HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS

PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Senate Legal and Constitutional Affairs Committee
Inquiry into the efficacy, fairness, timeliness and costs of the processing and granting of visa classes which provide for or allow for family and partner reunions

25 June 2021

QoN Number: 02

Subject: Procedural instructions

Asked by: Nick McKim

Question:

Senator McKIM: Thanks. When the department is giving consideration to those matters—that is, the medical grounds and the health public interest criteria—are there guidelines or internal guidance used by department officers to assist them in making decisions about whether or not to grant visas?
Mr Willard: We issue procedural instructions for officers that assist them with consideration of the migration regulation requirements.
Senator McKIM: Are they publicly available?
Mr Willard: Yes, they are.
Senator McKIM: They're on the department's website?
Mr Willard: I think they're available through a system we have called LEGENDcom.
CHAIR: Would you be able to provide them to the committee?
Mr Willard: We can certainly provide them.
CHAIR: I think that's what he's really asking.
Senator McKIM: That was going to be my next question. Thanks for your assistance, Chair. Mr Willard, if I could ask that you provide all of the relevant—I can't remember what you called them—
Mr Willard: Procedural instructions.
Senator McKIM: Could you provide all the relevant procedural instructions for all of the visa classes that this committee is currently inquiring into?
Mr Willard: Sure.
Senator McKIM: Thank you.
…
Senator McKIM: Are there procedural instructions granted around the consideration of whether or not to issue a waiver?
Mr Willard: Yes. There are certainly procedural instructions in relation to the public interest criteria that go to health. I would imagine they go to that question.
Senator McKIM: And you'll provide a copy of those?
Mr Willard: We will provide a copy of those.

Answer:
The procedural instructions for Family visas and the health requirements are provided at **Attachments 1 to 20**.

The procedural instructions are also available on the Department's LEGENDcom database, which is accessible from the Parliamentary library.

[Sch2Visa300] Sch2 Visa 300 - Prospective Marriage

About this instruction

Contents

This departmental instruction, which deals with the Regulations Schedule 2 Part 300 Prospective Marriage provisions for the TO-300 visa, comprises:

- Introduction
- The TO-300 main applicant
- TO-300 family members
- TO-300 sponsorship and related requirements
- TO-300 visa grant.

Related instructions

- PAM3: GenGuideB - Non-humanitarian migration - Visa application and related procedures
- PAM3: Sch1 item 1215 - Prospective Marriage (Temporary) (Class TO)
- PAM3: Div1.4 - Form 40 sponsors and sponsorship.

Latest changes

Legislative – 18 November 2016

The Migration Legislation Amendment (2016 Measures No. 3) Regulation 2016 amended Regulations Schedule 2 Part 300.

Policy

This departmental instruction was re-issued on 18 November 2016 but **only** to note the above legislation change. Owner information has not been updated, nor has the instruction itself been reviewed or updated by its owner.

Owner

Family (Partner and Child) Policy Section

email

MVP Helpdesk/IMMI/AU
for referral to
partner child policy/IMMI/AU

Document ID

VM-6211

Contents summary

Introduction

1 About the TO-300 visa

1.1 The TO-300 visa pathway

This visa is for persons seeking entry to Australia:

- to marry, after their first entry to Australia, the Australian citizen, ***Australian permanent resident*** or ***eligible New Zealand citizen*** who is their ***prospective spouse*** (either party is also called 'fiancé(e)') and
- with a view to remaining permanently.

A TO-300 visa allows the holder to travel to, enter and remain in Australia for 9 months. Policy intends that, after marrying their prospective spouse (and while the TO-300 visa is still in effect), the TO-300 visa holder apply for a UK-820/BS-801 Partner visa.

1.2 If the couple intend to marry before travelling to Australia

Persons who intend to marry their prospective spouse outside Australia (that is, before travelling to Australia to settle permanently) should apply outside Australia for a UF-309/BC-100 Partner visa - see PAM3: Sch2Visa309.

Note: The applicant and prospective spouse must still meet the requirement that their marriage be recognised under Australia law - see PAM3: Act - Act defined terms - s5F - Spouse.

1.3 If the couple marry before a TO-300 visa is granted

If, after aTO-300 application is made but before it is decided, the couple change their plans and marry outside Australia, TO-300 time of decision criteria cannot be satisfied.

However, under regulation 2.08E (which covers most situations), once the couple has notified the department of their marriage (as would be required of them by s104 of the Act), and provided the

marriage is valid for visa purposes (see PAM3: Act - Act defined terms - s5F - Spouse), the TO-300 applicant is taken to have also applied for a UF-309/BC-100 Partner visa.

In these cases, no additional first instalment VAC is payable; the amount paid for the first instalment VAC for the TO-300 visa is taken to be payment of the first instalment VAC for the BC-100 visa - see regulation 2.08E(3).

The applicant should be advised to withdraw, in writing, the TO-300 application or the visa will be refused (note: the applicant must still be informed of their review rights in this situation). Refusal of the TO-300 visa does not affect continued processing of the UF-309/BC-100 application.

For more information see PAM3: Div2.2/reg2.08E.

1.4 Further TO-300 visa onshore

There is no provision for a TO-300 visa holder to be granted a further TO-300 visa in Australia, even if, for example, the couple still intend to marry but wish (for whatever reason) to delay the marriage until after the visa period.

The TO-300 main applicant

Eligibility

2 Age requirements

At time of visa application:

- the visa applicant must be at least 18 (300.212A)
- the prospective spouse (who must also be the sponsor - see 300.213(1)) must be at least 18 (300.213(2)).

3 Couple must have met and be known to each other

3.1 Must have met

Clause 300.214(1) requires the couple to have met in person since each of them turned 18. The onus is on the couple to provide satisfactory evidence of having met in person since turning 18.

Written correspondence or contact by phone, fax or the internet does not constitute having ‘met in person’. This interpretation of ‘must have met’ is consistent with that for the pre-1 July 2013 requirement (‘must have met and be known to each other’), the interpretation of which was upheld at the Full Federal Court, which determined that, for parties to a proposed marriage to have ‘met’, the parties must have come into each other’s company or physical presence (met in person) rather than by any other means. (Minister for Immigration and Citizenship v Yucesan [2008] FCAFC 110.)

3.2 Must be known to each other personally

The couple must also be 'known to each other personally' (300.214(2)).

To gauge the extent to which the couple know each other, officers may wish to consider:

- evidence of contact that shows the development of the relationship

- whether the relationship is traditionally or culturally appropriate within the couple's circumstances and
- interviewing both the applicant and their prospective spouse (if appropriate).

Evidencing intention to marry

4 Marriage celebrant's letter

For 300.215(a), in support of claims that the couple genuinely intend to marry, all applicants should provide evidence that arrangements have been made for the marriage ceremony to take place after the applicant's first entry to Australia.

In all cases, the form of evidence required is a signed and dated letter (on letterhead) from the (authorised) marriage celebrant who will conduct the ceremony.

Details require

The letter must include:

- in all cases, the date (or the date range - see Note - Date range) and the venue of the marriage ceremony
- in most cases, confirmation that a Notice Of Intention to Marry (NOIM) in respect of the couple has been lodged with the celebrant.

Cases where requirement for celebrants letter may be waived

Officers should consider waiving the requirement for a celebrant's letter to be provided only if:

- other evidence of the couple's intention to marry is strong and
- officers are satisfied that it is not reasonably possible for the evidence to be provided.

This may be in circumstances where the couple are outside Australia and the celebrant has declined to accept a NOIM without first interviewing them.

5 Notice of intention to marry (NOIM)

5.1 About the NOIM

Under Australian law, persons who wish to marry in Australia must lodge a NOIM with the celebrant who will be conducting the marriage ceremony. The NOIM must be lodged no less than 1 month and no more than 18 months before the proposed date of the ceremony.

5.2 Validity of a NOIM

A NOIM is valid for up to 18 months.

Officers should be mindful when processing TO-300 application not to grant the visa if doing so will cause the visa to cease before the date of intended marriage. Although the decision to grant the visa may be lawful, it will have the unintended consequence of the visa holder becoming an unlawful non-citizen before the marriage takes place in Australia (and no further TO-300 visa can be granted in Australia - see section 1.4 Further TO-300 visa onshore). In these circumstances, officers should discuss the situation with the applicant *before* deciding the application. See also section 28 The TO-300 visa period.

5.3 Who can witness a NOIM

Outside Australia

Persons who can witness NOIMs outside Australia include:

- Australian diplomatic officers
- Australian consular officers
- notaries public
- employees of the Commonwealth authorised under paragraph 3(c) of the Consular Fees Act 1955
- employees of the Australian Trade Commission authorised under paragraph 3(c) of the Consular Fees Act 1955.

There are several officers in each Australian Embassy, High Commission or Consulate who can witness such documents under the Consular Fees Act 1955.

In Australia

Persons who can witness NOIMS in Australia are:

- authorised celebrants
- Commissioners for Declarations under the Statutory Declarations Act 1959
- justices of the peace
- barristers
- solicitors
- legally qualified medical practitioners or
- members of the Australian Federal Police or state/territory police forces.

5.4 Only evidence of a NOIM is required

Officers should *not* request a copy of the NOIM itself. In most cases:

- a letter from the celebrant confirming the date of the marriage ceremony for the couple and
- confirmation that a NOIM has been lodged will be sufficient. However, in rare cases, if the document itself is required as proof of the intention to marry, officers should request a certified copy.

It is of no value for officers to ask that the original NOIM be provided. The original NOIM is held by the celebrant until the marriage has been performed. Within 14 days of the ceremony, the celebrant is required to lodge the NOIM, the official marriage certificate and any other papers required to register the marriage with the appropriate State/Territory registry of births, deaths and marriages.

5.5 Genuineness of the documentation

If doubt arises as to, for example, the authenticity of a document, the existence of a NOIM or whether the celebrant is an authorised celebrant, officers may, as appropriate:

- ask the relevant departmental STO in Australia to make further enquiries, for example, interview the prospective spouse regarding the document
- verify the celebrant is authorised. Officers can do this via www.marriage.ag.gov.au/internet/marriagecelebrants.nsf/publicViewCelebrants?OpenView and/ormclisting

and/or

- have document/s examined by Document Examination Section, National Office (document.examination.issues@immi.gov.au).

5.6 A NOIM is not evidence of 'no impediment'

A NOIM must not be regarded as proof that there is no impediment to the marriage, which is a time of decision visa requirement under 300.221A - see section 10 No impediment to marriage.

6 The marriage date

6.1 Must be within the visa period

Visa processing times vary between posts. It may therefore be unreasonable to expect couples to set a specific date for marriage. However, 300.215(b) requires that the marriage be intended to take place within the visa period.

To meet this requirement, it is reasonable to suggest that the date (or the date range - see Note - Date range) of the marriage ceremony indicated in the celebrant's letter come within the following 9 months (being the stated average visa processing time of 12 months from the date of application). Officers should take into account that their individual post processing times may differ from that of the stated average. This should be taken into consideration when assessing whether the marriage will take place within the visa period.

It is critical that the couple have firm plans to marry within the 9 month period of the visa - see section 28 The TO-300 visa period. There is no provision for a TO-300 holder to be granted a further TO-300 in Australia even if, for example, the couple need (for whatever reason) to delay the marriage beyond the visa period.

If the date does not fall within the appropriate periods described above, 300.215(b) cannot be satisfied.

6.2 Related documentation

Clause 300.215(b) requires the applicant to establish 'that the marriage is intended ... to take place within the visa period' - that is, the date of the marriage will be within the visa period. It follows that:

- the intended marriage date may be assessed having regard to the celebrant's letter (provided that, if only a date range has been provided, the date range is within the visa period - see Note - Date range

and

- given the policy requirements, the applicant will, in practice, provide further documentary evidence of intention to marry within the 9 month visa period prescribed in 300.511.

As there is no legislative requirement for applicants to specify a date for the intended marriage, officers are to ensure that any public information and checklists they make available relating to the Prospective Marriage visa do *not* include a requirement to specify a date.

Note - Date range

Some celebrants provide a letter that gives a date range rather than a specific date. For example, the West Australian Registry of Births Deaths and Marriages (BDM) letter states “This is to advise that a Notice of Intended Marriage has been lodged with me for the proposed marriage between (date) and (date) to take place at the Perth Registry Office, Western Australia.”

The relationship

7 Integrity concerns about the relationship

7.1 If there are integrity concerns

In assessing whether a visa applicant can satisfy 300.216 (that the couple intend to live together as spouses), officers might have concerns as to the integrity of the claimed relationship, that is, the bona fides of the relationship.

If such bona fides concerns arise (for example, fraud or malpractice is suspected) in relation to a TO-300 application, it is sometimes difficult for delegates to obtain further information that would enable them to be able to be satisfied or not satisfied about the relationship's bona fides. It may therefore be necessary to seek further information about the applicant's Australian sponsor's circumstances by requesting assistance from a Bona Fides Unit (BFU) in the relevant departmental STO in Australia.

7.2 Bona Fides Units

To assist departmental officers, BFUs have been established within the department's STOs. The aim of establishing a BFU national network is to provide a specialist function in an STO to improve the integrity of family stream visa processing in general and, in particular, partner category visa applications.

7.3 Case referral

Cases should *not* be referred to a BFU if:

- the visa can be refused immediately because the applicant fails an objective criterion or
- there is sufficient evidence and information available for the delegate to decide the application or
- the case can be resolved by due diligence in normal processes (for example, through investigative interviews with the applicant and other relevant persons or checks of documents, departmental databases and other evidence) or
- the case cannot be finalised due to an incomplete application or lack of evidence lodged with the application. In these cases, further information/evidence should be sought, particularly from the applicant and/or their Australian partner sponsor.

If, on receipt of further information, it appears that there are significant concerns as to the claimed relationship such that further detailed examination of the prospective spouse's circumstances is required, then the case may be referred to the relevant BFU.

Officers can request that the relevant onshore departmental office provide further information from the sponsor or undertake to visit the sponsor, but only if the specialised expertise or attention of the BFU is required to assist in finalising the application.

7.4 Details required by BFUs

If an officer wishes a BFU to undertake checks on the eligibility of a person to sponsor or ability to fulfil their undertakings, the following detailed information must be provided to the BFU:

- the checks needed
- the time frames involved and
- whether there is a deadline for receiving information.

In addition, the following further information must be given:

- relevant visa subclass
- applicant's name and departmental file number
- prospective spouse's name, address and telephone number
- type of check required, indicated against:
  - citizenship
  - resident status
  - accommodation
  - employment background and
- other relevant case details, accompanied by copies of forms or other documents relevant to the checks.

7.5 Authorisation for BFU referrals

If an officer wishes to refer a case to a BFU, the relevant local manager is responsible for authorising the referral request. The authorising officer at an overseas post would be, as appropriate, either the PMO or the SMO responsible for partner migration.

The authorisation should include:

- name of client (prospective spouse)
- address
- reasons for further referral and
- other relevant details.

Under policy, the preference is for the BFU referral request to be addressed to the appropriate Residence Section manager and sent by departmental bag. However, if the case is urgent, direct contact details are available from the relevant Residence Section manager or from Family (Partner and Child) Policy Section.

8 Arranged marriages

8.1 'Real consent'

Cases may arise where the intended marriage has been arranged by relatives, friends or brokers.

Such arranged marriages often arise from commitments given before one or both of the parties to the marriage reached marriageable age. Often in such cases the marriage commitments (contracts) are given when the parties are infants, and are characterised by an initial absence of informed and voluntary consent to the marriage by the parties.

Although, by the time of visa application, the (adult) applicant and their (adult) prospective spouse may have given real consent (as described in the corresponding section in PAM3: Act - Act defined terms - s5F - Spouse), cases may arise where one of the parties (usually the prospective spouse) indicates, either directly or through a third party, that:

- arrangements for the marriage are proceeding solely because of familial duress or cultural pressure and/or
- the party concerned prefers that the marriage not proceed.

(Keep in mind that TO-300 criteria cannot be satisfied if the couple have not met in person since both have turned 18 or are not personally known to each other (300.214).)

8.2 Assessing real consent

In either case, because 300.216 requires officers to be satisfied that couple ‘genuinely intend to live together as spouses’, officers are in effect obliged to be satisfied that ‘real consent’ to the impending marriage has been given by both applicant and the prospective spouse.

Officers should, however, exercise care and sensitivity if there are indications that real consent has not been given. There may be serious implications for the safety and well being of the party in question should their unwillingness to marry become known to persons other than the visa decision maker, or be disclosed within a decision record.

Officers may consider confining the decision record to an appropriate time of application criterion, for example:

- 300.214 (met in person and known toe ach other personally) - the applicant and their prospective spouse might have met as children but are unable to demonstrate that their relationship has developed to a point where the decision to marry was mutual or

- 300.215 (genuine intent to marry within visa period) - the applicant and their prospective spouse might be unable to satisfy officers that the couple have made firm plans to marry or
- 300.216 (genuine intent to live together as spouses) - the applicant and their prospective spouse might not be able to demonstrate that they have formed or will form an on-going spouse relationship consistent with the requirements of regulation 1.15A.

Care should also be taken to ensure that potentially sensitive material on file is properly labelled to ensure that the information provided by the applicant or the prospective spouse is not released. For policy and procedure:

- contact FOI and Privacy Section, National Office at privacy@immi.gov.au
- see PAM3: Act - Merits review - Disclosure of certain information to and by the MRT.

If an officer assesses that there is a high likelihood that the proposed relationship is the result of a forced marriage, refer the case to Family (Partner and Child) Policy Section.

9 Continued intention to marry

9.1 Overview

The policy and procedure that follow reflect common practice that officers assess an applicant's ability to satisfy 300.211 and 300.215 at time of decision, as provided for by 300.221. Briefly, under policy:

- documentary evidence of intention to marry is required and
- the applicant must otherwise satisfy the decision maker as to the parties' intention to marry. Officers may take into account all information held at time of decision.

However, documentary evidence of marriage intention - as described in Evidencing intention to marry - should not be given undue weight in assessing the genuineness of the parties' intention to marry.

9.2 Genuineness of the intended spouse relationship

In practice, officers assess an applicant's ability to satisfy 300.216 at time of decision, that is, as provided for by 300.221.

It is for the applicant to satisfy the decision maker that both parties intend to live together as spouses. It is policy that officers assess the parties' intention to live together as spouses by having regard to, as far as practicable,

- the s5F ***spouse*** definition
- the regulation 1.15A factors for assessing married relationships
- PAM3: Act - Act defined terms - s5F - Spouse and
- PAM3: Div1.2/reg1.15A.

However, officers should also keep in mind that, for cultural and/or religious reasons, a couple who are intending to marry will not always be able to provide evidence in support of the factors listed in regulation 1.15A(3).

10 No impediment to marriage

For 300.221A, officers should familiarise themselves with the potential impediments to marriage in Australia - see PAM3: Act - Act-defined terms - s5F - Spouse - Recognition of marriages.

Briefly, for 300.221A to be satisfied at time of decision:

- both parties must be free to marry
- the intended marriage must be able to be recognised under Australian law as valid.

In terms of TO-300 requirements, the most common impediment to the marriage will be cases involving divorce:

- If a question arises in reference to the validity under Australian law of an applicant's (or prospective spouse's) previous divorce, officers should first read s104 of the Family Law Act 1975 (available on ComLaw at http://www.comlaw.gov.au/Details/C2013C00174). If further issues arise, officers should seek advice from Family (Partner and Child) Policy Section.
- If the applicant is currently married and cannot obtain a divorce, officers should explore other visa pathways and/or seek advice from Family (Partner and Child) Policy Section.

It is important that officers *never* regard a celebrant's confirmation that a NOIM has been lodged as proof that there is no impediment to the marriage. A NOIM is not a requirement under Australian law for a person to demonstrate that, at time of lodging the NOIM, they are free to marry.

Other TO-300 requirements

Continued eligibility

11 General requirements

In regard to 300.221, s104 of the Act requires applicants to notify changes in their circumstances, including for example, if the relationship ends or the composition of their family unit changes (for example, as a result of birth, death or change in marital status).

For *other than* 300.215 and 300.216 - for which see, respectively:

- Evidencing intention to marry
- section 9.2 Genuineness of the intended spouse relationship

officers may without further enquiry consider 300.321 satisfied provided:

- there is no evidence (or notification) to the contrary (for example, the sponsorship has been withdrawn) and
- no significant time has elapsed since the application was made; otherwise, officers should check that there has been no material change in the circumstances of the applicant, their prospective spouse or any family unit member.

12 If the couple marry before visa grant

An applicant cannot satisfy 300.221 criterion if they marry their prospective spouse during the processing of the TO-300 visa application. In such cases, the marriage can no longer be regarded as 'intended by the parties to take place within the visa period' (300.215(b)).

See section 1.2 If the couple intend to marry before travelling to Australia.

Generic visa requirements

13 Main applicant - Public interest criteria

For policy and procedure on the PICs prescribed in 300.223, see the corresponding PAM3: Sch4 instructions.

14 Main applicant - Special return criteria

For policy and procedure on the special return criteria prescribed in 300.224, see PAM3: Sch5 - Special return criteria.

15 "One fails, all fail" public interest criteria

For 300.226(1)(a) and (aa), the main applicant cannot be granted a visa unless those ***members of the family unit*** who are visa applicants satisfy these criteria. See the corresponding PAM3: Sch4 instructions.

For 300.226(2), the main applicant cannot be granted a visa unless those members of the family unit who *are not visa applicants* satisfy these criteria. See the corresponding PAM3: Sch4 instructions.

Note: 300.226(2)(b) provides that those family members who are not visa applicants need not satisfy PIC 4007 if the decision maker is satisfied that to do so would be unreasonable. For policy and procedure, see PAM3: Sch4/4005-4007 - The health of family unit members (including non- migrating dependants).

16 "One fails, all fail" special return criteria

The main applicant cannot be granted a visa unless those family unit members who are also visa applicants satisfy the special return criteria prescribed in 300.226(1)(b).

17 "One fails, all fail" parental responsibility criteria

For 300.227, which relates to family unit members under 18 years old, see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children. The main applicant cannot be granted a visa if a family member applicant who is a minor does not satisfy PIC 4015 and PIC 4016.

TO-300 family members

18 Eligibility - Relationship

To satisfy 300.311, at time of application, the applicant must be a ***member of the family unit*** of the person seeking to satisfy primary criteria - see:

- regulation 1.12 (Member of the family unit) and
- for policy and procedure on establishing the composition of the family unit, PAM3: Div1.2/reg1.12 - member of the family unit.

Combined application

Clause 300.311 requires family unit members to combine their application with that of the main applicant; they cannot successfully apply separately for this visa. However, provided the main applicant has not yet been granted or refused a visa:

- regulation 2.08, by operation of law, adds newborn children to the application (they are taken to have applied for a visa at birth) - see PAM3: Div2.2/reg2.08 and
- regulation 2.08B allows dependent children (only) to be added to the application at the main applicant's written request - see PAM3: Div2.2/reg2.08B.

In either situation, the relevant regulation states that the person is taken to have combined their application with that of the main applicant, so this particular Schedule 2 secondary criterion is still satisfied.

Continued eligibility

For 300.321, see:

- Continued eligibility and
- section 11 General requirements.

19 Family applicants - Public interest criteria

For policy and procedure on the PICs prescribed in 300.323, see the corresponding PAM3: Sch4 instructions.

20 Family applicants - Special return criteria

For policy and procedure on the special return criteria prescribed in 300.324, see PAM3: Sch5 - Special return criteria.

21 If a minor

For 300.326 - the "parental responsibility" criterion that applies to family applicants under 18 years old - see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

22 Main applicant must be visaed first

Clause 300.321 precludes family members from being granted their visas unless/until the main applicant is granted their visa.

TO-300 sponsorship and related requirements

23 Sponsorship requirements

For policy and procedure on TO-300 sponsorship requirements (300.213, 300.222, 300.312 and 300.322) and associated regulation 1.20 provisions, see PAM3: Div1.4 - Form 40 sponsors and sponsorship.

NZ citizen sponsors

For specific policy and procedure on ***eligible New Zealand citizen*** sponsors (including health and character considerations), see:

- PAM3: Div 1.4 - Form 40 sponsors and sponsorship - New Zealand citizens
- PAM3: Act - Identity, biometrics and immigration status - New Zealand citizens in Australia
- PAM3: Sch4 - 4005-4007 - The health requirement - Health assessment - Permanent and provisional visas - Category-specific requirements - NZ sponsors of visa applicants.

24 Sponsorship limitations

24.1 Regulations 1.20J and 1.20KA

For policy and procedure on:

- the regulation 1.20J sponsorship limitations that apply to TO-300
- the regulation 1.20KA sponsorship limitations that apply to certain are CA-143 Contributory Parent and DG-864 Contributory Aged Parent visa holder sponsors

see PAM3: Div1.4B - Limitation on certain sponsorships under Division 1.4.

24.2 Regulation 1.20KB - Sponsors of concern

The sponsorship must be refused if the sponsor has an unresolved charge, or a conviction for, a ***registrable offence*** - see regulation 1.20KB. To determine whether the sponsor has been charged with, or convicted of, a registrable offence, officers may request the sponsor to provide a police check from:

- a jurisdiction in Australia specified in the request or
- a country in which the sponsor has lived for a total of at least 12 months.

Under policy, such police checks *must* be obtained and cases involving registrable offences must be referred to the department's Visa Applicant Character Consideration Unit (VACCU).

For regulation 1.20KB policy and procedure, including requesting police checks and procedures for referring relevant cases to the VACCU, see PAM3 Div 1.04 - Form 40 sponsorship - Protection of children - Sponsors of concern.

25 If the prospective spouse was a woman at risk

25.1 Preclusions on sponsoring

Clause 300.212 supports similar Schedule 2 Part 204 criteria that apply to persons seeking entry to Australia under the "immediate family" provisions of the XB-204 Woman at Risk visa. The purpose is to maintain the integrity of the Woman at Risk component of the Refugee and Humanitarian program.

26 Sponsorship approval

For 300.222, the sponsorship must be approved and remain in force. For policy and procedure, see PAM3: Div1.4 - Form 40 sponsors and sponsorship.

TO-300 visa grant

27 Where a TO-300 applicant must be to be granted their visa

27.1 Most cases

Most TO-300 visa cases are covered by 300.412, for which see PAM3: GenGuideA - All visas - Visa application procedures - Circumstances applicable to grant.

27.2 If granted a TI-303 visa in lieu of TO-300

Clause 300.411(2) applies only to those TO-300 visa applicants who entered Australia holding a TI-303 Emergency visa. It relates to those cases where the TO-300 visa applicant:

- was granted a TI-303 visa and
- is now in Australia as a TI-303 visa holder and
- has now satisfied all ***remaining criteria*** to be granted their TO-300 visa but
- has not yet married their prospective spouse.

If the TI-303 visa holder marries their prospective spouse before being granted their TO-300 visa, under regulation 2.08E, the (unfinalised) TO-300 visa application is taken to also be a UF-309/BC-100 Partner visa application. In these cases, see instead PAM3: Sch2Visa309.

28 The TO-300 visa period

The period prescribed in 300.511 is intended to allow sufficient time for the TO-300 visa main applicant to travel to Australia, marry their prospective spouse and apply in Australia for the UK-820/BS-801 Partner visa.

Nothing in 300.511 or elsewhere requires the couple to marry in Australia. Although the TO-300 visa holder must enter Australia within the visa period, they may leave again to marry their prospective spouse overseas. The TO-300 visa holder would, however, need to re-enter Australia within the visa period to be able to apply for the UK-820/BS-801 Partner visa.

29 TO-300 visa conditions

29.1 First entry date

Under 300.611, the visa holder must make their initial entry to Australia by a specific date. In deciding this officers should take into account both:

- general policy as described in PAM3: GenGuideB - Non-humanitarian migration - Visa application and related procedures - Granting visas and
- TO-300 visa policy that the date should be the earliest of the following:
  - the date of intended marriage
  - the validity of the applicant's health and character clearances.

(In practice, therefore, the date is most likely to be one of those described immediately above.)

Officers should warn TO-300 applicants that the conditions and period of effect of a visa cannot be altered following grant. If there is reason to believe that the applicant may not, for example, be able to arrive in Australia before the *proposed* specified date, officers should resolve these matters *before* granting the visa - see also section 5.2 Validity of a NOIM.

29.2 Entry-related conditions

Main applicant

In regard to the conditions prescribed in 300.612 and 300.613, it is important that persons granted a TO-300 visa on the basis of satisfying primary criteria be made fully aware of the conditions subject to which the visa has been granted and the possible consequences of failing to abide by those conditions.

For policy and procedure on these conditions (other than 8519, which is specific to, and applies by law to, TO-300), see:

- for 8502 - PAM3: Sch8 - 8502 - "Not to arrive before person specified in visa"
- for 8515 - PAM3: Sch8 - 8515 - "Must not marry or enter into de facto relationship".

Family members

In regard to 300.614, condition 8520 (which applies by law), is specific to the TO-300 visa.

For policy and procedure on the discretionary conditions listed in 300.615, see:

- for 8502 - PAM3: Sch8 - 8502 - "Not to arrive before person specified in visa"
- for 8515 - PAM3: Sch8 - 8515 - "Must not marry or enter into de facto relationship".

29.3 If the couple marry before first entry

If the couple marry before first entry to Australia, see PAM3: Sch8 - Visa conditions - Breach of entry-related visa conditions (inc. entry date).

30 Standard letters

For notification templates, see Standard Correspondence Templates on IMMInet.

END OF DOCUMENT

[Sch2Visa309] Sch2 Visa 309 - Partner (Provisional)

About this instruction

Contents

This instruction, which deals with the UF-309 Partner (Provisional) visa – that is:

- Regulations Schedule 1 item 1220A
- Regulations Schedule 2 Part 309

comprises:

- Introduction
- Applying for a Partner (Provisional) (Class UF) visa
- The UF-309 primary applicant
- UF-309 family unit members
- Visa grant.

Related instructions

- PAM3: GenGuideB - Non-humanitarian migration - Visa application and related procedures
- PAM3: Act - Act-defined terms - s5F - Spouse
- PAM3: Div1.2/reg1.15A - Spouse
- PAM3: Act - Act-defined terms - s5CB - De facto partner
- PAM3: Div1.2/reg1.09A - De facto partner and de facto relationship
- PAM3: Div2.1/reg2.03A - Criteria applicable to classes of visas.

Latest changes

Legislative

Nil.

Policy

This departmental instruction was re-issued on 3 February 2017 but **only** to correct minor typographic errors.

owner

Family (Partner and Child) Policy Section.

email

MVP helpdesk
for referral to
partner child policy/IMMI/AU

Document ID

VM-6212

Contents summary

Introduction

1 About the UF-309 visa

1.1 Purpose

Partners, whether spouse or de facto (both same-sex and opposite-sex), of:

- Australian citizens
- ***Australian permanent residents*** or
- eligible New Zealand citizens

who apply *outside Australia* for a permanent visa (namely, BC-100) on the basis of that relationship must, as a prerequisite for the BC-100 visa, hold a UF-309 visa (application for both visas is made at the same time, using the same form).

1.2 Two year wait out period

Under two-stage partner visa processing arrangements, applicants apply on the one application form for both a provisional visa (UF-309) and a permanent visa (BC-100)In most cases, applicants are not eligible for the permanent visa until two years after their application is made. This means that UF-309 visa holders are usually required to wait two years before their BC-100 visa application is able to be considered. For details of the exceptions to this, see PAM3: Sch2Visa100.

1.3 Ineligible

UF-309 is not for

- persons *in* Australia seeking to remain permanently on the basis of a partner relationship with an Australian resident - see instead PAM3: Sch2Visa820 or
- dependent children seeking to join a UF-309 holder in Australia - see instead PAM3: Sch2Visa445.

2 UF 309 defined terms

2.1 Intended spouse

Where the term 'intended spouse' is used in PAM3, it has the same meaning as in 309.111. It relates specifically to those cases described in 309.211(3) where, at time of visa application, the applicant has not yet married. Otherwise in PAM3, "Australian partner", "sponsoring partner" or "Australian resident" are used.

Note: The term ‘prospective spouse’ is not used in relation to UF-309, as this term has a specific defined meaning for Schedule 2 Prospective Marriage visa (TO-300) purposes. The difference is that

- an ‘intended spouse’ marries the visa applicant before a visa (in this case, a UF-309) is granted, that is, the marriage takes place before the applicant enters Australia
- a 'prospective spouse' marries the holder of a TO-300 Prospective Marriage visa after the visa holder makes their initial entry to Australia on the TO-300 visa (there is no requirement that the TO-300 visa holder marry in Australia, however).

2.2 Spouse

See section 5 Eligibility as a partner.

2.3 De facto partner

See section 5 Eligibility as a partner.

2.4 Woman-at-risk visa

See section 8.3 If the Australian partner was a Woman at risk.

Applying for a Partner (Provisional) (Class UF) visa

3 Schedule 1 and related requirements

3.1 Schedule 1 item 1220A

Schedule 1 item 1220A requirements for making a valid Class UF application are mostly self-explanatory. For policy and procedure on valid application requirements, see PAM3: GenGuideA - Visa application procedures - Applications for visas - What is a valid application.

3.2 Forms

Visa application form

The application form (form 47SP) that the applicant must complete, sign and submit is prescribed at Schedule 1 item 1220A(1).

Sponsorship

Sponsorship form 40SP, which the department requests be completed by the applicant's sponsor (usually their Australian partner), is not a Schedule 1 requirement for making a valid UF-309 application. A visa application can be validly made without an accompanying sponsorship form 40SP.

However, under policy, the form 40SP, completed and signed by the visa applicant's sponsor, should be submitted by the visa applicant with their visa application (and accompanying documentation).

This is because the sponsor's completion of the form 40SP usually addresses those Schedule 2 visa criteria that require the s65 delegate to be satisfied **at time of visa application**, namely that:

- the Australian partner (who is usually the sponsor) genuinely intends to sponsor the applicant for the visa and
- the sponsor (who is usually the Australian partner) understands sponsorship obligations and undertakings and satisfies all relevant criteria (for example, that the sponsor is not a sponsor of concern).

For further guidelines on the form 40SP and the sponsorship provisions, see PAM3: Div1.4 - Form 40 sponsors and sponsorship.

Cases that do not require a UF-309 application

If the Minister has intervened using ministerial public interest powers to grant a person a UF-309 visa, that person will not have an application for the permanent Partner (BC-100)visa with the department. If the UF-309 visa holder wishes to be granted a permanent visas on the grounds of a partner relationship, they must apply (using form 47SP) for the BC-100 visa.

3.3 Where and how the application must be lodged

For Schedule 1 item 1220A(3)(a), the application must be made outside Australia.

3.4 Where the applicant must be

For Schedule 1 item 1220A(3)(b), the applicant must be outside Australia.

3.5 Visa application charge (VAC)

Schedule 1 item 1220A(2) prescribes a nil VAC for this visa. The VAC for the combined UF-309/BC-100 application is “attached” to the BC-100 and is prescribed in Schedule 1 item 1129(2) for the BC-100 visa.

The UF-309 primary applicant

Eligibility

4 Eligibility - Overview

For 309.211(1), briefly,

- 309.211(2) applies if the applicant has already married or is already in a de facto partner relationship with their Australian partner
- 309.211(3) applies if the applicant has not yet married their Australian partner (but intends to do so before the application is decided).

5 Eligibility as a partner

5.1 Requirements

(In this instruction, as in other policy instructions, "partner" refers to ***spouse*** and ***de facto partner***.)

Clause 309.211(2) provides visa eligibility for a spouse or a de facto partner, which are separately defined in the Act. The definitions have been split between the Act and the Regulations. Relevant provisions include:

- s5F of the Act - definition of ***spouse***
- reg. 1.15A - factors for assessing ***spouse relationships***
- s5CB of the Act - definition of ***de facto partner*** and ***de facto relationship***
- reg. 1.09A - factors for assessing de facto relationships
- reg. 2.03A - age and length of relationship requirements for de facto relationships.

5.2 De jure relationships

For 309.211(2), s5F of the Act defines spouse as married (that is, de jure) relationships only. In this and related policy instructions, therefore, references to a spouse (or spouse relationship) are limited to meaning married relationships.

Guidance on the definition of spouse is in PAM3: Act - Act-defined terms - s5F - Spouse. Among other matters, that instruction provides policy and procedure on the recognition (if any) under migration law of:

- proxy, customary and arranged marriages
- marriages where the person whom the visa applicant has married (or will marry) is - in terms of the Marriage Act 1961 - usually domiciled in Australia
- polygamous marriages
- under-age marriages, that is, where either party is not of Australian marriageable age (at least 18 years old)
- marriages within a prohibited degree of relationship
- same-sex marriages
- marriages involving transsexuals.

In addition, there are factors in reg. 1.15A that must be taken into account when assessing the marital relationship - for policy and procedure see PAM3: Div1.2/reg1.15A.

5.3 De facto relationships

For 309.211(2), de facto partner is defined in s5CB of the Act and includes both same-sex and opposite-sex de facto couples. For policy and procedure see PAM3: Act- defined terms - s5CB - De facto partner. Among other matters, that instruction provides policy and procedure on the recognition (if any) under migration law of same-sex de facto relationships.

In addition, there are factors in regulation 1.09A that must be taken into account when assessing the de facto relationship - for policy and procedure on these factors, see PAM3: Div1.2/reg1.09A.

Further, regulation 2.03A prescribes an age requirement for de facto partners (both applicant and their Australian partner must have turned 18) - see PAM3: Div2.1/reg2.03A.

5.4 Related instructions

For policy and procedure relating to eligibility as a partner, see:

- PAM3: Act - Act-defined terms - s5F - Spouse
- PAM3: Div1.2/reg1.15A - Spouse
- PAM3: Act - Act-defined terms - s5CB - De facto partner
- PAM3: Div1.2/reg1.09A - De facto partner
- PAM3: Div2.1/reg2.03A - Criteria applicable to classes of visas

6 If applying prior to marriage

6.1 Purpose

Clause 309.211(3)(a) relates to situations where the couple are planning to marry outside Australia. If the couple plan to marry in Australia, the applicant should apply for and be considered against TO-300 Prospective Marriage visa criteria.

6.2 Evidence of intended marriage

The applicant should provide documentation satisfying the s65 delegate that they have made arrangements to marry the person named in their application as their intended spouse (this will usually be the sponsor). To assist visa processing, the documentation should indicate the intended date of the marriage.

6.3 If not free to marry

Nothing requires the applicant and intended spouse to be free to marry at the time the application is made. However, if either party is, at the time of application, legally unable to marry, the policy intention is that the couple be able to marry within the time frame that it usually takes to process an application at that particular overseas post. If possible, applicants in these circumstances should be advised accordingly before they apply.

6.4 Intended de facto relationship

There is no provision for a successful UF-309 application to be made on the basis of an "intended" de facto partner relationship.

6.5 Intended marriage must be valid

For 309.211(3)(b), the intended marriage, if it takes place, must be a valid marriage for the purposes of s12 of the Act.

See:

- s12 of the Act and
- for policy and procedure, PAM3: Act - Act-defined terms - s5F - Spouse - Recognition of marriages.

6.6 About the Note at 309.211(3)

The Note in 309.211(3) states that the marriage must have taken place before the applicant can be granted a visa.

The 'Note' means only that a decision cannot be made to *grant* a visa until the marriage has taken place. It does *not* preclude a visa being refused before the marriage takes place on grounds that, for example, other prescribed criteria are not satisfied or it is apparent that the marriage will not take place at all.

7 Integrity concerns about the partner relationship

7.1 If the s65 delegate has integrity concerns

In assessing whether or not an applicant can satisfy 309.211, that is, that they are in an ongoing partner relationship with their Australian partner sponsor, a delegate may have concerns about the integrity of the claimed relationship, that is, the bona fides of the relationship.

If such bona fides concerns arise (for example, fraud or malpractice is suspected) in relation to a visa application, it is sometimes difficult for delegates to obtain further information that would enable them to be able to be satisfied or not satisfied about the bona fides of the relationship. It may therefore be necessary to seek further information about the applicant's Australian sponsor's circumstances by requesting assistance from a Bona Fides Unit (BFU) in the relevant state or territory office (STO) in Australia.

7.2 Bona Fides Units

To assist departmental officers, BFUs have been established within the department's STOs. The aim of establishing a BFU national network is to provide a specialist function in an STO to enable improvement to the integrity of family stream visa processing in general and, in particular, partner visa applications.

7.3 When not to refer a case to a BFU

Cases should not be referred to a BFU if:

- the visa can be refused immediately because the applicant fails an objective criterion or
- there is sufficient evidence and information available for the officer to make a decision on the application or
- the case can be resolved by due diligence in normal processes (for example, through investigative interviews with the applicant and other relevant persons or checks of documents, departmental databases and other evidence) or
- the case cannot be finalised due to an incomplete application or lack of evidence lodged with the application. In these cases, further information/evidence should be sought, particularly from the applicant and/or their Australian partner sponsor.

7.4 Referral to BFUs

If, on receipt of further information, it appears that there are significant concerns as to the claimed relationship such that further detailed examination of the Australian partner sponsor's circumstances is required, the case may then be referred to the relevant BFU.

The officer can request that the relevant onshore departmental office provide further information from the sponsor or undertake to visit the sponsor, but only if the specialised expertise or attention of the BFU is required to assist in finalising the visa application.

7.5 Details required by BFUs

If a delegate wishes a BFU to undertake checks on the eligibility of a person to sponsor or ability to fulfil their undertakings, the following detailed information must be provided to the BFU:

- the checks needed
- the time frames involved and
- whether there is a deadline for receiving information.

In addition, the following further information must be given:

- relevant visa subclass
- applicant's name and departmental file number
- sponsor's name, address and telephone number
- type of check required, indicated against:
  - citizenship
  - resident status
  - accommodation
  - employment background and
- other relevant case details, accompanied by copies of forms or other documents relevant to the checks.

7.6 Authorisation for BFU referrals

If a delegate wishes to refer a visa application to a BFU, the relevant local manager is responsible for authorising the referral request. The authorising officer at an overseas post would be, as appropriate, either the PMO or the SMO responsible for partner migration.

The authorisation should include:

- client's name (usually the Australian partner sponsor)
- address
- reasons for further referral and
- other relevant details.

Under policy, the preference is for the BFU referral request to be addressed to the appropriate Manager, Residence Section and sent by departmental bag. However, if the case is urgent, direct contact details are available from the relevant STO Residence Section manager or from the programme management section (contact details on page 1 of this document).

7.7 Processing of requests by BFUs

BFUs are able to assist the decision making process by promptly responding to requests for checks. Given that s85 capping of visas is not applicable to partner visas and given that they are accorded priority processing, BFU officers are to avoid unnecessary delays that could result in the applicant being disadvantaged.

The results of BFU checks undertaken should be forwarded by email as soon as they are available.

Other requirements

8 Sponsorship requirements

8.1 Sponsorship

For 309.213 , see PAM3: Div1.4 - Form 40 sponsors and sponsorship. Form 40SP is, under policy, the approved sponsorship form for this visa. (See also section 3.2 Forms.)

Officers are reminded that, under law, sponsors who need to be assessed as eligible New Zealand citizens must undergo standard Schedule 4 health/character assessment for their latest entry to Australia - see regulation 1.03 definition - ***eligible New Zealand citizen***. However as most eligible New Zealand citizens do not undertake such assessments before entry to Australia, officers will have to ensure that such sponsors are advised at time of application that they will need to undergo such checks.

As at 24 March 2012, a health assessment by the MOC is no longer required for New Zealand citizen sponsors where no adverse information is known about the prospective sponsor's health. Unless the applicant or sponsor have volunteered information that causes the case officer to believe that the sponsor may not have met PIC 4007 at time of their last entry to Australia an officer should not request any medical examinations or tests and can assume the criterion is met. If a medical condition has been declared that would result in the sponsor failing to meet PIC 4007, they must be assessed by the MOC.

For policy and procedure relating to eligible New Zealand citizens and sponsorship see:

- PAM3: Sch4 - 4005-4007 - The health requirement
- PAM3: Act - Identity, biometrics and immigration status - New Zealand citizens in Australia
- PAM3: Div 1.4 - Form 40 sponsors and sponsorship.

8.2 Sponsorship approval/limitation

Reg. 1.20

For 309.222, the sponsorship must be approved and remain in force. For policy and procedure, see PAM3: Div1.4 - Form 40 sponsors and sponsorship.

Regs. 1.20J and 1.20KA

For policy and procedure on:

- the regulation 1.20J sponsorship limitations that apply to this visa
- the regulation 1.20KA sponsorship limitations that apply to certain CA-143 Contributory Parent and DG-864 Contributory Aged Parent visa holding sponsors

see PAM3: Div1.4B - Limitation on certain sponsorships under Division 1.4.

Reg. 1.20KB - Sponsors of concern

The sponsorship must be refused if the sponsor has an unresolved charge, or a conviction, for a ***registrable offence*** - see regulation 1.20KB.

To ascertain whether the sponsor has been charged with, or convicted of, a registrable offence, officers may request the sponsor to provide a police check from:

- a jurisdiction in Australia specified in the request or
- a country in which the sponsor has lived for a total of at least 12 months.

Under policy, such police checks**must** be obtained and cases involving sponsors with registrable offences **must** be referred to the department's Visa Applicant Character Consideration Unit (VACCU).

Policy and procedure on regulation 1.20KB, including requesting police checks and procedures for referring relevant cases to the Visa Applicant Character Consideration Unit, are in PAM3: Div 1.4 - Form 40 sponsorship - Protection of children - Sponsors of concern.

8.3 If the Australian partner was a Woman at risk

Preclusions on sponsoring

For 309.212, this provision supports similar Schedule 2 Part 204 criteria that apply to persons seeking entry to Australia under the "immediate family" provisions of the Woman at risk visa.

The purpose is to maintain the integrity of the Woman at risk component of the offshore humanitarian program.

9 Continued eligibility

9.1 General requirements

For 309.221 or 309.321, applicants are required (under s104 of the Act) to notify changes in their circumstances. It follows that applicants are expected to notify, for example, if the relationship ends or the composition of their family unit changes (for example, as a result of birth, death or change in relationship status).

Officers may without further enquiry consider this criterion satisfied provided:

- there is no evidence (or notification) to the contrary (for example, the Australian partner has withdrawn the sponsorship) **and**
- no significant time has elapsed since the application was made; otherwise, officers are expected to take reasonable steps to satisfy themselves that there has been no material change in the family's circumstances.

9.2 Applications remitted by MRT

If the MRT has remitted a UF-309 application with the direction that the requirement that the applicant is in a spousal or de facto relationship is satisfied, delegates are still required to assess the relationship at time of decision for the permanent (BC-100) application.

Deciding the BC- 100 application

If the applicant is eligible for their permanent application to be considered immediately following remittal of the UF-309 application, in the absence of significant new evidence to suggest that that the applicant is not in a genuine and ongoing spousal or de facto relationship, and subject to an applicant meeting all other legislative criteria, the BC-100 application should be decided without delay with due regard to the MRT’s finding. This policy reflects the MRT’s direction in respect of assessment of the relationship, and avoids further delay to the applicant given the period of time that would have already elapsed between refusal and remittal of the UF-309 application.

Note: Before any decision to **refuse** a BC-100 visa, delegates are to email this instruction’s owner for policy advice if the MRT has remitted theUF-309 application.

9.3 Remittal of decision to refuse dependant a UF-309 visa

If the MRT has remitted a decision to refuse a UF-309 visa to a dependant applicant, 309.321(b) allows the UF-309 visa to be granted to the dependant in the event that the primary applicant has already been granted the UF-309 and BC-100 visa.

9.4 Continued relationship eligibility

For 309.223 and 309.224, see section 8 Sponsorship requirements.

10 Generic criteria

10.1 Public interest criteria (PICs)

For 309.225, see policy and procedure in the corresponding PAM3: Sch4 instructions.

10.2 Special return criteria

For 309.226, see PAM3: Sch5.

10.3 "One fails, all fail" criteria

PICs

For 309.228(1)(a) and (aa), the main applicant cannot be granted a visa unless those ***members of the family unit*** who are visa applicants satisfy these criteria. See the corresponding PAM3: Sch4 instructions.

For 309.228(2), the main applicant cannot be granted a visa unless those members of the family unit who are **not** visa applicants satisfy these criteria. See the corresponding PAM3: Sch4 instruction.

Note: Clause 309.228(2)(b) provides that those family members who are **not** visa applicants need not satisfy 4007 if the delegate is satisfied that to do so would be unreasonable. For policy and procedure, see PAM3: Sch4/4005-4007 - Assessing the health of family unit members (including non-migrating dependants).

Special return criteria

For 309.228(1)(b), see PAM3: Sch5. The main applicant cannot be granted a visa unless those ***members of the family unit*** who are visa applicants satisfy these criteria.

Custody of minors

For 309.229, see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children. The main applicant cannot be granted a visa if granting a visa to any minor described in this provision would prejudice the custody (or similar) rights of another person.

10.4 Passport requirement

Clause 309.225 requires the applicant to satisfy PIC 4021, that is, either the applicant holds a valid passport or it would be unreasonable to require the applicant to hold a passport. For policy and procedure, see PAM3: Sch4/4021 - The passport requirement.

UF-309 family unit members

11 Eligibility

11.1 Relationship

For 309.311, see regulation 1.12 and, for policy and procedure on establishing the composition of the family unit, PAM3: Div1.2/reg1.12.

11.2 Combined application

Clause 309.311 requires ***members of the family unit*** to combine their application with that of the main applicant. In other words, persons seeking to satisfy secondary criteria cannot successfully apply separately for this visa.

If the main applicant has not yet been visaed

Provided the main applicant has not yet been granted or refused their visa

- regulation 2.08, by operation of law, adds newborn children to the application (they are taken to have applied for a visa at birth) - see PAM3: Div2.2/reg2.08 and
- regulation 2.08B allows dependent children (only) to be added to the application at the main applicant's written request - see PAM3: Div2.2/reg2.08B.

In either situation, the relevant regulation states that the child is taken to have applied with the main applicant, so this particular Schedule 2 secondary criterion is still satisfied.

If the main applicant has already been visaed

Dependent children outside Australia not included in (or added to) their parent's UF-309 application may be sponsored later - see PAM3: Sch2Visa445.

11.3 Continued eligibility

For 309.321, see section 9 Continued eligibility.

12 Other requirements

12.1 Sponsorship

For 309.312 and 309.322, see section 8 Sponsorship requirements.

12.2 Public interest criteria (PICs)

For 309.323, see:

- section 10.3 "One fails, all fail" criteria and
- policy and procedure in the corresponding PAM3: Sch4 instructions.

12.3 Special return criteria

For 309.324, see PAM3: Sch5.

12.4 If a minor

For 309.326, see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

12.5 Passport requirement

Clause 309.323 requires the applicant to satisfy PIC 4021, that is, either the applicant holds a valid passport or it would be unreasonable to require the applicant to hold a passport. For policy and procedure, see PAM3: Sch4/4021 - The passport requirement.

12.6 Main applicant must be visaed first

For 309.321, family members cannot be granted their visas unless/until the main applicant is granted their visa.

Visa grant

13 Where the applicant must be to be granted their visa

13.1 Most cases

Most UF-309 cases are covered by 309.412, for which see PAM3: GenGuideA - Circumstances applicable to grant.

13.2 If a TI-303 Emergency visa holder

For 309.411(1), see PAM3: GenGuideA - All visas - Visa application procedures - Circumstances applicable to grant. Clause 309.411(1) applies only to those UF-309 applicants who entered Australia holding a TI-303 Emergency visa.

14 The visa period

As indicated by 309.511, visas are event-based visas; both the period of stay and the travel component are linked to an event, not a specific date.

15 Visa conditions

15.1 First entry date

For 309.611, see policy and procedure on deciding the "first entry date" in PAM3: GenGuideB -Non-humanitarian migration - Visa application and related procedures - Granting visas.

15.2 Entry related conditions

For policy and procedure on the conditions in 309.612 and 309.613, see:

- for 8502 - PAM3: Sch8 - 8502
- for 8515 - PAM3: Sch8 - 8515.

END OF DOCUMENT

[Sch2Visa100] Sch 2 Visa 100 - Partner

About this instruction

Contents

This instruction comprises:

- Introduction
- Applying for a Partner (Class BC) visa
- The visa 100 main applicant
- Visa 100 members of the family unit
- Visa grant
- Second stage partner processing.

Related instructions

- PAM3: GenGuideB - Non-humanitarian migration (offshore and onshore) - Visa application and related procedures
- PAM3: Act - Act-defined terms - s5F - Spouse
- PAM3: Div1.2/reg1.15A - Spouse
- PAM3: Act - Act-defined terms - s5CB - De facto partner
- PAM3: Div1.2/reg1.09A - De facto partner and de facto relationship
- PAM3: Div2.1/reg2.03A - Criteria applicable to de facto partners.

Latest changes

Legislative - 19 November 2016

Bridging visa provisions in the Regulations have been amended to delink BV cease dates from the date the holder is notified of the primary (or, if applicable, merits review) decision on their substantive visa application. Rather, the BV cease date now relates to a specified period after the date of decision.

Policy

This instruction, was reissued on 19 November 2016 mainly to:

- note the (above) legislative changes.
- update owner details.

The instruction's content has not otherwise been reviewed.

Owner

Family Migration Programme Management Section

Permanent Visa and Citizenship Branch

Visa and Citizenship Management Division

National Office

Email

family.programme.management@homeaffairs.gov.au

Contents summary

Introduction

1 About visa 100

1.1 Eligibility

This visa is for persons who apply outside Australia for a permanent visa on the basis of being the partner (that is, spouse or de facto partner) of:

- an Australian citizen
- ***Australian permanent resident*** or
- ***eligible New Zealand citizen***

(in this instruction, the "Australian partner"). For these applicants, the visa 100 is applied for offshore, but is usually granted onshore.

Visa 100 does not, apply to visa 820 holders - see instead PAM3: Sch2Visa801.

1.2 Prerequisite visa

To be granted a visa 100, the applicant must have been granted a visa 309 (which can only be applied for and granted outside Australia). The only exception is certain pre-1 November 1999 applicants whose visa 309 ceased because the travel component of the visa expired.

1.3 Two-year wait out period

Under current two-stage partner visa processing arrangements, applicants apply on the one combined application form for both a provisional visa 309 and a permanent visa 100. In most cases, applicants are not eligible to be granted the permanent visa (be it in or outside of Australia) until two years after their application is made. This means visa 309 holders are usually required to wait 2 years before their visa 100 application is able to be finalised.

The only provisions to grant the visa 100 within the two-year period are prescribed at:

- clause 100.221(5) - if the relationship was already long-term when the visa application was made (see section 10 If the partner relationship is long-term) or
- clause 100.221(6) - if the visa 309 was granted on the basis of their being the partner of a permanent humanitarian visa holder (see section 11 If Australian partner visaed under the humanitarian program).

In the above two circumstances, if a decision maker decides that:

- an applicant is eligible to be granted a visa 309 and
- the applicant can satisfy one of the above exceptions to the two-year wait out period and
- that applicant has notified the department of their relevant circumstances either in their application or subsequent correspondence

the officer will, immediately after deciding to grant the visa 309, undertake assessment of the visa 100 application and, if appropriate, proceed to grant that visa.

Following the grant of the visa 309 and after the visa 309 holder enters Australia, a decision maker may consider the grant of the visa 100 at any time in the two-year wait out period in prescribed circumstances - see:

- clause 100.221(3) - the Australian partner dies (see section 7 If the Australian partner has died since visa 309 grant)
- clause 100.221(4)(c)(i) - family violence has occurred (see section 8.4 If family violence has occurred) or
- clause 100.221(4)(c)(ii) - the applicant is given custody (or similar) rights/responsibilities over a child for whom the Australian partner has similar rights/responsibilities (see section 8.5 If the case involves access or custody (or similar) rights).

1.4 Second stage visa 100 processing

For policy and procedure on second stage visa 100 processing (which is usually onshore), see Second stage partner processing.

2 Division 100.1 defined terms

2.1 Long-term partner relationship

Long-term partner relationship, defined in regulation 1.03, relates to 100.221(5). For details, see:

- section 10 If the partner relationship is long-term and
- PAM3: Div1.2/reg1.03 - Long-term partner relationship.

2.2 Sponsoring partner

For visa 100, sponsoring partner has two meanings:

Standard meaning

The standard meaning definition links visa 100 eligibility to the visa 309. The partner relationship that is the basis for the visa 100 must be the same relationship that led to the visa 309 being granted.

Note: A person continues to be a sponsoring partner for visa 100 purposes even if they cease to be a sponsor, for example, by withdrawing their sponsorship. (Withdrawal of a sponsorship results only in the sponsorship itself ceasing to have effect.)

Ministerial intervention cases

The Ministerial intervention meaning definition relates to cases where the Minister uses non-delegable powers under the Act to grant the visa 309.

Although, in these cases, the Australian partner does not have to sponsor the visa 309 holder for the visa 100 visa, the Australian partner is dealt with, as far as practicable, as if they were a sponsoring partner.

2.3 Permanent humanitarian visa

For subclass 100, the regulation 1.03 definition of permanent humanitarian visa for an Australian partner relates to 100.221(6) - see section 11 If Australian partner visaed under the humanitarian program.

Applying for a Partner (Class BC) visa

3 Schedule 1 and related requirements

3.1 Schedule 1 item 1129

Schedule 1 item 1129 requirements for making a valid Class BC application (of which visa 100 is the only subclass) are mostly self-explanatory. However, given that applicants usually submit a combined visa 309/100 application, in most cases applicants would already be able to satisfy item 1129 requirements.

The only exception is if the applicant is the holder of a visa 445 (Dependent Child) visa. For further details on applicants who are holders of a visa 445 and for visa 445 policy and procedure, see respectively:

- section 13.2 Adding members of the family unit to the application
- PAM3: Sch2Visa445 - Dependent Child

For policy and procedure on valid application requirements, see PAM3: GenGuideA - Visa application procedures - Application for visas - What is a valid application.

3.2 Visa application charge

The first instalment of the visa application charge (VAC) for a combined visa 309/100 application is attached to the visa 100 and is prescribed in Schedule 1 item 1129(2)(a) (there is no VAC prescribed

for the visa 309 - see Schedule 1 item 1220A(2)). However, as the applicant applies on the same form at the same time for both visas and pays the visa 100 VAC at the time their application is made, the applicant does not need to pay another VAC to have their visa 100 application processed.

If the Minister has granted a visa 309 using public interest powers (see section 6 Ministerial intervention cases) the visa 309 holder will need to:

- complete the prescribed visa application form (see Schedule 1 item 1129(1))
- submit relevant documentation and
- pay the VAC prescribed in Schedule 1 item 1129(2)(a).

For policy and procedure on VAC payment,see:

- PAM3: Div2.2A
- relevant Chief Financial Officer's Instructions.

3.3 Forms

The forms to be used by visa 100 applicants are prescribed at Schedule 1 item 1129(1).

However, given that visa 100 applicants usually submit a combined visa 309/100 application, in most cases, no new forms are required to be lodged with the department for the visa 100 to be processed. However, in limited circumstances (for example, cases where the Minister has granted a visa 309 using his public interest powers) a visa application would need to be lodged using the appropriate forms (see section 6 Ministerial intervention cases).

Form 1002

The mandatory form (form 1002) to be completed, signed and submitted by the applicant who is the holder of a visa 445 is prescribed at Schedule 1 item 1129(1)(a). The lodging of this form will enable the visa 445 holder to be added to the unfinalised visa 100 application of their subclass 309 visa-holding parent - see section 13.2 Adding members of the family unit to the application.

Form 47SP

The mandatory form (form 47SP) to be completed, signed and submitted by the applicant (who is not the holder of a visa 445) is prescribed at Schedule 1 item 1129(1).

Form 40SP

Unlike form 47SP, the sponsorship form (form 40SP) is not a prescribed form in the Regulations. A visa 100 application can be validly made without an accompanying form 40SP being completed by the sponsor (usually the Australian sponsor) and submitted by the applicant. However, under law (100.221(2)(b)), the decision maker must be satisfied at time of decision that:

- there is a genuine intent by the Australian partner to sponsor the applicant for the visa and
- the sponsor understands the sponsorship obligations and undertakings and satisfies all relevant criteria (for example, the sponsor is not a 'sponsor of concern').

Consequently, the department prefers that the required information be provided in a form 40SP as its completion would usually address all these issues relating to a visa application. For further policy and procedure on the form 40SP and the sponsorship provisions, see PAM3:Div1.4 - Form 40 sponsors and sponsorship.

3.4 Where the applicant must be

For Schedule 1 item 1129(3)(d), if the applicant is the holder of a visa 445 (Dependent Child) or a visa 309 or granted using the Minister's public interest powers, at time of application lodgement, the applicant may be either in or outside Australia, but not in immigration clearance.

For Schedule 1 item 1129(3)(c), if the applicant is not the holder of a visa 309 or a visa 445 (Dependent Child), at time of application lodgement, the applicant must be outside Australia.

3.5 Where the application must be made

Schedule 1 item 1129(3)(b) prescribes that, if the applicant is the holder of either visa 445 or a visa 309 granted using the Minister's public interests powers, then the application can be made either in or outside Australia but not in immigration clearance.

Schedule 1 item 1129(3)(a) prescribes that, if the applicant is the not holder of either visa 445 or a visa 309 granted by the Minister using his public interests powers, then the application must be made outside Australia.

The visa 100 main applicant

Eligibility

4 Eligibility - overview

Schedule 2 subclass 100 criteria (and various transitional regulations) reflect many significant changes in partner policy that have occurred since 1 September 1994. This instruction does not attempt to address those criteria that relate solely to such historical cases even if being assessed against current criteria.

Briefly, in 100.221:

- 100.221(2) is the 'standard' provision, namely where the partner relationship is ongoing and at least two years have passed since the application was made - see section 5 If the partner relationship is ongoing
- 100.221(2A) relates to cases where the Minister used non-delegable powers under the Act to grant a visa 309 - see section 6 Ministerial intervention cases
- 100.221(3) applies to those applicants whose Australian partner has died before the application is decided (provided the applicant has already entered Australia holding a visa 309) - see section 7 If the Australian partner has died since visa 309 grant
- 100.221(4) applies to those applicants who have already entered Australia as the holder of a visa 309 and whose relationship has ceased in circumstances where family violence has occurred (see section 8.4 If family violence has occurred) or access rights to children are involved (see section 8.5 If the case involves access or custody (or similar) rights)
- 100.221(4A) relates to applicants who are successful at merits review - see section 9 If a merits-review case
- 100.221(5) relates to cases where an applicant has been in a long-term partner relationship with their sponsor - see section 10 If the partner relationship is long-term
- 100.221(6) relates to applicants who are partners of permanent humanitarian visa holders - see section 11 If Australian partner visaed under the humanitarian program
- 100.221(7) relates to case officers not needing to wait until two years after application lodgement to refuse to grant a visa or to grant a visa to those applicants who meet 100.221(3) or (4) - see section 1.3 Two-year wait out period.

5 If the partner relationship is ongoing

5.1 Eligibility

Clause 100.221(2) is the standard provision, which may be expected to apply to most applicants. Except as provided in 100.221(3) or (4), it requires applicants to wait at least 2 years from when the visa 309/100 application was made before being eligible to be granted their visa 100 - see 100.221(2)(c).

5.2 Must hold (or have held) a visa 309

Under 100.221(2)(a)(i), except as indicated immediately below and in section 5.3 If not a visa 309 holder, the holding of a visa 309 is a standard prerequisite for grant of a visa 100.

If the person has previously held a 309 visa and this visa was cancelled before a decision was made on the 100 visa, under policy, the decision maker should wait until the outcome of any merits or judicial review is known before finalising the visa 100 application.

5.3 If not a visa 309 holder

Clause 100.221(2)(a)(ii) (inserted 1 July 2001) covers certain pre 1 November 1999 applicants who were inadvertently 'caught out' by s82 of the Act.

Prior to 1 November 1999, visas 309 were granted so that the 'travel component' ceased 30 months from the date of visa application, even though the 'stay component' did not cease until the visa 100 application was finalised. This led to some visa 309 holders being caught by s82(5) or s82(6) of the Act - that is, in the circumstances described in 100.221(2)(a)(ii)(A) and (B) - with the result that their visa 309 ceased to be in effect and a visa 100 could not (prior to the 1 July 2001 amendment) be granted.

Most of these persons are probably offshore. However, the provision can also cover former 309 holders who have re-entered Australia on a different class of visa and are now seeking to finalise their visa 100 application. The critical factor is not if the visa 309 was the last substantive held - this is irrelevant. Rather, the critical factors are that:

- a visa 309 was held
- the visa 309 ceased solely for one of the two reasons described in 100.221(2)(a)(ii), and not for any other s82 reason such as visa cancellation.

5.4 Continued sponsorship

For 100.221(2)(b) relating to sponsorship, see:

- PAM3: Sch2Visa309.

5.5 Must still be the sponsor's partner

The term 'sponsor's partner' has the meaning that the applicant must be either the spouse (that is, married) or de facto partner of the sponsoring partner.

For the purposes of 100.221(2)(b) spouse and de facto partner are defined in the Act at:

- s5F for spouse and
- s5CB for de facto partner.

For policy and procedure on assessing the applicant against these definitions (as applicable), see:

- PAM3: Act - Act-defined terms - s5F - Spouse and
- PAM3: Act - Act-defined terms - s5CB - De facto partner.

Further factors that must also be taken into account in assessing the visa 100 applicant are in the Regulations at

- regulation 1.15A - Spouse
- regulation 1.09A - De facto partner and de facto relationship
- regulation 2.03A - Criteria applicable to de facto partners.

For policy and procedure on assessing the applicant against these further factors, see:

- PAM3: Div1.2/reg1.15A - Spouse
- PAM3: Div1.2/reg1.09A - De facto partner and de facto relationship
- PAM3: Div2.1/reg2.03A - Criteria applicable to de facto partners.

In assessing this criterion, officers should not rely on s104 of the Act (which requires applicants to notify changes in their circumstances). Rather, and in particular if any appreciable time has elapsed since the visa application was made, officers are expected to make such enquiries as considered appropriate to satisfy themselves that s5F or s5CB and attendant regulatory requirements are (still) met.

If an officer has significant concerns about the integrity of the applicant's relationship and considers further investigation of the sponsor's circumstances is required, in some cases the officer can request investigations be undertaken by relevant officers in an STO. For policy and procedures, see section 30 Integrity concerns about the partner relationship.

5.6 Two years must have elapsed

Under current two-stage processing arrangements, applicants apply on the one combined application form for both a provisional visa 309 and a permanent visa 100. In most cases, applicants are not eligible for the permanent visa grant until at least two years after they applied for their visa 309/100. For further details, see section 1.3 Two-year wait out period.

As specified in 100.221(2)(c), the only exceptions to the two-year wait out period are as follows:

- 100.221(5) allows a visa to be granted within the two-year period provided the couple were already in a long-term partner relationship when the visa 309/100 application was made - see section 10 If the partner relationship is long-term
- 100.221(6) allows a visa to be granted within the two-year period provided the applicant was granted their visa 309 on the basis of being the spouse of a permanent humanitarian visa holder - see section 11 If Australian partner visaed under the humanitarian program
- 100.221(7)(a) enables officers to refuse the grant of a visa 100 any time within the two-year period
- 100.221(7)(b) enables a visa 100 to be granted under 100.221(3) or 100.221(4) (as applicable) any time within the two-year period. These clauses enable visa grant if:
- the Australian partner dies (100.221(3)) - see section 7 If the Australian partner has died since visa 309 grant
- family violence committed by the sponsoring partner has occurred (100.221(4)(c)(i)) - see section 8.4 If family violence has occurred or
- the applicant is given custody or access rights over a child for whom the Australian partner has custody/access rights and/or maintenance obligations (100.221(4)(c)(ii)) - see section 8.5 If the case involves access or custody (or similar) rights or responsibilities.

6 Ministerial intervention cases

6.1 Relevant cases

Clause 100.221(2A) relates to those cases where the Minister used non-delegable powers under the Act to grant a visa 309 in circumstances where the person may never have applied for that visa. For these cases, note also:

- Schedule 1 item 1129 - which, since 9 December 2002, has specifically provided for visa 309 holders to apply either in or outside Australia for a visa 100 or
- regulation 2.08G, which relates to 309 visas granted before 9 December 2002 and provides for the holders to be able to apply in Australia for a visa 100.

In such cases, the visa 309 holder does not have a valid visa 100 application lodged with the department so is not eligible for consideration of the grant of a visa 100. Therefore, they must apply for a visa 100 and pay the appropriate VAC (as at the date of when the application is made - not the date of the visa 309 grant).

6.2 Must hold a visa 309

Clause 100.221(2A)(a) requires that the applicant must hold a visa 309.

If the person has previously held a visa 309 and this visa was cancelled before a decision was made on the visa 100 application, the decision maker officer should wait until the outcome of any review is known before finalising the visa 100 application.

6.3 Must be the sponsor's partner

For the purposes of 100.221(2A)(b), see section 5.5 Must still be the sponsor's partner.

6.4 Two years must have elapsed

As specified in 100.221(2A)(c), unless one of the exceptions described in section 5.6 Two years must have elapsed applies, at least two years must have passed since the Minister intervened to grant the 309 visa.

7 If the Australian partner has died since visa 309 grant

7.1 Relevant cases

Clause 100.221(3) applies if the Australian partner has died since the applicant first entered Australia holding a visa 309. As evidence, the original or certified true copy of the death certificate should be provided.

If all criteria are satisfied, these applicants are not required to wait out two years before being granted their visa. However, officers must be satisfied the applicant was in a genuine and continuing relationship with the Australian partner at the time of the Australian partner's death.

7.2 Must hold or have held a visa 309

Clauses 100.221(3)(a) and (b) relate to the requirement that an applicant who holds or has held a visa 309 must have entered Australia on that visa - see:

- section 5.2 Must hold (or have held) a visa 309
- section 5.3 If not a visa 309 holder.

7.3 Would otherwise have satisfied partner relationship requirements

Clause 100.221(3)(c) requires that the visa 100 applicant satisfy the decision maker that the relationship was, until the Australian partner died, a 'partner relationship' as defined in s5F or s5CB of the Act.

Officers should assess these criteria on the basis of the information on file, having regard (as far as practicable) to relevant legislation, policy and procedures on assessing partner relationships - see section 5.5 Must still be the sponsor's partner.

8 If the partner relationship has ceased since visa 309 grant

8.1 Relevant cases

Clause 100.221(4) applies if the partner relationship has ceased (in prescribed circumstances) since the applicant was granted the visa 309. If an applicant satisfies the relevant criteria in this provision, decision makers are not required to wait out two years before assessing and, if applicable, granting the visa.

8.2 Must hold (or have held) a visa 309

Clauses 100.221(4)(a) and (c) relate to the requirement that an applicant who holds or has held a visa 309 must have entered Australia on that visa - see:

- section 5.2 Must hold (or have held) a visa 309
- section 5.3 If not a visa 309 holder.

8.3 Would otherwise have satisfied partner relationship requirements

Clause 100.221(4)(b) requires that the visa 100 applicant satisfy the decision maker that the relationship with their Australian partner was, until the relationship ceased, a 'partner relationship' as defined in s5F or s5CB of the Act.

Officers should assess these criteria on the basis of the information on file, having regard (as far as practicable) to relevant legislation, policy and procedures on assessing partner relationships - see section 5.5 Must still be the sponsor's partner.

If the applicant can satisfy this provision and if all other criteria for the grant of the visa can be met, the applicant is not required to wait out two years before being granted their visa.

8.4 If family violence has occurred

Clause 100.221(4)(c)(i) relates to claims of family violence allegedly committed by the applicant's sponsoring partner.

For applications made on or after 1 July 2011, the family violence must have occurred while the relationship was in existence and after the applicant entered Australia as a 309 visa holder. For claims of family violence made prior to 1 July 2011, whether or not the family violence had to have occurred when the relationship was in existence depends on when the family violence claim was made and whether it was made to the Department or the AAT.

Officers are reminded, however, that there is no requirement that there be a cause-and-effect link between the family violence and the cessation of the relationship.

For policy and procedures, see PAM3: Div1.5 - Special provisions relating to family violence.

If the visa 100 applicant is successful in their claims of family violence and if all other criteria for the grant of a visa 100 are satisfied, they are not required to wait out two years before being granted their visa.

8.5 If the case involves access or custody (or similar) rights

If 100.221(4)(c)(ii) applies, a decision maker must have regard to Australian case law if a child of both the applicant and their Australian partner is involved. Departmental policy in relation to "custody" is that any parent will have custody unless there is a court order granting sole custody to the other parent.

Therefore, if an officer satisfied that a child is the child of the applicant and their Australian partner, the applicant has rights and responsibilities towards that child unless there is evidence of the applicant being denied any access to that child by a court or that the Australian partner has sole custody of that child.

Under policy, this means that, unless an officer has a particular reason to believe such evidence exists, they can accept a statutory declaration from the applicant to that effect. Although not a requirement under law, it may assist an officer if an applicant can provide other documents, such as a court order giving access, a parenting order or parenting plan that attests to their parental responsibility.

For further policy and procedures, see:

- PAM3: Sch2Visa820 - If the case involves access or custody (or similar) rights and responsibilities

If the applicant can satisfy 100.221(4)(c)(ii) and if all other criteria for the grant of the visa are satisfied, they are not required to wait out two years before being granted their visa.

9 If a merits-review case

9.1 Visa 100 decision remitted by AAT

Clause 100.221(4A) applies to an applicant:

- who was refused the grant of a visa
- who subsequently made a valid application to the AAT tribunal for review of that refusal and the tribunal remitted the decision for reconsideration by the department.

This provision reflects the fact that an applicant's visa 309 ceases when a decision maker refuses the grant of a visa 100. This fact alone is not intended to prevent the department's original visa 100 refusal decision from being overturned.

Consequently, if a (refused) application is remitted to the department by the AAT for decision in circumstances where:

- following remittal, the a decision maker determines that the applicant satisfies all the Schedule 2 criteria for the grant of a visa 100 but for the fact that the applicant holds a visa 309 (100.221(4A)(b)(i)) or
- the tribunal has determined that all Schedule 2 visa 100 criteria have been satisfied other than the need to hold a visa 309 (100.221(4A)(b)(ii))

then the applicant is taken to have satisfied 100.221.

If the applicant is in Australia and the grant of a visa 100 is again refused on different grounds to those for the original refusal, the applicant will need to be granted a bridging visa - see section 34 If visa grant refused while applicant in Australia - bridging visa.

9.2 Visa 309 decision remitted by AAT

Deciding the visa 100 application

In cases where the applicant is eligible for their permanent application to be considered immediately following remittal of the provisional Partner application, in the absence of significant new evidence to

suggest that that the applicant is not in a genuine and ongoing spousal or de facto relationship, and subject to an applicant meeting all other legislative criteria, the permanent Partner visa application should be decided without delay with due regard to the Tribunal's finding. This policy reflects the Tribunal's direction in respect of assessment of the relationship, and avoids further delay to the applicant given the period of time that would have already elapsed between refusal and remittal of the provisional Partner application.

Decision makers are to contact Family (Partner and Child) Policy Section (mvp.helpdesk@immi.gov.au) for policy advice prior to refusing a permanent Partner application where the Tribunal has remitted the provisional Partner application.

10 If the partner relationship is long-term

Clause 100.221(5) provides that the requirement for two years to have passed from the time the application is made or from the date the Minister decided to grant a visa 309 does not apply to an applicant who at the time of making the application was in a ***long-term partner relationship*** with their Australian partner.

For the definition and relevant policy and procedure for long-term partner relationship, see:

- regulation 1.03 - Long-term partner relationship
- PAM3: Div1.2/reg1.03 - Long-term partner relationship.

11 If Australian partner visaed under the humanitarian program

For 100.221(6), see the regulation 1.03 definition of permanent humanitarian

Clause 100.221(6) is available only if the department was advised of the existence of the partner relationship before the sponsoring partner was granted their permanent humanitarian visa. Officers should be flexible about the type of evidence required to demonstrate that the department had been informed - for example, a file note record could be sufficient evidence.

Other requirements (all cases)

12 Generic criteria

12.1 Public interest criteria

For policy and procedures on the public interest criteria (PICs) prescribed in 100.222, see the corresponding PAM3: Sch4 instructions. However, officers should note that, under policy, special arrangements are in place for health and character checks for those applicants who are holders of a visa 309 or visa 445 and for police checks for sponsors - see section 31.3 Protection of children: requirement for police checks.

12.2 "One fails, all fail" criteria

PICs

For the purposes of 100.224, the main applicant cannot be granted a visa unless:

- those ***members of the family unit*** who are also applicants satisfy the PICs prescribed in 100.224(1) and
- those members of the family unit who are not applicants satisfy the PICs prescribed in 100.224(2).

In either case, for policy and procedures see the corresponding PAM3: Sch4 instructions. However, officers should note that, under policy, special arrangements are in place for health and character

checks for those applicants who are holders of a visa 309 or 445 - see section 31 Public interestcriteria.For those members of the family unit of the main applicant who are *not* migrating and whose details were not included in the visa 309/100 application when it was made, and so:

- were not identified as a non-migrating member of the family unit at time of visa 309 consideration and
- were, consequently, not assessed against the corresponding criteria for visa 309 (309.228(2)(b)) and
- were not subsequently granted a visa 445 and
- have now been identified by the visa 100 applicant as a non-migrating member of the family unit

officers must assess such persons against 100.224(2). The member of the family unit should undergo full health checks unless the officer determines that it would be unreasonable to require them to do so. For policy and procedure, see PAM3: Sch4/4005-4007 - The health requirement - The health of family unit members (including non-migrating dependants). However, should a complex case arise, officers should, in the first instance, contact Family (Partner and Child) Policy Section, National Office.

Custody of children

For 100.225, which relates to members of the family unit who are under 18 years old, see Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

The main applicant cannot be granted a visa if granting a visa to any minor described in this provision would prejudice the custody (or similar) rights or responsibilities of another person. For policy in relation to this provision, see section 8.5 If the case involves access or custody (or similar) rights.

12.3 Nomination

Officers do not need to consider 100.226 because, briefly, it does not impact on an applicant's ability to satisfy criteria to be granted a visa 100.

Visa 100 members of the family unit

13 Eligibility

13.1 Relationship

For 100.311, the applicant must be a ***member of the family unit*** of the person seeking to satisfy primary criteria (that is, the main applicant). Members of the family unit can include a dependent child, a dependant's dependent child and a relative and all terms are defined in the Regulations - see:

- the regulation 1.03 definition of ***dependent child***
- the regulation 1.05A definition of ***dependent***
- the regulation 1.03 definition of ***relative***
- the regulation 1.12 definition of ***member of the family unit.***

For policy and procedure on establishing the existence of the claimed relationship and dependency, see the corresponding PAM3: Div1.2 instructions.

13.2 Adding members of the family unit to the application

Members of the family unit other than dependent children are unable to be added after application lodgement as they are not covered by regulations 2.08 and 2.08A (relating to adding certain family members to a visa application).

Because 309.311 requires family members to make a combined application with the main applicant, the effect of 309.311 and 100.311 is that, after the visa 309/100 application is made, only dependent children can be added later (up until the visa 309 decision) at the main applicant's written request.

Once a visa 309 has been granted to the main applicant, dependent children who were not included in the visa 309 application will need to apply for a visa 445 (Dependent Child) visa. The grant of the visa 445 will enable them to remain in, or travel to, Australia and apply on a separate form to be included in their visa 309 holder parent's undecided visa 100 application. (Note that the visa 445 visa holder does not necessarily have to be in Australia.)

For policy and procedure, see:

- PAM3: Div2.2/reg2.08
- PAM3: Div2.2/reg2.08A
- PAM3: Sch2Visa445.

13.3 Members of the family unit not required to be added to the visa 100 application

In the majority of visa 100 cases, officers will not have to consider children born of the partner relationship between the applicant and their Australian partner. This is because, with few exceptions (not relevant here):

- a child born in Australia acquires, in accordance with s12 of the Australian Citizenship Act 2007, Australian citizenship by birth if a parent was an Australian citizen or Australian permanent resident at the time of the birth and
- a child born outside Australia to an Australian citizen parent is generally eligible to be registered as an Australian citizen by descent.

13.4 Must hold a visa 309/445 (or have held a visa 309)

Clause 100.321 requires that the secondary applicant must be (or have been) a visa 309 holder or must be visa 445 holder on the basis of their being a member of the family unit of a person who is or was the holder of a visa 309 and who has now been granted a visa 100.

13.5 Is the applicant still a member of the family unit

Clause 100.321 applies to members of the family unit of the visa 100 main applicant. If the member of the family unit can satisfy one of the following criteria:

- they have been granted a visa 309 on the basis of being the member of the family unit of a holder of a visa 309 (that is, the main applicant) - 100.321(a)
- they have been granted a visa 445 on the basis of being the dependent child of a person who was granted a visa 309 or visa 445 and that person has been granted a visa 100 - 100.321(c)
- they have been granted a visa 309 or visa 445 by the Minister (using non-delegable powers) and at the time of visa grant was the dependent child or member of the family unit of a holder of a visa 309 or visa 445 who has been granted a visa 100 (that is, the main applicant) - 100.321(d)

and provided:

- the main applicant has been granted their visa 100 and
- the visa 309 holder member of the family unit has complied with the visa 309 conditions (for example, if imposed, condition 8515 about not marrying or entering into a de facto relationship before entering Australia)

nothing requires this applicant to still be a member of the family unit of, and consequently dependent on, the main applicant at time of visa 100 decision. Therefore, officers do not need to assess either member of the family unit or dependency requirements.

However, officers should note that:

- as applicants are required (under s104 of the Act) to notify changes in their circumstances, visa 100 applicants are still expected to notify the department if, for example, changes occur in the composition of their family unit (for example, as a result of birth, death or change in relationship status) and
- cancellation of the visa of the member of the family unit may be considered if there is substantiated evidence of migration fraud that affected the initial visa decision to accept that applicant as a member of the family unit of the visa 309 main applicant.

14 Other requirements

14.1 Public interest criteria

For policy and procedures on the PICs prescribed in 100.322, see the corresponding PAM3: Sch4 instructions. However, note that special arrangements are in place for health and character checks for visa 100 applicants - see:

- section 12.2 "One fails, all fail" criteria
- section 31 Public interest criteria.

14.2 If a minor

For 100.324, which applies to members of the family unit under 18 years old, see Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

This criterion relates to custody and access issues and the lawful travel to Australia of a child under 18 years old who is included in the main applicant's visa application but is not the Australian partner's child. Although this clause is also a criterion that must have been met for the visa 309 to be granted, officers should not assume that the criterion is automatically satisfied also for visa 100 purposes. They are expected to assess this criterion afresh.

14.3 Main applicant must be visaed first

Clause 100.321 precludes members of the family unit from being granted their visas unless/until the main applicant is granted their visa.

Visa grant

15 Visa grant or refusal

In accordance with s65(1)(a) of the Act, a visa is to be granted to a person who meets the all prescribed criteria. For further policy and procedures, see PAM3: GenGuideA - All visas - Circumstances applicable to grant.

Section 65(1)(b) of the Act provides for the situation where the decision maker 'if not so satisfied, is to refuse to grant a visa' - see section 19 If the visa is refused.

For policy and procedure relating to notification, see PAM3: Act - Code of procedure - Notification requirements.

16 Where the applicant must be at time of visa grant

Clause 100.411 specifies that the applicant can be in or outside Australia to be granted their visa.

For policy and procedure, see:

- section 3.4 Where the applicant must be
- PAM3: GenGuideA - All visas - Circumstances applicable to grant.

17 When the visa is in effect

Clause 100.511 provides that if the applicant is granted a visa 100, that visa enables the holder to leave and re-enter Australia for a period of five years from date of grant.

The visa 100 and its travel facility cannot be extended so, following the five-year period, the visa 100 holder may apply for Australian citizenship or a Return (Residence) visa (RRV) - for policy and procedure, see:

- Australian Citizenship Instructions (ACIs) or
- PAM3: Sch2RRV- Resident return visas (RRVs).

18 Visa conditions

18.1 First entry date

Under 100.611, for visas granted to applicants outside Australia, the visa holder must make their initial entry to Australia by a specific date. This date is generally tied to the earlier date of expiry of the visa holder's health (if any) or character checks. For policy and procedure, seePAM3: GenGuideB - Granting visas - Determining the 'first entry' date.

However, for those (few) cases where the visa 309 holder has already entered Australia, but is now outside Australia so is having their visa 100 application processed offshore, see also section 32 Applications finalised offshore - first entry date.

18.2 Other visa conditions

Clauses 100.612 and 100.613 relate to conditions that may be imposed when the visa is granted. These are:

- condition 8502, relating to the main applicant entering before their partner
- condition 8502, relating to a member of the family unit not entering before the main applicant and
- condition 8515, relating to the fact that a member of the family unit of the main applicant must not marry before entering Australia.

For further policy and procedure, PAM3: Sch8 - Visa conditions - About visa conditions.

19 If the visa is refused

If a decision maker decides to refuse to grant a visa to the applicant in accordance with s66 of the Act, they must notify the applicant of the decision as prescribed in the Act and the Regulations. Included in that notification must be whether or not the decision to refuse the grant of the visa an ***AAT-reviewable decision***. For policy and procedures relating to notification, see PAM3: Act - Code of procedure - Notification requirements.

For details on review and bridging visas, see:

- section 33 Merits review
- section 34 If visa grant refused while applicant in Australia - bridging visa
- PAM3: Act - Merits review - Merits review by the AAT - Guide for primary decision-makers.

Second stage partner processing

Overview

20 Legislative and policy background

Since 1991 persons applying in Australia for a permanent visa on spouse, de facto partner or interdependent partner grounds have been subject to a two year "provisional period" prior to being granted the permanent visa. In November 1996, this two-year provisional period requirement was extended to persons applying from outside Australia for a permanent partner visa. These arrangements are still ongoing following the 1 July 2009 legislative amendments to the partner visa framework.

This means that all persons applying to migrate or remain in Australia as a spouse or de facto partner (both opposite sex and same-sex couples) of an Australian citizen, permanent resident or eligible New Zealand citizen must go through a two-stage assessment process before permanent residence may be granted. However, only one visa application is required since persons apply for the offshore provisional visa 309 and permanent visa 100 at the same time and on the same application form.

This two year provisional period serves to minimise potential abuse of the partner provisions by persons who are not in genuine relationships.

However, there are exceptions to the requirement for the applicant to wait two years from the time the application is made before consideration of the visa can be undertaken. For details, see:

- section 1.3 Two-year wait out period and
- section 5.6 Two years must have elapsed.

21 Relevant cases

This part covers second-stage processing of those spouse and de facto partner visa applications where the applicant has entered Australia on their visa 309. The policy and procedures apply regardless of whether or not the second stage (that is visa 100) processing is done offshore by officers at overseas posts or onshore by officers in the department's state and territory offices (STOs). These policies and procedures do not apply if the applicant holds a visa 309, but has not entered Australia at all (thereby probably breaching their first entry date).

Note: These arrangements also apply to those partner visa applications lodged before 1 July 2009.

22 The two partner visa processing stages

22.1 Visa 309/100 cases

First stage partner visa (that is, visa 309) processing for these cases is undertaken offshore, but second stage partner visa processing may be undertaken onshore or offshore. This is because, although Schedules 1 and 2 require visa 309/100 applicants to be outside Australia when they apply and when the provisional visa 309 is granted, Schedule 2 (100.411) allows visa 100 applicants to be either in or outside Australia (but not in immigration clearance) when the permanent visa is granted.

Processing of visa 100 cases

23 Relevant offices for visa processing

Following consolidation of visa processing centres around Australia on 1 October 2008, all provisional Partner (Subclass 309) visa holders have their permanent visa processed by the Partner (Permanent) Processing Centre, Brisbane except for cases involving family violence which are processed by the (Permanent) Processing Centre, Melbourne. Contact details are available from the departmental

website (at:
https://immi.homeaffairs.gov.au/help-support/contact-us/offices-and-locations/offices-in-australia.

24 Cases that can be decided offshore

24.1 Circumstances when application is decided overseas

Visa 309 holders must make their initial entry to Australia by a date specified on that visa - see section 18.1 First entry date. In some cases, the visa 309 holder may have made their initial entry, but later leave Australia (for example, for family reasons or to take up employment), and still be offshore when the time comes to activate and finalise the permanent visa application. As a visa 100 can be granted when the applicant is in or outside Australia, likewise the application can be assessed and decided by an overseas post - see section 16 Where the applicant must be at time of visa grant.

24.2 If the applicant is residing interstate or overseas

If the applicant, since they entered Australia on the visa 309, has moved overseas, the Partner (Permanent) Processing Centre, Brisbane (PPPCB) will continue to process the visa 100 application, but will transfer the visa 100 application to the nearest overseas post if it is determined by PPPCB that the applicant has moved offshore permanently or temporarily on a long-term basis.

As a matter of policy, visa 100 applications should be transferred to an overseas post for processing only if the applicant will be overseas for an appreciable period (for example, at least five to six months from when the visa 100 application is due to be activated so as to allow sufficient time for the application to be transferred to the post for processing, assessment and decision).

24.3 Notification methods for the applicant

The visa 100 applicant may tell the department that they will be overseas at the time the application is activated by:

- notifying their nearest STO before departure
- notifying the overseas post once they have arrived
- completing a form 929 (Change of address) and sending it to the department.

Once an applicant notifies the department of a change of address for written communications, officers should immediately update system records and case files to ensure that all subsequent communications with the applicant can satisfy lawful notification requirements in accordance with s494C and s494D of the Act - see section 25.3 Importance of the applicant's current address.

24.4 If an applicant notifies their nearest STO before departure

If an applicant notifies an STO that they are travelling overseas, officers should ask the applicant for the address at which they can be contacted overseas to be provided in writing (in both English and foreign script, if applicable). If the applicant notifies the department using a form 929, officers should ascertain whether or not the period of absence from Australia is sufficient for the application to be transferred, assessed and decided at the overseas post - see section 24.2 If the applicant is residing interstate or overseas.

Applicants leaving Australia for an appreciable period (that is, at least five to six months after the application is due to be activated so as to allow sufficient time for the application to be transferred to the post for processing, assessment and decision) should be advised if it will be possible for an overseas post to finalise their application within this period. The applicant should be told that the relevant overseas post will contact them at this address in relation to the further processing and/or documentation that will be required.

24.5 If applicant notifies an overseas post

If an applicant notifies an overseas post that they wish to have their application processed offshore, the post should ascertain how long the applicant intends to be absent from Australia. If this is an appreciable period (that is, at least five to six months after the application is due to be activated so as to allow sufficient time for the application to be transferred to the post for processing, assessment and decision), the post should request the file from the relevant office (in most instances, the case file will located in NatO/PA, that is, National Office Put Away).

25 Activating permanent visa processing

25.1 Department contacts applicant near end of two-year wait out period

Near the end of the two-year provisional period for the application (that is, about 22 months after the date the visa 309/100 application was made), the PPPCB or overseas post will send a letter to the applicant's nominated address for receiving written communication advising them that the department will soon be considering the applicant's visa 100 application.

At that time, the department will also request further information and documentation about their relationship with their Australian partner.

Officers should be aware that applicants have been consistently advised in both the department's website and in correspondence sent to them that they should contact the department if they believe that the two-year provisional period has passed and have not yet heard from the department about the processing of their visa 100 application.

25.2 Updating address information

Section 52(3B) of the Act requires the applicant to inform the department of any change in address. If any notification of change of address is received (for example, a form 929), officers should immediately update system records and the relevant case file promptly to ensure that all subsequent communications with the applicant can satisfy lawful notification requirements in accordance with s494C and s494D of the Act.

25.3 Importance of the applicant's current address

The applicant would have completed their communication requirements in the form 47SP, but officers should check whether or not the visa 100 applicant and/or authorised recipient has advised the department of an updated contact address.

Applicants are informed by the department at a number of stages throughout the application the process, including in correspondence with the applicant (for example, when they were notified of the visa 309 grant) and on the department's website about the importance of keeping the department informed of any change in address.

25.4 Address to send written communication

Under migration law (see s494A to s494D of the Act), officers must send all written communications relating to the application to the applicant's nominated address for all written communications (that is, the applicant, authorised recipient or agent).

If a request for second-stage documentation is sent to the applicant's nominated address in accordance with s494C(4) of the Act, that request is taken to have been received by the applicant even if the applicant claims not to have received it.

For policy and procedures relating to notification, see PAM3: Act - Code of procedure - Notification requirements - Prescribed methods for giving notification.

26 Possible sources for an applicant's address

26.1 Related instruction

Further guidance on determining an applicant's address is provided in PAM3: Act - Code of procedure - Notification requirements - Identifying the last address provided for the purposes of receiving documents (s494B).

26.2 Suggested sources

In cases where an officer has been unable to contact an applicant via the nominated address either to seek or to provide further information or to send a decision notification (for example, letter returned to sender or no response within the prescribed timeframe), the officer can seek information about the applicant's contact address from various sources, namely

- departmental records
- the Australian partner
- certain family members or friends
- any authorised recipient or agent or
- an external source such as Medicare.

26.3 Checking departmental records

If they have not already done so, officers should check departmental records, including file and systems records, for any changes in the applicant's and/or sponsor's postal address. If there is a record of a change of address, officers should write to the applicant again, giving them a further prescribed timeframe in which to respond.

The department's Movements database should also be checked to ascertain whether or not the applicant is in Australia. If a movements check indicates that the applicant has left Australia, where provided, officers should write to them at the overseas address given on the application form.

26.4 Seeking address information from other sources

In cases where the department's records provide no further information, the officer can seek information about the visa 100 applicant's contact address from:

- the applicant's Australian partner
- family members or friends who provided statements (usually provided in form 888) in support of the relationship for the visa 309 assessment or
- any authorised recipient or migration agent or external source such as Medicare Australia.

The applicant had agreed to the department making such contact when they signed the declaration in the form 47SP.

26.5 Requests for address information from Medicare

If an officer has been unsuccessful in obtaining an applicant's address information from the sources as suggested above, the last remaining avenue, especially for those visa 309 applicants who have entered Australia, is to approach the Australian Government's health care scheme (Medicare) as such applicants may have enrolled in Medicare.

Requests for information from Medicare are restricted to contact addresses only and must be necessary to process the visa 100 application. The officer should send the request via the department's Settlement Planning and Information Section by email to 'Settle Data-Admin'. Requests should include an Excel spreadsheet containing details of the applicant's given and family name(s), date of birth, current visa held, visa grant number, ICSE Client ID and last known address. An example template for the request is available from the manager of the relevant partner processing area or from Family (Partner and Child) Policy Section, National Office.

26.6 If an alternate address is obtained

If an alternate address for the applicant can be obtained from another source other than as provided by the applicant, as well as the officer resending the relevant written communication to the applicant, they should request written confirmation of any change of the address for receiving all written communication relating to their application. form 929 may be used for this purpose.

27 If unable to contact the applicant

27.1 Related instruction

Further guidance on determining an applicant's address is provided in PAM3: Act - Code of procedure - Notification requirements - Identifying the last address provided for the purposes of receiving documents (s494B).

27.2 If the applicant does not respond

If a contact address is either:

- not available despite the officer's efforts as described above in section 26 Possible sources for an applicant's address or
- available and the officer resends the further information or decision notification letter, but is unsuccessful in contacting the client, then

under policy, such follow up would be able to satisfy the requirement that the department has made a reasonable effort to contact the visa 100 applicant.

In such cases, in accordance with s65 of the Act, a decision maker must proceed to make a decision on the application based on the information they have before them. The decision must be based on whether or not the information held by the department is sufficient for the decision maker to be able to determine if the applicant is able to meet the legislative visa 100 requirements. Nevertheless, decision makers should note that there may be certain circumstances where proceeding to make a decision may not be appropriate.

27.3 Circumstances when not to immediately decide the application

Despite s65 requirements to proceed to decision after officers have made all reasonable efforts to contact the applicant and the applicant has failed to respond, there are circumstances where, under policy, it may be prudent as well as good administrative practice not to do so:

- if the applicant is outside Australia (as verified from the Movements database), they may be so only temporarily. There might be extenuating reasons (for example, family emergency) why the applicant has not notified the department to their change of address. It would be appropriate to wait a short while, say, three months, to allow for possible contact or, if possible flight information from the Movements database is available, to alert the appropriate overseas post in case the applicant contacts the post. (If the applicant makes contact, with the post, and subject to the applicant's and PPPCB's agreement, the overseas post would be able to grant the visa to the applicant.)
- Schedule 2 (100.411) allows a visa to be granted whether the applicant is in or outside Australia. If the applicant is outside Australia and the decision maker proceeds to refuse to grant the visa 100, the applicant will be unable to apply for merits review (because they must be in Australia to do so - see section 33 Merits review. Although this is not a reason in itself to defer making a refusal decision, decision makers should be aware of the serious consequences for the applicant were they to do so. Therefore, under policy, it is open for an officer to defer making a decision for a short period, that is, up to three months, to allow time for the applicant to contact the department.

Second stage partner processing - case assessment

28 Level of assessment - offshore and onshore

The level of assessment by officers of visa 100 applications should be consistent with that for the applications for the second stage onshore partner visa counterpart (visa 801). In both instances, since 1 October 2008, streamlined arrangements for second stage partner visa processing have been implemented to ensure better client service while, at the same time, being able to maintain the integrity of the partner visa application process.

29 Genuineness of the relationship

Before a visa is granted, either onshore or offshore, applicants must demonstrate that they continue to meet the definition of (as applicable) a spouse (s5F of the Act and regulation 1.15A) or de facto partner (s5CB of the Act and regulation 1.09A). This is a fresh assessment, based on the evidence before the decision maker at the time of decision on the application. The assessment may be made based solely the relevant documentation (as requested by the department in accordance with streamlined arrangements) provided by the applicant and their Australian partner sponsor or may require further investigation such as interviewing both partners and/or examining additional relevant documentation.

30 Integrity concerns about the partner relationship

30.1 Where a decision maker has integrity concerns

In assessing whether or not a visa 100 applicant can satisfy 100.221(2)(b), that is, that they are in an ongoing partner relationship with their Australian partner sponsor, a decision maker may have concerns about the integrity of the claimed relationship, that is, the bona fides of the relationship.

30.2 Bona Fides Units

To assist decision makers both in and outside Australia, Bona Fides Units (BFUs) have been established within the department's STOs. The aim of establishing a BFU national network is to provide a specialist function in an STO to enable improvement to the integrity of family stream visa processing in general and, in particular, partner visa applications.

If such bona fides concerns had already been identified by a visa 309 decision maker at an overseas post through an integrity referral code (entered in IRIS, along with an IRIS case note, at time of time of visa 309 grant), such cases should have been directly sent to the relevant BFU in Australia after the visa 309 grant. For more details about integrity referral codes, see PAM3: Sch2Visa309.

However, there may be instances where an officer must process a visa 100 application where serious integrity concerns may be identified through:

- the visa 309 decision maker having entered an IRIS case note
- information has come to the attention of the department after visa 309 grant
- even following receipt of further information from the applicant and their Australian partner, the officer may not have sufficient information to determine whether or not they can be satisfied about the relationship's bona fides.

30.3 When not to refer a visa 100 case to a BFU

Cases should not be referred to a BFU if:

- the visa 100 can be refused immediately because the applicant fails an objective criterion
- there is sufficient evidence and information available for the officer to make a decision on the application

- the case can be resolved by due diligence in normal processes (for example, through investigative interviews with the applicant and other relevant persons, checks of documents, departmental databases and other evidence) or
- the case cannot be finalised due to an incomplete application or lack of evidence lodged with the application. In these cases, further information/evidence should be sought, particularly from the applicant and/or their Australian partner sponsor.

30.4 Referral of cases to BFUs

An application being processed at an overseas post would usually mean that both the applicant and their Australian partner sponsor are outside Australia on a long-term basis. Given this, it is unlikely that the decision maker will need to seek further information about the visa 100 applicant's and the Australian partner sponsor's circumstances by requesting assistance from a BFU (instead the officer could undertake the investigation themselves). Nevertheless, if the Australian partner sponsor is in Australia, the offshore decision maker may need to refer a case to the relevant BFU in the nearest departmental STO in Australia to where the sponsor is living.

Similarly, a visa application being processed onshore where there are serious integrity concerns may also be referred to the relevant BFU.

The officer can request that the BFU provide further information from the applicant and/or Australian partner sponsor or undertake to visit the couple (if possible or appropriate) or conduct investigations. However, officers are reminded that such a request should be made only if the specialised expertise or attention of the BFU is required to assist in finalising the application.

30.5 Details required by BFUs

If a decision maker requires a BFU to undertake checks on the applicant's and or sponsor's circumstances, the following detailed information must be provided to the BFU:

- the checks needed
- the time frames involved and
- whether or not there is a deadline for receiving information.

In addition, the following further information must be given:

- relevant visa subclass
- applicant's name and departmental file number
- sponsor's name, address and telephone number
- type of check required, indicated against:
- citizenship/s (sponsor and applicant)
- residence status (sponsor)
- accommodation (sponsor and applicant)
- employment background(s) (sponsor and applicant) and
- other relevant case details, accompanied by copies of forms or other documents relevant to the checks.

30.6 BFU referrals process

The process of referrals to BFUs is different depending on whether it is an overseas post or the PPPCB or STO requesting the referral:

- from an overseas post: contact the relevant BFU to find out that particular BFU's requirements and request format
- from the PPPCB: the referring office is to contact their relevant BFU to find out that particular BFU's requirements and request format via the department's Case Referral Management (CRM) Functionality in ICSE. For details about the CRM, see

- PAM3: GenGuideA - Global working - Output 1.1 Case referral management
- PAM3: GenGuideA - Site visit policy and procedures: Managing and conducting site visits

BFU contact details are available from the relevant Residence Section manager or from Family (Partner and Child) Policy Section, National Office.

30.7 Authorisation for BFU referrals

Once an officer finds out the appropriate format and information for the BFU referral and prepares that request, the relevant local manager is responsible for authorising the BFU referral request. The authorising officer at an overseas post is be the SMO responsible for partner migration or, for posts with no SMO, the PMO. In the department's STOs, the authorising officer is be the relevant business area manager (for example, Residence Manager).

The authorisation should include:

- client name
- address
- reasons for further referral and
- other relevant details.

Under policy, the preference is for the BFU referral request to be addressed to the appropriate Residence Section manager and sent by departmental bag. However, if the case is urgent, direct contact details are available from the relevant Residence Section manager or from Family (Partner and Child) Policy Section, National Office.

30.8 Processing of requests to BFUs

s85 capping of visas is not applicable to partner visas and given that they are accorded priority processing, BFU officers are to avoid unnecessary delays that could result in the applicant being disadvantaged.

The results of BFU checks undertaken should be forwarded by email as soon as they are available.

31 Public interest criteria

31.1 Health checks

In relation to the health assessment requirement at 100.222(a), under policy, decision makers do not need to request additional health assessments for applicants who are holders of a visa 309 or 445, as these applicants would have already received a permanent visa health clearance at time of visa 309/445 assessment. Therefore, new health checks are not required even if the applicant, since visa 309/445 grant, has travelled outside Australia to a higher risk country in terms of tuberculosis or their health has significantly deteriorated since their original health assessments.

For policy and procedure on these streamlined health arrangement for visa 100 applicants, see PAM3: Sch4/4005-4007 - The health requirement.

For health assessments for non-migrating members of the family unit, see section 12.2 "One fails, all fail" criteria.

31.2 Character checks

The previous policy regarding streamlined character arrangements for PIC 4001 and PIC 4002 ceased on 30 March 2011.

To satisfy PIC 4001 and PIC 4002 (see 100.222) all applicants are required to provide a new (and current) penal clearance for any country they have lived in for a cumulative period of 12 months or more since being granted the 309 visa.

Officers must also read relevant departmental instructions on security assessments.

31.3 Protection of children: requirement for police checks

It is a policy requirement that certain partner visa sponsors provide the department with police checks if they are sponsoring an applicant who is under 18 years old.

The requirement may be considered to have already been met if:

- the application being considered is for a combined temporary and permanent Partner visa and the sponsor provided police checks in relation to a Prospective Marriage visa application or
- the application being considered is for a permanent Partner visa and the sponsor provided police checks in relation to the associated temporary Partner visa application.

This requirement is relevant to determining whether or not PICs 4016 and 4018 relating to the best interests of children are met.

For policy and procedure on "sponsors of concern", protection of children and the requirement for Class BC sponsors to provide police checks, see PAM3: Div.1.4 - Form 40 sponsorship - Protection of children - Sponsors of concern.

For policy and procedure on the assessment of PICs 4016/4018 generally, see Sch4 - 4015-4018 - Custody (parental responsibility) and best interests of minor children.

31.4 Regulation 1.20KB

Regulation 1.20KB, inserted into the Regulations on 27 March 2010, provides a power to request police checks and a requirement that sponsorships be refused in certain circumstances.

Regulation 1.20KB does not apply to Class BC visa applications as there is no sponsorship approval associated with Class BC visa applications.

Rather, for the pre 27 March 2010 Class BC caseload, police checks of sponsors as set out in section 31.3 Protection of children: requirement for police checks remain a policy requirement for Class BC sponsors who have not provided a police check in relation to an associated Class UF visa application. This is to ensure that all sponsors for Partner visa applications involving a child:

- made but not finally determined as of 16 September 2009 or
- made on or after 16 September 2009

provide a police check at least once.

Other matters

32 Applications finalised offshore - first entry d ate

32.1 Legislative requirements

Schedule 2 clause 100.611 requires persons who are granted a visa offshore to enter Australia by a specific date - see section 18.1 First entry date.

32.2 First entry date policy

Under policy, the first entry date is generally linked to the earliest validity date of applicant's character clearances - see PAM3: GenGuideB - Granting visas. However, as the applicants described in this section may be regarded as having already migrated to Australia (having entered Australia on their visa 309), under policy, these applicants generally should be granted a visa with a 'first entry date' of 12 months from date of grant.

If officers have, however, requested fresh character checks (see section 31.2 Character checks), the 'first entry date' should reflect the earliest validity date of the fresh clearances. Officers may also take into account other factors, for example, if the sponsor is the holder of an Return (Residence) visa that will cease before the 12 month period elapses and the sponsor is not eligible for a further Return (Residence) visa.

32.3 Breach of first entry date policy

If an applicant fails to enter Australia by the specified date, the visa does not automatically cease to be in effect, but it does render the visa liable to be cancelled under s116(1)(b) of the Act. However, under policy, while cancellation should be considered by an officer, in cases where exceptional and compelling reasons (for example, unexpected illness, family emergency) have prevented travel to Australia by the first entry date, facilitation of travel can be considered. Whether or not to facilitate is very much dependent on the individual circumstances of the case. If travel is facilitated and the relevant PIC validity has ceased, either:

- the officer will have to arrange for an extension to the validity of the clearance or
- if appropriate, the visa 100 applicant will have to obtain a new clearance.

Under policy, while Family (Partner and Child) Policy Section prefers facilitation of travel to take place whenever possible for visa 100 holders, it does not recommend facilitation of entry as a matter of course. In determining whether to facilitate, officers should be guided by the policy as provided in the relevant PAM3: Sch8 instructions. Therefore, the visa holder may have to be prepared to make a trip to Australia before the first entry date ceases.

For full policy and procedure on breach of first entry, see PAM3: Sch8 - Visa conditions - Breach of entry-related visa conditions (inc. first entry date).

33 Merits review

Under migration law, if an applicant has been refused the grant of a visa, they must be notified of their rights (if any) for merits review of the decision - see section 19 If the visa is refused.

For policy and procedure relating to notification, see PAM3: Act - Code of procedure - Notification requirements.

Merits review for visa 100 applicants (in most cases review is undertaken by the AAT) may be summarised as follows:

- applicants (whether or not visa 309 holders) in Australia at the time of decision and time of application for review - merits review right
- applicants (whether or not visa 309 holders) offshore at time of decision and/or time of attempted application for review - no merits review right.

Applicants with no merits review rights should be advised as to why this is the case, that is, that they were outside Australia when the decision to refuse the grant of the visa was made. For details, see PAM3: Act - Merits review - Merits review by the AAT - Guide for primary decision-makers.

34 If visa grant refused while applicant in Australia - bridging visa

If a decision maker refuses the grant of a visa to an applicant who is in Australia at time of decision, the applicant may be eligible to apply for and be granted a bridging A visa (BVA) provided they can satisfy regulation 2.21A(1) requirements.

The BV enables the applicant to remain lawfully in Australia for a prescribed period. This gives them time either to make arrangements to leave Australia or, if eligible, to apply to the AAT for review of the decision to refuse to grant the visa - see section 33 Merits review. Should the applicant lodge a valid application for review at the AAT, the BV continues to be in effect for a prescribed period after notification of the AAT decision. - see 010.511(b)(iii).

For policy and procedure on eligibility (if any) for a bridging visa, refer first to:

- PAM3: Sch2Visa010 - Bridging A
- PAM3: Sch2 Bridging visas - Visa application and related procedures
- PAM3: Act - Code of procedure - Notification requirements - Notice of decision to refuse to grant a visa (non-character) - s66.

35 Transferring case files

35.1 File transfer to the Partner (Permanent) Processing Centre - Brisbane

For all finalised visa 309 case files to be transferred to the Partner (Permanent) Processing Centre - Brisbane for visa 100 processing, overseas posts should first register the visa 100 application in ICSE. This registration should be done within 24-48 hours of granting the associated visa 309 in IRIS.

The benefits of early registration of visa 100 applications in ICSE include:

- a central record of any interactions with the applicant from the point of visa 309 grant onwards, thus improving client service and record management
- enabling processing of the visa 100 application to proceed without delay as soon as the case becomes eligible, even if the file has not yet been transferred to Australia. This is particularly useful if the visa 309 is granted shortly before the visa 100 application becomes eligible for processing
- enabling the Partner (Permanent) Processing Centre to better predict their upcoming workload so that visa 100 assessment will not be unduly delayed.

After registering the visa 100 application in ICSE, posts should transfer the case file to Converga in Australia. Posts can avail themselves of the most appropriate courier/delivery option, which may be bulk transfers via less frequent and cheaper delivery methods. However, overseas posts should transfer finalised visa 309 case files back to Australia no less often than every 6 months. Urgent cases (that is, where the case will be eligible for visa 100 assessment within the next 5 months) should be sent back to Overseas File Handling (OFH) via the next available Diplomatic Bag. When transferring case files to Converga, processes outlined in PAM3: GenGuideB - Overseas case record management and disposal should be followed.

A process-map summarising the visa 100 application registration process in ICSE and the associated file transfer procedure is available on IMMInet, as is a step-by-step guide for registering visa 100 applications in ICSE. See:
http://dimanet.immi.gov.au/DIMA_services/visa/migrants/partner_permanent_registration_overseas/

35.2 File transfer to overseas posts

If a visa 100 application is to be processed, assessed and decided at an overseas post, the PPPCB is to transfer the case file to the appropriate post. To do this, the file is forwarded to the overseas post via OFH in National Office, but the STO office must first record that transfer in TRIM.

If transferring a case file to an overseas post, officers at the Partner (Permanent) Processing Centre - Brisbane must close the ICSE record. To do this, click Add Event, Event 'Otherwise finalised' -

Qualifier 'Request Transferred' and add a brief note explaining the case has been transferred overseas for processing and finalisation in IRIS.

35.3 Raising a new IRIS record if transferred to an overseas post

When the case file is received at the relevant overseas post, the post must raise a fresh visa 100 record on IRIS. It is essential that this record be given the same file number as the visa 309 case file. This will enable adjustments to be made, in National Office, to the migration program statistics to avoid double counting.

35.4 After the application is finalised

For cases where the visa 100 is finalised in Australia, officers from the Partner (Permanent) Processing Centre - Brisbane should send the finalised case to be filed marked "NatO/PA".

For cases where the visa 100 is finalised outside Australia, the overseas post should send the finalised case file to OFH for put away, having first recorded that transfer in IRIS and having marked on the covering envelope or box as follows:

1. OFH, National Office

2. NatO/PA.

Standard file disposal procedures (see PAM3: GenGuideB - Overseas case record management and disposal) apply to visa 100 applications finalised offshore.

END OF DOCUMENT

[Sch2Visa820] Sch2 Visa820 - Partner

About this instruction

Contents

This instruction, which deals with the UK-820 visa – that is:

- Regulations Schedule 1 item 1214C and
- Regulations Schedule2 Part 820

comprises:

- Introduction
- Applying for a Partner (Temporary) (Class UK) visa
- The UK-820 primary applicant
- UK-820 family unit members
- UK-820 visa grant
- Other matters.

Related instructions

About partner relationships

- PAM3: Act - Act-Defined terms - s5F - Spouse
- PAM3: Div1.2/reg1.15A - Spouse
- PAM3: Act - Act-defined terms - s5CB - De facto partner
- PAM3: Div1.2/reg1.09A - De facto partner and de facto relationships
- PAM3: Div2.1/reg2.03A - Criteria applicable to de facto partners.

About visa processing

- PAM3: GenGuideB - Non-humanitarian migration - Visa application and related procedures.

Latest changes

Legislative – 19 November 2016

Bridging visa provisions in the Regulations have been amended to delink BV cease dates from the date the holder is notified of the primary (or, if applicable, merits review) decision on their substantive visa application. Rather, the BV cease date now relates to a specified period after the date of decision.

Policy

This departmental instruction was re-issued on 19 November 2016 to:

- Note the above legislative change
- Update owner details.

owner

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Contents summary

Introduction

1 About the UK-820 visa

1.1 Purpose

A partner, whether the ***spouse*** or ***de facto partner*** of:

- an Australian citizen
- an Australian permanent resident or
- an eligible New Zealand citizen

(in this and related PAM3 policy instructions, “the Australian partner”), who applies in Australia for a permanent visa (that is, the BS-801 Partner visa) on the basis of that relationship must, as a prerequisite for the BS-801 visa, hold a UK-820 visa.

2 Two-year wait out period

Under two-stage partner visa processing arrangements, applicants apply on the one combined application form for both the provisional (UK-820) visa and permanent (BS-801) visa.

In most cases, applicants are ineligible to be granted the permanent visa until two years after their application is made. This means UK-820 visa holders are usually required to wait 2 years before their BS-801 application can be finalised.

Long-term relationship

Clause 801.221(6A) provides that the two-year wait out period does not apply if, at the time the visa application was made, the visa applicant and their partner were in a ***long-term partner relationship***. In this situation, immediately after granting the UK-820 visa, the s65 delegate is to assess the applicant’s BS-801 application and, if Schedule 2 criteria are satisfied, should grant the BS-801 visa.

Other prescribed circumstances

In addition to the long-term partner relationship requirement, there are certain circumstances in which an applicant who is eligible for grant of the UK-820 visa can then, without having to wait the 2 years, become immediately eligible for grant of the BS-801 visa.

For policy and procedure, see:

- If the partner relationship has ceased and
- PAM3: Sch2Visa801 - Two-year wait out period - Other prescribed circumstances.

3 Second stage BS-801 visa processing

For policy and procedure on second stage BS-801 visa processing, see PAM3: Sch2Visa801.

4 Ineligible

The UK-820 visa (and, similarly, the BS-801 visa) is **not** for:

- persons **outside** Australia seeking a permanent visa on the basis of a spouse or de facto partner relationship with their Australian partner - see instead PAM3: Sch2Visa309
- dependent children seeking to join a UK-820 visa holder in Australia - see instead PAM3: Sch2Visa445 .

5 Defined terms

Term	Definition
court	This relates to those UK-820 visa (and BS-801) provisions for cases where the spouse or de facto relationship has ended and access rights to children are involved.
original sponsor	Together with subsequent sponsor, this definition creates the distinction between the person who sponsored an applicant for a TO-300 Prospective Marriage visa (the 'original sponsor') and a person who might subsequently sponsor that person for the UK-820 visa.
sponsoring partner	There are two branches to this definition. Definition (b) is the "standard" definition. Definition (a): By inclusion of reference to 'subsequent sponsor' in definition (a), a UK-820 applicant who entered Australia as a TO-300 Prospective Marriage visa holder but is no longer in a relationship with their subsequent sponsor because that sponsor has died or committed family violence can still be eligible to be granted a UK-820 visa. Definition (b) is also worded, however, such that an applicant relying on it must be in a partner relationship with their subsequent sponsor at the time they apply for their UK-820 visa. Note: Whether definition (a) or (b) applies, a person otherwise continues to be a 'sponsoring partner' for the purposes of UK-820 criteria even if the person ceases to be a sponsor by withdrawing their sponsorship. (Withdrawal of a sponsorship results only in the sponsorship itself ceasing to have effect.)
subsequent sponsor	See ***original sponsor*** and ***sponsoring partner*** (definition (b)) above.
spouse	See section 10 Eligibility as a partner.
de facto partner	See section 10 Eligibility as a partner.

Applying for a Partner (Temporary) (Class UK) visa

6 Schedule 1 and related requirements

6.1 Schedule 1 item 1214C

Schedule 1 item 1214C requirements for making a valid UK-820 application are mostly self-explanatory. For policy and procedure on valid application requirements see, PAM3: GenGuideA - Visa application procedures - Applications for visas - What is a valid application.

Note: For Schedule 1 requirements for applicants subject to s48 of the Act, see section 6.6 Applicants to whom s48 applies.

6.2 Forms

The mandatory application form (form 47SP) to be completed, signed and submitted by the applicant is prescribed at Schedule 1 item 1214C(1).

Unlike form 47SP, form 40SP, which the department asks be completed by the UK-820 applicant's sponsor (usually their Australian partner), is **not** a prescribed form in the Regulations. Most UK-820 applications can be made validly **without** an accompanying form 40SP (the exception to this is where the applicant is subject to s48 of the Act - see section 6.6 Applicants to whom s48 applies).

However, it is policy that the form 40SP be completed and signed by the UK-820 applicant's sponsor and be submitted by the applicant at the same time, and with, their completed and signed form 47SP (plus accompanying documentation). This is because, as the s65 delegate must be satisfied at time of application that:

- there is a genuine intent by the Australian partner (usually the sponsor) to sponsor the applicant for the visa and
- the sponsor (usually the Australian partner) understands sponsorship obligations and undertakings and satisfies all relevant criteria (for example, the sponsor is not a 'sponsor of concern')

the department prefers that the required information be provided in a form 40SP, because its completion by the sponsor usually addresses all these issues in relation to a UK-820 application.

For further policy and procedure on the form 40SP and the sponsorship provisions, see PAM3: Div1.4 - Form 40 sponsors and sponsorship.

6.3 Visa application charge (VAC)

Schedule 1 item 1214C(2) prescribes a nil VAC for the UK-820 visa. Note: The VAC for the combined UK-820/BS-801 application "attaches" to the BS-801 application - see Schedule 1 item 1124B(2). However, as the applicant applies on the same form at the same time for both visas, the applicant must pay the BS-801 VAC at the time the UK-820/BS-801 application is made.

6.4 Where and how the application must be made

For Schedule 1 item 1214C(3)(c) the application must be made in Australia, but cannot be made in immigration clearance.

6.5 Where the applicant must be

For Schedule 1 item 1214C(3)(c), for the application to be valid, at time of application the applicant must be in Australia (but not in immigration clearance).

6.6 Applicants to whom s48 applies

Persons to whom s48 applies may apply for UK-820/BS-801 visas. See Schedule 1 item 1124B for the BS-801 visa.

6.7 Bridging visas with nil conditions for certain Partner visa applications

The legislative instrument made under 010.611(1)(c) and 020.611(1)(b) enables UK-820 and BS-801 applicants who are eligible for an associated BVA or BVB to be granted that bridging visa with nil conditions imposed.

For policy and procedure, see:

- PAM3: Sch2Visa010 - Bridging A - Certain Partner and Parent visa applications specified by legislative instrument
- PAM3: Sch2Visa020 - Bridging B - Certain Partner and Parent visa applications specified by legislative instrument.

The UK-820 primary applicant

Eligibility

7 Eligibility - Overview

7.1 Legislative requirements

Under 820.211(1)(b), briefly:

- 820.211(2) is the “standard” provision allowing applicants to apply on the basis of a spousal or de facto relationship with an Australian citizen, permanent resident or eligible New Zealand citizen. Clause 820.211(2)(d) outlines the limited provision for unlawful non-citizens to successfully apply for a UK-820 visa
- 820.211(5) relates to applicants who are not the holder of a substantive visa and ceased to hold a substantive visa after marrying the Australian citizen, permanent resident or eligible New Zealand citizen whom they entered Australia to as the holder of a TO-300 Prospective Marriage visa
- 820.211(6) is the “standard” provision for TO-300 visa holders where the couple have married and the relationship is on-going
- 820.211(7) applies to TO-300 visa holders in those cases where the couple have married but the Australian partner died before the visa holder applied for their UK-820/BS-801 visa
- 820.211(8) applies to TO-300 visa holders in those cases where the couple have married but, before the UK-820/BS-801 application was made, the relationship broke down (and family violence occurred)
- 820.211(9) applies to former TO-300 visa holders where the couple married before the TO-300 visa ceased but, before the UK-820/BS-801 application was made, the relationship broke down (and family violence occurred).

Note: Applicants to whom 820.211(7), (8) or (9) applies are not required to wait out 2 years before being granted a BS-801 visa - see 801.221(7)(d).

Also, in this instruction, as in other policy instructions, “partner” refers to spouse and de facto partner.

8 Immigration status

8.1 Transit visas

Transit (TX-771) visa holders and former Transit visa holders cannot satisfy either 820.211(1)(a) or 820.211(2)(d)(ii) (which apply to the primary applicant only, not family members).

8.2 If an unlawful non-citizen

Overview

Under 820.211(2)(d), there is only limited provision for unlawful non-citizens to successfully apply for a UK-820 visa:

- 820.211(2)(d)(i) and 820.211(2A) relate to unlawful non-citizens who held, but no longer have, diplomatic or SOFA status and
- 820.211(2)(d)(ii) applies to all other unlawful non-citizens.

Schedule 3 criteria

For 820.211(2)(d)(ii) or 820.211(2)(d)(i)(B), see:

- PAM3: Sch3
- (in this instruction) section 8.7 Other unlawful non-citizens and section 8.8 Delegation to waive Schedule 3 criteria.

8.3 If a former special purpose visa holder

Clause 820.211(2)(d)(i)(A) applies to persons who held SOFA status at time of last entry to Australia - see section 8.6 If SOFA.

8.4 If the visa has been cancelled

Although a former holder of a TF-995 Diplomatic visa, or a person with SOFA status who has had their SPV cancelled, is precluded by regulation 2.12 from making a valid UK-820 application, in practice this situation is unlikely to arise for the following reasons.

It is envisaged that TF-995 visa holders would have their visa cancelled only if they lose accreditation, that is, by no longer being a diplomatic/consular representative (or the partner/dependant of a diplomatic/consular representative). However, even in such circumstances, it is unlikely that a decision to cancel the visa would be made before giving them an opportunity to apply for a UK-820 visa as the spouse or de facto partner of an Australian resident while they are still the holder of a substantive visa. (For further information about the requirements for TF-995 visa holders, especially before visa grant, see section 25.2 Diplomatic visa holders.)

Also, a special purpose visa is more likely to cease to have effect by operation of law (that is, when the holder loses their prescribed status) than by cancellation - see PAM3: Act - Act based visas - Special purpose visas. Even so, it is unlikely that a decision to cancel a special purpose visa would be made before giving the holder an opportunity to apply for a UK-820 visa as the spouse or de facto partner of an Australian resident while they are still the holder of a substantive visa.

8.5 Former Diplomatic visa holders

Under 820.211(2)(d)(i)(A), 'holder of a Subclass 995 (Diplomatic) visa' includes persons who held the superseded equivalent Class 995 entry permit - see regulation 19 of the Migration Reform (Transitional Provisions) Regulations.

8.6 If SOFA

Clause 820.211(2)(d)(i)(A) is intended to mean a person who had SOFA status (for example, as a dependent child) at time of last entry to Australia. Applicants should provide documentary evidence (for example, from the relevant Government) of having had SOFA status.

As an example of evidence of this status, members of the civilian component of the US armed forces (and their dependent relatives) would usually have held official status US passports endorsed with a statement from the relevant US authority that they were entering Australia under the relevant SOFA.

If a former member of the armed forces, the applicant will also need to provide their military discharge papers.

8.7 Other unlawful non-citizens

Clause 820.211(2)(d)(ii), the 'compelling reasons' provision, allows certain persons who are unlawful in Australia to regularise their status if compelling reasons exist.

The Migration Regulations do not prescribe the circumstances that need to be considered when assessing whether or not 'compelling reasons' exist to not apply Schedule 3 criteria 3001, 3003 and 3004. As such, officers should consider circumstances on a case by case basis.

In doing so, however, officers should be mindful that the intent of the waiver provisions is to allow persons whose circumstances are genuinely compelling to regularise their status. The provisions are **not** intended to give, or be perceived to give, an unfair advantage to persons who:

- fail to comply with their visa conditions or
- deliberately manipulate their circumstances to give rise to compelling reasons or
- can leave Australia and apply for a Partner visa outside Australia.

An example of where the circumstances may not be compelling to waive the Schedule 3 requirements may be where an applicant has remained unlawful for a number of years, made little or no effort to regularise their status and claims compelling circumstances on the basis of a long term relationship with their sponsoring partner and/or hardship caused by separation if they were to apply outside Australia for the visa.

With the intent of the waiver provisions in mind, it is generally reasonable to expect that compelling reasons to exercise the waiver provision exist where an applicant's circumstances happened beyond their control. That is, circumstances beyond the applicant's control had led them to become unlawful and/or prevented them from regularising their status through means other than the Partner visa application for which they seek the waiver.

For example, in the scenario given earlier, it is reasonable to accept that compelling circumstances exist to waive the Schedule 3 criteria if, for reasons beyond the applicant's control - such as severe illness or incapacity - the applicant was prevented from regularising their status in the years they had been unlawful.

As a general rule, the existence of a genuine spouse or de facto relationship between the applicant and sponsoring partner, and/or the hardship suffered from the separation if the applicant were to leave, and apply for the visa, outside Australia are **not**, in themselves, compelling reasons not to apply the Schedule 3 criteria. This is because a genuine relationship forms the basis of **all** Partner visa applications, and hardship caused by separation, whilst it differs in degree from one case to another, is common in the Partner visa caseload, particularly in the offshore context where partners may be separated for extended periods during visa processing.

Policy intends that the waiver provision should **not** be applied where it is reasonable to expect the applicant to leave Australia and apply outside Australia for a Partner visa. This not only ensures fairness and equity to other applicants and discourages deliberate non-compliance, but also preserves the integrity of the Partner visa program in general and the waiver provisions in specific.

Matters that officers should take into consideration when assessing whether the applicant's circumstances may be considered compelling include but are not limited to:

- any history of non-compliance by the applicant
- the length of time the applicant has been unlawful
- the reasons why the applicant became unlawful
- the reasons why the applicant did not seek to regularise their status sooner
- what steps, if any, the applicant has taken to regularise their status (other than applying for a Partner visa).

8.8 Delegation to waive Schedule 3 criteria

A decision as to whether or not Schedule 3 criteria should apply may be made by the delegated case officer. Managers may wish to be consulted in cases where a waiver of the Schedule 3 requirements is being considered. However, this is not mandatory.

Any queries officers have regarding the waiver of Schedule 3 criteria should be referred to this instruction's owner.

If the relationship is ongoing

9 "Standard eligibility"

Clause 820.211(2)(a) is the "standard" UK-820 visa provision that may be expected to apply to most applicants.

Except as provided for by 820.211(2)(d) - see section 8.2 If an unlawful non-citizen - a successful application cannot be made by persons who do not hold a substantive visa.

10 Eligibility as a partner

10.1 Relationship eligibility

Clause 820.211(2) provides for a spouse or de facto partner, the requirements for which have been split between the Act and the Regulations.

Relevant provisions include:

- s5F of the Act - definition of spouse
- regulation 1.15A - factors for assessing spouse relationships
- s5CB of the Act - definition of de facto partner and de facto relationship
- regulation 1.09A - factors for assessing de facto relationships and
- regulation 2.03A - relationship period and age requirement for de facto relationships.

In this instruction, as in other instructions, "partner" refers to spouse and de facto partner.

The term "sponsor's partner" has the meaning that the applicant must be either the spouse (that is, married) or de facto partner of the sponsoring Australian partner

10.2 Spouse relationships

For 820.211(2), 'spouse' is defined in s5F of the Act.

The s5F definition of 'spouse' defines **married** (that is, de jure) relationships only - see s5F(1). Therefore, in this and related policy instructions, references to a spouse (or spouse relationship) are limited to meaning married relationships.

See also PAM3: Act - Act-defined terms - s5F - Spouse. Among other matters, that instruction provides information on the recognition (if any) under migration law of:

- proxy, customary and arranged marriages
- marriages where the person whom the visa applicant has married (or will marry) is (in terms of the Marriage Act 1961) usually domiciled in Australia
- polygamous marriages
- under-age marriages, that is, where either party is not of Australian marriageable age (at least 18 years old)

- marriages within a prohibited degree of relationship
- same-sex marriages and
- marriages involving transsexuals.

In addition, there are factors in regulation 1.15A that must be taken into account when assessing the marital relationship. For policy and procedure on these factors, see PAM3 Div1.2/reg1.15A.

10.3 De facto relationships

For 820.211(2), s5(1) of the Act defines ***de facto partner*** to have the meaning set out in s5CB of the Act.

See also PAM3: Act - Act-defined terms - s5CB - De facto partner. Among other matters, that instruction provides information on the recognition under migration law of same-sex de facto relationships.

Further de facto partner relationship requirements

Further factors that must be taken into account when assessing the de facto relationship are prescribed in the Regulations at:

- regulation 1.09A – De facto partner and
- regulation 2.03A – Criteria applicable to de facto partners.

Regulation 2.03A provides that, at time of application, if the partner visa applicant is claiming a de facto relationship with their Australian partner, they must **both**:

- be at 18 years old - regulation 2.03A(2) and
- have been together in a de facto relationship for at least 12 months - regulation 2.03A(3).

If the relationship is registered under Australian State/Territory law

Under regulation 2.03A(5), the minimum relationship period does not apply if the relationship is registered under a State/Territory law prescribed in the Acts Interpretation Act (Registered Relationship) Regulations (namely, regulation 3) as a kind of relationship as prescribed in those Regulations - see PAM3: Div2.1/reg2.03A - Criteria applicable to de facto partners.

10.4 Policy and procedure - partner relationship eligibility

In summary, for policy and procedure relating to eligibility as a partner:

- as a spouse, see
  - PAM3: Act - Act-defined terms - s5F - Spouse
  - PAM3: Div1.2/reg1.15A - Spouse
- as a de facto partner, see:
  - PAM3: Act - Act-defined terms - s5CB - De facto partner
  - PAM3: Div1.2/reg1.09A - De facto partner
  - PAM3: Div2.1/reg2.03A - Criteria applicable to de facto partners.

10.5 Continued partner relationship eligibility

For 820.221(1)(a), for those cases where the relationship must be on-going (that is, 820.211(2)-820.211(6) apply), officers should not rely on s104 of the Act (which requires applicants to notify changes in their circumstances). Rather, and in particular if any appreciable time has elapsed since the visa application was made, officers are expected to make such enquiries as considered appropriate to satisfy themselves that the requirements in (as applicable) s5F or s5CB of the Act are (still) met.

10.6 Other requirements

See:

- Other partner-related requirements
- Other visa criteria (all cases).

Other partner-related requirements

11 Sponsorship requirements

11.1 Sponsorship

For 820.211, see PAM3: Div1.4 - Form 40 sponsors and sponsorship.

Note: Form 40SP is, under policy, the approved sponsorship form for this visa. Note that it is not prescribed under Schedule 1 - see section 6.2 Forms. However, it is a required form under Schedule 1 for applicants subject to s48 of the act - see section 6.6 Applicants to whom s48 applies.

Officers are reminded that, under law, sponsors who need to be assessed as eligible New Zealand citizens must undergo standard Schedule 4 health/character assessment for their latest entry to Australia - see regulation 1.03 definition - eligible New Zealand citizen. However as most eligible New Zealand citizens do not undertake such assessments before entry to Australia, officers will have to ensure that such sponsors are advised at time of application that they will need to undergo such checks.

As at 24 March 2012, a health assessment by the MOC is no longer required for New Zealand citizen sponsors where no adverse information is known about the prospective sponsor's health. Unless the applicant or sponsor have volunteered information that causes the case officer to believe that the sponsor may not have met PIC 4007 at time of their last entry to Australia an officer should not request any medical examinations or tests and can assume the criterion is met. If a medical condition has been declared that would result in the sponsor failing to meet PIC 4007, they must be assessed by the MOC.

For policy and procedure relating to eligible New Zealand citizens and sponsorship, see:

- PAM3: Sch4 – 4005-4007 – The health requirement
- PAM3: Act - Identity, biometrics and immigration status - New Zealand citizens in Australia
- PAM3: Div1.4 - Form 40 sponsors and sponsorship.

11.2 Sponsorship approval

For 820.221, sponsorship must be approved and remain in force. For policy and procedure, see PAM3: Div1.4 - Form 40 sponsors and sponsorship.

11.3 Sponsorship limitations

Depending of their circumstances, the sponsor of a UK-820 applicant may be subject to a sponsorship bar or limitation as prescribed in:

- regulation 1.20J
- regulation 1.20KA or
- regulation 1.20KB.

Reg. 1.20J

Regulation 1.20J limits how many approved partner visa sponsorships a UK-820 sponsor may have, preventing abuse (through repeat applications) of the partner visa provision.

For policy and procedure on regulation 1.20J sponsorship limitations, see PAM3: Div1.4B - Limitation on certain sponsorships under Division 1.4.

Reg. 1.20KA

Regulation 1.20KA applies to certain CA-143 Contributory Parent and DG-864 Contributory Aged Parent visa-holding sponsors.

For policy and procedure relating to regulation 1.20KA sponsorship limitations, see PAM3: Div1.4B - Limitation on certain sponsorships under Division 1.4.

Reg. 1.20KB

The sponsorship must be refused if the sponsor has an unresolved charge, or conviction, for a registrable offence - see regulation 1.20KB.

To determine whether the sponsor has been charged with or convicted of a registrable offence, officers may request the sponsor to provide a police check from:

- a jurisdiction in Australia specified in the request or
- a country in which the sponsor has lived for a total of at least 12 months.

Under policy, such police checks **must** be obtained.

Cases involving sponsors with registrable offences must be referred to the Visa Applicant Character Consideration Unit (VACCU).

For policy and procedure on regulation 1.20KB, including VACCU referral requirements, see PAM3 Div1.4 - Form 40 sponsorship - Protection of children - Sponsors of concern.

11.4 Preclusion if the Australian partner is a XB-204 Woman at Risk visa holder

Clause 820.211(2B) supports similar Schedule 2 Part 204 criteria that apply to persons seeking entry to Australia under the ‘immediate family’ provisions of the XB-204 Woman at Risk visa.

The purpose is to maintain the integrity of the Woman at Risk component of the Refugee and Humanitarian program.

12 Continued relationship eligibility

For 820.221, applicants are required (under s104 of the Act) to notify changes in their circumstances. It follows that applicants are expected to notify, for example, if the relationship ends or the composition of their family unit changes (for example, as a result of birth, death or change in relationship status).

Officers may without further enquiry consider this criterion satisfied provided:

- there is no evidence (or notification) to the contrary (for example, the Australian partner has withdrawn the sponsorship) and
- no significant time has elapsed since the application was made; otherwise, officers are expected to take reasonable steps to satisfy themselves that there has been no material change in the family’s circumstances.

For further information about partner relationship criteria, see section 10 Eligibility as a partner.

13 Integrity concerns about the partner relationship

13.1 If a delegate has integrity concerns

In assessing whether or not a UK-820 applicant can satisfy 820.211, relating to the requirement that that the applicant be in an ongoing partner relationship with their Australian partner sponsor, a delegate might have concerns about the integrity of the claimed relationship, that is, the bona fides of the relationship.

Bona Fides Units

To assist delegates both in and outside Australia, Bona Fides Units (BFUs) have been established within the department's STOs. The aim of establishing a BFU national network is to provide a specialist function in an STO to enable improvement to the integrity of family stream visa processing in general and, in particular, partner visa applications.

If such bona fides concerns arise because:

- information regarding possible fraud or malpractice has come to the department's attention or
- even following receipt of further information from the applicant and the applicant's Australian partner, officers might not have sufficient information to determine whether or not they can be satisfied about the relationship's bona fides

it may be necessary for the delegate to seek further information about the applicant's and/or Australian partner/sponsor's circumstances by requesting assistance from the relevant BFU.

13.2 When not to refer a UK-820 case to a BFU

Cases should **not** be referred to a BFU if:

- the UK-820 visa can be refused immediately because the applicant fails an objective criterion or
- there is sufficient evidence and information available for the officer to make a decision on the UK-820 application or
- the case can be resolved by due diligence in normal processes (for example, through investigative interviews with the applicant and other relevant persons or checks of documents, departmental databases and other evidence) or
- the case cannot be finalised due to an incomplete application or lack of evidence lodged with the application. In these cases, further information/evidence should be sought, particularly from the UK-820 applicant and/or their Australian partner sponsor.

13.3 Referral of UK-820 cases to BFUs

If, on receipt of further information, it appears that there are significant concerns as to the claimed relationship such that further detailed examination of the applicant's and/or Australian partner sponsor's circumstances is required, the case may then be referred to a BFU.

The officer can request that the relevant STO provide further information from the sponsor or undertake to visit the sponsor, but only if the specialised expertise or attention of the BFU is required to assist in finalising the UK-820 application.

13.4 Details required by BFUs

If a s65 delegate wishes a BFU to undertake checks on the circumstances of the applicant and/or sponsor, the following detailed information must be provided to the BFU:

- the checks needed
- the time frames involved and

- whether or not there is a deadline for receiving information.

In addition, the following further information must be given:

- relevant visa subclass
- applicant's name and departmental file number
- sponsor's name, address and telephone number
- type of check required, indicated against:
  - citizenship
  - resident status
  - accommodation
  - employment background and
- other relevant case details, accompanied by copies of forms or other documents relevant to the checks.

13.5 BFU referrals process

For BFU referrals from within Australia, the referring office is to contact their relevant BFU to find out that particular BFU's requirements and request format.

Referrals should be sent via the CRM functionality in ICSE. For details about the CRM, see

- PAM3: GenGuideA - Global working - Output 1.1 - Case referral management
- PAM3: GenGuideA - Site visit guidelines: Managing and conducting site visits.

BFU contact details are available from the relevant Residence Section manager or from this instruction's owner.

13.6 Authorisation for BFU referrals

If an officer wishes to refer a UK-820 application to a BFU, the relevant local business manager (for example, Residence Manager) is responsible for authorising the referral request.

The authorisation should include:

- client's name (usually the Australian partner sponsor)
- address
- reasons for further referral and
- other relevant details.

If the case is urgent, direct contact details are available from the relevant STO Residence Section manager or from this instruction's owner.

13.7 Processing of requests by BFUs

BFUs are able to assist the UK-820 decision making process by responding to requests for checks promptly. Given that s85 capping of visas is not applicable to partner visas and given that they are accorded priority processing, BFU officers are to avoid unnecessary delays that could result in the UK-820 applicant being disadvantaged.

The results of BFU checks undertaken should be forwarded by email to as soon as they are available.

If the partner relationship has ceased

14 Eligibility

For 820.221, briefly:

- 820.221(2) applies to certain applicants whose relationship with their Australian partner has ended (since the UK-820 application was made) solely because the Australian partner has died
- 820.221(3) applies to certain applicants whose relationship with their Australian partner has ended since the UK-820 application was made and where family violence has occurred or access rights to children are involved.

If these criteria are satisfied, such applicants are not required to wait out 2 years before being granted a BS-801 visa.

15 If the Australian partner has died since the visa application was made

15.1 Would have continued to meet requirements

Under 820.221(2)(a), the applicant is incapable of satisfying this criterion unless the delegate is satisfied that, among other things, they were the spouse or de facto partner of their Australian partner (that is, meeting all s5F or s5CB and corresponding regulation 1.15A or 1.09A and 2.03A requirements) until the Australian partner died.

15.2 Would have continued to be the spouse or de facto partner

For 820.221(2)(b), see section 19.4 Would have otherwise satisfied visa criteria.

15.3 Must have developed close ties

For 820.221(2)(c), see section 19.5 Must have developed close ties.

15.4 Other requirements

See:

- Other partner-related requirements (as applicable)
- Other visa criteria (all cases).

16 If family violence has occurred

16.1 Would otherwise have satisfied criteria

The applicant is incapable of satisfying 820.221(3)(a) requirements unless the delegate is satisfied that, among other things, the applicant was the spouse or de facto partner of their Australian partner (that is, meeting **all** s5F or s5CB and corresponding regulation 1.15A or 1.09A and 2.03A requirements) until the relationship ceased.

16.2 If family violence has occurred

For 820.221(3)(b)(i), see section 20.5 Assessing family violence claims.

16.3 Other requirements

See:

- Other partner-related requirements (as applicable)
- Other visa criteria (all cases).

If the applicant no longer holds a TO-300 visa

17 Eligibility

Clause 820.211(5) applies to applicants who:

- at time of UK-820 application, do not hold a substantive visa
- last entered Australia as a TO-300 visa holder and
- ceased to hold that TO-300 visa **after** marrying the Australian citizen, permanent resident or eligible New Zealand citizen that they entered Australia to marry.

Although not a substantive visa holder at the time of UK-820 application, applicants who satisfy 820.211(5) are not required to meet Schedule 3 criteria. An applicant who does not hold a substantive visa at time of application and does not satisfy 820.211(5) or (9) is subject to Schedule 3 criteria as required by 820.211(2)(d)(ii).

Applicants to whom 820.211(5) applies **cannot** satisfy UK-820 criteria on the basis of a **de facto relationship** because in all cases the applicant must have married the person whom they entered Australia to marry.

The applicant's spouse relationship with their sponsor must also be assessed as genuine and ongoing - see the policy and procedure at section 18 If the relationship is ongoing.

Prospective Marriage visa cases

18 If the relationship is ongoing

18.1 Must hold a TO-300 visa

By operation of law, TO-300 visas are subject to Schedule 8 conditions 8515 (requiring the holder not to marry before entry to Australia) and 8519 (requiring the marriage to take place within the visa period). However, to satisfy 820.211(6)(a):

- breach of either condition is **not** a relevant factor in assessing UK-820 criteria and
- the cancelling of a TO-300 (on the basis that the holder has not abided by these conditions) after a UK-820 application has been made has no effect on the outcome of the UK-820 application.

It follows that policy envisages few situations where officers would consider cancelling a TO-300 **after** the UK-820 application is made.

18.2 Must have married their original sponsor

Under 820.211(6)(b) and the definition of ***sponsoring partner***, officers should verify from departmental file records that the person whom the applicant has married is the person who was, according to those records, the applicant's 'prospective spouse' in relation to the TO-300 application.

Note: Clause 820.211(2) enables a person who holds or held a TO-300 visa to be sponsored by a subsequent sponsor - that is, by a spouse or de facto partner who is an Australian citizen, Australian permanent resident or eligible New Zealand citizen who was **not** the TO-300 sponsor.

18.3 The marriage must be valid

For 820.211(6)(b), see s12 of the Act and, for policy and procedure, PAM3: Act - Act-defined terms - s5F - Spouse. Evidence of marriage should take the form of the marriage certificate.

Officers should seek written legal advice from National Office (LOHD/IMMI/AU) if failure to satisfy UK-820 criteria rests **solely** on whether the marriage is recognised or not under the Act.

18.4 Spouse relationship

For 820.211(6)(d), see section 10 Eligibility as a partner.

18.5 Sponsorship

For 820.211(6)(c), see section 11 Sponsorship requirements.

18.6 Other requirements

See:

- Other partner-related requirements
- Other visa criteria (all cases).

19 If the Australian partner has died

19.1 Overview

Clause 820.211(7) applies to TO-300 visa holders who married their Australian partner, but their partner died before the visa holder applied for the UK-820/BS-801 visa. If UK-820 criteria are satisfied and the visa is granted, these applicants are not required to wait out 2 years before being granted a BS-801 visa.

19.2 Must hold a TO-300

For 820.211(7)(a), see section 18.1 Must hold a TO-300 visa.

19.3 Must have validly married their sponsor

For 820.211(7)(b), see:

- section 18.2 Must have married their original sponsor and
- section 18.3 The marriage must be valid.

19.4 Would have otherwise satisfied visa criteria

Under 820.211(7)(d), officers should assess this criterion on the basis of the information on file, having regard as far as practicable to policy and procedure on assessing partner relationships listed in section 10 Eligibility as a partner.

Under 820.221(1)(a), it is policy that applicants cannot satisfy this criterion if they have since formed a new spouse or de facto relationship. In other words, they are taken to no longer satisfy the 820.211 criterion that requires the delegate to be satisfied that the applicant would have continued to be the partner of their Australian partner sponsor.

19.5 Must have developed close ties

Overview

For 820.211(7)(e), policy and procedure on individual factors within this provision are given separately immediately below. However, briefly, the applicant is expected to demonstrate:

- the existence of ties in Australia of a kind prescribed in 820.211(7)(e) and
- that the close business, cultural or personal ties in question have developed over time.

Ties must have developed

In assessing whether the applicant has developed close ties, officers should consider the extent to which ties have formed and/or strengthened over time. For example, a tie that existed at time of application cannot reasonably be said to have since 'developed' (that is, in effect to have become a closer tie) if the tie has not materially changed.

In assessing this criterion, officers should have regard to the following policy and procedure. However, they should not regard these as exhaustive and should assess claims on a case-by-case basis.

Business ties

In assessing this criterion, officers should take into consideration that, under policy:

- a business tie may include ownership of property in which the applicant has an ongoing and active interest and
- an applicant is capable of having developed a business tie in Australia only if:
  - they have business partners or associates who are Australian citizens, permanent residents or eligible New Zealand citizens or
  - that business operates in Australia or, if claim based on the ownership of property, that property is in Australia.

In assessing whether a business tie is close, officers may consider:

- the extent and nature of the activities of the business or the extent of the applicant's active interest/involvement in their property and
- the extent, if any, to which the refusal of the visa would cause economic hardship to that business/property or to business partners/associates. For example, policy envisages that, if the business ties are indeed 'close', refusal of the visa would have a reasonably significant, quantifiable and detrimental economic impact.

Cultural ties

In assessing this criterion, officers should take into consideration that, under policy:

- ties of a cultural nature are envisaged as (but not limited to) the arts, music, or literature and
- an applicant is capable of having developed a cultural tie in Australia only if they participate in, or actively contribute to, cultural activities (in Australia).

It follows that, in assessing whether or not those cultural ties in Australia are close, officers should consider the extent (if any) of the applicant's participation in or contribution to those cultural activities.

Personal ties

In assessing this criterion, officers should take into consideration that, under policy:

- such ties are envisaged as being family unit members, other ***close relatives*** (that is, as defined in regulation 1.03) and/or close friends
- for such ties to be in Australia, the relevant person(s) must reside in Australia and be an Australian citizen or Australian permanent resident and
- a tie is incapable of being close unless the applicant and the relevant person(s) have regular and ongoing contact.

In assessing whether the tie is close, officers may also have regard to the **extent** of the tie, taking into consideration:

- the applicant's aggregate periods of residence in Australia and their age during those periods. Policy envisages ties that were formed during the applicant's formative years as more capable of developing into close ties
- (if the claim is based on the presence of close relatives in Australia) the composition and disposition (in and outside Australia) of all close relatives
- the degree of support shown for the application by those close relatives and personal friends in Australia and
- the degree of emotional ties with (and/or dependence on) those relatives and close personal friends in Australia.

19.6 Other requirements

See Other visa criteria (all cases).

20 Family violence provisions

20.1 Overview

Clause 820.211(8) applies to TO-300 Prospective Marriage visa holders who married their Australian partner before their TO-300 ceased but, before the UK-820/BS-801 visa application was made, the relationship ceased and the applicant is claiming that family violence has occurred. If UK-820 criteria are satisfied and the visa is granted, these applicants are not required to wait out 2 years before being granted a BS-801 visa.

20.2 Must hold a TO-300 visa

For 820.211(8)(a), see section 18.1 Must hold a TO-300 visa.

20.3 Must have validly married their sponsor

For 820.211(8)(b), see:

- section 18.2 Must have married their original sponsor
- section 18.3 The marriage must be valid.

20.4 Would otherwise have satisfied visa criteria

The applicant is incapable of satisfying 820.211(8) requirements unless the delegate is satisfied that, among other things, they were the spouse of their Australian partner (that is, meeting **all** s5F and corresponding regulation 1.15A requirements) up until when the relationship ceased.

Under 820.221(1)(a), it is policy that applicants cannot satisfy this criterion if they have since formed a new spouse or de facto relationship. In other words, they are taken to no longer satisfy the 820.211 criterion that requires the delegate to be satisfied that the applicant would have continued to be the partner of the sponsoring partner.

20.5 Assessing family violence claims

For policy and procedure and evidentiary requirements under 820.211(8)(d), see PAM3: Div1.5 - Special provisions relating to family violence. Officers are reminded, however, that there is no requirement that there be a cause-and-effect link between the family violence and the relationship ending.

20.6 Other requirements

See:

- Other partner-related requirements (as applicable)
- Other visa criteria (all cases).

Former Prospective Marriage visa holders

21 Eligibility

21.1 If the relationship has broken down

Clause 820.211(9) applies to former TO-300 Prospective Marriage visa holders who married their Australian partner before the TO-300 visa ceased but, before the UK-820/BS-801 visa application was made, the relationship ceased and the applicant is claiming that family violence has occurred.

As it virtually mirrors 820.211(8), except for the TO-300 having ceased at time of UK-820 application, officers should use the corresponding policy and procedure (as applicable) - see section 20 Family violence provisions.

21.2 Other requirements

See Other visa criteria (all cases).

Other visa criteria (all cases)

22 Generic visa criteria

22.1 Public interest criteria (PICs)

For 820.223, see policy and procedure in the corresponding PAM3: Sch4 policy instructions.

“One fails, all fail” criteria

For 820.224, the primary applicant cannot be granted a visa unless:

- those members of the family unit who are visa applicants satisfy the PICs prescribed in 820.224(1) and
- those members of the family unit who are not visa applicants satisfy the PICs prescribed in 820.224(1A).

In either case, for policy and procedure, see PAM3: Sch4/4005-4007 - 30 Assessing the health of family unit members (including non- migrating dependants).

22.2 If the case involves access or custody (or similar) rights and responsibilities

Custody of children

Clause 820.225 relates to members of the family unit and provides that the primary applicant cannot be granted a visa if granting a visa to any minor (that is, under 18 years old at time of decision) would prejudice the custody (or similar) rights and responsibilities of another person - see Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

If 820.225 applies, delegates must have regard to Australian case law if a child of both the applicant and the applicant's Australian partner is involved. Departmental policy in relation to "custody" is that any parent will have custody unless there is a court order granting sole custody to the other parent.

Therefore, if an officer is satisfied that a child is the child of the applicant and the applicant's Australian partner, the applicant has rights and responsibilities towards that child unless there is evidence of the applicant being denied any access to that child by a court or evidence that the Australian partner has sole custody of that child.

Under policy, this means that, unless officers have a particular reason to believe such evidence exists, they can accept a statutory declaration from the applicant stating they have rights and responsibilities towards that child. Although not a legal requirement, it may assist an officer if an applicant can provide other documents - such as a court order giving access, a parenting order or parenting plan - that attest to their parental responsibility.

22.3 Applications remitted by MRT

If the MRT has remitted a decision to refuse a UK-820 visa with direction that the requirement that the applicant is in a partner relationship is satisfied, delegates are still required to assess the relationship at time of decision for the BS-801 application.

Deciding the BS-801 application

If the applicant is eligible for their BS-801 application to be considered immediately following remittal of the UK-820 application, in the absence of significant new evidence to suggest that that the applicant is not in a genuine and ongoing partner relationship, and subject to an applicant meeting all other legislative criteria, the BS-801 application should be decided without delay, with due regard to the MRT's finding. This policy reflects the MRT's direction in respect of assessment of the relationship, and avoids further delay to the applicant given the period of time that would have already elapsed between refusal and remittal of the UK-820 application.

Delegates are required to email this instruction's owner for policy advice before refusing a BS-801 application in circumstances where the MRT remitted the UK-820 application. For policy and procedure, see PAM: Sch2Visa801 - Partner.

22.4 Other PIC requirements

Clause 820.226 requires applicants to satisfy PIC 4021 ("passport requirement") and PIC 4020 ("the integrity PIC"). For policy and procedure, see:

- PAM3: Sch4/4020 – The integrity PIC
- PAM3: Sch4/4021 – The passport requirement.

UK-820 family unit members

23 Eligibility

23.1 Immigration status

For 820.312, see section 8 Immigration status.

23.2 Relationship

For 820.311(a), see:

- the regulation 1.03 definition of ***dependent child*** and, for policy and procedure on establishing the existence of the claimed relationship, PAM3: Act – Act-defined terms - s5G – Relationships and family members – Child-parent relationships

and

- the regulation 1.05A definition of ***dependent*** and, for policy and procedure on establishing dependency, PAM3: Div1.2/reg1.05A – Dependent

and

- for TO-300 cases, the regulation 1.12 definition of ***member of the family unit*** and, for policy and procedure on establishing the existence of the claimed relationship, PAM3: Act – Act-defined terms - s5G – Relationships and family members – Dependent family members.

23.3 Primary applicant's application must be undecided

Clause 820.311(c) requires the primary applicant's BS-801 application to be undecided. A dependent child (or, if applicable, member of the family unit) cannot successfully apply for a UK-820 visa after their parent has been granted or refused their BS-801 visa.

23.4 Adding a child to the application

If the primary applicant's UK-820 application is undecided, provided the child is in Australia, regulation 2.08B and regulation 2.08A together allow a dependent child (only) to be added to the UK-820/BS-801 visa application at the primary applicant's written request.

For policy and procedure, see, as applicable:

- PAM3: Div2.2/reg2.08B - Addition of certain dependent children to certain applications for temporary visas
- PAM3: Div2.2/reg2.08A - Addition of certain applicants to certain applications for permanent visas.

[LEGEND Comment - 23.4 - The above PAMs are no longer applicable]

For further information about adding a child to a UK-820/BS-801 application after the primary applicant has been granted a UK-820 visa, see PAM3: Sch2Visa801 - Adding family unit members to the BS-801 application.

23.5 Children outside Australia

Dependent children outside Australia may be sponsored later after UK-820 visa grant, but before BS-801 visa decision - see PAM3: Sch2Visa801 - Adding family unit members to the BS-801 application.

23.6 Adding other members of the family unit

For TO-300 cases only, other members of the family unit, who are not covered by regulations 2.08B and 2.08A, may, in **most** cases (but not all, because they are not covered by 1 November 1999 transitional provisions) still apply **separately** from (that is, later than) the primary applicant, provided the primary applicant has not yet been granted or refused their BS-801 visa.

23.7 Continued eligibility

For 820.321, applicants are required under s104 of the Act to notify changes in their circumstances such as changes in the family unit as a result of birth, death or change in relationship status.

Officers may without further enquiry consider this criterion satisfied provided that:

- there is no evidence (or notification) to the contrary and
- no significant time has elapsed since the application was made; otherwise officers should check that there has been no material change in the family's circumstances.

24 Other requirements

24.1 Sponsorship

For 820.311(b) and 820.325, see section 11 Sponsorship requirements.

24.2 Public interest criteria

For 820.323(1) policy and procedure, see:

- section 22.1 Public interest criteria (PICs)
- the corresponding PAM3: Sch4 instructions.

24.3 If a minor

For 820.324 policy and procedure, see

- section 22.2 If the case involves access or custody (or similar) rights and responsibilities

24.4 Other PIC requirements

Clause 820.326 requires applicants to satisfy PIC 4021 ("passport requirement") and PIC 4020 ("the integrity PIC"). For policy and procedure, see:

- PAM3: Sch4/4020 – The integrity PIC
- PAM3: Sch4/4021 – The passport requirement.

24.5 Primary applicant must be visaed first

Under 820.321(a), members of the family unit cannot be granted their visas unless/until the primary applicant is granted **their** visa.

Remittal of decision to refuse dependant a UK-820 visa

For cases where the MRT has remitted a decision to refuse a UK-820 visa to a dependent applicant, 820.321(b) allows the UK-820 visa to be granted to the dependant even if the primary applicant has already been granted their UK-820 and/or BS-801 visa.

UK-820 visa grant

25 Where the applicant must be to be granted their visa

25.1 In Australia

Clause 820.411 specifies that the applicant must be in Australia for the UK-820 visa to be granted. If the applicant is not in Australia, they cannot be granted the UK-820 visa.

For policy and procedure, see:

- section 26 If the visa applicant is temporarily outside Australia
- PAM3: GenGuideA - All visas - Visa application procedures - Circumstances applicable to grant.

25.2 Diplomatic visa holders

Under policy, applicants (for example, TF-995 Diplomatic visa holders) who hold diplomatic status in Australia must obtain a 'no objection' letter from DFAT prior to the grant of a UK-820 visa.

This is important because a Diplomatic visa ceases on grant of a UK-820 visa (Act, s82(2)). A 'no objection' letter indicates that the applicant has been counselled about this by DFAT. The applicant should approach the nearest office of their country's official representative in Australia (for example, the Embassy, High Commission or Consulate-General), which would then usually liaise with DFAT to obtain such a letter.

26 If the visa applicant is temporarily outside Australia

26.1 Deferral of UK-820 visa grant

If 820.411 is not satisfied, generally the s65 delegate should proceed to refuse the visa. However, under s51 of the Act, delegates have the discretion to deal with applications, taking account of individual circumstances.

It is therefore appropriate to consider whether or not it is reasonable in the circumstances to defer making a decision. If there is evidence that the applicant's absence from Australia is only temporary, it may be reasonable to defer the decision until the applicant's return. However, before considering whether or not it is reasonable to defer a decision because the applicant is not in Australia, a delegate must be satisfied that the applicant meets all other requirements for the grant of the UK-820 visa.

The following is intended to assist officers in considering what is reasonable in the circumstances, which involves two elements:

- what is a reasonable period of time to allow the applicant to return to Australia - see section 26.2 Reasonable period of absence
- what circumstances are considered reasonable for the applicant's absence from Australia - see section 26.3 Reasonable circumstances.

26.2 Reasonable period of absence

In deciding what constitutes a reasonable period of absence, it is policy that a period of up to 3 months might be reasonable, given that this ties with the period that a UK-820 applicant would be given if they are eligible to be granted a Bridging B (WB-020) visa (that is, a bridging visa with a travel facility that is available only to Bridging A visa holders who meet the relevant criteria for the grant of a WB-020 visa).

However, the 3-month period is a guide only and does not have to be applied rigidly. A shorter or longer period may be reasonable, depending on the individual circumstances of the case.

26.3 Reasonable circumstances

Circumstances that may be considered reasonable for an applicant's absence from Australia may include, but are not limited to, the following:

- if the applicant or an immediate family member has a serious medical condition that would make it unreasonable to expect the applicant to return to Australia. (If it is a medical condition of a family member, consideration should be given to other support options available to that person, particularly if the applicant asks that the decision be deferred for more than six months.)

- if the applicant has personal safety or security concerns that will impact on their return to Australia, such as in times of natural disaster or civil unrest
- overseas employment of the applicant or their partner where, because of work obligations such as a short-term contract or secondment, they cannot return to Australia in the short term
- if the applicant or their partner is attending an overseas training course or study, or has an overseas scholarship that does not allow them to return to Australia in the short term.

In all circumstances, the UK-820 applicant may be asked to provide documentary evidence that they are unable to return to Australia in the short term.

26.4 Counselling of applicants

Applicants should be counselled that, by deferring the decision to grant the UK-820 visa, it may result in their having to undertake health and character checks again (if undertaken already) and, if appropriate, their relationship may also have to be reassessed.

For policy advice on requesting health and character checks again, see, respectively:

- PAM3: Sch4/4005-4007 - The health requirement
- PAM3: Act - Compliance and Case Resolution - Character - s501 - The character test, visa refusal and visa cancellation
- section 26.1 Deferral of UK-820 visa grant.

26.5 If the applicant does not return to Australia by agreed date

If the applicant does not return to Australia by the agreed date, an officer should advise them in writing that:

- a decision will be made on their application and that, if they remain overseas, the visa will be refused for failure to satisfy 820.411
- such a refusal decision would be reviewable by the MRT, but, under s347(3) of the Act, they would have to be physically present in Australia to make the review application
- moreover, in order to return to Australia after the refusal decision is made, they would have to first meet the legal requirements for the grant of another visa and
- if they choose to remain overseas, they may consider applying outside Australia for the UF-309/BC-100 visas, but this would involve lodging a new application and supporting documents and paying the applicable VAC.

If the applicant chooses to remain overseas, the delegate should proceed to refuse to grant the UK-820 visa - see section 29 If visa grant is refused.

27 The UK-820 visa period

27.1 Event-based

Under 820.511, UK-820 visa are “event-based visas”; the visa period is linked to an **event**, not a specific date.

A UK-820 visa will cease if the applicant’s BS-801 application has either been decided or been withdrawn. The UK-820 visa has a travel facility that enables the visa holder to leave and re-enter Australia as often as they wish until the BS-801 application has been finalised.

28 UK-820 visa conditions

None (820.6).

Other matters

29 If visa grant is refused

If a delegate decides to refuse to grant a visa to the applicant in accordance with s66 of the Act, they must notify the applicant of the decision as prescribed in the Act and the Regulations. Included in that notification must be advice as to whether the decision to refuse the grant of the visa is eligible or not to be reviewed by the MRT - that is, is an ***MRT-reviewable decision***. For further policy and procedure, see

- section 31 Merits review
- PAM3: Act - Merits review - Review by the MRT - Guide for primary decision-makers.

For policy and procedure on notification, see PAM3: Act - Code of procedure - Notification requirements.

30 If visa grant refused while applicant in Australia - bridging visa

If a delegate refuses the grant of a visa to an applicant who is in Australia at time of decision, provided the applicant is not the holder of a substantive visa, at time of decision the bridging visa (BV) held by the applicant comes into effect.

The type of BV held by the applicant depends on their immigration status when they applied for the UK-820/BS-801 visa. For further information, see PAM3: Sch2 Bridging visas - Visa application and related procedures.

The BV enables the applicant to remain lawfully in Australia for 28 days after notification (7 working days from the date of the decision letter) of visa refusal. This gives them time either to make arrangements to leave Australia or, if eligible, to apply to the MRT for review of the visa refusal decision. If they lodge a valid application for review with the MRT, the BV remains in effect until 28 days after notification of the MRT decision.

31 Merits review

31.1 Review rights

If an applicant has been refused the grant of a visa, s66 of the Act requires them to be notified of their rights (if any) for merits review of the visa refusal decision - see section 29 If visa grant is refused.

Briefly, in regard to merits review of UK-820 decisions (in most cases, review by the MRT):

- UK-820 applicants in Australia at the time of decision and time of application for review - merits review right
- UK-820 applicants outside Australia at time of attempted application for review - no merits review right.

UK-820 applicants with no merits review rights should be advised why this is the case, that is, that by law they must be in Australia when the application for review is made.

32 Service standards for finalising UK-820 applications

Officers are to adhere to the department’s service standards for finalisation of UK-820 applications.

Further information about service standards is on the department’s website.

33 Transferring case files

After the visa application is finalised, the relevant STO should send the finalised case file to “NatO/PA”, having first recorded that transfer in TRIM and having marked on the covering envelope or box as “NatO/PA”.

For standard file disposal procedures at posts, see PAM3: GenGuideB - Overseas case record management and disposal.

END OF DOCUMENT

[Sch2Visa801] Sch2 Visa 801 - Partner

About this instruction

Contents

This departmental instruction, which deals with the BS-801 visa – that is:

- Regulations Schedule 1 1124B and
- Regulations Schedule 2 Part 801

comprises:

- Introduction
- Applying for a Partner (Class BS) visa
- The BS-801 primary applicant
- BS-801 family unit members
- Visa grant
- Second stage Partner processing.

Related instructions

- PAM3: GenGuideB - Non-humanitarian migration - Visa application and related procedures
- PAM3: Act - Act-defined terms - s5F - Spouse
- PAM3: Div1.2/reg1.15A - Spouse
- PAM3: Act - Act-defined terms - s5CB - De facto partner
- PAM3: Div1.2/reg1.09A - De facto partner and de facto relationship
- PAM3: Div2.1/reg2.03A - Criteria applicable to de facto partners

Latest changes

Legislative – 19 November 2016 Bridging visa provisions in the Regulations have been amended to delink BV cease dates from the date the holder is notified of the primary (or, if applicable, merits review) decision on their substantive visa application. Rather, the BV cease date now relates to a specified period after the date of decision.

Policy

This instruction was reissued on 19 November 2016 to:

- note the above legislation change
- update owner details.

owner

Family Migration Programme Management Section

Permanent Visa and Citizenship Programme Branch

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Contents summary

Introduction

1 About the BS-801 visa

1.1 Eligibility

This visa is for persons in Australia seeking a permanent visa on the basis of being the partner (that is, spouse or ***de facto partner*** of an:

- Australian citizen
- Australian permanent resident or
- ***eligible New Zealand citizen***

(in this and related policy instructions, the "Australian partner").
BS-801 does **not**, however, apply to visa UF-309 holders - see instead PAM3: Sch2Visa100.

1.2 Prerequisite visa

To be granted a visa, the applicant must have been granted a UK-820 visa (which can only be applied for and granted in Australia).

2 Two-year wait out period

Under two-stage partner visa processing arrangements, applicants apply on the one combined application form for both a temporary visa (UK-820) and a permanent visa (BS-801).

In most cases, applicants are ineligible to be granted the permanent visa until two years after their application is made. This means UK-820 visa holders are usually required to wait two years before their BS-801 application is able to be finalised.

Long-term relationship

Under 801.221(6A) the BS-801 visa can be granted within the two-year period if the relationship was already long-term when the visa application was made.

In this situation (see also section 12 If the partner relationship is long-term), if the s65 delegate decides that the UK-820/BS-801 applicant:

- is otherwise eligible to be granted a UK-820 visa
- can satisfy the Schedule 2 long-term partner relationship criterion (see also the regulation 1.03 definition) and
- has notified the department of their relevant circumstances either in their application or subsequent correspondence

the delegate is to, immediately after granting the UK-820 visa, assess the BS-801 application and, if Schedule 2 criteria are satisfied, should proceed to grant the BS-801 visa.

Other prescribed circumstances

Following grant of the UK-820 visa, a delegate may consider grant of the BS-801 at any time in the two-year period in prescribed circumstances - see:

- 801.221(5) - the Australian partner dies - see section 10 If the Australian partner has died since UK-820 visa grant
- 801.221(6)(c)(i) - family violence has occurred – see section 11.4 If family violence has occurred or
- 801.221(6)(c)(ii) - the applicant is given custody or access rights over a child for whom the Australian partner has custody/access rights and/or maintenance obligations - see section 11.5 If the case involves access or custody (or similar) rights.

3 Second stage visa processing

For policy and procedure on second stage visa processing, see Second stage Partner processing.

4 Regulation 801.1 defined terms

Term	**Definition**

long-term partner relationship	This term, defined in regulation 1.03, relates to 801.221(6A). For policy and procedure, see: § section 12 If the partner relationship is long-term § PAM3: Div1.2/reg1.03 - Long-term partner relationship.
Sponsoring partner	For BS-801, ***sponsoring partner*** has two meanings. **Standard meaning** The “standard meaning” (a) definition links BS-801 eligibility back to the UK-820 visa. The partner relationship that is the basis for the BS-801 visa must be the same relationship that led to the UK-820 visa being granted. Note: A person continues to be a sponsoring partner for BS- 801 purposes even if they cease to be a sponsor, for example, by withdrawing their sponsorship. (Withdrawal of a sponsorship results only in the sponsorship itself ceasing to have effect.) **Ministerial intervention cases** The “ministerial intervention meaning” (b) definition relates to cases where the Minister uses personal ministerial powers under the Act to grant the UK-820 visa. Although, in these cases, the Australian partner does not have to sponsor the UK-820 visa holder for the BS-801 visa, the Australian partner is dealt with, as far as practicable, as if they were a sponsoring partner.

Applying for a Partner(Class BS) visa

5 Schedule 1 and related requirements

5.1 Schedule 1 item 1124B

Schedule 1 item 1124B requirements for making a valid BS-801 application are mostly self-explanatory.

Given that applicants usually submit a combined UK-820/BS-801 application, in most cases applicants would already be able to satisfy item 1124B requirements. The only exception is if the applicant holds a TK-445 Dependent Child visa. For further details on BS-801 applicants who hold TK-445 visas, and for TK-445 policy and procedure, see respectively:

- section 15.2 Adding family unit members to the visa application
- PAM3: Sch2Visa445 - Dependent Child

For policy and procedure on valid application requirements, see PAM3: GenGuideA - All visas - Visa application procedures - Application for visas - What is a valid application.

5.2 Visa application charge

The first instalment of the visa application charge (VAC) for a combined UK-820/BS-801 application is “attached” to the BS-801 application and is prescribed in Schedule 1 item 1124B(2)(a). There is no

VAC prescribed for the UK-820 application - see Schedule 1 item 1214C(2). Therefore, a BS-801 applicant does not have to pay another VAC to have their BS-801 application processed.

If the Minister has granted a UK-820 visa using the ministerial public interest powers - see section 7 Ministerial intervention cases - to subsequently be considered for the BS-801 visa, the UK-820 visa holder will have to:

- complete the prescribed visa application form (see Schedule 1, item 1124B(1)
- submit relevant documentation and
- pay the VAC prescribed in Schedule 1 item 1124B(2)(a).

For policy and procedure on VACs, see PAM3: Div2.2A – Visa application charge.

5.3 Forms

The application forms for the BS-801 visa are prescribed at Schedule 1 item 1124B(1).

However, given that visa applicants usually submit a combined UK-820/BS-801 application, in most cases, no "new" forms are required to be lodged with the department for the application to be processed. However, in a few circumstances (for example, cases where the Minister has granted a UK-820 visa using the ministerial public interest powers - see section 7 Ministerial intervention cases), an application would need to be made using the appropriate form.

Form 1002

If form 1002 is prescribed (Schedule 1 item 1124B(1)(a)), the form is to be completed, signed and submitted by the applicant who holds the TK-445 visa. Lodging this form enables the TK-445 visa holder to be added to the undecided BS-801 application of their UK-820 visa-holding parent - see section 15.2 Adding family unit members to the visa application.

Form 47SP

The mandatory form (form 47SP) to be completed, signed and submitted by the applicant (who is not the holder of a TK-445 visa) is prescribed at Schedule 1 item 1124B(1)(b).

Form 40SP

Unlike form 47SP, the sponsorship form (form 40SP) is not a prescribed form in the Regulations. A BS-801 application can be validly made without an accompanying form 40SP being completed and signed by the sponsor (usually the Australian partner) and submitted by the applicant. However, under law 801.221(2)(b)), delegates must be satisfied at time of decision that:

- there is a genuine intent by the Australian partner to sponsor the applicant for the visa and
- the sponsor understands the sponsorship obligations and undertakings and satisfies all relevant criteria (for example, the sponsor is not a 'sponsor of concern').

Consequently, the department prefers that the required information be provided in a form 40SP as its completion would usually address all these issues relating to a BS-801 application. For further policy and procedure on the form 40SP and the sponsorship provisions, see PAM3: Div1.4 - Form 40 sponsors and sponsorship.

5.4 Where the applicant must be

For Schedule 1 item 1124B(3)(b), the applicant must be in Australia but not in immigration clearance at time of applying for a BS-801 visa.

5.5 Where and how the application must be made

Schedule 1 item 1124B(3)(a) prescribes that the application must be made in Australia but not in immigration clearance.

5.6 Applicants subject to s48

Persons subject to s48 of the Act can now apply for UK-820 and BS-801 visas.

For applications made between 14 September 2009 and 30 June 2011 inclusive, Schedule 1 specified additional requirements for a UK-820 application by persons to whom s48 applies to be valid. Since 1 July 2011, these criteria have instead been in Schedule 1 item 1124Bfor the BS-801 visa. This means that applicants who are subject to s48 must meet the additional requirements in order for a UK-820/BS-801 application to be valid.

Since 1 July 2011 there have also been additional requirements concerning the statutory declarations supporting the relationship.

Must not have been refused a Partner visa since last entering Australia

Schedule 1 item 1124Bprovides that, if s48applies to a person, they are unable to make a valid application if they have had a Partner visa refused since they last entered Australia.

Item 1124B(3A) provides that a person who leaves and re-enters the migration zone while holding a bridging visa is taken to have been continuously in the migration zone despite that travel.

Signed sponsorship from required

For Schedule 1 item 1124B(3)(e), in order for their application to be valid, a person to whom s48 applies must provide a form 40SP that is completed and signed by an Australian citizen, Australian permanent resident or eligible New Zealand citizen who claims to be the spouse or de facto partner of the applicant.

Although form 40SP is not a prescribed form for all UK-820 applications, it is a legislative requirement for applicants to whom s48 applies.

Two statutory declarations supporting the relationship

Schedule 1 item 1124B(3)(e) provides that, in order for their application to be valid, a person to whom s48 applies must also provide two statutory declarations:

- each made by an Australian citizen, Australian permanent resident or eligible New Zealand who is not the partner and
- that declare that the applicant and the partner are in a married relationship or de facto relationship, as the case may be.

The statutory declarations must have been made no more than 6 weeks prior to the application being made.

5.7 Dependent children of applicants subject to s48 of the Act

Under Schedule 1 item1124B(3A), if a person who is subject to s48 has met the requirements of item 1124B(3)(e), their dependent children are also taken to have met those requirements.

This allows dependent children to make a valid BS-801 application at the same time and place as their parent in situations where:

- both the parent and children are subject to s48 of the Act
- the parent has met all of the criteria in item 1124B(3)(e) and
- the dependent children have met the criteria in item 1124B(3A).

5.8 Applicants refused a Partner visa but not subject to s48 of the Act

Item 1124B(3)(d) prescribes that if a person holds a substantive visa but has been refused a partner visa in the preceding 21 days, that person cannot apply for a BS-801 visa. A person who has been refused a BS-801 or BC-100 visa remains on the associated temporary partner visa until notified of visa refusal . This clause precludes such a person from making a further Partner visa application

while in Australia unless they first obtain a different substantive visa or they meet the requirements in item 1124B(3)(e).

5.9 Bridging visas with nil conditions for certain Partner applicants

The instrument under 010.611(1)(c) and 020.611(1)(b) enables UK-820 and BS-801 applicants who are eligible for an associated BVA or BVB to be granted that BVA or BVB with nil conditions imposed.

For policy and procedure, see:
- PAM3 - Sch2Visa 010 - Bridging A - Certain Partner and Parent visa applications specified in an instrument
- PAM3 - Sch2Visa 020 - Bridging B - Certain Partner and Parent visa applications specified in an instrument.

The BS-801 primary applicant

Eligibility

Schedule 2 Part 801criteria (and various transitional regulations) reflect many significant changes in partner policy that have occurred since 1 September 1994. This instruction does not attempt to address those criteria that relate solely to such “historical” cases even if being assessed against “current” criteria.
Briefly, for 801.221(1):
- clause (2) is the “standard” provision, namely where the partner relationship is ongoing and at least 2 years have passed since the application was made- see section 6 If the partner relationship is ongoing
- clause (2A) relates to cases where the Minister used personal ministerial powers under the Act to grant a UK-820 visa - see section 7 Ministerial intervention cases
- clause (3)applies to those applicants whose Australian partner died before the applicant was granted their UK-820 visa - see section 8 If the Australian partner died before UK-820 visa grant. Nothing requires these UK-820 visa holders to wait out two years before being granted their BS-801 visa
- clause (4)applies to those applicants whose relationship ended before they were granted their UK-820 visa, in situations where family violence had occurred or access rights to children were involved - see section 9 If the partner relationship ceased before UK-820 visa grant. Nothing requires these UK-820 visa holders to wait out two years before being granted their BS-801 visa
- clause (5) applies if the Australian partner has died since the applicant was granted their UK-820 visa - see section 10 If the Australian partner has died since UK-820 visa grant
- clause (6) applies to those applicants whose relationship has ended since they were granted their UK-820 visa, in situations where family violence has occurred or access rights to children are involved - see section 11 If the relationship has ceased since 820 granted and
- clause (8) relates to applicants who are successful at merits-review - see section 13 Merits review cases.

6 If the partner relationship is ongoing

6.1 Eligibility

Clause 801.221(2), is the standard provision, which may be expected to apply to most applicants. Except as provided in 801.221(6A) or (7), it requires applicants to wait at least 2 years from when the visa application was made before being eligible to be granted their BS-801 visa - see 801.221(2)(d).

If the AAT has remitted a UK-820 application with direction that the requirement that the applicant is in a spouse or de facto relationship is satisfied, delegates are still required to assess the relationship for the BS-801 application. Delegates should be particularly careful in making this assessment if the applicant is eligible for their BS-801 application to be considered immediately after their UK-820 visa is granted. For policy and procedure, see section 13.2 UK-820 visa decision remitted by AAT.

6.2 Must hold a UK-820 visa

Under 801.221(2)(a), the holding of a UK-820 visa is a standard prerequisite for grant of a BS-801 visa.

If the person has previously held a UK-820 visa and this visa was cancelled before a decision was made on the BS-801 application, delegates should wait until the outcome of any merits or judicial review is known before finalising the BS-801 application.

6.3 Continued sponsorship

For 801.221(2)(b) relating to sponsorship, see:

- PAM3: Sch2Visa820 and
- PAM3: Div1.4 - Form 40 sponsors and sponsorship.

6.4 Must still be the sponsor's partner

The term "sponsor's partner" has the meaning that the applicant must be either the spouse (that is, married) or ***de facto partner*** of the sponsoring partner.

For 801.221(2)(c), s5(1) of the Act defines spouse and de facto partner to have the meaning set out in:

- s5F for spouse
- s5CB for de facto partner

For policy and procedure on assessing the applicant against these definitions (as applicable), see:

- PAM3: Act - Act-defined terms - s5F - Spouse and
- PAM3: Act - Act-defined terms - s 5CB - De facto partner.

Further factors that must also be taken into account in assessing the applicant are in the Regulations at

- regulation 1.15A - Spouse
- regulation 1.09A - De facto partner
- regulation 2.03A - Criteria applicable to de facto partners.

For policy and procedure on assessing the applicant against these further factors, see:

- PAM3: Div1.2/reg1.15A - Spouse
- PAM3: Div1.2/reg1.09A - De facto partner and de facto relationship
- PAM3: Div2.1/reg2.03A - Criteria applicable to de facto partners.

In assessing this criterion, officers should not rely on s104 of the Act (which requires applicants to notify changes in their circumstances). Rather, and in particular if any appreciable time has elapsed since the visa application was made, officers are expected to make such enquiries as considered appropriate to satisfy themselves that s5F or s5CB and attendant regulatory requirements are (still) met.

If an officer has significant concerns about the integrity of the applicant's relationship and considers further investigation of the sponsor's circumstances is required, in some cases the officer can request investigations be undertaken by relevant officers in an STO. For policy and procedure, see section 32 Integrity concerns about the partner relationship.

6.5 Two years must have elapsed

Under current two-stage processing arrangements, applicants apply on the one combined application form for both a temporary visa (UK-820) and a permanent visa (BS-801). In most cases, applicants are not eligible for the BS-801 visa until at least two years after they applied for their UK-820/migration/2017-2020/ BS-801 visa. For further policy and procedure, see section 2 Two-year wait out period.

As specified in 801.221(2)(d), the only exceptions to the two-year wait out period are as follows:

- 801.221(6A) allows a BS-801 visa to be granted within the two-year period provided the couple were already in a long-term partner relationship when the visa application was made - see section 12 If the partner relationship is long -term.
- 801.221(7)(a) enables officers to refuse a BS-801 visa any time within the two-year period
- 801.221(7)(d) enables the BS-801visa to be granted at any time within the two-year period where:
  - the Australian partner dies (801.221(5)) - see section 10 If the Australian partner has died since visa UK-820 grant
  - family violence committed by the sponsoring partner has occurred (801.221(6)(c)(i)) - see section 11.4 If family violence has occurred or
  - the applicant is given custody or access rights over a child for whom the Australian partner has custody/access rights and/or maintenance obligations (801.221(6)(c)). For 801.221(6)(c)(ii), see section 11.5 If the case involves access or custody (or similar) rights.

7 Ministerial intervention cases

7.1 Relevant cases

Clause 801.221(2A) relates to those cases where the Minister used personal ministerial powers under the Act to grant a UK-820 visa in situations where the person may never have applied for that visa.

In such cases, the UK-820 visa holder applicant does not have a valid BS-801 application made with the department so is not eligible for consideration of the grant of a BS-801 visa. Therefore, they must apply for a BS-801 visa and pay the appropriate VAC (as at the date of when the application is made - not the date of UK-820 visa grant).

7.2 Must hold a UK-820 visa

Clause 801.221(2A)(a) requires that the applicant must hold a UK-820 visa.

7.3 Must still be the sponsor's partner

For the purposes of 801.221(2A)(b), see section 6.4 Must still be the sponsor's partner.

7.4 Two years must have elapsed

As specified in 801.221(2A)(c), unless one of the exceptions described in section 6.5 Two years must have elapsed applies, at least two years must have passed since the Minister intervened to grant the UK- 820 visa.

8 If the Australian partner died before UK-820 visa grant

Clause 801.221(3) applies to those applicants whose UK-820 visa was granted under 820.221(2) on the basis that their Australian partner died. As evidence, the original or certified true copy of the death certificate should be provided.

If all criteria are satisfied, these applicants are not required to wait out two years before being granted their BS-801 visa. However, officers must be satisfied the applicant was in a genuine and ongoing relationship with the Australian partner at the time of the Australian partner's death.

9 If the partner relationship ceased before UK-820 visa grant

Clause 801.221(4) applies to those applicants whose UK- 820 visa was granted on the basis that their relationship with their Australian partner ended but:

- family violence occurred allegedly committed by the sponsoring partner (see section 11.4 If family violence has occurred) or
- the applicant has custody of a child in respect of whom the Australian partner has access or custody (or similar) rights and responsibilities (see section 11.5 If the case involves access or custody (or similar) rights).

If all criteria are satisfied, these applicants are not required to wait out two years before being granted their BS-801 visa. However, officers must be satisfied the applicant was in a genuine relationship with the Australian partner at the time of the family violence occurring.

10 If the Australian partner has died since UK-820 visa grant

10.1 Visa eligibility

Clause 801.221(5) applies to certain applicants whose Australian partner has died since the applicant was granted their UK-820 visa. As evidence, the original or certified true copy of the death certificate should be provided.

If all criteria are satisfied, these applicants are not required to wait out two years before being granted their BS-801visa. However, officers must be satisfied the applicant was in a genuine relationship with the Australian partner at the time of the Australian partner's death.

10.2 Must hold a UK-820 visa

Clause 801.221(5)(a) requires that the applicant must hold a UK-820 visa.

If the person has previously held a UK-820 visa and this visa was cancelled before a decision was made on the v BS-801 application, the processing officer should wait until the outcome of any review is known before finalising the BS-801 application.

10.3 Would otherwise have satisfied partner relationship requirements

Clause 801.221(5)(b) and (c) mean, for example, that the applicant must satisfy the s65 delegate that the relationship was, until the Australian partner died, a partner relationship as defined in s5F or s5CB of the Act.

Officers should assess these criteria on the basis of the information on file, having regard (as far as practicable) to relevant legislation and policy and procedure on assessing partner relationships - see section 6.4 Must still be the sponsor's partner.

10.4 Must have developed close ties

For 801.221(5)(d), see PAM3: Sch2Visa820 - Must have developed close ties.

11 If the relationship has ceased since 820 granted

11.1 Visa eligibility

Clause 801.221(6), applies if the partner relationship has ceased (in prescribed circumstances) since the applicant was granted their UK-820 visa. Applicants who satisfy the relevant criteria in this provision are not required to wait out two years before being granted a BS-801visa.

11.2 Must hold a UK-820 visa

Clause 801.221(6)(a) provides that the applicant must hold a visa UK-820.

If the person has previously held a UK-820 visa and this visa was cancelled before a decision was made on the visa BS-801 application, officers should wait until the outcome of any review is known before finalising the visa BS-801 application.

11.3 Would otherwise have satisfied partner relationship requirements

Clause 801.221(6)(b) requires that the applicant satisfy the s65 delegate that the relationship with their Australian partner was, until it ceased, a 'spouse (or de facto partner) relationship' as defined in s5F (or s5CB) of the Act.

Officers should assess this criterion on the basis of the information on file, having regard (as far as practicable) to relevant legislation and policy and procedure on assessing partner relationships - see section 6.4 Must still be the sponsor's partner.

If the applicant can satisfy this provision and if all other criteria for the grant of the BS-801visa can be met, the applicant is not required to wait out two years before being granted their BS-801visa.

11.4 If family violence has occurred

Clause 801.221(6)(c)(i) relates to claims of family violence allegedly committed by the applicant's sponsoring partner.

For applications made on or after 1 July 2011, the family violence must have occurred while the relationship was in existence. For claims of family violence prior to 1 July 2011, whether or not the family violence had to have occurred when the relationship was in existence depends on when the family violence claim was made and whether it was made to the department or the AAT.

Officers are reminded, however, that there is no requirement that there be a cause-and-effect link between the family violence and the cessation of the relationship.

If the applicant is successful in their claims of family violence and if all other criteria for the grant of a BS-801visa can be met, the applicant is not required to wait out the two years before being granted their BS-801visa.

For policy and procedure and evidentiary requirements, see PAM3: Div1.5 - Special provisions relating to family violence.

11.5 If the case involves access or custody (or similar) rights

If 801.221(6)(c)(ii) applies, officers must have regard to Australian case law if a child of both the applicant and their Australian partner is involved. Departmental policy in relation to custody is that any parent will have custody unless there is a court order granting sole custody to the other parent.

Therefore, if officers are satisfied that a child is the child of the applicant and the applicant's Australian partner, the applicant has rights and responsibilities towards that child unless there is evidence of the applicant being denied any access to that child by a court or that the Australian partner has sole custody of that child.

Under policy, this means that, unless officers have a particular reason to believe such evidence exists, they can accept a statutory declaration from the applicant to that effect. Although not a legal requirement, it may assist the s65 delegate if they applicant can provide other documents - such as a court order giving access, a parenting order or parenting plan - that attest to their parental responsibility.

For further policy and procedure, see:

- PAM3: Sch2Visa820 - If the case involves access or custody (or similar) rights and responsibilities

If the applicant can satisfy this criterion, and all other criteria for the grant of the BS-801 visa can be met, the applicant is not required to wait out two years before being granted their BS-801 visa.

12 If the partner relationship is long-term

Clause 801.221(6A) provides the requirement for two years to have passed from the time the application is made, or from the date that the Minister decide to grant a UK-820 visa, does not apply to an applicant who, at the time of making the application, was in a ***long-term partner relationship*** with their Australian partner, for which see:

- the regulation 1.03 definition of ***long-term partner relationship***
- for relevant policy and procedure, PAM3: Div1.2/reg1.03 - Long-term partner relationship.

13 Merits review cases

13.1BS-801 visa decision remitted by AAT

Clause 801.221(8), applies if an applicant's:

- 820 visa ceased when they were refused the grant of a BS-801 visa and
- subsequent ATT review application was remitted for reconsideration by the department.

This provision reflects the fact that an applicant's UK-820 visa ceases when a s65 delegate refuses the grant of a BS-801 visa and that, in these circumstances, the lack of the UK-820 visa will not prevent the grant of a BS-801 visa.

Consequently, the applicant is taken to have satisfied 801.221 if a BS-801 visa application is remitted to the department by the AAT for decision if:

- following remittal, a s65 delegate determines that the applicant satisfies all the Schedule 2 criteria for the grant of a BS-801 visa but for the fact that the applicant does not hold a UK-820 visa (801.221(8)(b)(i)) or
- the AAT has determined that all Schedule 2 Part 801 criteria have been satisfied other than the need to hold a UK-820 visa (801.221(8)(b)(ii)).

If the applicant is in Australia and the grant of a visa is again refused on different grounds to those for the original refusal, the applicant will need to be granted a bridging visa - see section 34 If visa refused while applicant in Australia - bridging visa.

AAT's finding. This policy reflects the AAT's direction in respect of assessment of the relationship, and avoids further delay to the applicant given the period of time that would have already elapsed between refusal and remittal of the UK-820 application.

Note: Delegates are to email this instruction's owner for policy advice before refusing a BS-801 visa in situations where the AAT remitted the UK-820 application.

Other requirements (All cases)

14 Generic criteria

14.1 Public interest criteria

For policy and procedure on the public interest criteria (PICs) prescribed in 801.223(1), see the corresponding PAM3: Sch4 instructions. Note: Under policy, special arrangements are in place for health and character checks for those applicants who hold a UK-820 or TK-445 visa - see section 33 Public interest criteria.

14.2 "One fails, all fail"

PICs

For the purposes of 801.224, the primary applicant **cannot** be granted a visa unless:

- except as provided in 801.224(3), those members of the family unit who are also applicants satisfy the PICs prescribed in 801.224(1) and
- those members of the family unit who are not visa applicants satisfy the PICs prescribed in 801.224(2).

In either case, for policy and procedure see the corresponding PAM3: Sch4 instructions. Note: Under policy, special arrangements are in place for health and character checks for those applicants who hold a UK-820 or TK-445 visa - see section 33 Public interest criteria.

Clause 801.224(3) provides that, in considering those members of the family unit who are also applicants, certain children of an applicant who:

- entered Australia as the holder of TO-300 Prospective Marriage visa
- married the person they came to marry
- ceased to be the holder of a substantive visa before applying for the UK-820/BS-801 visas

do not have to satisfy the PICs specified in 801.224(1)(a).

For those members of the family unit of the primary applicant who are not migrating and who were not included in the UK-820/BS-801 application when it was made, and so:

- were not identified as a non-migrating member of the family unit at time of UK-820 visa consideration and
- were, consequently, not assessed against the corresponding criteria for visa 820 (U820.224(1A)(a)) and
- were not subsequently granted a TK-445 and
- have now been identified by the BS-801 applicant as a non-migrating member of the family unit

officers must assess such persons against 801.224(2). Such family unit members should undergo full health checks unless the s65 delegate decides that it would be unreasonable to require them to do so.

For policy and procedure, see PAM3: Sch4/4005-4007 The health requirement - The health of family unit members (including non-migrating dependants). However, should a complex case arise, officers should, in the first instance, email this instruction's owner.

14.3 Custody of children

For 801.225, which relates to members of the family unit who are under 18, see Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

The primary applicant cannot be granted a visa if granting a visa to any minor described in this provision would prejudice the custody (or similar) rights or responsibilities of another person. For policy in relation to this provision, see section 11.5 If the case involves access or custody (or similar) rights.

BS-801 family unit members

15 Eligibility

15.1 Relationship

For 801.311, at the time of application the applicant must be a member of the family unit of the person seeking to satisfy primary criteria (that is, the primary applicant). Members of the family unit can include a dependent child, a dependant, a dependant's dependent child and a relative and these terms are defined in the Regulations - see:

- the regulation 1.03 definition of dependent child
- the regulation 1.05A definition of dependent
- the regulation 1.03 definition of relative
- the regulation 1.12 definition of member of the family unit.

For policy and procedure on establishing the existence of the claimed relationship and dependency, see the corresponding PAM3: Div1.2 instructions.

15.2 Adding family unit members to the visa application

Family unit members other than dependent children are unable to be added to an application after lodgment as they are not covered by regulations 2.08 and 2.08A (relating to adding certain family members to a visa application).

Because 820.311 requires family members to make a combined application (having time and place criteria) with the primary applicant, the effect of 820.311 and 801.311 criteria is that, after the UK-820/BS-801 application is made, only dependent children can be added later (up until the visa 820 decision) at the primary applicant's written request.

Once a UK-820 visa has been granted to the primary applicant, dependent children who were not included in the UK-820 visa application will need to apply for a TK-445 (Dependent Child) visa. The grant of the TK-445 will enable them to remain in, or travel to, Australia and apply on a separate form to be included in their UK-820 visa-holding parent’s undecided BS-801 application.

Note: The TK-445 visa holder does not necessarily have to be in Australia.

For policy and procedure, see:

- PAM3: Div2.2/reg2.08 - Application by newborn child
- PAM3: Div2.2/reg2.08A - Addition of certain applicants to certain applications for permanent visas
- PAM3: Sch2visa445 – Dependent Child.

Nothing precludes any member of the family unit making their own (that is, separate) visa application. If a person wishes to be considered for a visa as a family unit member of another applicant, but cannot meet the requirements of regulations 2.08A (or, for UK-820, regulation 2.08B), they may apply separately for a visa in their own right, pay any applicable VAC, and be considered (first) against Schedule 2 secondary criteria for the class of visa that they (and the original visa applicant) have applied for. However, there are very few circumstances enabling them to successfully apply for a BS-801 visa; this is because:

- they must be in Australia
- they must be able to satisfy the requirement that they are a member of the family unit of the primary applicant
- the primary applicant must have arrived in Australia as the holder of a TO-300 (Prospective Marriage) visa and
- the primary applicant's BS-801 application must still be undecided.

15.3 Family unit members not required to be added to the 801 application

For most BS-801 cases, delegates will not have to consider children born of the partner relationship between the applicant and their Australian partner. This is because, with few exceptions (not relevant here):

- in accordance with s12 of the Australian Citizenship Act 2007, a child born in Australia acquires Australian citizenship by birth if a parent (who is not the visa applicant) was an Australian citizen or Australian permanent resident at the time of the birth
- a child born outside Australia to an Australian citizen parent is generally eligible to be registered as an Australian citizen by descent.

15.4 Ministerial intervention cases

For 801.311(3), which applies to cases where the Minister uses personal ministerial powers under the Act to grant the UK-820 visa, the applicant can be a dependent child or other family unit member of the primary applicant.

16 Time of decision criteria

16.1 No need to assess dependency or membership of the family unit

Provided the primary applicant has been granted their BS-801 visa, nothing requires an applicant seeking to satisfy the secondary criteria to still be a member of the family unit of, or dependent on, the primary applicant at time of BS-801 decision. Therefore, officers do not need to assess either member of the family unit or dependency requirements.

An applicant seeking to satisfy the secondary criteria must satisfy one of the following:

- they hold a TK-445 or UK-820 visa on the basis of being the member of the family unit or dependent child of a TK-445 or UK-820 visa holder and that person (that is, the primary applicant) has been granted a BS-801 visa - see801.321(a)(i)
- they held a TK-445 or UK-820 visa that has ceased on the basis of being the dependent child or member of the family unit of a person who was refused a BS-801 visa, but that person has now been granted a BS- 801 (that is, following AAT remittal) - see 801.321(a)(ii) or
- they hold a TK-445 or UK-820 granted by the Minister (using personal ministerial powers) and at the time of visa grant they were the dependent child or member of the family unit of a TK-445 or UK-820 visa holder - see 801.321(a)(iii).

Note:

- (under s104 of the Act) applicants are required to notify changes in their circumstances, such as changes in the composition of their family unit (for example, as a result of birth, death or change in relationship status) and
- cancellation of the family unit member's visa may be considered if there is substantiated evidence of migration fraud that affected the initial visa decision to accept that applicant as a member of the family unit of the UK-820 primary applicant.

17 Other requirements

17.1 Public interest criteria

For policy and procedure on the PICs prescribed in 801.323(1), see the corresponding PAM3: Sch4 instructions. Note: Special arrangements are in place for health and character checks for BS-801 applicants and police checks for sponsors - see section 33 Public interest criteria.

17.2 If a minor

Clause 801.324 applies to members of the family unit under 18. For policy and procedure, see:

- PAM3: Sch2Visa820 - If the case involves access or custody (or similar) rights and responsibilities

This criterion relates to custody and access issues and the lawful travel to Australia of a child under 18 who is included in the primary applicant's visa application, but is not the Australian partner's child. Although this is also a criterion that must have been satisfied for the UK-820 visa to be granted, officers should not assume that the criterion is automatically satisfied also for BS-801 purposes. They are expected to assess this criterion afresh.

17.3 Primary applicant to be visaed first

Clause 801.321(b) precludes members of the family unit from being granted their visa unless/until the primary applicant is granted their visa.

Visa grant

18 Visa grant or refusal

In accordance with section 65(1)(a) of the Act, a visa is to be granted to a person who meets the all prescribed criteria. For further policy and procedure, see PAM3: GenGuideA - All visas - Circumstances applicable to grant.

Section 65(1)(b) of the Act provides for the situation where the s65 delegate 'if not so satisfied, is to refuse to grant a visa.' For details about refusing a visa, see section 21 If the BS-801 visa is refused.

19 Where the applicant must be at time of visa grant

Under 801.411, the applicant can be anywhere except in immigration clearance when a BS-801 visa is granted.

20 When visa is in effect

Clause 801.511 provides that if the applicant is granted a visa, that visa enables the holder to leave and re-enter Australia for a period of 5 years from date of grant.

The BS-801 visa and its travel facility cannot be extended so, following the 5 year period, the visa holder may apply for Australian citizenship or a resident return visa (RRV) - for policy and procedure, see:

- Australian Citizenship Instructions (ACIs) or
- PAM3: Sch2RRV - Resident return visas (RRVs).

21 If the BS-801 visa is refused

If it is decided to refuse to grant a visa to the applicant, s66 of the Act requires the applicant is to be notified of the decision. Included in that notification must be whether or not the decision to refuse the grant of the visa is an AAT-reviewable decision. For policy and procedure, see:

- section 35 Merits review
- PAM3: Act - Code of procedure - Notification requirements
- PAM3: Act - Merits review - Merits review by the AAT - Guide for primary decision makers.

Second stage Partner processing

Overview

22 Legislative and policy background

All persons applying to migrate or remain in Australia as a spouse or de facto partner of an Australian citizen, permanent resident or eligible New Zealand citizen must go through a two-stage assessment process before a permanent visa may be granted. (Only one visa application is required, however, because persons apply for the temporary/provisional and permanent visas at the same time and on the same application form.)

This two year provisional period serves to minimise potential abuse of the partner provisions by persons who are not in genuine relationships. There are, however, exceptions to the requirement for the applicant to wait two years from the time the application is made before consideration of the visa can be undertaken - for details, see:

- section 2 Two-year wait out period and
- section 6.5 Two years must have elapsed.

23 Relevant cases

This Part covers second-stage processing of those spouse and de facto partner visa applications where the visa applicant is in Australia as a UK-820 visa holder.

24 The two partner visa processing stages

24.1 820/BS-801 cases

First stage partner visa (that is, UK-820) processing for these cases is undertaken in Australia, as is second stage partner visa processing. This is because Schedules 1 and 2 require that applicants must be in Australia when they apply for, and are granted, the UK-820 and BS-801 visas.

Processing of BS-801 cases

25 Relevant offices for BS-801 processing

25.1 Second stage processing centre

All BS-801 applications are processed by the Partner (Permanent) Processing Centre, Melbourne.

Contact details are available from the department's website at: https://immi.homeaffairs.gov.au/help-support/contact-us/offices-and-locations/list

26 If visa applicant is outside Australia

26.1 Whereabouts of visa applicant at time of grant

See 801.4.

A BS-801 visa may be granted whether the applicant is in Australia (other than in immigration clearance) or outside Australia. If the applicant is outside Australia when an officer is assessing the application, depending on the circumstances of the case, the officer can either proceed to:

- grant or refuse to grant the visa or
- if the applicant is known to be outside Australia only temporarily, delay making a decision until the applicant has returned to Australia - see section 29.2 Circumstances when not to immediately decide the application.

26.2 Notification methods for the applicant

The applicant may tell the department that they will be overseas at the time the application is activated by:

- notifying their nearest STO before departure

- notifying the nearest overseas post once they have arrived
- completing a form 929 (Change of address) and sending it to the department.

Once an applicant notifies the department of a change of address for written communications, officers should immediately update system records and case files to ensure that all subsequent communications with the applicant can satisfy lawful notification requirements in accordance with s494C and s494D of the Act - see section 27.3 Importance of the applicant's current address.

26.3 If an applicant advises the department before departure

If an applicant notifies an STO that they are travelling overseas, officers should ask the applicant for the address at which they can be contacted overseas to be provided in writing (in both English and foreign script, if applicable). If the applicant notifies the department using a form 929, officers should ascertain whether or not the period of absence from Australia is sufficient for the processing of the visa, especially grant (if applicable), to be delayed - see section 19 Where the applicant must be at time of visa grant.

27 Activating permanent visa processing

27.1 Department contacts applicant near end of two-year wait out period

Near the end of the two-year provisional period for the application (that is, about 22 months after the date the UK-820/BS-801 application was made), the PPPCM will send a letter to the applicant's nominated address for receiving written communication advising them that the department will soon be considering their application.

At that time, the department will also request from the applicant further information and documentation about their relationship with their Australian partner.

Officers should be aware that applicants have been consistently advised in both the department's website and in correspondence sent to them that they should contact the department if they believe that the two-year provisional period has passed and have not yet heard from the department about the processing of their application.

27.2 Updating address information

Section 52(3B) of the Act requires the applicant to inform the department of any change in address. If any notification of change of address is received (for example, form 929), officers should immediately update system records and the relevant case file promptly to ensure that all subsequent communications with the applicant can satisfy lawful notification requirements in accordance with s494C and s494D of the Act.

27.3 Importance of the applicant's current address

The applicant would have completed their communication requirements in the form 47SP, but officers should check whether or not the applicant and/or authorised recipient has advised the department of an updated contact address.

Applicants are informed by the department at several stages of the application process - including in correspondence with the applicant (for example, when they were notified of the UK-820 visa grant) and on the department's website - as to the importance of keeping the department informed of any change in address.

27.4 Address to send written communication

Under migration law (see s494A to s494D of the Act), officers must send all written communications relating to the application to the applicant's nominated address for all written communications (that is, the applicant or authorised recipient or an agent).

If a request for second-stage documentation is sent to the applicant's nominated address for all written communications, in accordance with s494C(4) of the Act, that request is taken to have been received by the applicant even if the applicant claims not to have received it.

28 Possible sources for an applicant's address

28.1 Suggested sources

In cases where an officer has been unable to contact an applicant via the nominated address either to seek or to provide further information or to send a decision notification (for example, letter returned to sender or no response within the prescribed timeframe), the officer can seek information about the applicant's contact address from various sources, namely

- departmental records
- the Australian partner
- any authorised recipient or agent or
- an external source such as Medicare.

28.2 Checking departmental records

If they have not already done so, officers should check departmental records, including file and systems records, for any changes in the applicant's and/or sponsor's postal address. If there is a record of a change of address, officers should write to the applicant again, giving them a further prescribed timeframe in which to respond.

The department's Movements database should also be checked to ascertain whether or not the applicant is in Australia. If a movements check indicates that the applicant has left Australia, where provided, officers should write to them at the overseas address given on the application form.

28.3 Seeking address information from other sources

In cases where the department's records provide no further information, the officer can seek information about the applicant's contact address from either:

- the applicant's Australian partner
- family members or friends who gave statements (usually provided in the form 888) in support of the relationship for the 820 assessment or
- any authorised recipient, migration agent or external source such as Medicare Australia.

The applicant had agreed to the department making such contact when they signed the declaration in the form 47SP.

28.4 Requests for address information from Medicare

If an officer has been unsuccessful in obtaining an applicant's address information from the sources as suggested above, the last remaining avenue, especially for those visa 309 applicants who have entered Australia, is to approach the Australian Government's health care scheme (Medicare) as such applicants may have enrolled in Medicare.

Requests for information from Medicare are restricted to contact addresses only and must be necessary to process the visa application. The officer should send the request via Settlement Planning and Information Section, National Office (email 'settle Data-Admin'). Requests should include an Excel spreadsheet containing details of the applicant's given and family name(s), date of birth, current visa held, visa grant number, ICSE Client ID and last known address. An example

template for the request is available from the manager of the relevant partner processing area or from this instruction's owner.

28.5 If an alternate address is obtained

If an alternate address for the applicant can be obtained from another source other than as provided by the applicant, as well as the officer resending the relevant written communication to the applicant, they should request written confirmation of any change of the address for receiving all written communication relating to their application. Form 929 may be used for this purpose.

29 If unable to contact the applicant

29.1 If the applicant does not respond

If a contact address is either:

- not available despite the officer's efforts as described in section 28 Possible sources for an applicant's address or
- available and the officer resends the further information or decision notification letter, but is unsuccessful in contacting the client

under policy, such follow up would be able to satisfy the requirement that the department has made a reasonable effort to contact the applicant.

In such cases, in accordance with s65 of the Act, a delegate must proceed to make a decision on the application based on the information they have before them. This means that if there is insufficient information available to the delegate to determine that the applicant satisfies the legislative requirements, the visa would normally be refused. Note: There may be certain situations where proceeding to make a decision may not be appropriate - see section 29.2 Circumstances when not to immediately decide the application.

29.2 Circumstances when not to immediately decide the application

Despite s65 requirements to proceed to decision after officers have made all reasonable efforts to contact the applicant and the applicant has failed to respond, there are situations where, under policy, it may be prudent as well as good administrative practice not to do so:

- if the applicant is outside Australia (as verified from the Movements database), they may be so only temporarily. There might be extenuating reasons (for example, family emergency) why the applicant has not notified the department of their change of address. It would be appropriate to wait a short while, say, three months, to allow for possible contact or, if possible until visa flight information from the Movements database is available, to alert the appropriate overseas post in case the applicant contacts the post. Should the applicant contact the overseas post, the post should advise the applicant to contact the relevant departmental office in Australia immediately
- Schedule 2 (801.411) allows a visa to be granted whether the applicant is in or outside Australia. If the applicant is outside Australia and the s65 delegate proceeds to refuse to grant the 801 via, the applicant will be unable to apply for merits review of the refusal decision (because they must be in Australia to do so - see section 35 Merits review). Although this is not a reason in itself to defer making a refusal decision, delegates should be aware of the serious consequences for the applicant were they to do so. Therefore, under policy, it is open for an officer to defer making a decision for a short period, that is, up to 3 months, to allow time for the applicant to contact the department.

Second stage partner processing - Case assessment

30 Level of assessment – All cases

The level of assessment by officers of BS-801 applications should be consistent with that for the applications for the second stage BC-100 visa. In both instances, streamlined arrangements for second stage partner visa processing exist to ensure better client service while, at the same time, maintaining the integrity of the partner visa application process.

31 Genuineness of the relationship

Before a visa is granted, applicants must demonstrate that they continue to meet the definition of (as applicable) a spouse (for which see s5F of the Act and regulation 1.15A) or ***de facto partner*** (for which see s5CB of the Act and regulation 1.09A).

This is a fresh assessment, based on the evidence before the s65 delegate at the time of decision. The assessment may:

- be made based solely on the relevant documentation (as requested by the department in accordance with streamlined arrangements) provided by the applicant and their Australian partner sponsor or
- require further investigation such as interviewing both partners and/or examining additional relevant documentation.
-

32 Integrity concerns about the partner relationship

32.1 If the s65 delegate has integrity concerns

Bona Fides Units

In assessing whether or not the applicant can satisfy 801.221(2)(c) or 801.221(2A)(b), that is, that they are in an ongoing partner relationship with their Australian partner sponsor, the delegate might have concerns about the integrity of the claimed relationship, that is, the bona fides of the relationship.

To assist delegates both in and outside Australia, Bona Fides Units (BFUs) have been established within the department's STOs. The aim of establishing a BFU national network is to provide a specialist function in an STO to enable improvement to the integrity of family stream visa processing in general and, in particular, partner visa application

If such bona fides concerns had already been identified by the UK-820 delegate, such cases should have already been sent to directly to the BFU. However, there may be instances where an officer must process an application where serious integrity concerns may be identified through:

- the UK-820 delegate having entered an ICSE case not
- information has come to the attention of the department after UK-820 visa grant or
- even following receipt of further information from the applicant and their Australian partner, the officer may not have sufficient information to determine whether or not they can be satisfied about the relationship's

32.2 When not to refer a case to a BFU

Cases should not be referred to a BFU if:

- the visa can be refused immediately because the applicant fails an objective criterion
- there is sufficient evidence and information available for the officer to make a decision on the application
- the case can be resolved by due diligence in normal processes (for example, through investigative interviews with the applicant and other relevant persons, checks of documents, departmental databases and other evidence) or

- the case cannot be finalised due to an incomplete application or lack of evidence made with the application. In these cases, further information/evidence should be sought, particularly from the applicant and/or their Australian partner sponsor.

32.3 Referral of BS 801 cases to BFUs

If an officer does have serious integrity concerns, they may refer the case to the relevant BFU and request further information be obtained from the sponsor or undertake to visit the sponsor. However, such a request must only be made when the specialised expertise or attention of the BFU is required to assist in finalising the application.

32.4 Details required by BFUs

If a s65 delegate requires a BFU to undertake checks on the applicant's and or sponsor's circumstances, the following detailed information must be provided to the BFU:

- the checks needed
- the time frames involved and
- whether or not there is a deadline for receiving information.

In addition, the following further information must be given:

- relevant visa subclass
- applicant's name and departmental file number
- sponsor's name, address and telephone number
- type of check required, indicated against:
- citizenship
- resident status
- accommodation
- employment background and
- other relevant case policy and procedure, accompanied by copies of forms or other documents relevant to the checks.

32.5 BFU referrals process

For BFU referrals from within Australia (that is, the PPPCM), the referring office is to contact their relevant BFU to find out that particular BFU's requirements and request format via the department's case referral management (CRM) functionality in ICSE. For details about the CRM, see

- PAM3: GenGuide A - Global working - Output 1.1 - Case referral management
- PAM3: GenGuide A - Site visit policy and procedure: Managing and conducting site visits.

BFU contact details are available from the relevant Residence Section manager or from this instructions owner.

32.6 Authorisation for BFU referrals

If a s65 delegate wishes to refer a case to a BFU, the relevant business area manager (for example, residence manager) is responsible for authorising the referral request.

The authorisation should include:

- client name
- address
- reasons for further referral and
- other relevant details.

Under policy, the preference is for the BFU referral request to be addressed to the appropriate Manager, Residence Section and sent by departmental bag. However, if the case is urgent, direct

contact details are available from the relevant STO Residence Section manager or via email from this instruction's owner.

32.7 Processing of requests to BFUs

BFUs are able to assist the decision making process by responding to requests for checks promptly. Given that s85 capping of visas is not applicable to partner visas and given that they are accorded priority processing, BFU officers are to avoid unnecessary delays that could result in the applicant being disadvantaged.

The results of BFU checks undertaken should be forwarded by email as soon as they are available.

33 Public interest criteria

33.1 Health checks

In relation to the health assessment requirement at 801.223(1)(a), under policy, delegates do not need to request additional health assessments for applicants who hold a UK-820 or TK-445 visa, as these applicants would have already received a visa health clearance for permanent stay at time of UK-820/TK-445 assessment. Therefore, new health checks are not required even if the applicant has, since UK-820/TK-445 visa grant, travelled to a higher risk country in terms of tuberculosis or their health has significantly deteriorated since their original health assessments.

For policy and procedure on these streamlined health arrangement for BS-801 applicants, see PAM3: Sch4/4005-4007 - The health requirement.

For health assessments for non-migrating members of the family unit, see section 14.2 "One fails, all fail".

33.2 Character checks

The previous policy regarding streamlined character arrangements for PIC 4001 and PIC 4002 ceased on 30 March 2011.

To satisfy PICs 4001 and 4002 at 801.223(1)(a), all applicants are required to provide a new (and current) penal clearance for any country they have lived in for a cumulative period of 12 months or more since being granted their UK-820 visa.

Officers must also read relevant departmental instructions on security assessments.

33.3 Protection of children: requirement for police checks

It is a policy requirement that certain partner visa sponsors provide the department with police checks if they are sponsoring an applicant who is under 18.

The requirement may be considered to have already been met if:

- the application being considered is a combined application for the UK-820 and BS-801 visas and the sponsor provided police checks in relation to a TO-300 Prospective Marriage visa application or
- the application being considered is for the BS-801 visa only and the sponsor provided police checks in relation to the associated UK-820 application.

This requirement is relevant to determining whether PICs 4016 and 4018 relating to the best interests of children are met.

For policy and procedure on sponsors of concern, protection of children and the requirement for BS-801 sponsors to provide police checks, see PAM3: Div.1.4 - Form 40 sponsorship - Protection of children - Sponsors of concern.

For policy and procedure on the assessment of PICs 4016/4018 generally, see Sch4 - 4015-4018 - Custody (parental responsibility) and best interest of minor children.

33.4 Other PIC requirements

Clauses 226 and 801.325 require primary and secondary applicants to satisfy PIC 4021 ("passport requirement") and PIC 4020 ("the integrity PIC"). For policy and procedure, see:

- PAM3: Sch4/4020 – The integrity PIC
- style="line-height: 1.7;">PAM3: Sch4/4021 – The passport requirement.

33.5 Regulation 1.20KB

Since 27 March 2010, regulation 1.20KB has provided a power to request police checks and a requirement that sponsorships be refused in certain circumstances.

Regulation 1.20KB does not apply to Class BS visa applications as there is no sponsorship approval associated with BS-801 applications.

Rather, for the pre-27 March 2010 Class BS caseload, police checks of sponsors as set out in section 33.3 Protection of children: requirement for police checks remain a policy requirement for BS-801 sponsors who have not provided a police check in relation to an associated UK-820 or TO-300 visa application that included a child. This is to ensure that all sponsors of Partner visa applications involving a child:

- made but not finally determined as of 16 September 2009 or
- made on or after 16 September 2009

provide a police check at least once.

Other matters

34 If visa refused while applicant in Australia - bridging visa

If a delegate refuses the grant of a visa to an applicant who is in Australia at time of decision, at time of decision the applicant generally will become the holder of a bridging visa (BV). The type of BV they hold depends on their immigration status when they applied for the UK-820/BS-801 visas.

The BV enables the applicant to remain lawfully in Australia for a prescribed period. This gives them time either to make arrangements to leave Australia or, if eligible, to apply to the AAT for review of the decision to refuse to grant the visa - see section 35 Merits review. Should the BS-801 applicant lodge a valid application for review at the AAT, the BV continues to be in effect for a prescribed period after notification of the AAT decision.

For policy and procedure, see PAM3: Sch2 Bridging visas - Visa application and related procedures

35 Merits review

Under s338(2) of the Act, a decision (other than a decision made under s501) to refuse to grant a BS-801 visa is an AAT-reviewable decision. Under s347(2), an application for review may be made only by the visa applicant who, under s347(3), must be in Australia when the application for review is made.

If an applicant has been refused the grant of a visa, the applicant must be notified of their review rights - see section 21 If the BS-801 visa is refused. If the applicant (whether or not a UK-820 holder) is outside Australia at time of decision they are to be notified that they must be in Australia in order to make a valid application for review.

36 Transferring case files

After the application is finalised, the PPPCM should send the case file to “NatO/PA”, having first recorded that transfer in TRIM and having marked on the covering envelope or box as “NatO/PA”.

END OF DOCUMENT

[Sch2Visa101] Sch2 Visa 101 - Child

About this instruction

Contents

This instruction, which deals with the AH-101 Child visa - that is, Regulations Schedule 2 Part 101 - comprises:

- Introduction
- Applying for an AH-101 visa
- The AH-101 main applicant
- AH-101 family unit members
- AH-101 visa grant.

Related instructions

- PAM3: Sch1 item 1108 - Child (Migrant) (Class AH)
- PAM3: GenGuideB - Non-humanitarian migration - Visa application and related procedures.

Latest changes

Legislative – 19 November 2016

The regulation 1.12 definition of ***member of the family unit*** has been amended and its subclauses renumbered.

Policy

This instruction was reissued on 19 November 2016, but only to note the above amendment. The instruction itself has not been owner–reviewed or updated to take account of the legislation changes.

Owner

Family Section

Visa Framework and Family Policy Branch

Migration and Visa Policy Division

National Office

email

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Document ID

VM- 3068

Contents summary

Introduction

1 About the AH-101 visa

1.1 Eligibility

Briefly, this visa is for a person outside Australia seeking a permanent visa on the basis of being the ***dependent child*** (child or, in certain circumstances, step-child) of an Australian citizen, the holder of a permanent visa or an eligible New Zealand citizen.

Applying for an AH-101 Visa

2 Schedule 1 and related requirements

The requirements for making a valid Class AH application (of which AH-101 is a subclass) are mostly self-explanatory - see:

- Schedule 1 item 1108 and
- PAM3: Sch1 item 1108 - Child (Migrant) (Class AH).

The AH-101 main applicant

General eligibility and age limits

3 The child-parent relationship

Since 1 July 2009, "child" has been defined by s5CA in the Migration Act. The definition recognises a broader range of parent-child relationships than previously, including children conceived through artificial conception procedures such as invitro fertilisation and children born under certain surrogacy agreements which are recognised under a prescribed State/Territory law as per the Family Law Act 1975. It is therefore no longer appropriate to refer to "natural" children, because, under the s5CA definition, children may have no biological links to their legal parents.

4 Biological relationships

Generally, a person is the child of their biological parents unless:

- the child has been adopted
- the child was born as a result of an artificial conception procedure to a third person or
- the child was born under a surrogacy arrangement and a court has ordered under a prescribed state/territory law that somebody else is the child's parent.

In cases where a full birth certificate is not provided to evidence a parent-child relationship, case officers should email this instruction's owner for further advice.

For policy and procedure, see PAM3: Act - Act-defined terms - s5CA - Child of a person.

DNA testing

In the absence of satisfactory appropriate documentation, an applicant and sponsor may choose to undertake DNA testing to prove the existence of a relationship. For policy and procedure, see PAM3: Div1.2/reg1.12 - Member of the family unit - DNA testing.

5 Surrogacy

5.1 What is surrogacy

Surrogacy is an arrangement, usually contractual, under which a woman (the"gestational or birth mother) agrees to bear a child for another person or persons (the commissioning parent/s) with the intention that the child be handed over to those persons immediately or very soon after the birth. The persons involved may or may not be genetically related to the child.

If the commissioning parent refuses to take the child when it is born, the surrogate mother will have the option of keeping the child or surrendering him/her for open adoption. Existing adoption laws will govern this situation.

Under Australian law the surrogate mother should not receive material benefit from the arrangement (altruistic surrogacy only), but there may be reimbursement of prescribed costs actually incurred.

For more information, see PAM3: Act - Act-defined terms - s5CA - Child of a person.

5.2 Surrogacy arrangements by Australians outside Australia

Some Australians have pursued the surrogacy option outside Australia, particularly in the United States, where surrogacy arrangements are more common and well established. Californian law especially has taken the lead of all USA jurisdictions by favourably extending existing Californian family law statutes to protect all parties involved in surrogacy arrangements. Commissioning parents and surrogate mothers can be reasonably certain that their intentions, as expressed by their agreement will be upheld in California. Californian courts have consistently upheld the commissioning parents' rights and obligations to their parenthood when commissioning a child using a surrogate mother.

Arrangements in other countries or jurisdictions may not be so clear and there may be concerns about the nature of the arrangement especially in relation to countries where there are no local laws to protect all parties involved in the surrogacy arrangement.

The 1 July 2009 migration law (Act, s5CA) amendments to recognise as "children" those children born under certain surrogacy arrangements recognised under a prescribed Australian state/territory law as per the Family Law Act 1975 does not extend to overseas surrogacy arrangements. For more information, see PAM3: Act - Act-defined terms - s5CA - Child of a person.

5.3 Citizenship by descent

A surrogate child born *outside Australia to an Australian citizen parent* may be eligible for Australian citizenship by descent. For further information about the citizenship requirements, see the Australian Citizenship Instructions - Chapter 3 - Attachment D - Surrogacy.

5.4 Surrogacy - AH-101 visa requirements

If one parent has a biological link to the child and can show evidence of this (either through DNA testing or possibly advice from the specialist doctor involved) that parent may sponsor the child for an AH-101 visa.

If there is no biological link between the commissioning parents and the child, or if no court order exists confirming the person other than the biological parent is the parent of the child, the child will require an AH-102 Adoption visa. (Note: To meet AH-102 visa requirements, the commissioning parents would need to have lived overseas for 12 months before the application for an AH-102 visa for the child was made, or the adoption needs to have been either arranged through the relevant State/Territory welfare authorities or arranged through other Hague Convention Countries and have an ***adoption compliance certificate*** (see the regulation 1.03 definition) accompanying the adoption. For policy and procedure see PAM3: Sch2Visa102.

If the child and the commissioning parents are in Australia and parentage has been transferred by court order under a prescribed Australian state/territory law, then the child would be eligible to apply for a BT-802 Child visa.

If parentage has not be transferred by court order, the child may also be eligible to apply for a BT-802 if :

- at least one of the parents has adopted the child and lived overseas for 12 months before the application for the BT-802 visa for the child was made, or the adoption needs to have been either arranged through the relevant State/Territory welfare authority, or arranged through other Hague Convention Countries and have an adoption compliance certificate accompanying the adoption - see PAM3: Sch2Visa802 or
- at least one of the parents has a biological link to the child and can show evidence of this (either through DNA testing or possibly advice from the specialist doctor involved).

For policy and procedure see PAM3: Sch2Visa802.

For specific surrogacy cases that are not in the above circumstances, officers may email this instruction's owner for advice.

6 Step-children

6.1 Definition

See:

- the regulation 1.03 definition of ***step-child***
- PAM3: Div1.2/reg1.03 - Step-child.

6.2 Relationship requirements

Clause 101.211(1)(c)(i) imposes an additional criterion to be satisfied by an applicant claiming to be a dependent child of an Australian citizen, the holder of a permanent visa or an eligible New Zealand citizen on the basis of a step-relationship, that is, the applicant must be a step-child of that person within the meaning of paragraph (b) of the definition of step-child.

6.3 Effect of the relationship requirement

This criterion limits the circumstances in which a dependent child may be granted an AH-101 visa on the basis of a step-relationship to circumstances where:

- the child's parent is no longer a partner of the step-parent but
- that step-parent has legal responsibility for the child granted by a court.

The purpose and effect of this criterion (in circumstances other than those above) is to prevent a step-child being granted a permanent visa unless their parent is already an Australian citizen, an Australian permanent resident or an ***eligible New Zealand citizen***.

For example, in the case of a child whose parent has applied for a Partner visa, the parent is subject to a 2-stage process and may be required to hold a provisional visa for up to 2 years. The child, being a step-child of the parent's sponsor, might meet the definition of ***dependent child***, however:

- the relationship does not meet 101.211(1)(c)(i) requirements (because the child's parent is not a "former partner" of the step-parent)
- a dependent child in this circumstance should be included in their parent's Partner visa application - see:
- Schedule 2 Part 445 and PAM3: Sch2Visa445 and
- regulation 2.08B and PAM3: Div2.02/reg2.08B.

6.4 Evidence of step-relationship

Having regard to:

- the definition of step-child and
- the additional requirements indicated in section 6.2 Relationship requirements

the relationship should be evidenced as follows:

- evidence that the child's parent was, but is no longer, the partner of the step-parent
- evidence of the relationship between that parent and the child and
- evidence that the step-parent now has custody or guardianship of the child.

7 Adopted children

See Adoption cases. If not eligible for an AH-101 visa, see instead:

- Schedule 2 Part 102 and
- PAM3: Sch2Visa102.

8 All cases - Dependency requirement

For 101.211(1)(a), see the regulation 1.03 definition of ***dependent child***. For policy and procedure on assessing dependency, see:

- PAM3: Div1.2/reg1.03 - Dependent child
- PAM3: Div1.2/reg1.05A

Schedule 2 imposes additional criteria in relation to step-children and adopted children. See:

- section 6 Step-children
- section 7 Adopted children.

9 Age limits

9.1 Time of application upper age limit (24 yrs)

For 101.211(1)(b), the applicant *must be under* 25 at time of application, unless they satisfy subclause (2) that is, is incapacitated for work because of a disability - see section 9.3 Exception to the 24 yr age limit.

9.2 If an adoption case

Under 101.211(1)(c)(ii) and regulation 1.04(1), the "time of application" age limits described in section 9.1 Time of application upper age limit (24 yrs) apply also to adoption cases. As well, in order to be able to satisfy 101.211(1)(c)(ii), the applicant must have been under 18 at time of adoption. (They do not have to be under 18 at time of visa application.)

9.3 Exception to the 24 yr age limit

In regard to 101.211(2), paragraph (b)(ii) of the regulation 1.03 definition of dependent child refers to a child 18 or older who is incapacitated for work because of the total or partial loss of bodily or mental functions - for which see PAM3: Div1.2/reg1.05A.

The Schedule 2 upper age limit of 24 (that is, has not yet turned 25 years old) does not apply to a child who meets this part of the definition. However, there will be implications for the child's ability to satisfy health criteria for this visa.

9.4 If the applicant turns 18 prior to visa decision

Under 101.221(1)(b), provided the applicant was under 18 years old at the time of application they are assessed at time of decision as if still under the age of 18. In other words, 101.211 will still apply to the applicant even though they are no longer a minor.

This means that they do not have to be assessed against paragraph (b) of the regulation 1.03 definition of dependent child - that is, their financial dependence on their parent sponsor does not have to be assessed.

For applicants who are 18 years or older at time of *application*, see section 19 If an adult applicant turns 25 before visa decision.

9.5 Additional criteria - Adult applicants

Applicants who are 18 years or older at time of application must meet certain requirements that do not apply to applicants under 18 years old - see Adult children - Additional requirements.

Adult children - additional requirements

Adult children - Overview

10 Policy background

Under 101.213(1), adult applicants (persons 18 years or older at time of application) must meet certain requirements that do not apply to applicants under 18 years old. This recognises the fact that under Australian law a child attains adult status on turning 18 years old.

11 Summary of requirements

Adult applicants must first still meet the regulation definition of ***dependent child*** - see section 8 All cases - Dependency requirement.

For adult applicants, this means they must be:

- ***dependent*** on the relevant parent or
- incapacitated for work because of total or partial loss of bodily or mental functions

see PAM3: Div1.2/reg1.05A for policy and procedure.

As well, AH-101 criteria require adult applicants:

- to not be engaged and never to have had a partner relationship - see:
  - section 12 Must not be engaged
  - section 13 Must never have had a partner and

unless they are incapacitated for work because of a disability, to be under 25 years old and a full-time student - see:

- section 14 Must not be working full-time
- section 15 Must be a full-time student.

(It is expected that, if an adult were to meet these requirements, they would be considered dependent for the purposes of being a dependent child provided they could show that the sponsoring parent had financially assisted with their studies.)

Relationship status

12 Must not be engaged

Under 101.213(1)(a)(i), adult applicants must not currently be engaged. (This simply mirrors the requirement in the regulation 1.03 definition of ***dependent child*** which excludes any child, regardless of age, who is currently engaged.)

Nothing precludes from AH-101 consideration a child (adult or minor) who has formerly been engaged (whether as a minor or adult).

13 Must never have had a partner

Under 101.213(1)(a)(ii) and 101.213(1)(a)(iii), an applicant who is 18 years or older at time of application must never have been in a partner relationship. ***Spouse*** and ***de facto partner*** are defined in the Migration Act:

- s5F for spouse
- s5CB for de facto partner.

For policy and procedure on assessing the relationship against these definitions, see:

- PAM3: Div1.2/reg1.15A - Spouse
- PAM3: Div1.2/reg1.09A - De facto partner and de facto relationship
- PAM3: Act - Act defined terms - s5F - Spouse
- PAM3: Act - Act defined terms - s5CB - De facto partner.

This criterion in part mirrors the requirement in the regulation definition of ***dependent child*** which excludes any child, regardless of age, who currently has a partner. The difference is that, for applicants who are under 18 years old at time of application, the regulation 1.03 definition excludes only those children who are in a partner relationship at time of visa application. This is because it is not the policy intention to exclude minors who have *formerly* been in a partner relationship.

Student status

14 Must not be working full-time

Clause 101.213(1)(b) requires the applicant not to be working full-time.

In Australia, full time work is defined on the basis of the number of hours worked each week. Persons working 35 hours or more are regarded as full-time workers; persons working for less than 35 hours are defined as part-time workers.

The policy intention, however, is to exclude from AH-101 adult children who are in a position to support themselves financially. Under policy, therefore "full-time work" means full-time work involving remuneration. In other words, work that would otherwise be full-time (that is, at least 35 hours a week) but is not remunerated does not disqualify adult children from being a dependent child.

However, keep in mind also 101.213(1)(c) - see section 15 Must be a full-time student.

15 Must be a full-time student

15.1 Requirements

Clause 101.213(1)(c) requires adult children to have been studying full-time since turning 18 years old. At time of application, they must be full-time students (as described in this provision (unless incapacitated for work because of total or partial loss of bodily or mental functions - see section 18 Exemption to full-time student requirement).

In addition, 101.221(2)(b) requires the adult child to continue to be a full-time student at time of decision. If the adult child is not a full-time student at both time of application and time of decision, they cannot satisfy either 101.213(1)(c) or 101.221(2)(b).

15.2 Policy background

A child who turns 18 years old is considered, prima facie, to be independent. If, however, a child progresses to further studies after secondary schooling, it is generally accepted that the child is still dependent on the parent/s and dependence has not been terminated.

This concept is also contained in various Commonwealth/State/Territory laws. If the applicant has been a full-time student continuously since turning 18 years old (even if post-secondary studies were commenced before that time) they will meet this requirement.

16 If not studying at 18

To cater for the situation where the child commenced post-secondary studies after turning 18, a child will also satisfy 101.213(1)(c) if they commenced post-secondary studies within 6 months of (or a reasonable time after) completing secondary school.

Reasonable time

The term 'reasonable time' as used in 101.213(1)(c) is not defined in the Regulations. Officers should consider the policy background, namely, that the purpose of the visa is to provide for children who are genuinely still dependent on their parent/s.

Examples of breaks of more than 6 months from studies that might be considered reasonable are:

- if the break between completing studies in the Northern hemisphere and commencing studies in the Southern hemisphere is more than 6 months or
- a break due to having given birth or
- a break due to illness or
- dire financial necessity or
- if the applicant has commenced studies but moved between institutions and it has taken time to re-commence studies.

Note that, in Australia, it is now considered acceptable and sometimes even desirable to have a gap year between school and post-secondary studies.

Under policy, the term 'reasonable time', as it applies to a break in study, is solely intended to cover the period between secondary school and post-secondary studies. It is not intended that 'reasonable time' take account of breaks once post-secondary studies have commenced or for breaks between post-secondary studies and postgraduate studies. Officers should check with this instruction's owner for policy advice in such cases.

Military service

A break in studies due to compulsory military service may be considered reasonable, provided the applicant resumes full-time studies as soon as possible.

17 Acceptable studies

17.1 Requirements

Clause 101.213(1)(c) requires the applicant to be studying full-time for a professional, trade or vocational qualification.

17.2 Further studies

The criterion does not require the study to be for a first qualification. Further studies (for example, graduate diploma) are acceptable.

17.3 Relevant streams

The criterion requires the (full time) course of study to be leading to a professional, trade or vocational qualification.

The policy intention is that it be at least the equivalent of an Australian TAFE Certificate Level course. Courses of a lesser nature, such as hobby-type courses, single subject courses, and other courses of a very short duration are not acceptable.

17.4 Evidence of studying

Enrolment in itself is not sufficient to demonstrate that the applicant is undertaking a full-time course of study. The applicant must produce evidence of both their enrolment, and their active participation, in the course of study.

This could take the form, for example, of an official statement of academic record from the institution where the applicant is undertaking their studies which shows that the applicant has undertaken the appropriate assessment.

17.5 Full-time

The criterion requires the course to be a full-time course. Part-time studies are not acceptable.

This is consistent with other Commonwealth law (for example, the Health Insurance Act) relating to the issue of dependency and students. In Australia, full-time study is commonly taken to mean at least 75% of the normal study load for the particular course. See also PAM3: GenGuideG - Student visas - Visa application and related procedures - Acceptable studies.

18 Exemption to full-time student requirement

Under 101.213(2), an adult applicant who is incapacitated for work because of a disability is not required to be a full-time student. However, there will be implications for the applicant's ability to satisfy Schedule 4 health criteria for this visa.

Age limits

19 If an adult applicant turns 25 before visa decision

Under 101.221(2)(a)(ii) and 101.221(2)(b), provided the (adult) applicant was under 25 years old at the time of application, they are to be assessed at time of decision as if still under the age of 25.

In other words, the upper age limit will not apply in these circumstances. However, the applicant must continue to satisfy 101.211 (dependent child requirements) *and* 101.213 (relationship, work and study requirements).

Adoption cases

20 Eligibility - Overview

20.1 Requirements

Briefly, 101.211(1)(c)(ii) applies if the adoptive parent was not the holder of a permanent visa when the adoption took place. (If this criterion is not satisfied, see instead PAM3: Sch2Visa102.) Evidence (satisfying the decision maker) is required that the parent became an Australian citizen, the holder of a permanent visa or an eligible New Zealand citizen sometime after the adoption took place. The date of the adoption will have already been established in assessing whether an adoption has taken place - see section 20 Evidence of adoption.

20.2 Evidence of adoption

In all cases, documentary evidence should be provided that an ***adoption*** as defined in regulation 1.04 has taken place. (For policy and procedure, see PAM3: Div1.2/reg1.04.)

20.3 Age limits

Having regard to the regulation 1.04 definition of ***adoption***, the applicant must have been under 18 years old at time of adoption in order to be regarded as adopted for AH-101 purposes. However, it is irrelevant whether the applicant is a minor at time of AH-101 application. The provisions of 101.213 apply equally to adopted children who are now adult dependent children. See section 9.2 If an adoption case.

Other AH-101 requirements (all cases)

Sponsorship

21 Requirements

Clauses 101.212 and 101.222 prescribe the sponsorship requirements for this visa. Criterion 101.212 requires the sponsor to be at least 18 and to be either the parent referred to in 101.211 or that parent's cohabiting partner - see:

- regulation 1.20
- PAM3: Div1.4 - Form 40 sponsors and sponsorship.

Form 40CH (Sponsorship for a child to migrate to Australia) is, under policy, the approved sponsorship form for this visa.

Under policy, NZ citizen sponsors should undergo standard Schedule 4 health/character assessment - see PAM3: Div1.4 - Form 40 sponsors and sponsorship - Eligible New Zealand citizens.

22 Reg. 1.20KB limitation on sponsorship

Sponsors of concern

The sponsorship must be refused if the sponsor or their partner has an unresolved charge, or a conviction, for a ***registrable offence*** - see regulation 1.20KB.

In broad terms, 'registrable offences' (defined in ren 1.20KB(13)) primarily involve conduct such as:

- sexual or physical assault of a child
- child pornography and
- child prostitution.

However, a range of other offences such as bestiality, administering drugs to a child and loitering near schools are also registrable offences. For further information on what is a registrable offence, see PAM3: Div 1.04 - Form 40 sponsorship - Protection of children - Offences requiring case referral to VACCU for reg. 1.20KB consideration.

To determine whether the sponsor or their partner has been charged with, or convicted of, a registrable offence, officers may request the sponsor or the partner to provide a police check from:

- a jurisdiction in Australia specified in the request or
- a country in which the sponsor or their partner has lived for a total of at least 12 months.

Under policy, such police checks must be obtained and cases involving registrable offences must be referred to the department's Visa Applicant Character Consideration Unit (VACCU), Melbourne.

Policy and procedure on regulation 1.20KB, including requesting police checks and procedures for referring relevant cases to the Visa Applicant Character Consideration Unit, are in PAM3 Div 1.04 - Form 40 sponsorship - Protection of children - Sponsors of concern.

Generic criteria

23 Continued eligibility

In regard to 101.221(1)(a), 101.221(2)(a)(i) and 101.221(2)(b), applicants are required (under s104 of the Act) to notify changes in their circumstances, which include, for example, changes to the family unit as a result of birth, death or change in relationship status.

Officers may without further enquiry consider these s104-related Schedule 2 time of decision criteria satisfied provided:

- there is no evidence (or notification) to the contrary and
- no significant time has elapsed since the application was made

- otherwise, officers are expected to take reasonable steps to satisfy themselves that there has been no material change in the circumstances of the applicant or sponsor.

24 Public interest criteria

For policy and procedure on the PICs prescribed in 101.223, see the corresponding PAM3: Sch4 instructions.

25 If a minor

An AH-101 visa cannot be granted unless all applicants who are under 18 years old satisfy parental responsibility (PIC 4015 and 4017) and best interests of the child (PIC 4016 and 4018) requirements:

- 101.226 (PIC 4017 and 4018) applies to the AH-101 main applicant if they are still under 18 at time of visa decision.
- 101.228 (PIC 4015 and 4016) applies to the AH-101 main applicant's family unit members who under 18 at time of visa decision.

26 Discretionary AoS

For 101.225, see policy and procedure on 'discretionary' assurances of support (AoS) in PAM3: Div1.2/reg1.03 - Assurance of support - Discretionary assurances.

Briefly, however:

- officers should request an AoS only if the applicant is likely to need any of the social security allowances recoverable under the AoS Scheme
- minors cannot access any social security allowances recoverable under the AoS scheme other than special benefit, which is available in emergencies.

27 "One fails, all fail" criteria

"One fails, all fail" criteria relate to ***members of the family unit*** of the main applicant.

For both the following criteria, in establishing who (if anyone) is a member of the AH-1-1 main applicant's family unit, because the main applicant (that is, the child) is the ***family head*** for the purposes of regulation 1.12 (which specifies who are ***members of the family unit***), policy envisages few circumstances where the AH-101 main applicant would have any family unit members.

"One fails, all fail" PICs

The main applicant cannot be granted their visa unless:

- those family unit members who are AH-101 applicants satisfy the PICs prescribed in 101.227(1) criteria.
- those family unit members who are *not* AH-101 applicants satisfy the PICs prescribed in 101.227(2).
- those family unit members who are AH-101 applicants and under 18 years old satisfy the PICs prescribed in 101.228 (see section 25 If a minor).

In all cases, for policy and procedure see the corresponding PAM3: Sch4 instructions

AH-101 FAMILY UNIT MEMBERS

28 Eligibility

28.1 Relationship

To satisfy 101.311, the applicant must be a member of the family unit of the person seeking to satisfy primary criteria - see:

- regulation 1.12 (***Member of the family unit***)
- PAM3: Div1.2/reg1.12 for policy and procedure on establishing the composition of the family unit.

In establishing who (if anyone) is a member of the family unit of the AH-101 main applicant:

- because the AH-101 main applicant (that is, the ***dependent child***) is the ***family head*** for regulation 1.12 purposes and
- given AH-101 age and relationship requirements

policy envisages few circumstances in which an AH-101 main applicant would have family unit members (other than a dependent child) to whom secondary criteria would apply.

28.2 Combined application

In regard to the 101.311 "combined application" requirement, for policy and procedure on the various "combined application" provisions in the Regulations, see:

- PAM3: GenGuideA - All visas - Visa application procedures - Combined applications and
- in regard to the component(s) of the visa application charge that applies in such cases, PAM3: Div2.2A - Visa application charge - The first instalment of the visa application charge - Structure of the first instalment.

28.3 Continued eligibility

For 101.321, see section 23 Continued eligibility.

29 Sponsorship

For 101.312 and 101.322, see Sponsorship.

30 Public interest criteria

For policy and procedure on the PICs prescribed in 101.323, see the corresponding PAM3: Sch4 instruction.

31 Discretionary assurance of support

Under 101.325, if an AoS has been requested for the AH-101 main applicant, see section 26 Discretionary AoS.

32 If a minor

For 101.326, which applies to family unit members under 18 years old, see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

However, first see section 25 If a minor.

33 Main applicant must be visaed first

Clause 101.321 precludes family unit members from being granted their visas unless/until the main applicant is granted *their* visa.

AH-101 visa grant

34 Where the applicant must be to be granted their visa

For 101.411, specifies that an AH-101 applicant must be outside Australia to be granted their visa. For policy and procedure, see PAM3: GenGuideA - All visas- Visa application procedures - Circumstances applicable to grant.

35 Visa conditions

35.1 First entry date

For 101.611, see policy and procedure on deciding the 'first entry date' in PAM3: GenGuideB - Non-humanitarian migration - Visa application & related procedures - Granting visas.

35.2 Entry-related conditions

For policy and procedure on the conditions listed in 101.612, see:

- for 8502 - PAM3: Sch8 - 8502 - Not to arrive before person specified in visa
- for 8515 - PAM3: Sch8 - 8515 - Must not marry or enter into de facto relationship.

END OF DOCUMENT

[Sch2Visa802] Sch2 Visa 802 - Child

About this instruction

Contents

This departmental instruction, which deals with Regulations Schedule 2 Part 802 for the Child (BT-802) visa - comprises:

- Child (Standard cases)
- Vulnerable child cases.

Related instructions

- PAM3: Sch1 item 1108A - Child (Residence) (Class BT)
- PAM3: Act - Act-defined terms - s5CA - Child of a person
- PAM3: GenGuideB - Non-humanitarian migration - Visa application and related procedures.

Latest changes

Although not directly impacting on this instruction, Schedule 1 item 1108A(3)(f) was inserted so that a valid BT-802 application cannot be made if the child was adopted under the law of a country specified by legislative instrument.

Policy

This instruction, which is part of the centralised departmental instructions system (CDIS), was reissued on 1 January 2016, reformatted for web content accessibility and with updated owner information. The instruction itself, however, has not otherwise been owner-reviewed/updated since July 2013 and so may be **inaccurate, incomplete and out-of-date**.

Family Migration Programme Management Section.

email

Family Programme Management.

Document ID

VM-3073

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Child (Standard cases)

Eligibility

This visa is for a person in Australia seeking a permanent visa on the basis of being the ***dependent child*** (child or, in certain circumstances, step-child) of an Australian citizen, the holder of a permanent visa or an ***eligible New Zealand citizen***.

General eligibility and age limits

The child-parent relationship

What is a ‘child’

‘Child’ is defined in s5CA of the Migration Act. The definition recognises a broader range of parent-child relationships than previously, including children conceived through artificial conception procedures such as in vitro fertilisation and children born under certain surrogacy agreements that are recognised under a prescribed State/Territory law as per the Family Law Act 1975.Under the s5CA definition, children may have no biological links to their legal parents.

Biological relationships

Generally, a person is the child of their biological parents unless:

- the child has been adopted
- the child was born as a result of an artificial conception procedure to a third person or
- the child was born under a surrogacy arrangement and a court has ordered under a prescribed State/Territory law that somebody else is the child’s parent.

In cases where a full birth certificate is not provided to evidence a parent-child relationship, case officers should email Family Programme Management for further advice.

For policy and procedure, refer to PAM3: Act - Act-defined terms - s5CA - Child of a person.

DNA testing

In the absence of satisfactory appropriate documentation, an applicant and sponsor may choose to undertake DNA testing to prove the existence of a relationship. For guidelines, refer to PAM3: Div1.2/reg1.12 - Member of the family unit - DNA testing.

Surrogacy

What is surrogacy?

Surrogacy is an arrangement, usually contractual, under which a woman (the “gestational” or birth mother) agrees to bear a child for another person or persons (the “commissioning parent(s)”) with the

intention that the child be handed over to those persons immediately or very soon after the birth. The persons involved may or may not be genetically related to the child.

Surrogacy and migration law

The 1 July 2009 migration law (Act, s5CA) amendments to recognise as 'children' those children born under certain surrogacy arrangements recognised under a prescribed Australian State/Territory law as per the Family Law Act 1975 does not extend to surrogacy arrangements outside Australia). (For more information, refer to PAM3: Act - Act-defined terms - s5CA - Child of a person.)

Briefly, for visa purposes, a child born as a result of a surrogacy arrangement is (with rare exception) a 'child' of another person, and the other person is their 'parent', provided:

- the child was born under a surrogacy arrangement (for further information refer to PAM3: Act - Act-defined terms - s5CA - Child of a person - FLA - surrogacy arrangements) and
- a court has ordered under a prescribed Australian State/Territory law that the other person is the child's parent

and provided the child has **not** been adopted (within the meaning of the FLA) by a third person.

The commissioning parent must either provide evidence of:

- a biological link between the commissioning parent and the child or
- a court order that confirms that the commissioning parent (that is, other than the biological parent) is the parent of the child to be eligible to sponsor a child born as a result of a surrogacy agreement.

For example, if a male commissioning parent is the biological father and can show evidence of this (either through DNA testing or possibly advice from the specialist doctor involved), that commissioning parent may sponsor the child.

Officers needing further advice about surrogacy cases should email Family Programme Management.

Surrogacy with biological link

If the child has a **biological** link to their Australian citizen parent, an application for Australian citizenship by descent may also be an option. For such cases, further information about the citizenship requirements refer to the Australian Citizenship Instructions (ACIs) - Chapter 3 - Surrogacy - Attachment D.

Step-children

Definition

Refer to:

- the regulation 1.03 definition of ***step-child*** and
- PAM3: Div1.2/reg1.03 - Step-child.

Relationship requirements

Clause 802.212(1A) imposes an additional criterion to be satisfied by an applicant claiming to be a dependent child of an Australian citizen, the holder of a permanent visa or an eligible New Zealand citizen on the basis of a step-relationship, that is, the applicant must be a step-child of that person within the meaning of paragraph (b) of the definition of step-child.

Effect of the relationship requirement

This criterion limits the circumstances in which a dependent child may be granted a BT-802 visa on the basis of a step-relationship to circumstances where:

- the child's parent is no longer a partner of the step-parent but
- that step-parent has legal responsibility for the child granted by a court.

The purpose and effect of this criterion (in circumstances other than those above) is to prevent a step-child being granted a permanent visa unless their parent is already an Australian citizen, the holder of a permanent visa or an eligible New Zealand citizen.

For example, in the case of a child whose parent has applied for a Partner visa, the parent is subject to a 2-stage process and may be required to hold a provisional visa for up to 2 years. The child is a step-child of the parent's sponsor and might meet the definition of ***dependent child***. However, the relationship does not meet the criterion at 802.212(1A) as the child's parent is not a 'former partner' of the step-parent.

A dependent child in this circumstance should be included in their parent's Partner visa application - refer to:

- Schedule 2 Part 445 and PAM3: Sch2Visa445
- regulation 2.08B and PAM3: Div2.02/reg2.08B.

Evidence of step-relationship

Having regard to:

- the definition of step-child and
- the additional requirements indicated in Relationship requirements

the relationship should be evidenced as follows:

- evidence that the child's parent was, but is no longer, the partner of the step-parent
- evidence of the relationship between that parent and the child and
- evidence that the step-parent now has custody or guardianship of the child.

Adopted children

Refer to Adoption cases.

All cases - Dependency requirement

For 802.212(1)(a), refer to:

- the regulation 1.03 definition of ***dependent child***
- PAM3: Div1.2/reg1.03 - Dependent child and
- PAM3: Div1.2/reg1.05A - Dependent.

Schedule 2 imposes additional criteria in the case of adopted children and step-children - refer to:

- Step-children
- Adopted children.

Age limits

Time of application age limit (24 yrs)

For 802.212(1)(b), the applicant must be under 25 at time of application, unless they satisfy 802.212(2), that is, is incapacitated for work because of a disability - refer to Exception to the 24 yr age limit.

If an adoption case

Under 802.212(1)(b) and regulation 1.04(1), the 'time of application' age limits described in Time of application upper age limit (24 yrs) apply also to adoption cases. As well, in order to be able to satisfy 802.213(1)(a), the applicant to have been under 18 years old at time of ***adoption***. (They do **not** have to be under 18 at time of visa application.)

Exception to the 24yr age limit

In regards to 802.212(2), paragraph (b)(ii) of the regulation 1.03 definition of ***dependent child*** refers to a child 18 years or older who is incapacitated for work because of the total or partial loss of bodily or mental functions - for which refer to PAM3: Div1.2/reg1.05A - Dependent .

The Schedule 2 upper age limit of 24 (that is, not yet turned 25 years old) does not apply to a child who meets this part of the definition. However, there will be implications for the child's ability to satisfy health criteria for this visa.

If the applicant turns 18 prior to visa decision

Under 802.221(1)(b), if the applicant was under 18 years old at the time of application they are assessed at time of decision as if still under the age of 18. In other words, 802.212 will still apply to the applicant even though they are no longer a minor.

This means that they do not have to be assessed against paragraph (b) of the regulation 1.03 definition of 'dependent child' - that is, their financial dependence on their parent sponsor does not have to be assessed.

For applicants who are 18 years or older at time of **application**, refer to If an adult applicant turns 25 before visa decision.

Application criteria - Adult applicants

Applicants who are 18 years or older at time of application must meet certain requirements that do not apply to applicants under 18 years old - refer to Adult children - Additional requirements.

Adult children - Additional requirements

About adult children

Policy background

Under 802.214(1), adult applicants (persons 18 years or older at time of application) must meet certain requirements that do not apply to applicants under 18 years old. This recognises the fact that under Australian law a child attains adult status on turning 18 years old.

Schedule 1 valid application requirements

Class BT applications by adults who do not hold a substantive visa and have been refused a visa or have had a visa cancelled must meet additional requirements in order to be a valid Class BT application. Refer to PAM3: Sch1 item 1108A – Child (Residence) (Class BH).

Schedule 2 criteria - Summary of requirements

For Schedule 2, adult applicants must first still meet the regulation definition of ***dependent child*** - refer to All cases - Dependency requirement.

For adult applicants, this means they must be:

- ***dependent*** on the relevant parent or
- incapacitated for work because of total or partial loss of bodily or mental functions

- refer to PAM3: Div1.2/reg1.05A - Dependent.

As well, BT-802 criteria require adult applicants:

- to not be engaged and never to have had a partner relationship - refer to:
  - Must not be engaged
  - Must never have had a partner and
- unless they are incapacitated for work because of a disability, to be under 25 years old and a full-time student - refer to:
  - Must not be working full-time
  - Must be a full-time student.

(It is expected that, if an adult were to meet **these** requirements, they would be considered ***dependent*** for the purposes of being a ***dependent child*** provided they could show that the sponsoring parent had financially assisted with their studies.)

Relationship status

Must not be engaged

Under 802.214(1)(a)(i), adult applicants must not currently be engaged. (This simply mirrors the requirement in the regulation 1.03 definition of ***dependent child*** which excludes any child, regardless of age, who is currently engaged.)

Nothing precludes from BT-802 consideration a child (adult or minor) who has **formerly** been engaged (whether as a minor or adult).

Must never have had a partner

Under 802.214(1)(a)(ii) and 802.214(1)(a)(iii), an applicant who is 18 years or older at time of application must never have been in a partner relationship. ***Spouse*** and ***de facto partner*** are defined in s5(1) of the Migration Act to have the meaning set out in:

- s5F for spouse
- s5CB for de facto partner.

For policy and procedure on assessing the relationship against these definitions, refer to:

- PAM3: Act - Act defined terms - s5F - Spouse
- PAM3: Div1.2/reg1.15A - Spouse
- PAM3: Act - Act defined terms - s5CB - De facto partner
- PAM3: Div1.2/reg1.09A - De facto partner and de facto relationship.

This criterion in part mirrors the requirement in the regulation definition of ***dependent child*** that excludes **any** child, regardless of age, who currently has a partner. The difference is that, for applicants who are under 18 years old at time of application, the regulation 1.03 definition excludes only those children who are in a partner relationship at time of visa application. This is because it is not the policy intention to exclude minors who have **formerly** been in a partner relationship.

Student status

Must not be working full-time

Clause 802.214(1)(b) requires the applicant not to be working full-time.

Work is defined in regulation 1.03to be an activity that in Australia normally attracts remuneration.

In Australia, full time work is “defined” on the basis of the number of hours worked each week. Persons working 35 hours or more are regarded as full-time workers; persons working for less than 35 hours are defined as part-time workers.

The policy intention, however, is to exclude from BT-802 adult children who are in a position to support themselves financially. Under policy, therefore, ‘full-time work’ means full-time work **involving remuneration.** In other words, work that would otherwise be ‘full-time’ (that is, at least 35 hours a week) but is not remunerated does **not** disqualify an adult child from being a dependent child.

However, keep in mind also 802.214(1)(c) - refer to Must be a full-time student.

Must be a full-time student

Requirements

Clause 802.214(1)(c) requires adult children to have been studying full-time since turning 18 years old. At time of application they must be full-time students as described in this provision (unless incapacitated for work because of total or partial loss of bodily or mental functions - refer to Exemption to full-time student requirement).

In addition, 802.221(2)(b) requires the adult child to continue to be a full-time student at time of decision. If the adult child is not a full-time student at both time of application and time of decision, they cannot satisfy either 802.214(1)(c) or 802.221(2)(b).

Policy background

A child who turns 18 years old is considered, prima facie, to be independent. If, however, a child progresses to further studies after secondary schooling, it is generally accepted that the child is still dependent on the parent/s and dependence has not been terminated.

This concept is also embodied in various Commonwealth/State/territory laws. If the applicant has been a full-time student continuously since turning 18 (even if post-secondary studies were commenced before that time) they will meet this requirement.

If not studying at 18

Requirements

To cater for the situation where the child commenced post-secondary studies after turning 18 years old, a child will also satisfy 802.214(1)(c) if they commenced post-secondary studies within 6 months of (or a reasonable time after) completing secondary school.

Reasonable time

The term ‘reasonable time’ as used in 802.214(1)(c) is not defined in the Regulations. Officers should consider the policy background, namely, that the purpose of the visa is to provide for children who are genuinely still dependent on their parent/s.

Examples of breaks of more than 6 months from studies that might be considered reasonable are:

- if the break between completing studies in the Northern Hemisphere and commencing studies in the Southern Hemisphere is more than 6 months or
- a break due to having given birth or
- a break due to illness or
- dire financial necessity or
- if the applicant has commenced studies, but moved between institutions and it has taken time to re-commence studies.

Note that, in Australia, it is now considered acceptable and sometimes even desirable to have a “gap” year between school and post-secondary studies.

Under policy, the term ‘reasonable time’ as it applies to a break in study, is solely intended to cover the period between secondary school and post-secondary studies. It is not intended that ‘reasonable time’ take account of breaks once post-secondary studies have commenced or for breaks between post-secondary studies and postgraduate studies. In such cases, officers should email Family Programme Management for policy advice.

Military service

A break in studies due to compulsory military service may be considered reasonable, provided the applicant resumes full-time studies as soon as possible.

Acceptable studies

Requirements

Clause 802.214(1)(c) requires the applicant to be studying full-time for a professional, trade or vocational qualification.

Further studies

The criterion does **not** require the study to be for a first qualification. Further studies (for example, graduate diploma) are acceptable.

Relevant streams

The criterion requires the (full time) course of study to be leading to a professional, trade or vocational qualification.

The policy intention is that it be at least the equivalent of an Australian TAFE Certificate Level course. Courses of a lesser nature, such as hobby-type courses, single subject courses, and other courses of a very short duration are not acceptable.

Evidence of studying

Enrolment in itself is not sufficient to demonstrate that the applicant is ‘undertaking’ a full-time course of study. The applicant must produce evidence of both enrolment, **and** their active participation, in the course of study.

This could take the form, for example, of an official statement of academic record from the institution where the applicant is undertaking studies which shows that the applicant has undertaken the appropriate assessment.

Full-time

The criterion requires the course to be a full-time course. Part-time studies are not acceptable.

This is consistent with other Commonwealth law (for example, the Health Insurance Act) relating to the issue of dependency and students. In Australia, full-time study is commonly taken to mean at least 75% of the normal study load for the particular course. Refer also to PAM3: GenGuideG - Student visas - Visa application and related procedures - Acceptable studies.

Exemption to full-time student requirement

Under 802.214(2), an adult applicant who is incapacitated for work because of a disability is not required to be a full-time student. However, there may be implications for the applicant's ability to satisfy Schedule 4 health criteria for this visa.

Age limits

If an adult applicant turns 25 before visa decision

Under 802.221(2)(a)(ii) and 802.221(2)(b), provided the (adult) applicant was under 25 years old at the time of application, they are to be assessed at time of decision as if still under the age of 25.

In other words, the upper age limit will not apply in these circumstances. However, the applicant must continue to satisfy criteria 802.212 **and** 802.214.

Adoption cases

Eligibility - overview

Requirements

In regards to 802.213(1), briefly:

802.213(2) applies to adoptions made under the Hague ***Adoption Convention***

802.213(3) applies if the adoptive parent was not an Australian resident or Australian citizen when the adoption took place

802.213(4) applies if the adoptive parent was approved as a suitable adoptive parent for the child by an Australian 'competent authority' before the
adoption took place adoption took place

802.213(5) applies to children adopted outside Australia by an Australian resident who had been living outside Australia for more than 12 months at the
time of the adoption (unless waived). time of the adoption (unless waived).

Evidence of adoption

In all cases, documentary evidence should be provided that an ***adoption*** as defined in regulation 1.04 has taken place. (For policy and procedure, refer to PAM3: Div1.2/reg1.04 - Adoption.)

Age limits

Clause 802.213(1)(a) requires the applicant to have been under 18 **at time of adoption**. Refer to Age limits for age requirements at time of visa application.

Australian Citizenship

A child who has been adopted by order of an Australian court where at least one parent is an Australian citizen can apply for the grant of Australian citizenship under s13(9) of the Australian

Citizenship Act, and, if citizenship is granted, does not need to apply for or be granted a permanent visa. (Refer to Australian Citizenship Instructions - Chapter 4.)

Officers may contact Citizenship Policy Section for further advice.

Adoption Convention cases

Clause 802.213(2):

- requires:
    - the adoption to have been in accordance with the Hague Adoption Convention and
    - an adoption compliance certificate (refer to the regulation 1.03 definitions) to have been issued

and

- applies if the child has been adopted with the involvement of two Governments that are signatories to the Hague Adoption Convention and has been adopted in accordance with that Convention. (It is unlikely that one of the Government authorities involved would be Australian because, in such cases, the child would have been granted an Adoption (AH-102) visa.)

This type of adoption would occur when a dual national has adopted a child from a country that is a signatory to the Hague Adoption Convention with the involvement from their other country of nationality (also being a signatory to the Hague Adoption Convention); an example of this would be where a Swedish/Australian citizen has adopted a child from Venezuela with the involvement of the relevant central adoption authorities in both Sweden and Venezuela.

An adoption compliance certificate issued by the central adoption authority of the country is evidence of a Convention adoption, containing details of the adoption including names of child and parents and the two Central Authorities overseeing the adoption.

Note: An adoption arranged privately by an individual in a Convention country is **not** a Convention adoption and an adoption compliance certificate will not have been issued.

Non-resident adoptions

Clause 802.213(3) covers cases where a child was adopted by a person who became an Australian citizen, permanent resident or eligible New Zealand citizen only **after** the adoption; an example of this would be where a Partner (Provisional) (309) visa holder adopts a child.

This provision could include a customary adoption as described in regulation 1.04(2).

Expatriate adoptions

Eligibility

Clause 802.213(5) is for cases where a child is adopted outside Australia without the involvement of an Australian State/Territory central adoption authority. This is the provision relating to adoptions that is likely to be most relevant for s65 delegates in Australia.

Requirements include that:

- the child has been adopted overseas by an Australian citizen, permanent visa holder or eligible NZ citizen and

- at least one of the adoptive parents lived overseas for at least 12 months prior to the adoption (unless compelling and compassionate circumstances exist) and the delegate is satisfied that the residence was not contrived to circumvent normal requirements for children for adoption and
- the adoptive parents have lawfully acquired 'full and permanent parental rights' by the adoption and
- the child meets health requirements.

Note: 'Full and permanent' adoption does not exist under the laws of some countries, such as many Islamic countries. An order that does not give full parental rights to the adopting parent, for example guardianship or custody will not satisfy the requirements under this provision. Therefore, a customary adoption will not be sufficient.

Long-term overseas residence

For the 802.213(5)(b)(i) "12 month overseas residence at time of adoption" criterion to be satisfied, the adoptive parent can have been residing in **any** country (or countries) other than Australia for the required 12 month period, not necessarily the country where the adoption took place.

Brief visits to Australia by the adoptive parent during that period may be counted towards the 12 month period of absence from Australia. (A visit may be considered incidental if it was brief - a matter of a few weeks at a time - and for business, or personal reasons such as a death in the family.)

Purpose of the adoptive parent's residence outside Australia

Clause 802.213(5)(c) requires officers to be satisfied that the residence overseas by the adoptive parent was not contrived to circumvent the requirements for entry to Australia of children for adoption.

The ordinary meaning of the word 'contrived' carries negative connotations. However, officers should keep an open mind when assessing the contrivance aspect: although an adoptive parent may have taken up residence outside Australia for the purpose of adopting a child, it does not necessarily mean that they 'contrived to circumvent' Australian State/Territory adoption law.

There is a subjective element in 802.213(5)(c), and, as such, although the adoptive parent's intention in residing outside Australia may have been related to the child's adoption, it is only one of several considerations. Furthermore, intention is very difficult to prove in law and the intent of adopting a child can be just one of several factors that led the adoptive parents to reside outside Australia that may not, when considered as whole, lead to a finding of contrivance. The grant of an BT-802 visa does not pivot on the reason that the residency was solely to adopt a child.

Way to assess residency outside Australia

Why the adoptive parent took up residence outside Australia can be assessed by interviewing the adoptive parents and suggested avenues of enquiry can be, but are not limited to:

- looking at their passport to determine movements
- requesting travel details (including their stated reasons for travel as indicated on their outward passenger card) by emailing Movement Records DIMA
- asking the purpose of their residency outside Australia
- determining if they had contact with an Australian State/Territory central adoption authority and, if so, why they decided to adopt while outside Australia and
- the circumstances under which the adoption was undertaken.

Three examples of documentation that officers may also take into consideration are:

- employment records
- school records and
- accounts and receipts.

Exception to the 12 month overseas residence requirement

The 802.213(5)(b)(ii) “waiver provision” (on the grounds of compelling or compassionate circumstances) acknowledges that, given the complexity of situations that can arise with regard to adopted children, rare cases may arise where a person usually resident in Australia adopts a child overseas in circumstances that fall outside the provisions of visa 102.

Officers may use this waiver without referral to National Office, exercising their own judgment in deciding whether the circumstances of the case are ‘compelling or compassionate’ or not; no further policy guidance is currently considered necessary.

Monitoring

If the 802.213(5)(b)(ii) “waiver provision” is invoked in order to grant a visa (or is the sole reason for visa refusal), officers should email Family Programme Management details of the finalised case so that a profile can be developed of such cases, with a view to further amending BT-802 provisions if necessary.

Full parental rights

Requirements

Under 802.213(5)(d), the adoptive parent/s (and partner, if applicable) must have acquired permanent full legal parental rights.

In most cases this should be apparent from the text of the adoption order. Orders that grant only guardianship, custody or other lesser rights would not satisfy this provision.

If a customary adoption

For “customary adoptions” cases, that is, the adoption is one that falls within regulation 1.04(2) (‘arrangement in the nature of adoption’), the sponsoring parent should provide documentation from a competent authority (if any) in the country where the adoption took place recognising that customary adoption is available.

In some countries there is no legislative provision for, or recognition of, adoption. In such countries, orders relating to the **care** of a minor may be granted and could appear to award rights similar to those granted by an adoption order, specifically full and permanent parental rights.

It is recommended that details of any such order presented by the adoptive parent be emailed to LOHD or Family Programme Management for advice.

Other adoption cases

Eligibility

Clause 802.213(4) applies where the adoptive parent was approved by an Australian State/Territory central adoption authority before the adoption took place.

A BT-802 application where the child has been adopted overseas is unlikely, because children adopted outside Australia under an Australian State/Territory adoption program usually travel to Australia on an Adoption (AH-102) visa.

This provision is more likely to be used in circumstances where Australian State/Territory welfare authorities arrange for local adoption of a child in circumstances where the child has been relinquished for adoption in Australia by non-permanent resident parents

Note: Australian State/Territory central adoption authorities do not recognise private adoptions that have already taken place.

Competent authority's approval

For 802.213(4)(b), refer to:

- the regulation 1.03 definition of ***competent authority*** and
- PAM3: Div1.2/reg1.03 – Competent authority.

Generally the approval should be evidenced by an approval letter issued to the prospective adoptive parent(s) by the relevant State or Territory child welfare authority, identifying the applicant by name, sex and date of birth.

The prospective adoptive parent(s) and the 'child for adoption' named in the sponsorship and visa application, must be the same as identified in the welfare authority's approval.

Other requirements (All cases)

Sponsorship

Sponsorship

For 802.215 and 802.226 sponsorship requirements, refer to:

- regulation 1.20 and
- PAM3: Div1.4 - Form 40 sponsors and sponsorship.

Form 40CH (Sponsorship for a child to migrate to Australia) is, under policy, the approved form for this visa.

Criterion 802.215 requires the sponsor to be at least 18 and to be either the parent referred to in 802.212 or that parent's cohabiting partner. Acceptable evidence of 'cohabiting' would include the relationship status of the sponsor and partner and a current common residential address.

Officers are reminded that, under policy, NZ citizen sponsors should undergo standard Schedule 4 health/character assessment - refer to PAM3: Div1.4 - Form 40 sponsors and sponsorship - Sponsorship by eligible New Zealand citizens.

Reg. 1.20KB limitation on sponsorship

Sponsors of concern

The sponsorship must be refused if the sponsor or their partner for a Class BT visa has an unresolved charge, or a conviction, for a ***registrable offence*** - refer to regulation 1.20KB.

In broad terms, 'registrable offences' (defined in regulation 1.20KB(13)) primarily involve conduct such as:

- sexual or physical assault of a child
- child pornography and
- child prostitution.

However, a range of other offences such as bestiality, administering drugs to a child and loitering near schools are also registrable offences. For further information on what is a registrable offence, refer to PAM3 Div1.4 - Form 40 sponsorship - Protection of Children - Offences requiring case referral to VACCU for reg. 1.20KB consideration.

To determine whether the sponsor or their partner has been charged with or convicted of a registrable offence, officers may request the sponsor or the spouse or the partner to provide a police check from:

- a jurisdiction in Australia specified in the request or
- a country in which the sponsor or their partner has lived for a total of at least 12 months.

Under policy, such police checks **must** be obtained and cases involving registrable offences must be referred to the department's Visa Applicant Character Consideration Unit (VACCU), Melbourne.

For policy and procedure on requesting police checks and procedures for referral of relevant cases to the VACCU, refer to PAM3 Div1.4 - Form 40 sponsorship - Protection of children - Sponsors of concern.

Immigration status

If the child does not hold a substantive visa

For 802.211, refer to PAM3: GenGuideA - All visas - Visa application procedures - Limitations on applying for visas in Australia. For applicants to whom this 'time of application' criterion applies, 802.211(d) cannot be satisfied if the applicant was **already** the dependent child of an Australian resident when they last applied for a visa (either in or outside Australia).

Generic criteria

Continued eligibility

In regards to 802.221(1)(a) and 802.221(2), applicants are required (under s104 of the Act) to notify changes in their circumstances, which include, for example, changes to the family unit as a result of birth, death or change in relationship status.

Officers may without further enquiry consider these Schedule 2 time of decision criteria satisfied provided:

- there is no evidence (or notification) to the contrary and
- no significant time has elapsed since the application was made

- otherwise, officers are expected to take reasonable steps to satisfy themselves that there has been no material change in the circumstances of the applicant or sponsor.

Discretionary AoS

For 802.222, refer to policy and procedure on "discretionary" assurances of support (AoS) in PAM3: Div1.2/reg1.03 - Assurance of support - Discretionary assurances.

Public interest criteria

For policy and procedure on the PICs prescribed in 802.223, refer to the corresponding PAM3: Sch4 instructions.

If a minor

A BT-802 visa cannot be granted unless all applicants who are under 18 years old satisfy parental responsibility (PIC 4015 and 4017) and best interests of the child (PIC 4016 and 4018) requirements:

- 802.225 (PIC 4017 and 4018) applies to the BT-802 primary applicant if they are still under 18 at time of visa decision

- 802.324 (PIC 4015 and 4016) applies to the BT-802 primary applicant's family unit members who are under 18 at time of visa decision..

For policy and procedure, refer to PAM3: Sch4/4015-4018. - Custody (parental responsibility) and best interests of minor children.

"One fails, all fail" criteria

Requirements

"One fails, all fail" criteria relate to ***member*s *of the family unit*** of the primary applicant.

For both the following criteria, in establishing who (if anyone) is a member of the child's family unit, because the primary applicant (that is, the child) is the ***family head*** for the purposes of regulation 1.12, policy envisages few circumstances where the BT-802 primary applicant would have family unit members.

"One fails, all fail" PICs

The primary applicant cannot be granted a visa unless:

- those family unit members who **are** visa applicants satisfy the PICs prescribed in 802.224(1)
- those family unit members who are **not** visa applicants satisfy the PICs prescribed in 802.224(2).

BT-802 family unit members

Eligibility

Relationship

To satisfy 802.311, the applicant must be a member of the family unit of the person seeking to satisfy primary criteria - refer to:

- the term ***member of the family unit*** in regulation 1.12 and
- PAM3: Div1.2/reg1.12 - Member of the family unit.

It is, however, unlikely that a BT-802 primary applicant will have family unit members other than (possibly) dependent children.

Note: If necessary, for policy and procedure on the various "combined application" provisions in the Regulations, refer to:

- PAM3: GenGuideA - All visas - Visa application procedures - Combined applications and
- in regards to the component(s) of the visa application charge that applies in such cases, PAM3: Div2.2A - Visa application charge - The first instalment of the visa application charge - Structure of the first instalment.

Continued Eligibility

In regards to the 802.321 time of decision requirement that the applicant be a member of the BT-802 primary applicant's family unit., refer to Continued eligibility.

Other requirements

Sponsorship

For 802.312 and 802.325, refer to Sponsorship.

Public interest criteria

For policy and procedure on the PICs prescribed in 802.322 and 802.326, refer to the corresponding PAM3: Sch4 instruction.

AoS

Under 802.323, if an AoS has been requested for the primary applicant - refer to Discretionary AoS - an AoS is needed for the family unit members. For policy and procedure, refer to PAM3: Div1.2/reg1.03 - Assurance of support.

If a minor

Clause 802.324 applies to family unit members under 18 years old. Refer to PAM3: Sch4/4015-4018 Custody (parental responsibility) and best interests of minor children. However, first refer to If a minor.

Primary applicant must be visaed first

Clause 802.321 precludes family unit members from being granted their visas unless/until the primary applicant is granted **their** BT-802 visa.

BT-802 visa grant

Where the applicant must be to be granted their visa

For 802.411, which specifies that the applicant must be in Australia (but not in immigration clearance) when the visa is granted, refer to PAM3: GenGuideA - All visas - Visa application procedures - Circumstances applicable to grant.

Vulnerable child cases

Introduction

Background

The department is regularly called upon to address the visa status of minors (children under 18) in vulnerable circumstances in Australia.

The types of cases may include, but are not limited to children who have been relinquished for adoption, abandoned, abused or neglected. It is these types of cases where a State or Territory government welfare authority becomes involved and take on the responsibility to ensure the child's welfare is maintained. BT-802 provisions can now provide a permanent visa pathway for these children without having to go through the Ministerial intervention process - these provisions are known as the "vulnerable child" provisions. There are some circumstances where removal may be a reasonable and practicable option, but equally there are many cases where removal is not possible.

In other cases a temporary visa may be a more appropriate outcome than a permanent visa. Refer to Temporary versus permanent visa solution.

Note: Consider the child's circumstances and whether they may be an Australian citizen or eligible for recognition as such.

Objective of the vulnerable child provisions

It is the objective of the vulnerable child visa category to provide a lawful status to certain non-permanent resident, non-Australian citizen children who are in the care of a State or Territory government welfare authority, which in turn provides the children access to necessary services, including health care.

A sponsorship limitation is placed on children who are granted a BT-802 visa under the vulnerable child provisions. This is seen as a necessary integrity measure to discourage abandonment of children by parents in the hope that, should a child be granted permanent residence, they could later sponsor their parent for a parent type visa. Refer to:

- regulation 1.20LAA (Limitation on sponsorship - parent, aged dependent relative, contributory parent, aged parent and contributory aged parent) and
- PAM3: Div1.4B - Limitation on certain sponsorships under Division 1.4.

Category-specific terms

Several terms have been given a specific meaning to support delegate interpretation of the relevant legislation and policy to be applied in vulnerable child cases.

Care

"Care" has a policy definition and is used to uphold the policy intention relating to children in the "care" of a State or Territory government welfare authority. It is a generic term used to identify children who have come to the attention of the welfare authorities.

Under policy, "care" is:

> "the direct involvement with the wellbeing of an individual".

This policy definition should be used when assessing the circumstances of a vulnerable child visa applicant.

BT-802 visa specific terms

The terms 'State or Territory government welfare authority' and 'letter or support' as used in the Regulations relate only to the BT-802 vulnerable child provisions.

'State or Territory government welfare authority' and ***letter or support*** are used:

- in Schedule 1 item 1108A for visa application purposes
- in Schedule 2 Part 802 for BT-802 purposes and
- in regulation 1.20LAA(4) for sponsorship purposes.

State or Territory government welfare authority (STGWA)

Because 'State or Territory government welfare authority' ("STGWA") is quite clear as to its meaning, it has not been defined in the Regulations. The term can mean only an Australian State/Territory government authority (not a non-government organisation (NGO) such as Anglicare or Centercare)

that deals with and is responsible for child welfare issues within the relevant State/Territory. This term does not encompass a state or territory government welfare authority from another country.

It is the STGWA's support that is required for vulnerable children to make a BT-802 application. However, if an NGO has been contracted to perform child welfare services on behalf of a STGWA, the department would accept the NGO lodging a BT-802 application on behalf of a vulnerable child provided the STGWA provides a 'Letter of support' supporting the child's BT-802 application.

Letter of support

Letter of support is defined in Schedule 1 item 1108A(5) and Schedule 2 clause 802.1.

To meet requirements the letter of support provided by a State/ Territory government welfare authority must:

(a) state they support the child's visa application

(b)(i) provide a description of the child's situation leading to the STGWA intervention. This can include, but is not limited to information about:

- the person or persons who brought the child to the attention of the STGWA
- how this person became involved with the child (for example, are they a relative, friend or stranger)
- when and where this happened
- at that time, what the care arrangements were for the child (if known)

(b)(ii) sets out the STGWA's reasons for supporting the child's application for permanent residency. This should summarise the various outcomes from the assessment of the child's circumstances which has lead the STGWA to consider supporting the child for permanent residence. Such outcomes could include, but are not limited to:

- inability to locate the child's parents / carers or extended family willing or able to care for the child
- child relinquished for adoption
- the necessity to remove the child from their current care arrangements due to welfare and / or safety concerns
- court or administrative processes that imply support for the child's continued residence in Australia

(c) describe the nature of the STGWA's continued involvement in the welfare of the child. This should state what actions the STGWA is undertaking relative to the child's current and future care arrangements. This can include, but is not limited to:

- current care arrangements
- likely scenarios for the child's future
- legal or administrative processes relating to the guardianship of the child
- investigations to locate the child's parents / carers

(d) show the letterhead of the STGWA. This is an integrity measure to assist with authenticity and accountability issues surrounding the child's circumstances

(e) be signed by a manager or director employed by the STGWA. This is an integrity measure to ensure the relevant authorised person (manager or director) within the STGWA signs the letter endorsing the welfare authority's approach to regularising the child's immigration status. It is envisaged that the manager be at the director level equivalent or higher. Officers delegated to act in these positions, under policy, are acceptable.

Letter must conform to the definition

Letters of support from a STGWA, lodged in support of a BT-802 application for a child in their care, must conform to the ***letter of support*** definition to be accepted as meeting validity requirements of item 1108A(5).

Assessing officers and s65 delegates may contact with the STGWA in order to verify or seek clarification of the contents of the letter. Email Family Programme Management if any letter of support issues cannot be resolved with the STGWA.

A ***letter of support*** pro forma has been provided to STGWAs - refer to Letter of support pro forma.

Temporary versus permanent visa solution

Depending on the particular circumstances of each vulnerable child case, the preferred outcome may be either a temporary or permanent visa solution.

The BT-802 option is to be used where it is assessed that a permanent visa outcome is appropriate. Although delegates should give weight to the views of the STGWA in making this assessment, there may be situations where other factors indicate that a permanent visa is not the most appropriate outcome.

Current temporary visa options do not cater for the needs of vulnerable children and better targeted options are currently under consideration.

Non STGWA children and adopted children

Non STGWA children

There are a few cases each year involving children who may have been left with family members or friends where a STGWA is not party to their circumstances. It is proposed that these (non STGWA) cases, which have different risk characteristics, would continue to be handled as they are at present, with ministerial intervention being a possible outcome.

Unless a child is supported by a STGWA for permanent residence, the child cannot access the vulnerable child provisions within BT-802.

Children relinquished for adoption and adopted children

If a child has been relinquished for adoption, a STGWA can support a BT-802 application under the vulnerable child provisions, regardless of the time remaining for the adoption to be finalised.

However, the vulnerable child provisions are **not** intended to apply to cases where the adoption has already been finalised. This is because, once an adoption is finalised, the child is no longer considered to be in the care of the STGWA, so the vulnerable child provisions cannot apply. In such circumstances, it would be more appropriate for the adoptive parents, rather than the STGWA, to sponsor the child for a BT-802 visa.

STGWA processes and child's circumstances

Overview

STGWAs are responsible for child welfare issues within their respective State/Territory. Children who come to the attention of a STGWA usually do so because they are at risk of being harmed or they do not have a responsible adult (parent or carer) to care for them. These children may remain in the care of the STGWA either on a temporary or permanent basis. The nature of the care arrangements (temporary versus permanent) will usually determine whether a child remains in Australia long-term or not.

There are variations in the way that each STGWA operates, as well as the relevant laws each authority operates under. As such, the information provided in this section is of a general nature.

STGWA processes

Usually, at some stage in the STGWA process the authority will apply to a court to have a care application for the child considered. The care application contains the necessary information (such as child's history (if known), previous care arrangements, issues that bring the case before the court, child assessments and options for the child's future) that the court requires to make a determination on the child's future.

There is no standard process in the assessment of vulnerable child cases, as the circumstances of the child, and the relevant State/Territory legislation will dictate the processes to be undertaken.

Part of a STGWA assessment of a child considers family reunion prospects (child is returned to the family). Generally, this assessment can be undertaken quickly in cases where the child is very young, and depending on the circumstances, a decision could be made on the child's future within a relatively short period. Alternatively, family reunion assessments can take a considerable period of time (up to two years or longer), particularly when older children are involved. STGWAs assess each case on the individual circumstances of the child involved.

In some cases, where the child's family members are un-contactable, the STGWA may liaise with officials from the child's country of nationality to reach a view about the child's future.

Depending on the circumstances the STGWA may accept responsibility for the care, welfare and development of the child, or responsibility for where the child is to live (or a variation of those responsibilities) through a court or administrative procedure (for example, a court order or some other operation of law, that may or may not involve the consent of the child's parents).

Therefore delegates will need to establish that appropriate legal or administrative processes have been undertaken by the STGWA that gives the STGWA the authority to act on the child's behalf. It is expected that the ACT and Regions Office will work with all STGWAs and become aware of a STGWA's legal framework relating to vulnerable child cases. Guidance on these issues can be obtained on a case by case basis by emailing Family Programme Management.

Children in ccare

Examples where children may be in the temporary care of a STGWA can include but are not limited to:

- where the child's parents are in custody and facing a short term prison sentence
- where the child has been abandoned and the STGWA has placed the child in foster care while the child's background is investigated and future options considered
- a child is removed from the care of their parents or carers due to abuse and placed in temporary or foster care while the child's future options are decided
- a child is temporarily in Australia with carers (usually relatives) for a period in which their parents are unable to care for them.

As there is no standard approach by the eight jurisdictions, temporary care periods can vary greatly, ranging from a number days up to five years (and possibly beyond) in certain circumstances.

Generally, temporary care periods lasting longer than five years can be considered by decision-makers as being within the policy parameters for the grant of permanent residence. Cases can be emailed to Family Programme Management for guidance if the circumstances are of a controversial nature or there are concerns that parties may be adversely affected

Generally, temporary care periods less than five years are unlikely to be considered as meeting policy parameters for the grant of permanent residence. If delegates believe there is merit in considering a particular case for permanent residence even though the care period is less than 5 years, details of the case can be emailed to Family Programme Management for guidance.

If a child's temporary care period is dependent on other processes that have yet to be finalised, it is expected that a decision on the child's visa application will not be made until the child's future circumstances are resolved. An example of this could include where the child's future circumstances are unclear because their parent is in custody and facing criminal charges.

A decision on the child's visa application under these provisions should not be made:

- where a family reunion assessment by the STGWA is incomplete or
- if the child's future circumstances are yet to be resolved.

Children in permanent care

Generally, when a STGWA decides that there are no family reunion prospects for the child, the child will go into the permanent care of the STGWA until they turn 18 years old. Permanent care cases are to be considered by delegates as being within the policy parameters for the grant of permanent residence.

Examples where children may be in the permanent care of a STGWA are not limited to, but can include:

- a newborn child of parents who hold temporary visas, and the child is relinquished to a STGWA for adoption
- a child's parents are unable to care for the child due to processes/circumstances that will take many years to resolve or cannot be resolved (for example, parent becomes disabled)
- a child is removed from the care of their parents or others, due to abuse/ neglect and placed in permanent care of a STGWA.

Management of caseload

COFPC

As for mainstream BT-802 cases, management of the vulnerable child caseload rests with the Child and Other Family Processing Centre (COFPC) in the Perth Office, Western Australia. Other areas (Compliance, Case Management and Client Services) of STOs might be involved with vulnerable child cases, in which case they are to assist the COFPC, where necessary, in managing such cases.

Management and decision-making and decision-making

Management of the vulnerable child caseload will be given a high priority due to the sensitivities involved. Decision-making on such cases will occur at the Residence Manager level (EL1/APS 6) or above in the COPFC. Although it is not expected the relevant delegate will process an application from beginning to end, it is expected that they will be involved in the management of such cases and be available to provide guidance to processing staff on important issues when they arise during the processing of an application. These include, but are not limited to:

- initial assessment of the STGWA letter prior to authorising the input of a 'nil' VAC into ICSE at the time the application is lodged
- where necessary, acting on the initial assessment of an application and providing guidance to lower level staff on the processing (prioritising) of an application
- where necessary, providing guidance to lower level staff on the management of vulnerable child cases, as well as consulting with the STGWA on unresolved issues of concern, and
- assessment of the child's circumstances against the vulnerable child policy prior to making a decision on the application.

The Residence Manager will be responsible for the ongoing training of staff regarding vulnerable child applications.

Vulnerable child processing checklist

A checklist is provided to assist processing officers with the visa application - refer to Vulnerable child processing checklist.

Vulnerable child processing roadmap and explanatory information

A roadmap (flow chart) and explanatory information describing how to process and assess vulnerable child visa applications are included in this instruction. Refer to:

- Vulnerable child processing roadmap and
- Using the vulnerable child processing roadmap.

The roadmap has been provided to STGWAs to inform them of how the department intends processing such applications and the consultative processes necessary to progress and finalise them. All staff involved with vulnerable child applications need to familiarise themselves with the roadmap and explanatory information.

Systems issues

Departmental systems

At this stage there are no system enhancements to ICSE to assist with managing, monitoring, recording and reporting of this discrete caseload. However, with systems work-arounds - described in:

- Schedule 1 requirements and recording and
- Schedule 2 requirements and recording

- the existing BT-802 ICSE functionality can be used in managing this caseload.

A BT-802 Vulnerable Child ICSE tip sheet has been produced and is available by emailing Family Programme Management. The tip sheet should be used as a guide for processing vulnerable child applications in ICSE.

Schedule 1 requirements and recording

Overview

Three requirements need to be met for a valid BT-802 visa application to be made for a STGWA supported child, which then allows for a nil visa application charge to apply. The requirements are:

- a ***letter of support*** from a STGWA supporting the child's application for permanent residence (refer to Letter of support)

- evidence of the child being under 18 years old (refer to STGWA child must be under 18 years old) and
- lodgment of form 47CH (refer to Form 47CH).

STGWA letter of support

The letter accompanying the child's 802 visa application needs to address points (a) to (e) within the Letter of support definition, for the application to be validly lodged. This provides delegates with objective criteria to use when assessing the letter against the definition.

It is not necessary for the delegate at time of lodgment to assess the relevance of detailed information within the letter, as this will be undertaken as part of the Schedule 2 assessment process.

STGWA child must be under 18 years old

Under item 1108A(3)(d), the vulnerable child applicant must be under 18 years old at time of lodgment of the application. In most circumstances, the STGWA will be able to provide documentary evidence (such as birth certificate or passport) of the child's age.

Cases may arise where there is no documentary evidence available. In the majority of these cases it will be obvious the child is under 18, based on the child's development (for example, size, height, weight, maturity and intellect).

However, if there are applicants who appear to be in their mid to late teens (or older) and their age cannot be confirmed, the STGWA is to be consulted on how they determined the child's age to meet the eligibility requirements to apply for the BT-802 visa. If there is insufficient information for the delegate to be satisfied that the child is under 18 years old, email Family Programme Management to discuss the case.

Form 47CH

STGWAs will need to complete and lodge form 47CH (Application for migration to Australia by a child) as part of the valid application process. As provision has been made in form 47CH for the STGWA's details, they are not required to lodge a form 40CH (child sponsorship form) as part of the application.

A sample form 47CH with guidance sheet has been produced to assist STGWAs in completing the relevant areas of the form for vulnerable child visa applicants - electronic copies are available by emailing Family Programme Management.

Recording application lodgement

When first recording a vulnerable child application in ICSE, refer to the ICSE tip sheet, because several work-arounds are required during this part of the receipting process.

The following note must be recorded using ICSE' Client of Interest function:

> "Vulnerable child application - bring to Residence Manager attention - direct all enquiries to (record name of relevant Residence Manager here)."

If the child requires a bridging visa, refer to Bridging visas.

Essential work-around for managing caseload

The most important work-around relates to the identification of vulnerable child cases in ICSE. As upgrades to ICSE functionality were not possible as part of the BT-802 vulnerable child amendments, it is essential that a consistent approach is taken when recording such cases in ICSE. Processing staff must use the following protocols; otherwise, they will find it difficult to identify all relevant cases

by State/Territory. It will also impact on the department's ability to accurately report on the total caseload.

When entering details under the Sponsorship part of the Permission Request in ICSE, use the acronym STGWA (which identifies the case as a vulnerable child application) followed by single space, then enter the two or three letter acronym for the relevant State/Territory:

STGWA ACT

STGWA NT

STGWA NSW

STGWA QLD

STGWA SA

STGWA TAS

STGWA VIC

STGWA WA.

To further enhance high level monitoring of this caseload, it is suggested that processing staff also use the letter R (for "resolved") or U (for "unresolved") after the State/Territory acronym. This will help identify cases that:

- are likely to proceed through to the decision stage quickly where the child's future circumstances for remaining in Australia have been resolved or
- will take some time before a decision can be made, as the child's circumstances to remain in Australia are unresolved

- for example: STGWA ACTR or STGWA ACTU.

Whether a case is an "R" or "U" can usually be identified from the STGWA letter that supports the child's application when lodged. The letter will usually comment on the child's future circumstances. For examples, refer to:

- Children in temporary care
- Children in permanent care.

If it is unclear whether a child's circumstances are resolved, use "U" as the identifier.

Bridging visas

To date, for many child cases bought to the department's attention by STGWAs, the child has not held a visa of any kind.

As part of the BT-802 application process, a bridging visa (BV) must be granted to allow the child to remain lawful until a decision is made on the BT-802 application. Family policy is that, to as to ensure the child has access to Medicare and schooling, BVs granted to vulnerable child applicants should not have any conditions attached. However, when considering BV conditions, officers must have regard to legislative and policy requirements for each BV.

Officers should refer to departmental instructions for the relevant BV ICSE when considering and recording BV grants. For instance, for a BVE, the relevant instruction is PAM3: Act - Compliance and Case Resolution - Program visas - Bridging E visas - BVE 050 applications. If further BVE policy advice is needed, email Compliance Helpdesk.

Members of the family unit of vulnerable child visa applicants the family unit of vulnerable child visa applicants

Members of the family unit of vulnerable child applicants are ineligible to be included in the child's application. Refer to Schedule 1 item 1108A(3)(c)(ii).

However, if a BT-802 applicant has a ***dependent child*** (this is unlikely to be a common scenario), the STGWA may decide to support a separate 802 application for that dependent child if the dependent child's other parent does not hold a permanent visa or Australian citizenship.

If a BT-802 applicant becomes a parent before their visa application is decided, provision exists for the dependent child to be considered for the grant of a visa:

- the dependent child is automatically considered to have applied for the same visa as their parent - refer to regulation 2.08 (Application by newborn child); officers should check whether the new-born child is an Australian citizen, as other parent may hold Australian citizenship or a permanent visa
- in these circumstances, a BT-802 applicant's dependent child will be assessed against the same Schedule 2 requirements as their parent, except for PICs 4001 - 4003 - refer to 802.328.

The STGWA will need to provide a separate ***letter of support*** for the dependent child, if the dependent child is to be assessed against the secondary criteria relating to the vulnerable child provisions. Refer to 802.327.

If a visa applicant has a dependent child, details of the case should be emailed to Family Programme Management for guidance.

Schedule 2 requirements and recording

Overview

The visa requirements are broad in nature and have been deliberately kept to a minimum as it is impractical to legislate for the numerous circumstances a STGWA supported child may find themselves in.

A single **time of application** criterion needs to be met by vulnerable child visa applicants. Essentially, visa applicants having a letter of support from a STGWA are precluded from having to meet time of application criteria that apply to mainstream 802 applicants. Refer to 802.215 and 802.216.

Among the **time of decision** criteria to be met by vulnerable child visa applicants, there are three significant threshold requirements that differ from the mainstream BT-802 requirements. They are:

- continued support from the STGWA - refer to 802.226A(2)(b)(ii)
- health requirements (same as protection visa requirements) - refer to 802.226A(2)(a)(i) and
- grant of the visa is in the public interest (overarching grant/refuse criteria) - refer to In the public interest to grant the visa (overarching grant/refuse criterion).

Clause 802.226A(2)(a)(ii) prescribes the applicable public interest criteria (PIC).

Recording Schedule 2 outcomes

Important: The "Sponsorship approved" event should be the last event to be entered into the ICSE record (802.226A(2)(b)(ii) is used instead of "sponsorship' for vulnerable child cases). Currently, it is the only mandatory event for BT-802 that prevents a decision being recorded in ICSE. The "Sponsorship approved" event should be recorded only after a complete assessment of the application has been undertaken against the relevant Schedule 2 criteria (within 802) and a decision is ready to be recorded.

Continued support from the STGWA

A vulnerable child applicant is not sponsored by a STGWA, they are supported by a STGWA. However, a note in ICSE must be made when recording the "Sponsorship approved" event, stating that the "STGWA continues to support the child's application for permanent residence". Refer to 802.226A(2)(b)(ii).

The policy intention is that this criterion will be taken to be satisfied without further enquiry unless there is reason to believe otherwise. This is particularly so in circumstances where a decision is made on the application within a short period of the application being made. Should considerable time elapse between lodgment of the application and decision, a delegate can make further enquiries of the STGWA when considering this criterion.

In the public interest to grant the visa (overarching grant/refuse criterion)

As the circumstances of vulnerable children are too numerous to legislate for, 802.226A(2)(b)(i) is broad enough to consider the variety of circumstances that may present, and at the same time provides enough scope not to grant a visa if the circumstances do not meet the policy intention of the provisions (That is, this provision acts as an overall integrity measure, with regard to the circumstances of the child).

Clause 802.226A(2)(b)(ii) provides the delegate with a great deal of discretion - this is a major reason why Residence Managers and above have been given the decision-making responsibilities for this caseload.

Delegates need to consider all information provided in support of the child's application before making a decision. This includes:

- assessment of the STGWA letter of support (refer to Letter of support) and any other information received about the child's circumstances that supports permanent residence being granted to the applicant, and that it aligns with the policy intention of the vulnerable child guidelines
- whether the child's future circumstances have been resolved, and includes them residing in Australia on a long term or permanent basis (refer to Children in temporary care and Children in permanent care) and
- whether there are any other issues that remain unresolved.

Issues of concern relating to this requirement can be emailed to Family Programme Management.

Best interest of child

Clause 802.226A(2)(a)(ii) requires that PIC 4018 (there is no compelling reason to believe that granting the visa would not be in the child's best interests) is met

Because the child has the support of a STGWA, it can be generally assumed that the best interests of the child have already been addressed. It would only be in exceptional cases that this issue would need to be further assessed. An example of this may include where the department has been provided credible evidence that the child's welfare is at risk.

Officers should not solicit evidence to establish best interests - it will only need to be assessed if the application contains clear evidence, or if further information of an adverse nature is received.

Officers intending to refuse a visa solely on PIC 4018 grounds should first email Family Programme Management for advice.

Child parental responsibility

Unlike most other visa subclasses (including the mainstream BT-802 criteria), the vulnerable child provisions do not have separate child parental responsibility requirements (PICs 4015 and 4017). It is

accepted that, if a STGWA supports the child's application for permanent residence, that child's custody matters have been addressed by the STGWA and there is no need for delegates to consider this aspect of the child's circumstances.

Health requirements

Overview

Vulnerable child visa applicants will need to have undertaken a health assessment as outlined in:

- 802.226A(2)(a)(i) and
- 802.226A(3), (4), (5) and (6).

Where the processing officer has assessed the applicant as a permanent care case resulting in a permanent stay in Australia (refer toChildren in permanent care), the applicant must undergo a health assessment for that permanent stay. Refer to PAM3: Sch4/4005-4007 - The health requirement - Health assessment - Permanent and provisional visas.

For the health requirement to be met, the applicant needs to complete relevant health examinations. The purpose of the health examinations is to identify any potential risk to public health and, if such risk is identified, to ensure the applicant is placed under appropriate treatment and/or a supervised monitoring program.

A visa must not be granted until the results of both the medical examination and the chest x-ray, if applicable, have been received and the necessary medical arrangements have been put in place for the visa applicant. Refer to 802.226A(3), (4), (5) and (6).

Arrangements for the health assessment

The processing office should use the health assessment related text in the 802 vulnerable child acknowledgment letter template (available by emailing Family Programme Management) when advising the STGWA of the need for the visa applicant to undertake a health assessment. All vulnerable children applicants must undergo an HIV and hepatitis B test as part of their health assessment. Refer to PAM3: Sch4/4005-4007 - The health requirement - health assessment - Permanent and provisional visas .

Form 26 and, if the applicant is 11 years or older, form 160 , should be attached to the letter to the applicant. A passport photo of the applicant should be attached to the form 26. The STGWA will need to ensure the letter and form(s) accompany the applicant to the health assessment.

The STGWA can request a copy of the child's health assessment results from the department. Case officers should make a note on ICSE when a copy of the results has been provided to the STGWA.

Form 26

Annotation to form 26 is needed for panel doctors to ensure they undertake the appropriate medical tests for vulnerable child visa applicants. Case officers are requested to write the following in the "Office Use Only" section of form 26 prior to sending the form to STGWAs.

> Special 802 EO, HIV, Hep B (CXR depending on age)
>
> Applicants do not need to meet the health requirement.

Further advice on this issue can be obtained by emailing Family Programme Management.

Health assessment costs

STGWAs are responsible for covering all costs associated with the applicant's health assessments. Payment should be made at the time of booking an appointment, or when attending the appointment.

Health assessment letter of authority

Privacy concerns are a priority for all visa health assessments, and as such need to be managed appropriately for the Vulnerable child caseload to protect all parties involved.

To help manage this issue, a template letter has been created for welfare authorities to authorise the person(s) accompanying the child to the health assessment to receive information from health professionals about the child's health on behalf of the welfare authority. STGWAs may customize this letter or create their own.

The authorising letter will allow the examining health professionals, if necessary, to discuss the child's health with the person(s) accompanying the child. The letter will also provide contact details for the relevant welfare authority officer (usually the case officer) should there be a need to contact them.

The letter template is at Health assessment 'letter of authority'. A copy of the template can be forwarded with forms 26 and 160 to the STGWA when requesting the child to undertake a health assessment.

Referral to a Medical Officer of the Commonwealth (MOC)

Under 802.226A(5), where the doctor identifies a medical condition the doctor is to refer the results of the health assessment to a MOC.

Only the MOC can decide the need for a health undertaking - refer to 802.226A(6). The case manager should refer to the MOC comments in the Health Assessment Permission Request (HAPR) of ICSE. If a MOC requests a health undertaking be completed, the STGWA and applicant (if appropriate) should be counselled on the nature of the undertaking - refer to PAM: Sch4/4005 - 4007 - The health requirement - Health undertakings for further information.

The applicant (or STGWA on their behalf) must complete 3 copies of the form 815 health undertaking. Officers are to:

- return a copy to the applicant and to the STGWA, for their reference
- attach a copy to the case file and
- send a copy to the Health Undertaking Service

Case managers should ensure that the arrangements in accordance with the advice of the MOC have been made. The applicant is not considered to have satisfied 802.226A(6) and therefore 802.226A(2)(a)(i) until these arrangements have been made.

Recording in ICSE

If a case manager sends to the STGWA a letter requesting a health assessment for the applicant, they should record this event on ICSE using the "Letter sent - Health and Character Requested" event.

If a form 815 health undertaking has been requested and signed, the case manager should make an ICSE record.

Deciding the application

Child's immigration status

The delegate must be sure that the child concerned is not an Australian citizen (the child's circumstances may suggest that they are) or be eligible for recognition as such.

Age of applicant at time of decision

There are no age limitations that the child needs to meet at time of decision - even if they have turned 18 (or older) at the time of decision.

Note that in some cases, when the BT-802 applicant has turned 18, the State or Territory government welfare authority is no longer responsible for the BT-802 applicant. The critical requirement is whether or not the STGWA has withdrawn. their letter of support. Email Family Programme Management f there are difficulties in establishing this.

Have the child's future circumstances been resolved

A decision should not be made on a vulnerable child application until such time as assessments relating to arrangements for the child's continued stay in Australia have been resolved. For example, if it is not evident whether the child is to remain in Australia or not, no decision should be taken on the child's application - refer to Children in temporary care.

Clause 802.226A(2)(b)(ii) requires the delegate to be satisfied that the STGWA continues to support the application. If a considerable amount of time has passed since the application was made, processing staff should re-establish contact with the STGWA to obtain updated information on the child's future circumstances before a decision is made on the application.

In cases where the child's family members are un-contactable and the child's nationality can be confirmed, the delegate should confirm with the STGWA that officials from the child's country of nationality have been consulted about the child's future. Email Family Programme Management for advice on this issue if needed.

Changes in circumstance

There is the potential for a number of situations to occur during the processing of the application. Scenarios could include, but are not limited to, the visa applicant:

- forming a relationship
- becoming pregnant or
- giving birth to or fathering a child.

Should the examples above occur during application processing but the STGWA continues to support the child's application for permanent residence, this in itself should not be seen as an obstacle to the grant of a visa.

Intention to refuse application

Given the sensitivities in vulnerable child cases, officers intending to refuse an application under any of the vulnerable child provisions should, before making a decision, email circumstances of the case to Family Programme Management.

BT-802 visa grant

Where the applicant must be to be granted their visa

For 802.411, which specifies that the applicant must be in Australia (but not in immigration clearance) when the visa is granted, refer to PAM3: GenGuideA - All visas - Visa application procedures - Circumstances applicable to grant.

Letter of support pro forma

For the pro forma letter of support, refer to TRIM.

Vulnerable child processing checklist

The checklist has been removed from this instruction pending its reformatting for web content accessibility.

Vulnerable child processing roadmap

The flowchart roadmap has been removed from this instruction pending its reformatting for web content accessibility.

Using the vulnerable child processing roadmap

As the flowchart roadmap has been removed pending its reformatting for web content accessibility, so has this associated information.

Health assessment 'letter of authority'

State/Territory government welfare authority letterhead

To:

Letter of authority re: Australian state or territory welfare authority supported child for a Child (subclass 802) visa.

I, (insert authorising officer's name) give authority for (insert name(s) of person(s) accompanying the child/ young person to the health assessment) to receive information relating to the health assessment for (insert child's/ young person's full name and date of birth).

I understand a health assessment report for the child/ young person will be forwarded to the Department of Immigration and Citizenship, as the report will be considered in the visa assessment process for a Child (subclass 802) visa.

If the child/young person is diagnosed with significant health issues, or if you require further information about them, please contact (insert name of relevant welfare authority case officer as well as their contact details)

Yours sincerely

(insert authorising officer's name)

(job title)

(contact details)

(date)

Default contact details for State/Territory government welfare authority

END OF DOCUMENT

[Sch2Visa102] Sch2 Visa 102 - Adoption

About this instruction

Contents

This instruction, which deals with Regulations Schedule 2 Part 102 for the Adoption (AH-102) visa - comprises:

- Schedule 1 item 1108 Child (Migrant) (Class AH)
- Schedule 2 Part 102 Adoption

comprises:

- About the AH-102 visa
- Background
- Applying for an AH-102 visa
- Hague Adoption Convention adoptions - 102.211(4)
- Bilateral adoption arrangement - 102.211(4)
- Other State/Territory arranged adoptions - 102.211(3)
- Expatriate (private) overseas adoptions - 102.211(2)
- Third country Hague Adoption Convention adoptions - 102.211(5)
- Other AH-102 requirements (all cases)
- Adoption visa matrix
- Standard letters.

Related instructions

- PAM3: Sch1 item 1108 – Child (Migrant) (Class AH)
- PAM3: Div1.2/reg1.04 - Adoption
- PAM3: GenGuideB Non-humanitarian migration - Visa application and related procedures

Latest changes

Legislative – 14 December 2015

Although not impacting directly on this instruction, Schedule 1 item 1108(3)(c) was inserted so that a valid AH-102 application cannot be made if the child was “adopted” in a country (and, if relevant, at a time) specified in an instrument made for item 1108(3)(c) purposes.

Policy

This instruction, which is part of the centralised departmental instructions system (CDIS), was reissued on 1 January 2016, reformatted for web content accessibility and with updated owner information. The instruction itself, however, has not been owner-reviewed/updated since May 2014, so may be **inaccurate, incomplete and out-of-date**.

Owner

Family Migration Programme Management Section.

Email

Family Programme Management.

Document ID

VM-3076

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About the AH-102 visa

Overview

In adoption cases, a person is a "child" of another person, and the other person is their "parent" only if the other person has adopted the child within the meaning of Migration Regulation 1.04 (for which refer to PAM3: Div1.2/reg1.04 - Adoption). For policy and procedures relating to "child", refer to PAM3: Act - Act-defined terms - s5CA - Child of a person.

In *very* broad terms only, the AH-102 visa provides for the permanent migration of a child who is either:

- adopted (or to be adopted), with the involvement of an Australian State/Territory central adoption authority, under
  - the Hague Adoption Convention
  - a bilateral adoption agreement with a competent authority of another country or
  - another adoption agreement) or
- adopted by expatriate Australians who have been living outside Australia for more than 12 months before making the AH-102 visa application.

Terminology

Adoption compliance certificate

An ***adoption compliance certificate*** (ACC) is certification that a full and permanent adoption has occurred under the Hague Convention or a bilateral agreement.

Although the format of an ACC may vary, the certificate will usually:

- specify the date and place where the adoption took place
- identify the child and the ***adoptive parents*** by name and
- identify the two countries involved in the adoption.

If an ACC has been issued in accordance with Article 23 of the Hague Adoption Convention:

- the adoption is recognised in Australia
- there is no need for the adoptive parents to seek further recognition of the adoption in Australia.

Child for adoption

This term is used where an Australian State/Territory central adoption authority (STCAA) has approved the adoptive parents but the adoption is to be finalised in Australia after the child's entry.

Full and permanent adoption

An adoption where the legal ties to the birth parents are severed and, under law, the adoptive parents obtain full parental rights.

Simple adoption

An adoption has occurred but the bonds with the birth parents are not severed under law.

Hague Adoption Convention

is *The Hague Convention on Protection and Cooperation in Respect of Intercountry Adoption*.

Background

Commonwealth and State/Territory responsibilities

Commonwealth central adoption authority

The Attorney-General's Department (AGD) is responsible for Australia's intercountry adoption program and has primary responsibility for the establishment and management of Australia's intercountry adoption programs.

State/Territory central adoption authorities

Individual intercountry adoptions are the responsibility of each Australian STCAA, which, for example:

- manage, in conjunction with the relevant central adoption authority (CAA) outside Australia, arrangements for adopting children from outside Australia, including assessing and approving prospective adoptive parents and monitoring and reporting to relevant CAAs outside Australia on individual adoption cases as required and
- negotiate with CAAs outside Australia regarding new or existing intercountry programs concerned with placing children for adoption in Australia.

For the current list of Australian STCAAs, refer to AGD's Australian, state and territory central authorities webpage.

The role of the department

The department's role is to provide advice on how the child can be granted a visa and to grant the visa after all requirements are met.

The adoption process

Generally, persons wishing to adopt a child from overseas must apply through the intercountry adoption service in their State/Territory. Each State/Territory's eligibility requirements for adoptions of children from outside Australia are set out in their adoption legislation and include criteria concerning relationship status, age, citizenship, health and other factors. The requirements are intended to protect the interests of the child by:

- ensuring the suitability of the adoptive parents and
- minimising the possibility of baby trafficking, kidnapping of children, or coercion of birth families, which have been problems in some overseas countries.

Other countries also have requirements that must be met before an adoption can be approved.

After the adoptive parents have been approved and the overseas country has allocated a child, the adoptive parents may apply for a visa for the child.

An AH-102 visa may also be granted if the parents have been residing outside Australia as expatriates for more than 12 months and adopted a child during that time.

Visa eligibility

Categories

The AH-102 visa covers:

- expatriate (private) adoption by Australians resident overseas and
- adoptions arranged with the involvement of an STCAA.

Clause 102.211(1) requires that one of four provisions must be met:

102.211(2)

- Child adopted under private arrangements by an expatriate Australian/s living outside Australia for more than 12 months at time of application.
- Refer to Expatriate (private) overseas adoptions - 102.211(2).

or

102.211(3)

- Child allocated for adoption to parent/s approved by an Australian STCAA under an agreement **other than** a Hague Adoption Convention adoption or a bilateral adoption arrangement. The adoption takes place in Australia after a period of supervision (usually 12 months).
- Refer to Other State/Territory arranged adoptions - 102.211(3).

or

102.211(4)

- Child adopted or allocated for adoption under the Hague Adoption Convention or a bilateral adoption arrangement (to parent/s approved by an Australian STCAA. A Hague Adoption Convention adoption may be finalised outside Australia or in Australia.

- Refer to:

    - Hague Adoption Convention adoptions - 102.211(4) and
    - Bilateral adoption arrangement - 102.211(4)

or

102.211(5)

- Child adopted under the provisions of the Hague Adoption Convention, between the central adoption authorities of two Hague Adoption Convention countries other than Australia. This type of adoption is informally referred to as a third country Hague adoption.
- Refer to Third country Hague Adoption Convention adoptions - 102.211(5)

About the Hague Adoption Convention

Full title

The full title of the Hague Adoption Convention is The Hague Convention on Protection and Cooperation in Respect of Intercountry Adoption.

Objectives

The Convention's objectives are to ensure that intercountry adoptions take place in the best interests of the children concerned and according to consistent law and process. It also seeks to ensure that children enjoy safeguards and standards equivalent to those that exist in the case of Australian "domestic" adoptions. It aims to establish a system of cooperation among contracting countries to ensure those safeguards are respected and thereby prevent the abduction of, traffic in, and sale of children. Ratification of the Convention also secures the recognition of adoptions made in accordance with the Convention in all contracting states.

Applicability

A convention adoption must be organised by the central adoption authorities in both convention countries. An expatriate (private) adoption (without the assistance of the relevant central adoption authorities in both convention countries) cannot be an adoption in accordance with the Hague Adoption Convention even if it occurs between two countries that are signatories to the Hague Adoption Convention. Both countries must be parties to the convention, that is, must have ratified the convention.

Current list of Hague Adoption Convention countries

For the current list of countries with which Australia has intercountry adoption arrangements, refer to AGD's Australian, state and territory central authorities webpage.

Convention protocols

The Convention sets out the protocols that apply in each state involved in the adoption. In summary:

- the state of origin is responsible for determining that the child is free for adoption, that necessary consent has been received from the child's parent/guardian, and that intercountry adoption is in the best interests of that child
- the receiving state is responsible for assessing the prospective adoptive parents as suitable parents, and ensuring that the child is, or will be, authorised to enter and remain permanently in the receiving state
- both states must agree to the adoption before it takes place and the competent authority of the state where the adoption takes place must certify the adoption as having been made in accordance with the requirements of the Convention.

Convention adoption categories

There are four variations of adoptions in accordance with the Hague Adoption Convention, all of which are addressed in AH-102 visa criteria:

- full adoption (involving the CAAs of Australia and another Convention country), where the adoption takes place in a Convention country other than Australia and are evidenced by an Article 23 (ACC) (currently only Chile, Colombia, Lithuania, People's Republic of China and Sri Lanka) and adoptions are finalised before the child enters Australia. These adoptions fall within 102.211(4)
- simple adoption (involving an Australian STCAA and another Convention country), where the country's adoption laws do not sever the child's legal ties to the birth parents, but the country's CAA approve the child to come to Australia where the adoption is finalised (currently only Thailand). These adoptions also fall within 102.211(4)
- guardianship arrangements (involving an Australian STCAA and another Convention country's CAA), where the adoption is finalised in Australia after a placement period in Australia under relevant Australian STCAA monitoring and reporting to the other country's CAA and no problems have occurred (currently only Hong Kong and the Philippines)
- third country Convention adoption, where Australian adoptive parents habitually resident in a Convention country other than Australia, adopt from another Convention country (not Australia)

and an ACC (not necessarily an Article 23 ACC) has been issued. These adoptions fall within 102.211(5).

Adoption compliance certificate

When certificate issued

If the Convention adoption is a full adoption and has been finalised outside Australia, an ACC is issued and is certification that the adoption has occurred.

Legal recognition

If an ACC has been issued in accordance with Article 23 of the Hague Adoption Convention:

- the adoption is recognised in Australia
- there is no need for the adoptive parents to seek further recognition of the adoption in Australia.

Format

The format for an ACC may vary from country to country, however, as a minimum, the Convention requires that the certificate:

- specify the date and place where the adoption took place
- identify the child and the adoptive parents by name and
- identify the two Convention states involved in the adoption.

As a visa requirement

Under 102.228(1)**,** the certificate is a Schedule 2 time of decision criterion for Convention adoptions that take place overseas.

Bilateral adoption arrangements

What they are

Bilateral adoption arrangements are adoption programs negotiated with another country that is not a party to the Hague Adoption Convention. A bilateral adoption arrangement will have been negotiated since Australia became a party to the Hague Adoption Convention on 1 December 1998.

Purpose

These arrangements are intended to ensure that, where other countries are not parties to the Hague Adoption Convention, children for adoption are protected from being bought or sold. In addition, families who wish to adopt a child from outside Australia can be assured that the child is legally available for adoption. Such adoptions are recognised under Australian law. This means that there is no need for adoptive parents to seek further recognition of the adoption in Australia.

Current agreements

On 4 March 2014, the Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998 were amended to provide automatic recognition of adoptions from South Korea, Taiwan and Ethiopia that have not been finalised and future adoptions from South Korea and Taiwan. No other country programs will be affected.

Until 2012 Australia had such an agreement in place with the People's Republic of China (PRC), but since then intercountry adoptions undertaken in PRC with the involvement of both CAAs are taken to be full adoptions under the Hague Adoption Convention.

Legal recognition

Bilateral adoption arrangements are those recognised under Australian law. This means that there is no need for the adoptive parents to seek further recognition of the adoption in Australia.

Australian citizenship

Children adopted by Australian citizens may be eligible for Australian citizenship automatically or by application depending on the adoption arrangement.

For policy and procedure relating to citizenship for adopted children, refer to the Australian Citizenship Instructions - Chapter 4.

Immigration (Guardianship of Children) Act

Outline

Briefly, the Immigration (Guardianship of Children) Act (the IGOC Act) applies to children under 18 who enter Australia for settlement but who are not in the care of, or joining, a parent (or a relative over 21). Such minors are said to be "entering Australia under the IGOC Act". The Minister's responsibilities under the IGOC Act are delegated to State/Territory adoption authorities. For policy and procedure on the IGOC Act, refer to PAM3: Guardianship of minors under the IGOC Act.

Intercountry adoption and the IGOC Act

If a child has been adopted and the adoption is recognised under Australian law, the child will not enter Australia under the IGOC Act as they enter in the care of their parent.

If the adoption is not recognised under Australian law, the parental relationship is not recognised, so the child does not enter Australia under the care of their parent. In these circumstances, the child will enter Australia under the IGOC Act.

The child will remain under the IGOC Act until they:

- become an Australian citizen or
- turn 18 or
- leave Australia permanently or
- has an order made under s11 of the IGOC Act which removes them from the minister's guardianship

whichever occurs first.

Hague Adoption Convention adoptions

If a valid Article 23 ACC has been issued:

- this is evidence that the adoption is recognised in Australia
- the child will not enter Australia under the IGOC Act.

If there is no valid ACC, and the adoption is not recognised in Australia, the child may enter Australia under the IGOC Act. If these adoptions are later finalised in Australia, and at least one of the adopting parents is an Australian citizen, and the child is a permanent resident at the time the adoption is

finalised in Australia, the child would automatically become an Australian citizen at the time the adoption is finalised in Australia (s13 of the Australian Citizenship Act) and the IGOC Act will no longer apply.

Bilateral adoption arrangements

As adoptions under bilateral adoption arrangements are recognised under Australian law, the child will not enter Australia under the IGOC Act.

Other adoptions

If the adoption is not made under the Hague Adoption Convention or a bilateral adoption arrangement, the child will enter Australia under the IGOC Act.

If the adoption is arranged with an Australian STCAA, either:

- the child will be adopted in Australia or
- the adoption will later be recognised by an Australian court.

If the child is adopted in Australia, the child will become an Australian citizen (s13 of the ACA) and the IGOC Act will no longer apply.

If the adoption is recognised by an Australian court, the IGOC Act will continue to operate until child is granted Australian citizenship or turns 18.

In the case of an expatriate adoption (that is, an Australian STCAA was not involved), the IGOC Act will continue to operate until the child is granted Australian citizenship or turns 18.

Applying for an AH-102 visa

Refer to PAM3: Sch1 item 1108 – Child (Migrant) (Class AH).

Hague Adoption Convention adoptions - 102.211(4)

For adoptions under bilateral adoption arrangements, refer instead to Bilateral adoption arrangement - 102.211(4).

About this category

Eligibility

Clause 102.211(4) covers children adopted, with the involvement of an Australian STCAA, under the Hague Adoption Convention. The adoption may take place:

- in the overseas country (full adoption) or
- in Australia (simple adoption).

The visa application can be made before the adoption is finalised (but the child must have at least been allocated for adoption).

Full adoptions

If the adoption takes place outside Australia it will be a full and permanent adoption. An ACC will be evidence that a full adoption has occurred.

Simple adoptions

If the adoption does not take place outside Australia, the adoption will be completed in Australia. Usually this will be the case if the laws of the other Convention country do not provide for full adoption. In these cases:

- there will not be an ACC but
- there should be evidence from both the CAA of the relevant country and the Australian STCAA indicating their agreement that the child may be moved to Australia for the adoption to be completed, refer to 102.228(2). This will usually be in the form of letters from these authorities.

IRIS statistical code

IRIS statistical code 155 applies to adoptions under the Hague Adoption Convention.

Documentation requirements

To be submitted at time of application

Completed form 47CH *Application for migration to Australia by a child.*

Completed form 40CH *Sponsorship for a child to migrate to Australia* and any required supporting documentation (for example, evidence of permanent residence status or Australian citizenship).

Letter from Australian STCAA supporting the adoption:

- details of the visa applicant including name, sex, date of birth, nationality and place of usual residence
- statement that the applicant has been allocated to the prospective adoptive parents (that is, the sponsors) by a competent authority in the country of the child's usual residence giving the full names of the prospective parents and the name and address of the competent authority
- statement that the arrangements have been made in accordance with the Hague Adoption Convention.

The letter must be on the appropriate letterhead and signed and dated.

After adoption

To enable visa grant, either:

- ACC issued by the competent authority outside Australia (either the CAA or its accredited agent) or
- letter from the competent authority outside Australia (either the CAA or its accredited agent) giving permission for the applicant to travel to Australia in the care of the prospective adoptive parents for adoption in Australia in accordance with the Hague Adoption Convention.

Other category-specific visa requirements

Child allocated for adoption

Clause 102.211(4)(c) requirements generally should be evidenced by an approval letter issued to the prospective adoptive parent/s by the relevant *Australian* STCAA that identifies the allocated child by name, sex and date of birth. The prospective adoptive parent/s and the child named in the sponsorship and visa application, must be the same as identified in the adoption authority's approval.

Adoption

Generally, officers may regard 102.211(4)(d)(i) as satisfied provided they have the approval letter issued to the prospective adoptive parent/s by the relevant Australian STCAA

Adoptive parent approved

Generally, officers may regard 102.211(4)(e) as satisfied provided they have the approval letter issued to the prospective adoptive parent/s by the relevant Australian STCAA.

Adoption compliance certificate

Clause 102.228(1) applies if the adoption occurs overseas. A copy of the ACC should be attached to the case file.

Permission to travel

Clause 102.228(2) applies if the child travels to Australia for the adoption to be finalised in Australia. The prospective adoptive parent/s should provide documentation from the overseas competent authority that indicates the authority has approved the child's travel to Australia. A passport alone should *not* be regarded as sufficient evidence.

Other visa requirements

Refer to Other AH-102 requirements (all cases).

If a visa is granted

AH-102 visa grant letter

Posts should use the State/Territory adoption grant letter template.

Bilateral adoption arrangement - 102.211(4)

First read Bilateral adoption arrangements.

About this category

Eligibility

Clause 102.211(4) covers children adopted, with the involvement of an Australian STCAA under a bilateral adoption arrangement made in accordance with Australian law with another country. These adoptions are full adoptions and recognised in Australia under Australian law. The visa application can be made before the adoption is finalised (but the child must have at least been allocated for adoption).

As of 4 March 2014, the Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998 were amended to provide:

- automatic recognition of future adoptions from South Korea and Taiwan and
- recognition of adoptions from Ethiopia, South Korea and Taiwan that were lodged prior to June 2012 but have not yet been finalised.

No other country programs will be affected.

The amendments mean that children adopted from South Korea and Taiwan will have their adoptions automatically recognised in Australia on the day the adoption order (the ACC) was issued in the overseas jurisdiction.

For Ethiopia, the amendments will only affect adoptions that have already taken place but have not yet been recognised under Australian law. There is no agreement for future adoptions in Ethiopia to be recognised under a formal bilateral arrangement.

If a child has been adopted under a bilateral adoption arrangement, the child enters Australia under the care of their parent. For more information on guardianship refer to Intercountry adoption and the IGOC Act.

Children adopted from Taiwan, Ethiopia and South Korea under these arrangements may be eligible to apply for Australian citizenship by conferral.

IRIS statistical code

IRIS statistical code 155 applies to all 102.211(4) cases.

Documentation requirements

At time of application

Completed form 47CH (Application for migration to Australia by a child) and any required supporting documentation.

Completed form 40CH (Sponsorship for a child to migrate to Australia) and any required supporting documentation (for example, evidence of permanent residence status or Australian citizenship).

Letter from Australian STCAA supporting the adoption and including:

- details of the visa applicant including name, sex, date of birth, nationality and place of usual residence
- advice that the applicant has been allocated by the relevant CAA outside Australia to the prospective adoptive parents (that is, the sponsors)
- advice that the arrangements have been made in accordance with the bilateral adoption arrangement.

The letter must be on the appropriate letterhead and signed and dated.

After adoption

Adoption compliance certificate.

Child's passport.

Child's birth certificate.

Other category-specific visa requirements (Schedule 2 criteria)

Child allocated for adoption

Clause 102.211(4)(c) requirements generally should be evidenced by an approval letter issued to the prospective adoptive parent/s by the relevant *Australian* STCAA and that identifies the allocated child by name, sex and date of birth. The prospective adoptive parent/s and the child named in the sponsorship and visa application, must be the same as identified in the adoption authority's approval.

For 102.211(4)(d)(ii), the approval letter issued to the prospective adoptive parent/s by the relevant Australian STCAA is also evidence that this requirement is satisfied.

Adoptive parent approved

For 102.211(4)(e), the approval letter issued to the prospective adoptive parent/s by the relevant Australian STCAA is also evidence that this requirement is satisfied.

Adoption compliance certificate

For 102.228(1), a copy of the ACC should be attached to the case file.

Permission to travel

Criterion 102.228(2) does not apply to PRC cases because the adoption is finalised overseas.

If a visa is granted

AH-102 visa grant letter

Posts should use the State/Territory adoption grant letter template.

Other State/Territory arranged adoptions - 102.211(3)

About this category

Eligibility

Clause 102.211(3) provides for Australian STCAA adoptions under adoption agreements (known as other bilateral prospective adoption agreements by STCAAs) other than the Hague Adoption Convention or a bilateral adoption arrangement. These are usually agreements that were negotiated before the Hague Adoption Convention commenced on 1 December 1998. Adoptions will either be finalised or recognised by a court in Australia after the child enters Australia.

IRIS statistical code

IRIS statistical code 155 applies to all 102.211(3) cases.

Documentation requirements

At time of application

Completed form 47CH (Application for migration to Australia by a child) and any required supporting documentation.

Completed form 40CH (Sponsorship for a child to migrate to Australia) and any required supporting documentation (for example, evidence of permanent residence status or Australian citizenship).

Letter from Australian STCAA supporting the adoption and including:

- details of the visa applicant including name, sex, date of birth, nationality and place of usual residence and
- advice that the applicant has been allocated to the prospective adoptive parents (that is, the sponsors) by a competent authority in the country of the child's usual residence giving the full names of the prospective parents and the name and address of the competent authority.

The letter must be on the appropriate letterhead and signed and dated.

After adoption

Details of child including name, date and place of birth.

Details of adoptive parents including names and nationalities.

Details of the adoption order (if any).

Names and addresses of competent authorities of both Australia and the other country who agreed to the adoption.

Permission for the applicant to travel to Australia in the care of the prospective adoptive parents for adoption in Australia.

Other category-specific visa requirements

Undertaking to adopt and adoptive parent approval

For 102.211(3)(c) and (d), requirements generally should be evidenced by an approval letter issued to the prospective adoptive parent/s by the relevant Australian STCAA that identifies the allocated child by name, sex and date of birth. The very nature of this approval letter to the adoptive parent/s infers their intention to undertake the adoption, and so can be used as evidence that 102.211(3)(c)(i) or (ii) is satisfied. The prospective adoptive parent/s and the child for adoption named in the sponsorship and visa application, must be the same as identified in the adoption authority's approval.

Time of decision criteria to be satisfied

For 102.227A, a competent authority in the overseas country (either the central adoption authority or its accredited agent) should indicate that the child is a child for adoption in Australia and that approval has been given for the child's travel to Australia. A passport alone should *not* be regarded as sufficient evidence. (Note: 'The overseas country' should be regarded as meaning the country in which the child was residing when the adoption was approved.)

Other visa requirements

- Refer to Other AH-102 requirements (all cases).

Expatriate (private) overseas adoptions - 102.211(2)

About this category

Eligibility

Clause 102.211(2) applies where the child has been adopted outside Australia, without the involvement of an Australian STCAA, by an Australian citizen, permanent visa holder or eligible New Zealand citizen who has been living outside Australia for more than 12 months at the time the AH-102 visa application was made.

IRIS statistical code

IRIS statistical code 156 applies to all 104.211(2) cases.

Documentation requirements

At time of application

Completed form 47CH (Application for migration to Australia by a child) and any required supporting documentation.

Completed form 40CH (Sponsorship for a child to migrate to Australia) and any required supporting documentation (for example, evidence of permanent residence status or Australian citizenship).

After adoption

Details of child including name, date and place of birth.

Details of adoptive parents including names and nationalities.

Details of adoption order showing that a legal, full and permanent adoption has taken place.

Evidence that residence outside Australia for 12 months or longer was not contrived to circumvent Australian STCAA requirements.

Other category-specific visa requirements

Evidence of adoption

Refer to:

- regulation 1.04
- PAM3: Div1.2/reg1.04 - Adoption.

For 102.211(2)(b), documentary evidence should be provided that an ***adoption*** as defined in regulation 1.04 has taken place. The date of the adoption (as defined in regulation 1.04) should be evidenced by a dated adoption order or similar officially-sourced documentation.

Adoptive parent resided outside Australia for more than 12 months

For 102.211(2)(b)(ii) to be satisfied, it is necessary only that at least one adoptive parent be residing in any country (or countries) other than Australia for the 12 months prior to making the visa application, not necessarily the country where the adoption took place.

Brief visits to Australia by the adoptive parent during that period may be counted towards the 12 month period of absence from Australia. (A visit may be considered incidental if it was brief (a matter of weeks) and for business or personal reasons).

Purpose of the adoptive parent’s residency outside Australia

Clause 102.211(2)(c) requires officers to be satisfied that the residence overseas by the adoptive parent was not contrived to circumvent the requirements for entry to Australia of children for adoption.

The ordinary meaning of the word 'contrived' carries negative connotations. However, officers should keep an open mind when assessing the contrivance aspect: although an adoptive parent may have

taken up residence outside Australia for the purpose of adopting a child, it does not necessarily mean that they 'contrived to circumvent' Australian State/Territory adoption law.

There is a subjective element in 102.211(2)(c), and, as such, although the adoptive parent's intention in residing outside Australia may have been related to the child's adoption, it is only one of several consideration. Furthermore, intention is very difficult to prove in law and the intent of adopting a child can be just one of several factors that led the adoptive parents to reside outside Australia that may not, when considered as whole, lead to a finding of contrivance. The grant of an AH-102 visa does not pivot on the reason that the residency was solely to adopt a child.

Ways to assess residency outside Australia

Why the adoptive parent took up residence outside Australia can be assessed by interviewing the adoptive parents and suggested avenues of enquiry can be, but are not limited to:

- looking at their passport to determine movements
- requesting travel details (including their stated reasons for travel as indicated on their outward passenger card) by emailing Movement Records DIMA
- asking the purpose of their residency outside Australia
- determining if they had contact with an Australian STCAA and, if so, why they decided to adopt while outside Australia and
- the circumstances under which the adoption was undertaken.

Officers may also take into consideration, for example, documentation such as, but not limited to:

- employment records
- school records and
- accounts and receipts.

Full parental rights

For 102.211(2)(d), the adoption must have given the adoptive parent full and permanent parental rights. In most cases this should be apparent from the text of the adoption order. Full and permanent parental rights confer on the adoptive parent/s among other things, the right to decide where the child shall live. Orders that grant only guardianship, custody or parental responsibility for the day-to-day care of the child or other lesser rights would not satisfy this provision.

In some countries there is no legislative provision for, or recognition of, adoption. In such countries, orders relating to the care of a child may be granted and could appear to award rights similar to those granted by an adoption order, specifically full and permanent parental rights. Officers needing advice on these matters may email Family Programme Management.

Other visa requirements

Refer to Other AH-102 requirements (all cases).

If a visa is granted

AH-102 visa grant letter

Posts should use the Expatriate adoption grant letter for parents who have lived outside Australia for 12 months prior to making the AH-102 visa application.

Notifying the relevant Australian STCAA

The Minister has guardianship responsibilities under the IGOC Act for these children. If an AH-102 visa is granted, a Notice of impending arrival of an Adoption visa holder pro forma should be completed by posts and faxed directly to the relevant Australian STCAA - refer to the Notice of impending arrival of an Adoption visa holder pro forma.

Third country Hague Adoption Convention adoptions - 102.211(5)

About this category

Eligibility

Clause 102.211(5) covers children adopted if:

- the Hague Adoption Convention applies but
- an Australian STCAA was **not** involved in the adoption arrangements.

In other words, the adoption arrangements were between two countries other than Australia, both parties to the Hague Adoption Convention. These adoptions will be rare. Officers needing advice should email Family Programme Management.

Note: The Regulations do not require adoptive parents to have been living outside Australia for any period of time.

IRIS statistical codes

Code 155 applies to 102.211(5).

Documentation requirements

At time of application

Completed form 47CH (Application for migration to Australia by a child) and any required supporting documentation.

Completed form 40CH (Sponsorship for a child to migrate to Australia) and any required supporting documentation (for example, evidence of permanent residence status or Australian citizenship).

ACC issued by the competent overseas authority.

Category-specific visa requirements

Hague Adoption Convention requirements met

For 102.211(5)(b) and 102.228(1) to be satisfied, an ACC is required.

Other AH-102 visa requirements

Refer to Other AH-102 requirements (all cases).

If a visa is granted

AH-102 visa grant letter

Posts should use the State/Territory adoption grant letter for third country Hague Adoption Convention adoptions.

Other AH-102 requirements (all cases)

Other AH-102 primary criteria

Sponsorship

Requirements

For 102.212 and 102.212(b), for general guidance and policy on sponsorship refer to PAM3: Div1.4 - Form 40 sponsors and sponsorship. For this visa:

- form 40CH (Sponsorship for a child to migrate to Australia) is, under policy, the approved sponsorship form
- sponsors may lodge the sponsorship in Australia if to do so will facilitate visa processing.

Officers are reminded that, under policy, NZ citizen sponsors should undergo standard Schedule 4 health/character assessment, refer to PAM3: Div1.4 - Form 40 sponsors and sponsorship - Sponsorship by eligible New Zealand citizens.

Sponsors in Australia should not proceed overseas until they have been advised that the child has met Australian visa health requirements. The only exception to this is the PRC, where the sponsors must take their child to the departmental medical assessment once the adoption is finalised.

Reg. 1.20KB limitation on sponsorship - Sponsors of concern

The sponsorship must be refused if the sponsor or the partner has an unresolved charge, or a conviction, for a ***registrable offence*** - refer to regulation 1.20KB.

Briefly, to determine whether the sponsor or their partner has been charged with or convicted of a registrable offence, officers may ask the sponsor or partner to provide a police check from:

- a jurisdiction in Australia specified in the request or
- a country in which the sponsor or their partner has lived for a total of at least 12 months.

Under policy, such police checks must be obtained and cases involving registrable offences *must* be referred to the department's Visa Applicant Character Consideration Unit (VACCU), Melbourne.

For policy and procedure on regulation 1.20KB, including requesting police checks and procedures for referring relevant cases to the Visa Applicant Character Consideration Unit, refer to PAM3 Div 1.4 - Form 40 sponsorship - Protection of children - Sponsors of concern.

In that instruction, for AH-102 visa cases, first read Exceptions to the police check requirement.

The adoption must be legal

Requirements

For 102.213, in all cases, the adoption laws of the country in which the child is normally resident must be complied with. The primary purpose of this clause is to ensure that Australia meets its obligations under relevant international conventions to prevent child trafficking. Its intention under policy is to also

ensure that the adoption of the child takes place in the child's country of residence such that the child is not moved in order to circumvent requirements in that country.

This criterion may be regarded as satisfied without further enquiry for adoptions under:

- the Hague Adoption Convention (102.211(4) or 102.211(5)) or
- a bilateral adoption arrangement (102.211(4))

For all other State/Territory adoptions, 102.211(3), this criterion is satisfied if the competent authority in the overseas country has supported any adoption order granted in that country. For private adoptions, 102.211(2), the adoption order must comply with relevant laws.

Information on adoption law and practice should be obtained from the relevant competent authority if required. For further advice when assessing ‘normally resident’ for private adoptions, refer to 'Normally resident'.

'Normally resident'

Officers should have regard to the following information concerning the assessment of where a child is 'normally resident' for adoptions, particularly private, under 102.211(2).

The phrase 'normally resident' in 102.213 is not a defined term. The assessment of where a child is 'normally resident' for the purpose of considering if 102.213 is met, must occur on a case by case basis, taking into account all relevant information. Note: For the purpose of assessing 102.213A, a child's country of normal residence may be regarded as a country other than the county the child is currently resident in or adopted within.

Officers should afford particular attention to applications if the adopted child was born in a country or if their pre-adoption parents reside in a country other than the country in which they are being adopted. For example, a child may have arrived in the country of their current residence on a visitor visa and remain in the temporary custody of the potential adopting parents for a number of months before the courts ratify the adoption or other legal processes are finalised and the adoption visa application is lodged. Thus, the adoption laws of the country in which the child is currently residing have been complied with, however, the officer assessing the visa application may not have any evidence as to whether the child was lawfully adopted in their country of birth or whether lawful custody has been passed from the child's pre-adoption parents to another person.

In determining whether a person is 'normally resident' in a particular place, it will be necessary to have regard to the stated intention of the person and their physical presence in a location. However, in cases involving young children, it is not always possible to attribute intention. Given 'normally resident' in 102.213 is not a defined term, Australian case law provides some guidance on the assessment of normal residence. However, only one case has dealt with the specific term of 'normally resident' and it was that of an adult. Case law concerning the terms 'habitual residence' and 'ordinary residence', however, provide guidance, generally stating that in relation to a young child, residence or the settled purpose in relation to a young child can be attributed to the child's parents or the person who can make a decision as to their place of residence. Therefore, the stated intention of the child will likely be that of the person who has lawful custody of them.

Under policy, if the adoptive parent/s has lawful custody of the child, their intention regarding their place of normal residence can be attributed to the child. However, if they do not have lawful custody of the child (for example if a child was not removed or adopted lawfully from their country of birth) even if they have complied with the laws relating to adoption of the country of current residence, intentions regarding place of normal residence may not be attributed to the adoptive parent/s. Therefore, it is open to officers to assess a child's country of normal residence as a country other than the county the child is currently resident in or adopted within for the purpose of assessing 102.213.

In assessing where a child is 'normally resident' for the purposes of 102.213, it is policy to consider factors such as:

- where the child's pre-adoption parents were resident at the time of the child's birth
- how long the child has been resident in the country that is not their country of birth or residence of the child's pre-adoption parents and
- whether the child was removed or adopted lawfully from the country of their birth.

If a child has been adopted under the laws of a country other than the country of their birth or where the child's pre-adoption parents were resident at the time of their child's birth, officers may request evidence that the child was removed or adopted lawfully from the country of their birth, or the place residence of their pre-adoption parents.

For further guidance on this issue, particularly where an officer may have concerns that a child may not have been removed or adopted lawfully from the country of their birth and has been formally adopted in another country, email Family Programme Management.

Continued eligibility

In relation to 102.221, applicants are required (under s104 of the Act) to notify changes in their circumstances, which include, for example, changes to the family unit as a result of birth, death or change in relationship status. If no notification to the contrary has been received and there is no reason to believe otherwise, officers may consider this s104-related Schedule 2 satisfied.

Generic criteria

Public interest criteria

For 102.223, for:

- PIC 4007, refer to:
  - AH-102 health clearances, and then
  - PAM3: Sch4/4005-4007 – The health requirement
- other PICs, refer to the corresponding PAM3: Sch4 instructions.

"One fails, all fail" criteria

The main applicant for an AH-102 visa is unlikely to have family unit members included in their application, nevertheless, if they do, the standard "one fails, all fail" public interest criteria apply to the main applicant (102.226 and 102.227).

Discretionary AoS

Clause 102.225 enables officers to request an assurance of support. For policy and procedure, see PAM3: Div1.2/reg1.03 - Assurance of support– Discretionary assurances.

Note: It would be rare for AoS consideration to be required if an Australian STCAA assisted adoption has been undertaken given the approval processes involved. However, closer scrutiny for expatriate adoptions may be required.

AH-102 health clearances

Expatriate and third country Hague adoptions - 102.211(2) and (5)

Expatriate adoptive parents who have adopted children privately outside Australia or through a third country Hague adoption are encouraged to lodge complete visa applications, including a health assessment for the adopted child using approved panel doctors and direct transmission of results from the doctor to visa staff (not via the applicant or agent), as usual.

Should posts have health assessment procedures in place that are particular to their region, information on these procedures should be made readily available to clients via the intranet, and in print form from the office.

Processing a health assessment for these two types of adoptions would be similar to those done in the Partner caseload. The streamlined procedure mentioned below is not required for these types of adoption.

Australian STCAA - 102.211(3) and (4)

Departmental contact officer

To ensure clear communication between agencies and to facilitate the medical process, it is recommended that the post nominate an officer to create a link between the overseas adoption agency or Australian STCAA, the panel doctors and HAS. This is to ensure that:

- the original request for the adoption medical assessment has been received by the overseas intercountry adoption staff
- the request is being followed up and

- the overseas adoption agency or Australian STCAA has understood the requirements of the medical reports including the requirement to be sealed and delivered directly from assessing practitioners.

Developmental checklist

With the aim of decreasing unnecessary medical deferrals, assessing panel doctors may be reminded to include local developmental and growth charts, from the orphanages if necessary, with the assessment.

Medical report

Swift processing of the medical assessment is of the highest priority in adoption cases.

When the medical report is received from the panel doctor, the post must check for completeness and consistency, noting that HIV and hepatitis B test results are required for this caseload. If the medical report is found to be incomplete, the post must contact the panel doctor directly and immediately, requesting the additional reports/information. Where the post is certain of the panel doctor, the post may accept fax or email confirmation of the correct entry that has been omitted. The completed forms are to be faxed to the Health Assessment Service (HAS). **Local clearance does not apply to adoption cases, all assessments must be referred to HAS.**

Priority caseload

The Health Assessment Service treats adoption cases as a priority and seeks to respond with the opinion within 1 to 2 days of receipt of the reports.

When HAS opinion received

Australian STCAA to be told the results

The relevant Australian STCAA should be notified of the HAS opinion. Posts must use the standard letter developed for this purpose, refer to the Departmental advice to Australian STCAA that health and other visa requirements are met/not met template.

If the health requirement is met

If the child meets the health requirement, the Australian STCAA will finalise negotiations for the adoption.

Deferred HAS assessment

If the medical is deferred, the post should contact the panel doctor direct with the new request for further medical information/test result and to ensure that the information required is understood (and, if required, also refer the request through the appropriate government agency). The post should contact the overseas intercountry adoption authority to notify them of the deferral request and ensure as much as possible, a follow-up medical appointment for the child is made urgently.

If health requirement not met

Health waiver provisions exist for Adoption visa applicants, refer to PAM3: Sch4/4005-4007 – Health requirements – Health waivers. Visa staff must ensure that the prospective parents understand the nature and extent of the health condition and the impact on Australian health services and themselves, and that they wish to pursue waiver. Although waiver must always be considered as per PAM: Sch4/4005-4007, it is not automatic that the processing officer will be minded to waive. Careful descriptions of reasons are to be recorded.

If a health waiver is sought but refused or if a waiver is not sought, the application must be refused and the applicant notified, in the usual way, of the reasons and options for the sponsor to seek merits review. Note that this is *in addition* to the standard notification to the Australian STCAA referred to above.

AH-102 family unit members

Eligibility

AH-102 visa applicants are unlikely to have ***members of the family unit*** included in their visa application.

Note: In establishing who (if anyone) is a member of the family unit of the AH-102 visa main applicant, because the main applicant (that is, the child) is the family head for the purposes of regulation 1.12 and because of the age and relationship requirements for an AH-102 visa, policy envisages few if any circumstances where an AH-102 visa main applicant would have family unit members (other than a dependent child) to whom secondary criteria would apply.

However, it is possible that a sibling could make a visa application at the same time and place. Refer to PAM3: Sch1 item 1108 – Child (Migrant) (Class AH).

Combined application

Clause 102.311 requires family unit members to apply with the main applicant: they cannot successfully apply separately for this visa. However, provided the main applicant has not yet been granted or refused a visa:

- regulation 2.08, by operation of law, adds newborn children to the application (the child is taken to have applied for a visa at birth) - refer to PAM3: Div2.2/reg2.08 and
- regulation 2.08A allows a dependent child to be added to the application at the AH-102 primary applicant's written request - refer to PAM3: Div2.2/reg2.08A.

In either situation, the relevant regulation states that the family member is taken to have applied with the main applicant, so the 102.311 criterion is still satisfied.

Sponsorship

For 102.312 and 102.322, refer to Sponsorship.

AH-102 visa grant

Where the applicant must be to be granted their visa

For 102.411, the visa applicant must be outside Australia when the visa is granted. Refer to PAM3: GenGuideA - All visas - Visa application procedures - Circumstances applicable to grant.

AH-102 visa conditions

First entry date

For 102.611, for policy and procedure on deciding the “first entry date”, refer to PAM3: Sch8/8504 - (First) Entry date condition.

Other conditions

For policy and procedure on the conditions listed in 102.612, refer to:

- for 8502 - PAM3: Sch8 - 8502 - Not to arrive before person specified in visa
- for 8515 - PAM3: Sch8 - 8515 - Must not marry or enter into de facto relationship.

Adoption visa matrix

The following matrix distinguishes the various types of adoptions and the action necessary for each type of adoption.

(Note: This table does not yet comply with web content accessibility requirements.)

	Expatriate (private)	**Non-Hague** (other bilateral prospective)	**Hague - Simple**	**Hague - Full and Permanent**	**Bilateral**	**Hague (third country)** (rarely occurs)
Australian STCAA involvement?	no	yes	yes	yes	yes	no
Must meet regulation?	102.211(2)	102.211(3) and 102.227A	102.211(4)(d)(i) and 102.228(2)	102.211(4)(d)(i) and 102.228(1)	102.211(4)(d)(ii) and 102.228(1)	102.211(5) and 102.228(1)
Evidence of child been allocated or	Overseas court documentation confirming	Australian STCAA documentation and	Australian STCAA documentation and	Australian STCAA	Australian STCAA	ACC.

adoption finalised	full and permanent adoption.	permission for child to leave for adoption in Australia.	permission for child to leave for adoption in Australia.	documentation and ACC.	documentation and ACC.	
Type of grant letter to be sent to child?	Expatriate	State/Territory	State/Territory	State/Territory	State/Territory	State/Territory
Adoption recognised in Australia?	no	no	no	yes	yes	yes
Child enters Australia under IGOC Act?	yes	yes	yes	no	no	no
Notification pro forma to be sent to Australian STCAA?	yes	no (Australian STCAA aware of process)	no (Australian STCAA aware of process)	no	no	no
Examples of overseas countries	All countries that have full and permanent adoption.	Fiji Hong Kong Korea Taiwan	India Philippines Thailand	Chile Colombia Costa Rica Lithuania Sri Lanka	South Korea Taiwan Ethiopia	Any Hague Adoption Convention countries where an adoption occurs between them.

Standard letters

Standard letter used by Australian STCAAs

Principal Migration Officer

Australian Embassy

Allocation of child for adoption under the Hague Convention on the protection of children and cooperation in respect of intercountry adoption

Dear Sir/Madam

I wish to advise that the following person/s have been allocated a child for adoption by {name and address of competent authority} in accordance with article 17(c) of the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption signed at The Hague on 29 May 1993.

Full name _____

Date of birth _____

Place of usual residence _____

Nationality _____

Full name _____

Date of birth _____

Place of usual residence _____

Nationality _____

The details of the child are as follows:

Full name _____

Date of birth _____

Place of usual residence _____

Nationality _____

Name and address of current guardian_____

Yours sincerely

_____ _____

[Signed and dated]

Departmental advice to Australian STCAA that health and other visa requirements are met/not met

For the pro forma standard letter, refer to ECS or TRIM.

Expatriate adoption grant letter

For the pro forma visa grant letter, refer to ECS or TRIM.

Notice of impending arrival of an Adoption visa holder

This template:

- is to be used with departmental letterhead and forwarded to the appropriate Australian state or territory adoption authority in the state or territory where the applicant intends residing
- is used for expatriate adoptions only, or for adoptions that are not yet finalised in Australia (such as simple Hague adoptions)
- has been removed from this instruction pending its reformatting for web content accessibility.

State/Territory adoption grant letter

For the pro forma visa grant letter, refer to ECS or TRIM.

END OF DOCUMENT

Subclass 117 (Orphan Relative) visa

Procedural Instruction

This procedural instruction (PI) provides guidance when assessing whether an applicant for an offshore Orphan Relative (Subclass 117) visa satisfies the legal requirements of the visa.

Related Framework Documents

- AAT review of Part 5-reviewable decisions - Guide for primary decision makers
- Citizenship Procedural Instruction 13 - Best interests of the child assessments
- Div1.2/reg1.03 - Assurance of support
- Div1.2/reg1.12 - member of the family unit
- Div1.2/reg1.14 - Orphan relative
- Div1.4 - Form 40 sponsors and sponsorship
- Div2.2A - Visa application charge
- GenGuideA - All visas - Visa application procedures
- GenGuideB - Non-humanitarian migration - Visa application and related procedures
- Reporting child-related incidents
- s5G - Relationships and family members -Best interests of minor children
- s5G - Relationships and family members - Custody (parental responsibility) for minor children
- s5G - Relationships and family members - Dependent family members
- s5G - Relationships and family members - Overview
- Sch4 - Public Interest Criteria
- Sch4/4005-4007 - The health requirement
- Sch4 - 4005-4007 - The health requirement [Policy Statement]
- Sch 8 -Visa conditions - “No further application” conditions
- Child Safeguarding Framework (BE-916)
- Best interest of the child (DM-5721)
- Independent observer for interviews involving minors (DM-6506)
- Reporting Child-related incidents (BE-928)
- Form 40CH (Sponsorship for a child to migrate to Australia)

Latest Changes

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11 February 2023

Contact

Family Migration Program Management Section

Email

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Table of Content

1. Purpose

This procedural instruction (PI) provides guidance when assessing whether an applicant for an offshore Orphan Relative (Subclass 117) visa satisfies the legal requirements of the visa.

Delegates are required to understand and apply the relevant law as set out in the *Migration Act 1958* (the Act) and the Regulations. To the extent that the Act allows for discretion, delegates should consider the Department's approved policy and procedures where relevant and appropriate in decision-making. This ensures that decision-making is consistent to the extent that it is appropriate, allowing arbitrary outcomes to be avoided.

However, policy and procedures do not have the force of law. When exercising powers or making decisions under legislation, delegates should give policy documents due weight, but they should not apply policy inflexibly, and instead consider the merits of each individual case. In order to make a fair, reasonable and lawful decision, it may be necessary to depart from the approved policy and procedures, depending on the facts of the particular case. Before departing from approved procedure, delegates should first discuss with their immediate manager, and escalate to the instruction owner only when required. In all cases, a note of the reasons for departing from the approved procedure must be added to the client record in the relevant departmental system.

2. Scope

This PI covers administering migration law in relation to Subclass 117 visa applications.

This PI is directed to officers of the Department, in particular, officers who are visa decision makers (as referred to in this PI) exercising powers delegated to them under the Act. Other persons reading this PI should keep in mind that they are not the primary audience and therefore should not utilise contact channels specified for departmental staff only.

3. Procedural Instruction

3.1. About the visa

This visa is a permanent visa that can be applied for by a person who is outside Australia, and who is claiming to be the orphan relative of an Australian citizen, Australian permanent resident, or settled eligible New Zealand citizen, hereafter referred to as the Australian relative. This visa supports the principle of family unity by enabling family reunion.

The Department is committed to being a child safe organisation, as per the recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse, conducted in Australia between 2013 and 2017. All departmental officers making decisions that involve or impact children are required to comply with the Department's Child Safeguarding Framework (BE-916) and its associated policies and procedures.

Delegates interviewing or interacting with children should consider the guidance provided in the Best Practice for Interacting with Children Procedural Instruction (BC-764) for information about:

- managing interactions with children
- considering children's best interests
- keeping families together where possible
- including children in decision-making by seeking their views
- child focused feedback and complaint management
- records management requirements for cases involving child sexual abuse
- children with increased vulnerability.

Additional consideration is required on a case by case basis in the following circumstances:

- suspected child abuse and neglect: further guidance can be found in the Reporting Child-related Incidents [Policy Statement] and Procedural Instruction (DM-5858)
- circumstances in which a child is being interviewed without an adult family member or legal guardian: further guidance can be found in the Independent Observer for Interviews involving Minors Policy Statement (DM-6506) and Procedural Instruction (DM-6505).

Delegates can seek further guidance by contacting Child Wellbeing Operations.

3.2. Requirements for making a valid application

Class AH application requirements

Although Schedule 1 item 1108 requirements for making a valid Class AH application are mostly self-explanatory, note the following.

Ineligibility

A Class AH application is not valid if the applicant was "adopted" in a country (and, if relevant, at a time) specified in an instrument made for item 1108(3)(c) purposes.

Applications by siblings

Item 1108(3)(b) enables a sibling who claims to be a member of the family unit of a Class AH primary applicant to be included in that Class AH application. However:

- the sibling must pay a first instalment of visa application charge (VAC) - see Div2.2A - Visa application charge

and

- if that sibling is subsequently assessed against Schedule 2 criteria as **not** being a member of the Class AH primary applicant's family unit, that sibling will **not** satisfy Schedule 2 criteria for visa grant (and there is usually no entitlement to a refund of the VAC paid).

A sibling who is applying for a Class AH visa but **not** claiming to be a member of the family unit of a Class AH primary applicant must complete and lodge a separate application form and pay the applicable VAC, whether or not the siblings are applying at the same time and place.

Briefly, a valid application for this visa can only be made where:

- the applicant is outside Australia when the application is lodged, and
- the application is made on the approved form, and
- the correct amount of visa application charge has been paid, and
- the application is lodged at the nearest immigration office or service delivery partner outside Australia.

3.3. Interview requirements

For interview requirements, see Div1.2/reg1.14 - Orphan relative.

Briefly, delegates should, where appropriate, interview the Australian relative and/or other parties who have a legitimate interest in the outcome of the visa application.

Delegates may also, if appropriate, interview the visa applicant who is the orphan relative, if the orphan relative is reasonably capable of understanding the nature of the application, or the applicant has siblings outside Australia who are neither orphan relative visa applicants nor Australian permanent residents.

Delegates should consider the guidance provided in the procedural instruction Best practice for interacting with children (BC-764) to assist in their engagement with minors.

3.4. Evidence collection

Due to the unusual and sometimes traumatic nature of the circumstances that applicants for this visa usually claim to have experienced, it is likely that some applicants will have limited official documentary evidence.

It is important that applicants demonstrate that they have made a genuine effort to obtain the required documentation. However, where other evidence is available to support the applicant's claims, officers should give due consideration to those evidence. The weight given would be dependent on how credible, relevant and significant the evidence is to the visa application.

For further guidance on what evidence can be considered, see Div1.2/reg1.14 - Orphan relative.

3.5. Eligibility of the main applicant

3.5.1 Must be an orphan relative of an Australian relative

The term ***Orphan relative*** is defined in regulation 1.14 of the Regulations. Briefly, an applicant for this visa is the orphan relative of another person who is their Australian relative if:

a) the applicant:

(i) has not turned 18; and
(ii) does not have a spouse or de facto partner; and
(iii) is a relative of that other person; and

b) the applicant cannot be cared for by either parent because each of them is either dead, permanently incapacitated or of unknown whereabouts; and

c) there is no compelling reason to believe that the grant of a visa would not be in the best interests of the applicant.

For guidance on how to assess the applicant under the definition of orphan relative see Div1.2/reg1.14 - Orphan relative.

The applicant may also be eligible for this visa if they are no longer an orphan relative only because they have been adopted by their Australian relative.

3.5.2. Must have an eligible sponsor

Pursuant to Schedule 2 to the Regulations, the orphan relative can be sponsored by:

a) the Australian relative, if the relative:

(i) has turned 18; and
(ii) is a settled Australian citizen, a settled Australian permanent resident, or a settled eligible New Zealand citizen; or

b) the spouse or de facto partner of the Australian relative, if the spouse or de facto partner:

(i) has turned 18; and
(ii) is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; and
(iii) cohabits with the Australian relative.

Regulation 1.20 of the Regulations sets out the sponsorship undertakings for sponsors for a permanent visa, which includes this visa. For more information about sponsorship requirement, see Div1.4 - Form 40 sponsors and sponsorship.

The approved sponsorship form for this visa is the form 40CH (Sponsorship for a child to migrate to Australia).

3.5.3. The sponsor must be settled

Regulation 1.03 of the Regulations defines ***settled***, in relation to an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, as meaning lawfully resident in Australia for a reasonable period. For guidance on the settled requirement, see Div1.4 - Form 40 sponsors and sponsorship.

3.5.4. Limitations on approval of sponsorship – reg 1.20KB

Pursuant to regulation 1.20KB of the Regulations, the sponsorship for an application where the applicant is under 18 at the time of application must be refused if the sponsor or their partner has an unresolved charge, or a conviction, for, a ***registrable offence***. However, the sponsorship may still be approved under certain circumstances.

For policy and procedure on regulation 1.20KB, including requesting police checks and procedures for referring relevant cases to the Visa Applicant Character Consideration Unit (VACCU), see Div1.4 - Form 40 sponsors and sponsorship.

3.5.5. Multiple visa applicants with the same sponsor

In cases where one person is sponsoring multiple visa applicants, delegates should ensure that they conduct a thorough assessment of the sponsor's claims against their ability to fulfil their undertaking contained in part O of Form 40CH, see Div1.4 - Form 40 sponsors and sponsorship.

The obligations are consistent with a sponsor's undertakings specified in regulation 1.20 to assist a visa applicant, to the extent necessary, financially and in relation to accommodation during the 2 years immediately following the applicant's first entry into Australia as the holder of this visa. Delegates should be mindful when assessing the sponsor that the extent of the sponsor's ability to meet their undertakings would have a direct impact on the visa applicant and place them in significant hardships and/or difficult circumstances should the visa be granted.

Where there are concerns around the sponsor's claims, delegates should contact the document owner.

3.6. Continued eligibility of the main applicant

3.6.1. Applicant continues to be an orphan relative of their Australian relative

The applicant must continue to meet subclause 117.211, which states that the applicant:

a) is an orphan relative of an Australian relative of the applicant; or
b) is not an orphan relative only because the applicant has been adopted by the Australian relative mentioned in paragraph (a).

The applicant can also meet this time of decision criteria provision where the applicant was under 18 at time of application, but has turned 18 during the processing of the application.

Section 104 of the Act, requires applicants to notify the Department, as soon as practicable, of changes in their circumstances that may lead to an answer to a question in their visa application form to be incorrect in the new circumstances. For the purposes of this visa, this requirement only applies to changes in circumstance after the application is lodged and before the applicant is immigration cleared.

3.6.2. Applicant continues to be sponsored by the same eligible sponsor

Briefly, the sponsor for the application must have been approved and the sponsorship must still be in force. There is no provision to allow for the sponsor to be changed once the sponsorship has been approved.

Prior to granting the visa, where appropriate, delegates should check with the applicant and the sponsor, in writing, where there has been any material changes in the circumstances of the orphan relative, their family or the Australian relative.

3.6.3. Applicant meets relevant public interest criteria

For guidance relating to the PICs applicable to the main applicant for this visa, see the corresponding Schedule 4 VM instructions.

3.7. Discretionary assurance of support

Delegates may consider requesting an assurance of support (AoS). For guidance on the AoS, see Div1.2/reg1.03 - Assurance of support.

Briefly, however:

- officers should request an AoS only if the applicant is likely to need any of the social security allowances recoverable under the AoS Scheme
- minors cannot access any social security allowances recoverable under the AoS scheme other than special benefit, which is available in emergencies.

3.8. If the applicant is still a minor

If the applicant is under 18 years of age at time of decision then, amongst other criteria, PIC 4017, which relates to the parental responsibility requirement, and PIC 4018, which relates to the best interests of the child requirement, must both be satisfied in relation to the main applicant.

For guidance on PICS 4015 to 4018, see:

- s5G - Relationships and family members - Custody (parental responsibility) for minor children and
- s5G - Relationships and family members -Best interests of minor children.

3.9. “One fails, all fail” criteria

The requirement to satisfy the public interest criteria is a “one fails, all fail:” primary criteria relating to ***members of the family unit*** of the main applicant for the visa.

When establishing who (if anyone) is a member of an applicant’s family unit, the main applicant (that is, the orphan relative) is the family head for the purposes of regulation 1.12. In practice, there would be few circumstances where a main applicant would have family unit members (other than a dependent child) to whom secondary criteria would apply.

The main applicant cannot be granted this visa unless all members of their family unit, whether additional applicants or not, satisfy certain PICs. This includes the criteria that members of the family unit who are additional applicants for the visa, and who are under 18 years of age at time of decision, meet PIC 4015 and 4016.

For guidance on the PICs applicable to this members of the family unit of the applicant, see the corresponding Schedule 4 VM instructions.

3.10. Eligibility of additional applicant

3.10.1 Relationship to main applicant at time of application

At time of application, each additional applicant must be a member of the family unit of the main applicant. Regulation 1.12 of the Regulations, provides a general rule delegates can use when assessing whether a person is a member of the family unit of another person.

As stated above, when establishing who (if anyone) is a member of an applicant’s family unit, the main applicant (that is, the orphan relative) is the ***family head*** for the purposes of regulation 1.12. In practice, there would be few circumstances where a main applicant would have family unit members (other than a dependent child) to whom secondary criteria would apply.)

For guidance on member of the family unit see:

- Div1.2/reg1.12 - Member of the family unit and
- s5G - Relationships and family members -Dependent family members.

3.10.2. Combined application

Members of the family unit of the main applicant are required to apply with the main applicant. They cannot successfully apply separately for this visa. However, provided the main applicant has not yet been granted or refused a visa:

- regulation 2.08, by operation of law, adds newborn children to the application (the child is taken to have applied for a visa at birth) and
- regulation 2.08A allows a dependent child to be added to the application at the main applicant’s written request

Note: Although regulation 2.08A also allows a partner to be added to an application, an applicant for this visa who has a partner cannot meet the regulation 1.14 definition of ***orphan relative***.

For guidance on regulation 2.08 and regulation 2.08A see s5G - Relationships and family members - Dependent family members.

In either of the above situations, the member of the family unit is taken to have applied for a visa of the same class as the main applicant; the application is taken to be combined with the main applicant, and therefore must satisfy the secondary criteria set out in Schedule 2 of the regulation for the visa.

- For information on visa application charges for combined applications, see Div2.2A - Visa application charge.

3.11. Continued eligibility of additional applicant

3.11.1 Relationship to main applicant at time of decision

The additional applicant must continue to be a member of the family unit of the main applicant at time of decision.

3.11.2. Public interest criteria

For guidance relating to the PICs applicable to an additional applicant for this visa, see the corresponding Schedule 4 PAM3/VM instructions.

3.11.3. Assurance of support

Please see part 3.7 of this Instruction for Discretionary assurance of support.

3.11.4. Main applicant must be granted the visa first

Clause 117.321 precludes member of the family unit of the main applicant from being granted their visa/s unless/until the main applicant has first been granted *their* visa.

3.12. Subclass 117 grant

3.12.1 Where the applicant must be to be granted their visa

Applicants must be outside Australia when the visa is granted.

For guidance, see GenGuideA - All visas - Visa application procedures - Circumstances applicable to grant.

3.13 Visa conditions

3.13.1 First entry date

For guidance on deciding the “first entry date” in GenGuideB - Non-humanitarian migration - Visa application and related procedures - Granting visas.

3.13.2 Other conditions

For guidance on conditions, 8502 (not to arrive before person specified in visa) and 8515 (must not marry or enter into de facto relationship) listed in 117.612, see:

- s5G - Relationships and family members – Dependent family members – Condition 8502 and
- s5G - Relationships and family members – Dependent family members – Condition 8515

4. Accountability and Responsibility

Role	Description
Delegates delegated as decision makers including those in the overseas network	Responsible for implementing and applying this instruction to their decision making as part of making lawful, fair and reasonable decisions - For further information on the Instrument of Delegation refer to: • Minister – Delegations and Authorisations Instrument No. 4 of 2018 (Immigration and Citizenship Services Group) (MHA No. 4 of 2018) - for migration applications.
Supervisors and managers	Responsible for ensuring decision makers are: • applying the policy set in this instruction • exercising their powers appropriately.
Any delegate providing advice on AAT matters	Responsible for providing accurate and appropriate advice in accordance with this Instruction, as it relates to matters before the AAT.
Any delegate providing training to stakeholders	Responsible for ensuring that training content is accurate and is in accordance with this Instruction and related legislation.
Family Migration Program Management (FMPM) section	Responsible for providing accurate and appropriate advice in accordance with this instruction and related legislation.
Director – FMPM	Accountable for ensuring that the information contained in this Instruction is up to date, accurate and meets stakeholder requirements.
Assistant Secretary – SFVP branch	Accountable for the quality and delivery of the policy and programs owned by this branch. Also responsible for ensuring this instruction is fit for purpose and reviewing its implementation.

5. Version Control

Version number	Date of issue	Author(s)	Brief description of change
1	27/01/2017	Megan Scott	Creation of PI – transfer of content from PAM3
1.1	15/12/2017	Samantha Kearns	Review of comments received as part of cons

1.2	16/01/2019	Zamir Hameed PPCF Legal Advice Section	Review of draft PI and provision of legal clear suggested changes being implemented
1.3	24/07/2019	Christine Thomson FMPM Section	Updated to most recent template, and to incor suggestions from LOHD
1.4	02/01/2020	Annette Fusitua FMPM Section	Incorporate comments from PPCF and final re

Attachment A – Definitions

Term	**Acronym (if applicable)**	**Definition**
Act	N/A	The *Migration Act 1958*
Administrative Appeals Tribunal	AAT	The tribunal responsible for independent merits review of a wide range of administrative decisions made by the Australian Government.
Department, the	N/A	The Department of Home Affairs
Family Migration Program Management	FMPM	FMPM is a section within SFVP branch which primarily program manages family stream migration.
Public Interest Criteria	PIC	As described in Schedule 4 of the Regulations
Regulation (Reg)	N/A	The *Migration Regulations 1994*
Relative	N/A	A brother or sister, grandparent, grandchild, aunt, uncle, niece or nephew, or a step-brother or step-sister, step-grandparent, step-grandchild, step-aunt, step-uncle, step-niece or step-nephew
Schedule 1	Sch1	Schedule 1 of the *Migration Regulations 1994*
Schedule 2	Sch2	Schedule 2 of the *Migration Regulations 1994*
Sponsorship	N/A	Part of a visa process for a sponsored visa Subclass, where the applicant applies for approval as a sponsor
TRIM	TRIM	Departmental records management systems

Visa Application Charge	VAC	The fee for lodging a visa application

Attachment B – Assurance and Control Matrix

1.1. Powers and Obligations

Legislative Provision			Is this a delegable power?	If delegab instrumer
Legislation	**Reference (e.g. section)**	**Provision**		
Migration Act 1958	s65	Decision to grant or refuse to grant visa	Yes	Minister of Instrumen

1.2. Controls and Assurance

Related Policy	• Sch4 - 4005-4007 - The health requirement [Policy Statement] • Child Safeguarding Framework (BE-916) • Best interest of the child (DM-5721) • Reporting Child-related incidents (BE-928) • Independent observer for interviews involving minors (DM-6506)
Procedures / Supporting Materials	Related instructions: • AAT review of Part 5-reviewable decisions - Guide for primary decision makers • Citizenship Procedural Instruction 13 - Best interests of the child assessments • Div1.2/reg1.03 - Assurance of support • Div1.2/reg1.12 - member of the family unit • Div1.2/reg1.14 - Orphan relative • Div1.4 - Form 40 sponsors and sponsorship • Div2.2A - Visa application charge • GenGuideA - All visas - Visa application procedures • GenGuideB - Non-humanitarian migration - Visa application and related procedures • Reporting child-related incidents • s5G - Relationships and family members -Best interests of minor children • s5G - Relationships and family members - Custody (parental responsibility) for minor children • s5G - Relationships and family members - Dependent family members • s5G - Relationships and family members - Overview • Sch4 - Public Interest Criteria • Sch4/4001 - The PIC 4001 character requirement • Sch4/4005-4007 - The health requirement • Sch 8 -Visa conditions - “No further application” conditions • Independent observer for interviews involving minors (DM-6506) • Form 40CH (Sponsorship for a child to migrate to Australia)
Training/Certification or Accreditation	Migration (and Citizenship) training applicable to all delegates undertaking duties under the *Migration Act 1958* and *Migration Regulations 1994* (as well as *Australian Citizenship Act 2007*).

Other required job role requirements	None required
Other support mechanisms (eg who can provide further assistance in relation to any aspects of this instruction)	Decision makers should raise any questions with their supervisors/managers in the first instance. Internal enquiries should be forwarded to FMPM section - family.program.management@homeaffairs.gov.au
Escalation arrangements	Escalation, if required, should be to Director, FMPM section - family.program.management@homeaffairs.gov.au
Recordkeeping (eg system based facilities to record decisions)	ICSE, IRIS, TRIM,CCMD, CSP
Control Frameworks (please refer to a specific document outlining QA or QC arrangements)	It is anticipated that the revised quality management framework, a key element of the Visa and Citizenship Operating Model (VCOM2020), will be implemented in the 2019-20 program year. This will inform enhanced quality approaches across Divisions and Branches. Migration and Citizenship have been identified as one of the first caseloads to be incorporated into the revised quality management framework.
Job Vocational Framework Role	Program Implementation Vocation – Program Delivery Support Job Family

Attachment C – Consultation

1.1. Internal Consultation

- Family Policy
- Assurance
- Child Wellbeing Branch
- Privacy and Information Disclosure Section
- Child and Other Family Processing Centre Perth

[Sch2Visa837] Subclass 837 (Orphan Relative) visa

Procedural Instruction

This procedural instruction (PI) provides guidance when assessing whether an applicant for an onshore Orphan Relative (Subclass 837) visa satisfies the legal requirements of the visa.

Related Framework Documents

- GenGuideB - Non-humanitarian migration - Visa application and related procedures
- Div1.2/reg1.14 - Orphan relative
- GenGuideA - All visas - Visa application procedures - Circumstances applicable to grant
- Div1.2/reg1.12 - member of the family unit
- Div1.2/reg1.03 - Assurance of support
- Div1.4 - Form 40 sponsors and sponsorship
- s5G - Relationships and family members - Overview
- s5G - Relationships and family members - best interests of minor children
- s5G - Relationships and family members - Dependent family members
- s5G - Relationships and family members - Custody (parental responsibility) and best interests of minor children
- Sch4 - 4005-4007 - The health requirement
- Sch3 - Additional criteria applicable to unlawful non-citizens and certain bridging visa holders
- Sch4 – Public Interest Criteria
- Div2.2A - Visa application charge
- Guiding principles - Treatment of children
- Reporting child-related incidents (DM-5858)
- Form 40CH (Sponsorship for a child to migrate to Australia)
- Child safeguarding framework [Policy Statement](BE-916)
- Independent observer for interviews involving minors [Policy Statement](DM-6505)

Latest Changes

Amended 29 March 2020

Mandatory Review Date

11 February 2023

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Family Migration Program Management Section

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Document ID

VM-3075

Table of Contents

1. Purpose

This procedural instruction (PI) provides guidance when assessing whether an applicant for an onshore Orphan Relative (Subclass 837) visa satisfies the legal requirements of the visa.

- Delegates are required to understand and apply the relevant law as set out in the *Migration Act 1958* (the Act) and the Regulations. To the extent that the Act allows for discretion, delegates should consider the Department's approved policy and procedures where relevant and appropriate in decision making. This ensures that decision-making is consistent to the extent that it is appropriate, allowing arbitrary outcomes to be avoided.

However, policy and procedures do not have the force of law. When exercising powers or making decisions under legislation, delegates should give policy documents due weight, but they should not apply policy inflexibly, and instead consider the merits of each individual case. In order to make a fair, reasonable and lawful decision, it may be necessary to depart from the approved policy and procedures, depending on the facts of the particular case. Before departing from approved procedure, delegates should first discuss with their immediate manager, and escalate to the instruction owner only when required. In all cases, a note of the reasons for departing from the approved procedure must be added to the client record in the relevant departmental system.

2. Scope

This PI covers administering migration law in relation to Subclass 837 visa applications.

This PI is directed to officers of the Department, in particular, officers who are visa decision makers (as referred to in this PI) exercising powers delegated to them under the Act. Other persons reading this PI should keep in mind that they are not the primary audience and therefore should not utilise contact channels specified for departmental staff only.

3. Procedural Instruction

3.1 About the visa

This visa is a permanent visa that can be applied for by a person who is in Australia, and who is claiming to be the orphan relative of an Australian citizen, Australian permanent resident or settled eligible New Zealand citizen, hereafter referred to as the Australian relative. This visa supports the principle of family unity by enabling family reunion.

The Department is committed to being a child safe organisation, as per the recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse, conducted in Australia between 2013 and 2017. All departmental officers making decisions that involve or impact children are required to comply with the Department's Child Safeguarding Framework (BE-916) and its associated policies and procedures.

Delegates interviewing or interacting with children should consider the guidance provided in the Guiding principles - Treatment of children Procedural Instruction for information about:

- managing interactions with children
- considering children's best interests
- keeping families together where possible
- including children in decision-making by seeking their views
- child focused feedback and complaint management
- records management requirements for cases involving child sexual abuse
- children with increased vulnerability.

Additional consideration is required on a case by case basis in the following circumstances:

- suspected child abuse and neglect: further guidance can be found in the Reporting Child-related Incidents Policy Statement and Procedural Instruction (DM-5858)
- circumstances in which a child is being interviewed without an adult family member or legal guardian: further guidance can be found in the Independent Observer for Interviews involving Minors Policy Statement (DM-6506) and Procedural Instruction (DM-6505).

Delegates can seek further guidance by contacting Child Wellbeing Operations.

3.2 Requirements for making a valid application

Class BT application requirements

Although Schedule 1 item 1108A requirements for making a valid Class BT application are mostly self-explanatory, note the following.

Ineligibility

A Class BT application is not valid if the applicant was "adopted" in a country (and, if relevant, at a time) specified in an instrument made for item 1108A(3)(f) purposes.

Applications by siblings

Item 1108A(3)(c)(i) enables a sibling who claims to be a member of the family unit of a Class BT primary applicant to be included in that Class BT application. However:

- the sibling must pay a first instalment of visa application charge (VAC) - see Div2.2A - Visa application charge

and

- if that sibling is subsequently assessed against Schedule 2 criteria as **not** being a member of the Class BT primary applicant's family unit, that sibling will not satisfy Schedule 2 criteria for visa grant (and there is usually no entitlement to a refund of the VAC paid).

A sibling who is applying for a Class BT visa but **not** claiming to be a member of the family unit of a Class BT primary applicant must complete and lodge a separate application form and pay the applicable VAC, whether or not the siblings are applying at the same time and place.

3.3. Application by person who falls within s48

Under item 1108A(3)(e), if a person in Australia has had a visa refused (or cancelled) and does not hold a substantive visa (in other words, falls within s48 of the Act), to make a valid Class BT application they must:

- be under 25 years old, unless claiming to be incapacitated for work due to total or partial loss of bodily or mental functions (1108A(3)(e)(i)) and
- provide a form 40CH (Sponsorship for a child to migrate to Australia) that has been completed and signed by an Australian citizen, Australian permanent resident or eligible New Zealand citizen who claims to be the parent of the applicant (Schedule 1 item 1108A(3)(e)(ii)).

If claiming to be incapacitated for work due to total or partial loss of bodily or mental functions, the applicant must provide evidence from an Australian registered medical practitioner to support the claim (1108A(3)(e)(iii)).

3.4. Interview requirements

For interview requirements, see Div1.2/reg1.14 – Orphan relative.

Briefly, delegates should, where appropriate, interview the Australian relative and/or other parties who have a legitimate interest in the outcome of the visa application.

Generally, officers need not interview the child. However, it may be appropriate to do so if:

- the child is reasonably capable of understanding the nature of the application or;
- the child has siblings outside Australia, that is, siblings who are neither orphan relative visa applicants nor Australian permanent residents

Delegates should consider the guidance provided in the procedural instruction Best practice for interacting with children (BC-764) to assist in their engagement with minors.

3.5 Evidence collection

Due to the unusual and sometimes traumatic nature of the circumstances that applicants for this visa usually claim to have experienced, it is likely that some applicants will have limited official documentary evidence.

It is important that applicants demonstrate that they have made a genuine effort to obtain the required documentation. However, where other evidence is available to support the applicant's claims, officers should give due consideration to this evidence. The weight given would be dependent on how credible, relevant and significant the evidence is to the visa application.

For further guidance on what evidence can be considered see Div1.2/reg1.14 – Orphan relative.

3.6 Applications processed by COFPC, Perth

All Orphan Relative visa applications are posted or couriered to the address specified under the relevant legislative instrument.

3.7. Eligibility of the main applicant

3.7.1 Must be an orphan relative of an Australian relative

The term Orphan relative is defined in regulation 1.14 of the Regulations. Briefly, an applicant for this visa is the orphan relative of another person who is their Australian relative if:

a) the applicant:

(i) has not turned 18, and
(ii) does not have a spouse or de facto partner, and
(iii) is a relative of that other person, and

b) the applicant cannot be cared for by either parent because each of them is either dead, permanently incapacitated or of unknown whereabouts; and
c) there is no compelling reason to believe that the grant of a visa would not be in the best interests of the applicant.

For guidance on how to assess the applicant under the definition of orphan relative, see Div1.2/reg1.14 – Orphan relative.

The applicant may also be eligible for this visa if they are no longer an orphan relative only because they have been adopted by their Australian relative.

3.7.2 Current immigration status

If a transit visa holder

Under 837.212(a) and 837.212(b)(ii), TX-771 Transit visa holders cannot be subclass 837 main applicants.

If not a substantive visa holder

For 837.212(b), Schedule 3 criteria apply to subclass 837 main applicants who do not hold a substantive visas. See Sch3 - Additional criteria applicable to unlawful non-citizens and certain bridging visa holders.

3.7.3 Must have an eligible sponsor

Pursuant to Schedule 2 to the Regulations, the orphan relative can be sponsored by:

a) the Australian relative, if the relative:

(i) has turned 18, and
(ii) is a settled Australian citizen, a settled Australian permanent resident or settled eligible New Zealand citizen; or

b) the spouse or de facto partner of the Australian relative, if the spouse or de facto partner:

(i) has turned 18; and
(ii) is a settled Australian citizen, a settled Australian permanent resident or settled eligible New Zealand citizen; and
(iii) cohabits with the Australian relative.

Regulation 1.20 of the Regulations sets out the sponsorship undertakings for sponsors for a permanent visa, which includes this visa. For more information about sponsorship, see Div1.4 - Form 40 sponsors and sponsorship.

The approved sponsorship form for this visa is the form 40CH (Sponsorship for a child to migrate to Australia).

3.7.4 The sponsor must be settled

Regulation 1.03 of the Regulations defines settled, in relation to an Australian citizen, An Australian permanent resident or an eligible New Zealand citizen, as meaning lawfully resident in Australia for a reasonable period. For guidance on the settled requirement, see Div1.4 - Form 40 sponsors and sponsorship.

3.7.5 Limitations on approval of sponsorship – reg 1.20KB

Pursuant to regulation 1.20KB of the Regulations, the sponsorship for an application where the applicant is under 18 at the time of application must be refused if the sponsor or their partner has an unresolved charge, or a conviction, for a ***registrable offence.*** However, the sponsorship may still be approved under certain circumstances.

For policy and procedure on regulation 1.20KB, including requesting police checks and procedures for referring relevant cases to the Visa Applicant Character Consideration Unit (VACCU), see Div1.4 - Form 40 sponsors and sponsorship.

3.7.6 Multiple visa applicants with the same sponsor

In cases where one person is sponsoring multiple visa applicants, delegates should ensure that they conduct a thorough assessment of the sponsor's claims against their ability to fulfil their undertaking contained in part O of form 40CH, see Div1.4 - Form 40 sponsors and sponsorship.

The obligations are consistent with a sponsor's undertakings specified in regulation 1.20 to assist a visa applicant, to the extent necessary, financially and in relation to accommodation during the 2 years immediately following the applicant's first entry into Australia as the holder of this visa. Delegates should be mindful when assessing the sponsor that the extent of the sponsor's ability to meet their undertakings would have a direct impact on the visa applicant and place them in significant hardships and/or difficult circumstances should the visa be granted.

Where there are concerns around the sponsor's claims, delegates should contact the policy owner.

3.8. Continued eligibility of the main applicant

3.8.1 Applicant continues to be an orphan relative of their Australian relative

The applicant must continue to meet subclause 837.213, which states that the applicant:

1. is an orphan relative of an Australian relative of the applicant; or
2. is not an orphan relative only because the applicant has been adopted by the Australian relative mentioned in paragraph (a).

The applicant can also meet this time of decision criteria provision where the applicant was under 18 at time of application, but has turned 18 during the processing of the application.

Section 104 of the Act, requires applicants to notify the Department, as soon as practicable, of changes in their circumstances that may lead to an answer to a question in their visa application form to be incorrect in the new circumstances. For the purposes of this visa, this requirement only applies to changes in circumstance after the application is lodged and before the applicant is immigration cleared.

3.8.2 Applicant continues to be sponsored by the same eligible sponsor

Briefly, the sponsor for the application must have been approved and the sponsorship must still be in force. There is no provision to allow for the sponsor to be changed once the sponsorship has been approved.

Prior to granting the visa, where appropriate, delegates should check with the applicant and the sponsor, in writing, where there has been any material changes in the circumstances of the orphan relative, their family or the Australian relative.

3.9. Public interest criteria

For guidance relating to the PICs applicable to the main applicant for this visa, see the corresponding Schedule 4 VM instructions.

3.10. Discretionary assurance of support

Delegates may consider requesting an assurance of support (AoS). For guidance on the AoS, see Div1.2/reg1.03 - Assurance of support.

Briefly, however:

- officers should request an AoS only if the applicant is likely to need any of the social security allowances recoverable under the AoS Scheme
- minors cannot access any social security allowances recoverable under the AoS scheme other than special benefit, which is available in emergencies.

3.11. If the applicant is still a minor

If the applicant is under 18 years of age at time of decision then, amongst other criteria, PIC 4017, which relates to the parental responsibility requirement, and PIC 4018, which relates to the best interests of the child requirement, must both be satisfied in relation to the main applicant.

For guidance on PICS 4015 to 4018, see:

- s5G - Relationships and family members - Parental responsibility for minor children and
- s5G - Relationships and family members – Best interests of minor children.

3.12. “One fails, all fail” criteria

The requirement to satisfy the public interest criteria is a “one fails, all fail:” primary criteria relating to ***member***s ***of the family unit*** of the main applicant for the visa.

When establishing who (if anyone) is a member of an applicant’s family unit, the main applicant (that is, the orphan relative) is the family head for the purposes of regulation 1.12. In practice, there would be few circumstances where a main applicant would have family unit members (other than a dependent child) to whom secondary criteria would apply.

The main applicant cannot be granted this visa unless all members of their family unit, whether additional applicants or not, satisfy certain PICs. This includes the criteria that members of the family unit who are additional applicants for the visa, and who are under 18 years of age at time of decision, meet PIC 4015 and 4016.

For guidance on the PICs applicable to this members of the family unit of the applicant, see the corresponding Schedule 4 VM instructions.

3.13. Eligibility of additional applicant

3.13.1 Relationship to main applicant at time of application

At time of application, each additional applicant must be a ***member of the familyunit*** of the main applicant. Regulation 1.12 of the Regulations, provides a general rule delegates can use when assessing whether a person is a member of the family unit of another person.

As stated above, when establishing who (if anyone) is a member of an applicant's family unit, the main applicant (that is, the orphan relative) is the ***family head*** for the purposes of regulation 1.12. In practice, there would be few circumstances where a main applicant would have family unit members (other than a dependent child) to whom secondary criteria would apply.)

For guidance on member of the family unit see:

- regulation 1.12 - Member of the family unit and
- s5G - Relationships and family members – Dependent family members.

3.13.2 Combined application

Members of the family unit of the main applicant are required to apply with the main applicant. They cannot apply separately for this visa. However, provided the main applicant has not yet been granted or refused a visa:

- regulation 2.08, by operation of law, adds newborn children to the application (the child is taken to have applied for a visa at birth) and
- regulation 2.08A allows a dependent child to be added to the application at the main applicant's written request.

Note: Although regulation 2.08A also allows a partner to be added to an application, an applicant for this visa who has a partner cannot meet the regulation 1.14 definition of ***orphan relative***.

For guidance on regulation 2.08 and regulation 2.08A see s5G - Relationships and family members – Dependent family members.

In either of the above situations, the member of the family unit is taken to have applied for a visa of the same class as the main applicant; the application is taken to be combined with the main applicant, and therefore must satisfy the secondary criteria set out in Schedule 2 of the regulation for the visa.

- For information on visa application charges for combined applications, see Div2.2A - Visa application charge.

3.14. Continued eligibility of additional applicant

3.14.1 Relationship to main applicant at time of decision

The additional applicant must continue to be a member of the family unit of the main applicant at time of decision.

3.14.2 Public interest criteria

For guidance relating to the PICs applicable to an additional applicant for this visa, see the corresponding Schedule 4 PAM3/VM instructions.

3.14.3 Assurance of support

Please see part 3.10 of this PI Discretionary assurance of support.

3.14.4 Main applicant must be granted the visa first

Clause 837.321 precludes member of the family unit of the main applicant from being granted their visa/s unless/until the main applicant has first been granted *their* visa.

3.15. Subclass 837 grant

3.15.1 Where the applicant must be, to be granted their visa

Applicants must be inside Australia, but not in immigration clearance, when the visa is granted.

For guidance, see GenGuideA - All visas - Visa application procedures - Circumstances applicable to grant.

4. Accountability and responsibilities

Role	Description
Delegates delegated as delegates including those in the overseas network	Responsible for implementing and applying this instruction to their decision making as part of making lawful, fair and reasonable decisions - For further information on the Instrument of Delegation refer to: Minister – Delegations and Authorisations Instrument No. 4 of 2018 (Immigration and Citizenship Services Group) (MHA No. 4 of 2018) - for migration applications.
Supervisors and managers	Responsible for ensuring decision makers are: • applying the policy set in this instruction • exercising their powers appropriately.
Any delegate providing advice on AAT matters	Responsible for providing accurate and appropriate advice in accordance with this instruction as it relates to matters before the AAT.
Any delegate providing training to stakeholders	Responsible for ensuring that training content is accurate and is in accordance with this instruction and related legislation
Family Migration Program Management (FMPM) section	Responsible for providing accurate and appropriate advice in accordance with this instruction and related legislation.
Director – FMPM	Accountable for ensuring that the information contained in this instruction is up to date, accurate and meets stakeholder requirements.
Assistant Secretary – SFVP branch	Accountable for the quality and delivery of the policy and programs owned by this branch. Also responsible for ensuring this instruction is fit for purpose and reviewing its implementation.

Attachment A – Definitions

Term	Acronym (if applicable)	Definition
Act	N/A	The Migration Act 1958
Administrative Appeals Tribunal	AAT	The tribunal responsible for independent merits review of a wide range of administrative decisions made by the Australian Government.
Department, the	N/A	The Department of Home Affairs
Family Migration Program Management	FMPM	FMPM is a section within SFVP branch which primarily program manages family stream migration.
Public Interest Criteria	PIC	As described in Schedule 4 of the Regulations
Regulation (Reg)	N/A	The Migration Regulations 1994
Relative	N/A	A brother or sister, grandparent, grandchild, aunt, uncle, niece or nephew, or a step-brother or step-sister, step-grandparent, step-grandchild, step-aunt, step-uncle, step-niece or step-nephew
Schedule 1	Sch1	Schedule 1 of the *Migration Regulations 1994*
Schedule 2	Sch2	Schedule 2 of the *Migration Regulations 1994*
Sponsorship	N/A	Part of a visa process for a sponsored visa Subclass, where the applicant applies for approval as a *sponsor*
TRIM	TRIM	Departmental records management systems
Visa Application Charge	VAC	The fee for lodging a visa application

Attachment B – Assurance and Control Matrix

1.1 Powers and Obligations

Legislative Provision			Is this a delegable power?	If delegable, list the relevant instruments of delegation
Legislation	**Reference (e.g. section)**	**Provision**		
Migration Act 1958	s65	Decision to grant or refuse to grant visa	Yes	Minister of Home Affairs Instrument LIN 19/266

1.2 Controls and Assurance

Related Policy	• Child safeguarding framework [Policy Statement](BE-916) • Best interest of the child [Policy Statement](DM-5721) • Independent observer for interviews involving minors [Policy Statement](DM-6505)
Procedures / Supporting Materials	• GenGuideB - Non-humanitarian migration - Visa application and related procedures • Div1.2/reg1.14 - Orphan relative • GenGuideA - All visas - Visa application procedures - Circumstances applicable to grant • Div1.2/reg1.12 - member of the family unit • Div1.2/reg1.03 - Assurance of support • Div1.4 - Form 40 sponsors and sponsorship • s5G - Relationships and family members - Overview • s5G - Relationships and family members - best interests of minor children • s5G - Relationships and family members - Dependent family members • s5G - Relationships and family members - Custody (parental responsibility) and best interests of minor children • Sch4 - 4005-4007 - The health requirement • Sch3 - Additional criteria applicable to unlawful non-citizens and certain bridging visa holders • Sch4 – Public Interest Criteria • Div2.2A - Visa application charge • Guiding principles - Treatment of children • Form 40CH (Sponsorship for a child to migrate to Australia) • Reporting child-related incidents (DM-5858)

Training/Certification or Accreditation	Migration (and Citizenship) training applicable to all delegates undertaking duties under the *Migration Act 1958* and *Migration Regulations 1994* (as well as *Australian Citizenship Act 2007*).
Other required job role requirements	None required
Other support mechanisms (eg who can provide further assistance in relation to any aspects of this instruction)	Decision makers should raise any questions with their supervisors/managers in the first instance. Internal enquiries should be forwarded to FMPM section - family.program.management@homeaffairs.gov.au
Escalation arrangements	Escalation, if required, should be to Director, FMPM section - family.program.management@homeaffairs.gov.au
Recordkeeping (eg system based facilities to record decisions)	ICSE, IRIS, TRIM,CCMD, CSP
Control Frameworks (please refer to a specific document outlining QA or QC arrangements)	It is anticipated that the revised quality management framework, a key element of the ***Visa and Citizenship Operating Model (VCOM2020)***, will be implemented in the 2019-20 program year. This will inform enhanced quality approaches across Divisions and Branches. Migration and Citizenship have been identified as one of the first caseloads to be incorporated into the revised quality management framework.
Job Vocational Framework Role	Program Implementation Vocation – Program Delivery Support Job Family

Attachment C – Consultation

1.1. Internal Consultation

- Family Policy
- Assurance
- Child Wellbeing Branch
- Privacy and Information Disclosure Section
- Child and Other Family Processing Centre Perth

Subclass 445 (Dependent Child) visa

Procedural Instruction

The purpose of this procedural instruction (PI) is to identify the legal requirements and sets out related policy and procedures that apply to the Subclass 445 (Dependent Child) visa (the Subclass 445 visa).

Related Framework Document

- s5G – Relationships and family members – Custody (parental responsibility) for minor children
- s5G - Relationships and family members - Best interests of minor children
- s5G - Relationships and family members - Dependent family members
- Foreign policy travel sanctions and autonomous travel sanctions
- Bridging E visas
- Div1.4 - Form 40 sponsorship - Protection of children - Sponsors of concern
- Div 2.2A of the Migration Regulations 1994 – Visa Application Charge
- Sch2 Bridging visas - Visa application and related procedures
- Sch2 Visa 101 - Child
- Sch2 Visa 802 - Child
- Sch4 - Public interest criteria [Supporting Material]
- Sch4 - 4004 - Debts to the Commonwealth
- Sch4/4005-4007 - The Health Requirement
- Public Interest Criterion (PIC) 4019 – The Values Statement
- Public Interest Criterion 4020 – The Integrity PIC
- Sch4/4021 - The passport requirement [Policy Statement]
- Child Safeguarding Framework [Policy Statement]
- Reporting Child-related Incidents [Policy Statement]
- GenGuideA - All visas - Visa application procedures
- Penal Checking Handbook (VM-1002);
- The Security Checking Handbook (BE-1716);
- Proliferation of weapons of mass destruction – Risk assessment procedures (BE-1723);
- Independent Observer for Interviews involving Minors (DM-6505);
- Filming and Photographing Children [Supporting Material](DM-896);
- Independent Observer for Interviews involving Minors [Policy Statement](DM-6506);
- Reporting Child-related Incidents (DM-5858)
- Best Interest of the Child [Policy Statement](DM-5721)
- Best Practice for Interacting with Children (BC-764);

Latest Changes

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Mandatory Review Date

21 May 2024

Contact

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Document ID

VM-3071

Table of Contents

1. Purpose

The purpose of this procedural instruction (PI) is to identify the legal requirements and sets out related policy and procedures that apply to the Subclass 445 (Dependent Child) visa (the Subclass 445 visa).

Officers are required to understand and apply the relevant law as set out in the *Migration Act 1958* (the Act) and the *Migration Regulations 1994* (the Regulations). Many of the requirements in the Act are expressed in objective terms and do not allow any discretion for officers. To the extent that the Act and the Regulations allow for discretion, officers must consider the Department of Home Affair's (the Department's) approved policy and procedures where relevant and appropriate in decision-making. This ensures that decision-making is consistent to the extent that it is appropriate, allowing arbitrary outcomes to be avoided.

However, policy and procedures do not have the force of law. When exercising powers or making decisions under legislation, officers must give policy documents due weight, but they must not apply policy inflexibly and instead consider the merits of each individual case. In order to make a fair, reasonable and lawful decision, it may be necessary to depart from the approved policy and procedures depending on the facts of the particular case. Before departing from approved policy and procedure, officers must first discuss with their immediate manager, and escalate to the instruction owner only when required. In all cases, a note of the reasons for departing from approved policy and procedure must be added to the client record in the relevant visa processing system.

2. Scope

This PI sets out the considerations for officers making Subclass 445 visa application decisions. It applies to all officers as defined in subsection 5(1) of the Act and, in particular, officers that are visa decision makers exercising powers delegated to them under the Act. Other persons reading this PI must keep in mind that they are not the primary audience and therefore must not utilise contact channels specified for departmental officers only.

3. Procedural Instruction

3.1 Child Safeguarding Considerations

Departmental officers making decisions that affect children and their families are reminded that they are required to comply with the Department's Child Safeguarding Framework [Policy Statement] and the following associated policies and procedures:

- Best Interest of the Child [Policy Statement] (DM-5721);
- Best Practice for Interacting with Children (BC-764);
- Reporting Child-related Incidents [Policy Statement]
- Reporting Child-related Incidents (DM-5858);
- Independent Observer for Interviews involving Minors [Policy Statement](DM-6506);
- Independent Observer for Interviews involving Minors (DM-6505); and
- Filming and Photographing Children [Supporting Material] (DM-896).

If officers identify a child in Australia at risk of harm while processing a visa application, the Reporting Child-related Incidents - PI (DM-5858) should be reviewed to determine whether referral to a policing authority and state or territory child welfare authority is required.

Officers can seek further guidance by contacting Child Wellbeing Operations Section.

3.2 About the Dependent Child visa

The Subclass 445 visa is a temporary visa that can be applied for and granted both in and outside Australia (depending on where the application is made). It is intended for the dependent child of a ***visa-holding parent*** - see the clause 445.1 Interpretation - in circumstances where:

- the child was *not* included on the parent's application for a:

  - Subclass 309 (Partner (Provisional)) visa or
  - Subclass 820 (Partner) visa and
- that visa has already been granted to, and is still held by, the parent; and
- a decision has not yet been made on the parent's permanent visa application:
  - Subclass 100 (Partner) visa; or
  - Subclass 801 (Partner) visa.

Subclass 445 visa applicants will need to apply to be added to their parent's permanent Partner visa application *after* the Subclass 445 visa is granted.

3.2.1 Liaison with the permanent Partner visa processing office

If a parent intends to lodge a Subclass 445 visa application on behalf of their child

If an officer becomes aware that a parent is considering making a Subclass 445 visa application on behalf of their child, the following essential steps must be undertaken to ensure that the office handling the visa holding parent's permanent Partner visa application is aware of the child's application:

- advise the parent to contact the office in Australia processing the visa holding parent's permanent Partner visa application to inform them of their intention to lodge a Subclass 445 visa application on behalf of their child; and
- inform the parent that as soon their child is granted their Subclass 445 visa they will need to complete and lodge *Form 1002- Application by a subclass 445 dependent child for a permanent partner visa* in order for their child to be added to the visa holding parent's permanent Partner visa application.

3.2.2 If an application for a Subclass 445 visa has been lodged for the child

If a Subclass 445 visa application has already been made the officer must:

- check that the decision bar has been initiated in the parent's permanent Partner visa application ICSE permission request, and if it does not have one create one. Open the corresponding permanent Partner visa application permission request and add an event "Decision Bar- 445 Appln" including a note with details of the child and their application (for example, Subclass 445 Request ID); and
- place a system case note on the Subclass 445 visa application that these steps have been undertaken.

3.3. Schedule 1 requirements – Visa Application Validity Requirements

3.3.1 Overview

Item 1211 of Schedule 1 to the Regulations sets out the requirements for making a valid application for a Subclass 445 visa application.

- For general policy and procedural advice on visa application validity requirements, refer to: GenGuideA - All visas - Visa application procedures.
- For policy and procedural advice on the visa application charge, refer to: Div 2.2A of the Migration Regulations 1994 – Visa Application Charge.

3.3.2 Application form

In accordance with subitem 1211(1), applications for a Subclass 445 visa must be made using the form specified by legislative instrument *(IMMI 16/051 – Arrangements for Child Visa Applications 2016/051 – Compilation No. 2)* for this subitem and made under subregulation 2.07(5). The form specified is 918 – 'Application for a subclass 445 (temporary) visa by a dependent child'.

3.3.3 Visa application charge (VAC)

Paragraph 1211(2)(a) of Schedule 1 to the Regulations prescribes the first instalment of the VAC.

Paragraph 1211(2)(b) prescribes the second instalment of the VAC, payable before visa grant, is nil.

3.3.4 Where and how the application must be made

Under paragraph 1211(3) of Schedule 1 to the Regulations, a Subclass 445 visa application must be made at the place and in the manner (if any), specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5). The legislative instrument *IMMI 16/051 – Arrangements for Child Visa Applications 2016/051 – Compilation No. 2* provides:

*(a) An application by a dependent child of a holder of a Subclass 309, 310, 445, 820 or 826 visa **in Australia** must be made by:*

(i) posting the application (with the correct pre-paid postage) to:

Department of Home Affairs Child and Other Family Processing Centre,

Locked Bag 7

NORTHBRIDGE WA 6865 AUSTRALIA; or

(ii) delivering the application by courier service to:

Department of Home Affairs Child and Other Family Processing Centre,

Wellington Central,

836 Wellington Street

WEST PERTH WA 6005 AUSTRALIA.

*(b) An application by a dependent child of a holder of a Subclass 309, 310, 445, 820 or 826 visa **outside Australia**, must be made outside Australia*

Under law, Subclass 445 visa applications made while the applicant is in Australia cannot be hand delivered unless they are couriered to the address specified in the legislative instrument.

If a Subclass 445 visa application in Australia is received in any other location other than that listed above, the application is invalid and may be returned to the applicant/sponsor (if requested), after a digital copy has been made, with advice to post or courier the application to the addresses specified above. A Departmental office in Australia that receives an invalid application cannot make that application valid by sending it through Departmental mail to the correct processing office.

Payments are encouraged to be made wherever possible via ImmiAccount before the application is lodged. If the applicant is outside Australia and cannot pay online via ImmiAccount, then they should consider alternative payment methods for their location on the Department's website.

Locations outside Australia where an application may be lodged include any offshore Australian diplomatic, consular or migration office maintained by or on behalf of the Commonwealth.

There is no provision in item 1211 of Schedule 1 to the Regulations and legislative instrument 2016/051 for an application for a Class TK visa to be made by an applicant who is not the dependent child of a Subclass 309, 310, 445, 820 or 826 visa holder. Using Departmental systems, delegates must confirm the visa status of the person of whom the applicant is a dependent child. If that person was not the holder of a Subclass 309, 310, 445, 820 or 826 visa at the time of lodgement (for example they held a Subclass 010 (Bridging A) visa), then the application is not valid.

3.3.5 Where the applicant must be when making application

Under paragraph 1211(3)(aa) an applicant may be in or outside of Australia, but not in immigration clearance at the time of application.

Under paragraph 1211(3)(ab) an applicant must be in Australia to make an application in Australia.

3.3.6 Combined applications

Paragraph 1211(3)(b) provides that a person claiming to be a ***dependent child*** of the Subclass 445 visa primary applicant may apply at the same time and place as the primary applicant and be combined with that application.

For policy and procedure on valid application requirements, see:

- 3.6.1.2 Combined application
- GenGuideA - All visas - Visa application procedures.

3.3.7 Bridging visas

Eligibility - Onshore applicants

For policy and procedure on the eligibility for a Subclass 445 visa applicant to validly apply for, and be granted, a bridging visa on the basis of making an application for a Subclass 445 visa in Australia see: Sch2 Bridging visas - Visa application and related procedures, if relevant also see Bridging E visas).

Ineligibility - Offshore applicants

As offshore Subclass 445 applications are lodged at offices outside Australia, they are considered to be made outside Australia. As such, if a Subclass 445 visa applicant lodges their application outside Australia, they are ineligible to be granted an associated bridging visa at a later date if they are in Australia and their Subclass 445 visa application has not been finally determined.

If officers become aware of an offshore Subclass 445 visa applicant who has entered Australia but later becomes unlawful, they should refer them to the Status Resolution Service.

3.4 Priority Processing Direction

Direction 80 – order for considering and disposing of Family visa applications under s47 and 51 of the Migration Act 1958 (Direction 80) refers to the order of priority for considering and disposing of Subclass 445 visa applications.

3.5 Schedule 2 criteria – Primary criteria (Division 445.2)

3.5.1 Overview

The primary criteria must be satisfied by one applicant, the primary applicant who must be a dependent child of a visa holding parent and sponsored by the nominator or sponsor of the visa holding parent. If this is a combined application with the primary applicant, then dependent children of the primary applicant need only to satisfy the secondary criteria.

3.5.2 Criteria to be satisfied at the time of application (Subdivision 445.21)

3.5.2.1 Must be a dependent child

Briefly an applicant will be a dependent child of a person if:

- they are the child or step-child of that person; AND
- they are not engaged to be married, married or in a de facto relationship; AND
- either:
  - they have not turned 18; OR
  - they have turned 18 and are dependent on that person, or they are incapacitated for work due to total or partial loss of their bodily or mental functions.

For paragraph 445.211(a), see the regulation 1.03 definition of ***dependent child*** and, for policy and procedure on assessing dependency see:

- s5G - Relationships and family members - Dependent family members

3.5.2.2 Must have a visa-holding parent

For paragraph 445.211(a), to establish that the applicant's parent is a ***visa-holding parent***, officers must confirm the parent's visa status by reviewing and verifying information in Departmental systems. As defined at clause 445.111, a parent of an applicant is a visa-holding parent if they hold any of the following visas: Subclass 309 (Spouse (Provisional)), Subclass 310 (Interdependency (Provisional)), Subclass 445 (Dependent Child), Subclass 820 (Partner) or Subclass 826 (Interdependency).

3.5.2.3 Must be sponsored

The applicant must be sponsored by the same person who is the sponsor or nominator of the visa-holding parent (paragraph 445.211(b)). Sponsorship has certain obligations, for further information regarding the sponsorship undertakings see paragraph 1.20(2)(e). There is no separate sponsorship form for the Subclass 445 visa. Instead, the sponsor completes parts of the Form 918, to confirm their sponsorship of the applicant

3.5.3 Criteria to be satisfied at the time of decision (Subdivision 445.22)

3.5.3.1 Must still have a visa-holding parent

The applicant's parent must still be a visa-holding parent as per clause 445.221. If the applicant's parent is no longer a visa-holding parent because their permanent Partner visa application has been decided, then the applicant cannot satisfy clause 445.221.

If this has occurred, the applicant cannot be granted the Subclass 445 visa, and they may instead lodge an application for a Child visa (Subclass 101 (Child) or Subclass 802 (Child)) if they wish to be eligible to be granted permanent residence on the basis of being a child of a permanent visa holder. However, children who have already turned 18 may not be eligible to be granted such visas. Further information is available at 3.7.2.2. Subclass 445 visa holders who are not added to their parent's permanent Partner visa application.

3.5.3.2 Must still be a dependent child

Clause 445.222 requires the applicant to continue to be a dependent child of the visa-holding parent. Applicants are required under section 104 of the Act to notify changes such as in family composition (for example, as a result of birth, death or change in relationship status) or in the circumstances of the visa-holding parent or Australian sponsor. They also are required to declare in the application form that they will notify the Department of any changes in their personal circumstances whilst their application is being considered.

Clause 445.222 may be satisfied provided:

- there is no evidence to the contrary that the applicant continues to be a dependent child of the visa-holding parent (for example, the Australian sponsor has withdrawn their sponsorship); and

- the applicant is still under 18; OR
- if the child is over 18, they remain dependent on the visa-holding parent or they are incapacitated for work due to total or partial loss of their bodily or mental functions.

If the applicant is over 18 and was assessed at the time of application to be dependent on the visa-holding parent and not more than 6 months has lapsed since that time of application assessment, they are to be taken under policy to continue to be dependent.

If more than six months have passed since the time of application assessment, officers are expected to take reasonable steps to satisfy themselves that there has been no material change in the circumstances of the applicant or the visa-holding parent in Australia.

3.5.3.3 Sponsorship requirements

Clause 445.223 has three alternatives (subclause 445.223(2), (3) or (4)), only one of which needs to be satisfied.

In most cases, applicants will meet subclause 445.223(2) and continue to be sponsored by the same person who is sponsoring the visa holding parent. Officers should check the details of the visa-holding parent's permanent Partner visa application on the relevant system to verify that there has been no withdrawal of the partner visa application or sponsorship; or a relationship breakdown.

If the visa-holding parent's relationship has ended (Subclause 445.223(3))

The visa-holding parent's relationship may have ended where:

- the nominator or sponsor of the visa- holding parent (the original sponsor) has died; or
- the relationship between the ***visa-holding parent*** and their sponsor has ceased, and the visa-holding parent is seeking to be granted a permanent Partner visa on the basis of :
  - the family violence provisions in Subclass 100 or 801; or
  - shared parental responsibility of a child in Australia in Subclass 100 or 801.

In such cases, officers should consider information on the ICSE permission request for the parent's permanent Partner visa application to confirm that subclause 445.223(3) applies and is met. This information may include case notes suggesting family violence (FV) claims have been made by the visa-holding parent. Officers are **not** required to assess the merits of the parent's claim.

If new sponsorship is required

If paragraph 445.223(3)(a) applies, paragraph 445.223(3)(b) requires the Subclass 445 visa applicant to be sponsored by the ***visa-holding parent***. The visa-holding parent should be asked to complete form 40CH *Sponsorship for a child to migrate to Australia* and sign the undertaking.

It is the policy intention that, for the sponsorship to be approved, the visa-holding parent must be able to meet regulation 1.20 sponsorship requirements, which includes having the means to provide for the Subclass 445 visa applicant for a period of two years immediately after the visa is granted or after the applicant's first entry to Australia after the visa is granted (see paragraph 1.20(2)(e)).

Subject to approval of the new sponsorship by the visa-holding parent, officers must decide the Subclass 445 visa application as soon as all criteria are satisfied. They must not await the outcome of the visa-holding parent's claims to meet the family violence or shared parent responsibility provisions above.

Note: The requirement that the applicant be sponsored by the visa-holding parent only applies at time of decision. A visa-holding parent to whom the circumstances in subclause 445.223(3)(a) apply at the time that the child applies for the Subclass 445 visa *cannot* sponsor their child and, it follows, the child cannot be granted a Subclass 445 visa.

Other circumstances requiring new sponsorship

Subclause 445.223(4) is intended to allow for the very rare circumstance when a Subclass 445 visa holder is the visa-holding parent, and the circumstances in subclause 445.223(3)(a) apply in relation to their parent's Partner visa application.

For example, a dependent child who has already been granted a Subclass 445 visa and travelled to Australia, subsequently lodges a Subclass 445 visa application for a dependent child of their own. After lodgement, the sponsor of the Subclass 445 visa holder dies, or the relationship breaks down and that parent seeks to be granted their permanent partner visa on the basis of family violence provisions or shared parental arrangements of another child in Australia.

The visa-holding parent, who in this case is a Subclass 445 visa holder and also a dependent child is unlikely to meet the sponsorship requirement to allow the application to continue.

Subclause 445.223(4) allows for sponsorship by the parent of the Subclass 445 visa holder, that is, the original applicant for the relevant partner visa, and in this case the grandparent of the applicant. The sponsorship procedures for approving a new sponsor are outlined above.

For an applicant to be considered under this provision, the visa-holding parent who holds a Subclass 445 visa must have already applied on Form 1002 to be "added" to their own parent's permanent Partner visa application.

Further advice should be sought from Family Program Management in the event an applicant seeks to satisfy clause 445.223(4).

3.5.3.4 Sponsorship must be approved

Regardless of which sponsorship provision (that is, subclause 445.223(2), 445.223(3) or 445.223(4)) applies, clause 445.224 requires the sponsorship to be approved and in force at time of decision.

Regulation 1.20KB Limitation on approval of sponsorship

The sponsorship must be refused if the sponsor has an unresolved charge, or a conviction, for a ***registrable offence***.

For policy and procedure on regulation 1.20KB, including requesting police checks and procedures for referring relevant cases to the Visa Applicant Character Consideration Unit (VACCU), see Div1.4 - Form 40 sponsorship - Protection of children - Sponsors of concern.

3.5.3.5 Public interest criteria (PIC)

Paragraph 445.225(a) provides that an applicant seeking to satisfy the primary criteria must satisfy PICs 4001, 4002, 4003, 4004, 4007, 4009, 4020 and 4021.

Subclause 445.225(b) provides that if the applicant had turned 18 at the time of application, the applicant satisfies PIC 4019.

Clause 445.226 provides that if the applicant has not turned 18, PICs 4017 and 4018 must be satisfied.

For policy and procedural guidance on:

- Schedule 4 PIC see: Sch4 - Public interest criteria;
- PIC 4001 see: Penal Checking Handbook – PI (VM-1002);
- PIC 4002 see: The Security Checking Handbook – PI (BE-1716);
- PIC 4003, paragraphs 4003(a) and 4003(c) see: Foreign policy travel sanctions and autonomous travel sanctions;
- PIC 4003, paragraph 4003(b) see: Proliferation of weapons of mass destruction – Risk assessment procedures – PI (BE-1723);
- PIC 4004 see: Sch4 - 4004 - Debts to the Commonwealth;

- PIC 4007 see: Sch4/4005-4007 - The Health Requirement;
- PIC 4017 see: s5G - Relationships and family members - Custody (parental responsibility) for minor children;
- PIC 4018 see: s5G - Relationships and family members - Best interests of minor children;
- PIC 4019 see: Public Interest Criterion (PIC) 4019 – The Values Statement;
- PIC 4020 see: Public Interest Criterion 4020 – The Integrity PIC;
- PIC 4021 see: Sch4/4021 - The passport requirement .

Must be assessed against permanent visa health criteria

This visa is intended to lead to the grant (in Australia) of a permanent visa. Therefore, applicants must meet the health requirements set down for permanent visas, *not* temporary visas. Officers must ensure that the applicant's assessment in HAP under 'Type' is 'permanent', not 'temporary'.

Consideration of previously provided health/character

Officers must consider if the applicant can meet the health and character requirements if they have already been assessed as a non-migrating **member of the family unit** as part of the decision to grant the child's parent their provisional Partner visa. Officers will need to ensure the health and character checks remain valid by considering the relevant policy:

- Character see: Penal Checking Handbook – PI (VM-1002);
- Health see: Sch4/4005-4007 - The Health Requirement;

3.5.3.6 "One fails, all fail" criteria

Paragraph 445.227(1)(a), provides that each **member of the family unit** of the primary applicant who is an applicant for a Subclass 445 must satisfy PIC 4001, 4002, 4003, 4004, 4007, 4009 and 4020.

Paragraph 445.227(1)(b) provides that if the **member of the family unit** who is an applicant for a Subclass 445 had turned 18 at the time of application, the person satisfies PIC 4019.

Paragraph 445.227(2)(a), provides that each **member of the family unit** of the primary applicant who is not an applicant for a Subclass 445 must satisfy PIC 4001, 4002, 4003 and 4004. They must also satisfy paragraph 445.227(2)(b) unless the officer is satisfied it would be unreasonable to require the person to undertake the health assessment.

Clause 445.228, provides that the primary applicant cannot be granted the Subclass 445 visa unless each ***member of the family unit*** who are visa applicants and who are under 18 satisfy PIC 4015 and 4016.

Policy envisages few circumstances where the Subclass 445 primary applicant would have family unit members, because the primary applicant must be a ***dependent child*** themselves and be the ***family head*** for the purposes of regulation 1.12.

For policy and procedural guidance on the relevant PICs see: 3.5.3.5 Public interest criteria (PIC)

3.6 Schedule 2 criteria – Secondary Criteria (Division 445.3)

3.6.1 Criteria to be satisfied at time of application (Subdivision 445.31)

3.6.1.1 Dependent child

Under clause 445.311, the secondary applicant must be a ***dependent child*** of a person who has applied for a Subclass 445 visa. As the primary applicant must be a ***dependent child*** themselves and be the ***family head*** for the purposes of regulation 1.12, in practise there would be few circumstances where the Subclass 445 visa primary applicant would have family unit members.

3.6.1.2 Combined application

To satisfy clause 445.311, dependent children must apply with the Subclass 445 visa primary applicant. They cannot apply separately for this visa. However, provided the primary applicant has not yet been granted or refused a Subclass 445 visa:

- regulation 2.08, by operation of law, automatically includes newborn children to the application (the child is taken to have applied for a visa at birth) - see GenGuideA - All visas - Visa application procedures; and
- regulation 2.08B allows a dependent child to be added to the application at the primary applicant's written request - see: GenGuideA - All visas - Visa application procedures.

In either situation, the dependent child of the Subclass 445 visa primary applicant is taken under these provisions to have applied with their parent and has therefore made a combined application, and can satisfy clause 445.311.

Officers are advised to contact Family Program Management if they need specific advice on a dependent child of a Subclass 445 visa holder.

3.6.1.3 Sponsorship requirements

Clause 445.312 provides that the sponsorship mentioned in paragraph 445.211(b) for the person who satisfies the primary applicant also includes sponsorship of the secondary applicant. For further guidance regarding sponsorship, see 3.5.2.3 Must be sponsored.

3.6.2 Criteria to be satisfied at time of decision (Subdivision 445.32)

To satisfy clause 445.321, the applicant must still be a dependent child of a person who has been granted a Subclass 445 visa as a primary applicant. Thus the secondary applicant cannot be granted a Subclass 445 until after the primary applicant has been granted their visa.

Clause 445.322 provides that the sponsorship mentioned in clause 445.223 for the primary applicant also includes sponsorship of the secondary applicant. For further guidance on clause 445.322, see 3.5.3.3 Sponsorship requirements

Clause 445.323 provides that the sponsorship mentioned in clause 445.322 has been approved by the Minister and is still in force. For further guidance on clause 445.323, see 3.5.3.4 Sponsorship must be approved.

3.6.2.1 Public interest criteria

Paragraph 445.324(a) provides that an applicant seeking to satisfy the primary criteria must satisfy PICs 4001, 4002, 4003, 4004, 4007, 4009, 4020 and 4021.

Paragraph 445.324(b) provides that if the applicant had turned 18 at the time of application, the applicant satisfies PIC 4019.

Clause 445.325 provides that if the applicant has not turned 18, PICs 4017 and 4018 must be satisfied.

For further information regarding clauses 445.324 and 445.325 see: 3.5.3.5 Public interest criteria (PIC)

3.7 Subclass 445 visa grant

3.7.1 Where the applicant must be granted their visa

Under subclause 445.411(1), if the application is made when the applicant is outside Australia, the applicant must be outside Australia at the time of the grant, unless subclause (2) applies.

Subclause 445.411(2) applies:

- if the visa is granted after 26 February 2021 and
- the application was lodged before the end of the concession period and
- the applicant was in Australia at any time during the concession period and is in Australia (but not immigration clearance) when the visa is granted.

Under clause 445.412, if the application is made when the applicant is in Australia, the applicant must be in Australia at the time of the grant.

For policy and procedure, see GenGuideA - All visas - Visa application procedures.

3.7.2 When the Subclass 445 visa is in effect

3.7.2.1 Linked to the visa-holding parent's visa

Clause 445.511 provides that the Subclass 445 visa is a temporary visa permitting the holder to travel to, enter and remain in Australia within the visa period of the Subclass 445, Subclass 309 (Partner (Provisional)) or Subclass 820 (Partner) visa held by the person on whom the applicant is dependent. Hence Subclass 445 visas are "event-based visas", that is, the visa period is linked to an *event*, not a specific date.

A child must apply to be added to their parent's permanent visa application *before* the visa period of the parent (on whom the applicant is dependent) Subclass 445, Subclass 309 (Partner (Provisional)) or Subclass 820 (Partner) visa expires.

As a Subclass 445 visa ceases upon the grant or finalisation of the parent's permanent Partner visa, any child who has not yet been added to their parent's permanent Partner visa application no longer holds their Subclass 445 visa. This means that a child, who is already onshore, will become unlawful (unless they hold another visa). A child who is outside Australia will no longer be able to travel to, and enter, Australia on the Subclass 445 visa.

Please note: The cessation of the Subclass 445 visa in the system is not automatic when the child is not added to the parent's permanent Partner visa application before it is granted. As such, the Subclass 445 visa will need to be manually ceased. Officers should contact TRIPS Helpdesk to request this is actioned. Additionally, if the child is onshore at the time that their Subclass 445 visa ceases, then officers should also notify the status resolution team in the child's location.

3.7.2.2 Subclass 445 visa holders who are not added to their parent's permanent Partner visa application

Unless a jurisdictional error occurred (which would be determined by the Legals Opinions Section) in the granting of the permanent Partner visa to the parent of the Subclass 445 visa holder or applicant, it is not possible to "undo" the grant of that visa so that the Subclass 445 visa holder can be included in the permanent visa application. In addition, it is not possible to add a child to the parent's permanent Partner visa application once it has been granted.

If a child has not been added to their parent's permanent Partner visa application before that visa was granted, the only Family Stream visas that may be available to the child are the:

- Subclass 101(Child) visa for children outside of Australia (see Sch2Visa101 - Child; or
- Subclass 802 (Child) visa for children already in Australia (see Sch2Visa802 - Child

Minors who previously held a Subclass 445 visa generally will have little difficulty in meeting the Child visa requirements. However, there are additional requirements for children who have turned 18 that

may make it difficult for such children to meet the Subclass 101 (Child) or Subclass 802 (Child) visa criteria. These include full-time study requirements, and (if a child is 25 or older) that the child must be permanently incapacitated for work purposes.

For further advice in these circumstances, officers may contact Family Program Management.

3.7.3 Subclass 445 visa conditions

There are no conditions applicable to Subclass 445 visas.

As such, there is no first entry arrival date applicable to Subclass 445 visas.

4. Accountability and Responsibility

Role	Description
Officers delegated as decision makers	Responsible for implementing and applying this PI to their decision making as part of making lawful, fair and reasonable decisions.
Supervisors and managers	Responsible for ensuring decision makers are: • applying the policy and guidance set in this PI; and • exercising their powers appropriately.
Any officers providing advice on AAT matters	Responsible for providing accurate and appropriate advice in accordance with this Instruction, as it relates to matters before the AAT.
Any officers providing training to stakeholders	Responsible for ensuring that training content is accurate and is in accordance with this Instruction and related legislation.
Family Program Management (FPM) Section	Responsible for providing accurate and appropriate advice in accordance with this PI and related legislation to decision makers.
Director FPM Section	Responsible for ensuring that this PI is up to date, accurate and meets stakeholder requirements.
Assistant Secretary – Family Visas Branch	The document owner who is responsible for ensuring this instruction is fit for purpose and reviewing its implementation.

Attachment A – Definitions

Term	Acronym (if applicable)	Definition

Schedule 2		Schedule 2 to the *Migration Regulations 1994*
Public Interest Criterion	PIC	As defined in regulation 1.03 of the *Migration Regulations 1994*, 'means a criterion set out in a clause of Part 1 of Schedule 4, and a reference to a public interest criterion by number is a reference to the criterion set out in the clause so numbered in that Part.' A PIC is a criterion for visa grant for those visas to which it is attached.
Family Program Management Section	FPM Section	FPM is a section within Family Visas Branch which is primarily responsible for the program management of the family stream of the migration program.
Administrative Appeals Tribunal	AAT	The tribunal responsible for independent merits review of a wide range of administrative decisions made by the Australian Government.
Integrated Client Services Environment	ICSE	A processing system used to record and process citizenship, sponsorship and nomination applications and visa applications.
Immigration Records Information System	IRIS	A legacy processing system used to record and process citizenship, sponsorship and nomination applications and visa applications.

Attachment B – Assurance and Control Matrix

1.1. Powers and Obligations

Legislative Provision		

Legislation	Reference (e.g. section)	Provision	Is this a delegable power?	If delegable, list the relevant instruments of delegation
Migration Act 1958	s65	Decision to grant or refuse to grant visa	Yes	Social Cohesion and Citizenship Group AND Immigration and Settlement Services Group (Minister) Instrument 2020 (LIN 20/188)

1.2 . Controls and Assurance

Related Policy	Sch4/4021 - The passport requirement [Policy Statement] Child Safeguarding Framework [Policy Statement] Reporting Child-related Incidents [Policy Statement Independent Observer for Interviews involving Minors [Policy Statement](DM-6506); Best Interest of the Child [Policy Statement](DM-5721)
Procedures / Supporting Materials	s5G – Relationships and family members – Custody (parental responsibility) for minor children s5G - Relationships and family members - Best interests of minor children s5G - Relationships and family members - Dependent family members Foreign policy travel sanctions and autonomous travel sanctions Bridging E visas Div 1.4 - Form 40 sponsorship - Protection of children - Sponsors of concern Div 2.2A of the Migration Regulations 1994 – Visa Application Charge Sch2 Bridging visas - Visa application and related procedures Sch2 Visa 101 - Child Sch2 Visa 802 - Child Sch4 - Public interest criteria [Supporting Marterial] Sch4 - 4004 - Debts to the Commonwealth

	Sch4/4005-4007 - The Health Requirement Public Interest Criterion (PIC) 4019 – The Values Statement Public Interest Criterion 4020 – The Integrity PIC Sch4/4021 - The passport requirement [Policy Statement] Child Safeguarding Framework [Policy Statement] Reporting Child-related Incidents [Policy Statement] GenGuideA - All visas - Visa application procedures Penal Checking Handbook (VM-1002); The Security Checking Handbook (BE-1716); Proliferation of weapons of mass destruction – Risk assessment procedures (BE-1723); Filming and Photographing Children [Supporting Material](DM-896); Independent Observer for Interviews involving Minors [Policy Statement](DM-6506); Reporting Child-related Incidents (DM-5858) Best Practice for Interacting with Children (BC-764)
Training/Certification or Accreditation	Migration (and Citizenship) training applicable to all officers undertaking duties under the *Migration Act 1958* and *Migration Regulations 1994* (as well as *Australian Citizenship Act 2007*).
Other required job role requirements	None required.
Other support mechanisms (eg who can provide further assistance in relation to any aspects of this instruction)	Decision makers should raise any questions with their supervisors/managers in the first instance. Internal enquiries should be forwarded to family.program.management@homeaffairs.gov.au.
Escalation arrangements	Escalation of concerns or issues regarding this PI can be sent to the Director of Family Program Management section by email to family.program.management@homeaffairs.gov.au marked to the attention of the Director.
Recordkeeping (eg system based facilities to record decisions)	All decisions in relation to Subclass 445 visa applications are recorded in ICSE or IRIS and saved in TRIM.
Control Frameworks (please refer to a specific document outlining QA or QC arrangements)	The revised quality management framework, a key element of the **Visa and Citizenship Operating Model (VCOM2020)**, was implemented in the 2019-20 program year. It enhances consistent, lawful, high quality decision-making across visa programs.
Job Vocational Framework Role	Visa Processing.

Attachment C – Consultation

1.1 Internal Consultation

The following internal stakeholders were consulted during the development of this instruction:

- Parents, Child and Other Family Program Delivery WA section
- Child Wellbeing Operations section
- Family Policy section
- Health section
- Privacy and Information Disclosure section
- PPCF Legal Advice section
- Legal Opinions section

[Sch2] Sch2 Parent visas

A word document of this PAM can be located in the FLI (I) folder under the stack date where it was last updated. The change date can be found under the 'Latest Changes' heading located on this page.

About this instruction

Contents

This departmental instruction comprises:

- Introduction
- Applying for a visa
- The main applicant
- Sponsorship
- Family unit members
- Visa grant.

This instruction does not include policy and procedures relating to the ***contributory parents newborn child*** (CPNC) provisions - see instead PAM3: Div 1.2/reg1.03 - Contributory parent newborn child.

Related instructions

- PAM3: Div1.2/reg1.03 - Parent visa
- PAM3: Div1.2/reg1.03 - Contributory parent newborn child
- PAM3: GenGuideA - All visas - Visa application procedures.

Latest changes

Legislative

Reissued 8 December 2017 to take into account the disallowance of *Migration Legislation Amendment (2017 Measures No. 4) Regulations 2017* [F2017L01425] on 5 December 2017. More information on the disallowance is available here.

Policy

This instruction, which is part of the centralised departmental instructions system (CDIS), was reissued on 21 August 2016 but only to update section 31 When visa is in effect - Temporary visas to clarify how to record travel facility correctly when granting a 173 visa to ensure the travel facility period is consistent with the validity period.

The instruction otherwise remains legally flawed, incomplete, inaccurate and out-of-date. It has not yet been owner-updated to take account of (among other things):

- 1 July 2013 visa pricing transformation
- 1 July 2013 insertion of PIC 4020 as a Schedule 2 criterion for parent visas
- 1 September 2013 VAC amendments
- 1 September 2013 legislative technical amendments, several of which impacted on this instruction
- 1 July 2015 legislation changes.

Because its content is significantly out-of-date, the instruction has not yet been reformatted to meet web content accessibility requirements.

Owner

Family Migration Programme Management Section

email

Family Programme Management

Document ID

VM-3058

Contents summary

Introduction

1 About all Parent visas

1.1 Overview

Parent visas

Parent visas are accessible to persons seeking a permanent visa on the basis of being the parent of a child who is a settled Australian citizen, Australian permanent resident or eligible New Zealand citizen.

Parent visas are split into two categories and six visa subclasses. These are:

- Parent category visa and
- Contributory Parent category visa.

Parent category visa.

The Parent category visa contains two visa subclasses:

- (offshore) - Parent (Class AX)(subclass 103) visa
- (onshore) - Aged Parent (Class BP)(subclass 804) visa.

Contributory Parent category visa

The Contributory Parent category visa contains four visa subclasses:

Offshore

- Contributory Parent (Class CA) (subclass 143) visa
- Contributory Parent (Temporary) (Class UT) (subclass 173) visa;

Onshore

- Contributory Aged Parent (Class DG)(subclass 864) visa
- Contributory Aged Parent (Temporary) (Class UU) (subclass 884) visa

For policy and procedures on:

- aged parent, see PAM3: Div1.2/reg1.03 - Aged parent
- parent, see PAM3: Div1.2/reg1.03 - Parent visa
- eligible New Zealand citizen, see PAM3: Div1.2/reg1.03 - Eligible New Zealand citizen
- settled, see PAM3: Div1.4 - Form 40 sponsors and sponsorship.

1.2 Differences between Parent and Contributory Parent category visas

Contributory Parent category visas are usually processed to grant consideration stage faster than Parent category visas as they are accorded a higher processing priority and there are more visa places available. This arrangement recognises that applicants for visas in the Contributory Parent category pay a significantly higher second visa application charge (VAC) as a contribution to their ongoing health costs.

The main differences between the Parent and Contributory Parent category visas are illustrated by the following table.

Parent category	**Contributory Parent category**
Significantly lower second VAC	Significantly higher second VAC

Lower assurance of support (AoS) bond	Higher AoS bond
Shorter AoS bond period	Longer AoS bond period
Lower cost/longer wait option	Higher cost/shorter wait option

1.3 Differences between onshore and offshore parent visas

Onshore	Offshore
The primary applicant must meet the aged requirement at time of application, See Booklet 3 - Age requirements	Do not have to be "aged parent"
Must meet health and character requirements prior to queuing	Do not have to meet health and character prior to queuing See s499 Direction 44

If the applicant is in Australia and they are not "aged" and there is no bar on their applying (see section 6.9 Bars on applying), they may still be able to make a valid visa application for an offshore Parent (subclass 103) visa or an offshore Contributory Parent category visa whilst they remain in Australia. The application must however be sent to the Parent Visa Centre (PVC) in line with the legislative instrument under Schedule 1 item 1130(3)(b). In these circumstances, the applicant is not eligible for a Bridging visa and will need to obtain another type of visa to remain in Australia while their application is being processed - see section 4 Bridging visas.

If the applicant is in Australia and they hold (or last held) a visa subject to a "No Further Stay" condition 8503, 8534 or 8535, they will not be able to apply for any parent visa, including an offshore parent visa, whilst they remain in Australia with that condition - see section 6.9 Bars on applying.

1.4 s499 directions capping and queuing

All parent visa applications are subject to order of consideration s499 directions 43 and 44 respectively relating to:

- prioritising of family stream applications and
- order of consideration.

Applications are also subject to a s499 direction for the consideration of visa applications in the context of setting the planning levels for the annual Migration Program, particularly the capping of visas under s85 of the Act and the consequential queuing arrangements.

For policy and procedures on capping and queuing arrangements, see

- Direction under s499 - Direction No. 43
- Direction under s499 - Direction No. 44

- PAM3: GenGuideB - Non-humanitarian migration (offshore and onshore) - Visa application and related procedures - Capping
- PAM3: GenGuideB - Non-humanitarian migration (Offshore and Onshore) Management of the non-humanitarian migration program.

2 Contributory Parent category visas - two stage process

2.1 History

Subclass 143/173 visa, the Contributory Parent (Migrant) visa and the Contributory Parent (Temporary) visa, were inserted into the Regulations with effect from 23 June 2003.

Subclass 864/884 visa, the Contributory Aged Parent (Residence) visa and the Contributory Aged Parent (Residence) visa, were inserted into the Regulations with effect from 1 July 2003.

On 10 September 2007, the Regulations were amended to allow certain former holders of subclass 173/884 visa to pay lower VACs for subclass 143/864 visa and be assessed against less stringent criteria for the grant of the permanent visa. The Regulations also allow applicants who have held a 173/884 visa at any time since last entering Australia to be able to apply for a wider range of visas if they are outside Australia.

The amendments were intended to address the situation of people who, for a range of reasons, do not apply for a subclass 143/864 visa while still holding a subclass 173/884 visa. Their visa options are very limited. The amendment provides a 28-day period of grace, as well as discretion to consider compassionate and compelling circumstances.

2.2 Overview

Contributory Parent category visa applicants can choose to apply directly for a permanent visa or to go through a two-stage process. Under the two-stage process, applicants initially apply for a temporary Contributory Parent category visa. The temporary visa is only valid for a period of two years and cannot be extended or renewed. At any time during the two-year validity period of the visa, the temporary visa holder can apply for the corresponding permanent visa. Applicants must pay a first and second instalment of the VAC for both temporary and permanent visas.

The net costs of the two-stage process are broadly similar to the option of applying directly for a permanent Contributory Parent category visa except that the costs are staggered across two applications. The first and second VAC payable are based on the charges in place at the time that the respective application is made.

Note: All VACs are subject to annual adjustment.

2.3 Main benefits

The main benefits for applicants who undertake this two-stage process are that:

- they pay a lower second VAC at time of temporary visa grant, thereby mitigating the full second VAC required for the grant of the permanent visa
- when they apply for the subclass 173/884 visa, they pay a substantially lower first instalment of the VAC (1st VAC)
- at time of subclass 143/864 visa grant, they pay another lower 2nd VAC (which is subject to annual adjustment)
- an AoS bond is not required for the granting of the subclass 173/884 visa, however, it is required for the subclass 143/864 visa and
- the 173/884 visa holder will receive certain concessions when they apply for the corresponding subclass 143/864 visa. See section 2.5 Concessions.

For those parents who hold or have held a subclass 173/884, who wish to apply for the corresponding permanent subclass 143/864 visa, they must:

- be the holder of a current subclass 173/884 or
- have held a subclass 173/884 within the past 28 days or
- if 28 days have passed, provide the Department with evidence that compassionate and compelling circumstances exist for the person to be given the equivalent status to the subclass 173/884 visa holder.

2.4 Main detriments

The main detriments for applicants who undertake the two-stage process are that:

- the applicant will be required to undergo the application process twice, not once
- due to annual adjustment of charges, the applicant may end up paying slightly extra for their visa
- a 173/884 visa is valid for two years only and it cannot be extended or renewed
- whilst the holder of a 173/884 visa, the holder is subject to Regulation 2.07AI - see section 6.9 Bars on applying.

2.5 Concessions

By applying for the corresponding permanent visa within the 2 years validity period of the temporary visa, applicants obtain certain concessions, such as:

- they pay a reduced 1st VAC on making the permanent visa application
- they are not re-assessed against the balance of family (BoF) test (see section 17.4 Balance of family (BoF) test)
- they may be taken to be sponsored for their permanent visa application if the person who sponsored them for the temporary visa dies before their temporary visa ceases and there are no other children able to meet the sponsorship requirements
- they are generally not required to undergo further health checks and
- a dependant who was included in their temporary visa application, who was subsequently granted the temporary visa and is no longer dependent on the main applicant, can still be included in the permanent visa application even though they are no longer dependent.

Applicants who do not apply for the corresponding permanent visa within the 2 year validity period of their temporary visa or in accordance with the provisions of Schedule 1 items 1130(5) and 1130A(5), will not be entitled to any of these concessions - see Does the applicant hold a 173/884 visa.

2.6 Application process

Subclass 173/884 visa holders who wish to apply for the corresponding permanent subclass 143/864 visa will need to:

- complete form 47PT *Application for migration to Australia by a Contributory (Temporary) or Contributory Aged Parent (Temporary) visa holder* and
- submit form 40 *Sponsorship for migration to Australia*, signed by their sponsor and
- pay the appropriate 1st VAC.
-

By applying for the permanent visa while the holder of a subclass 173/884 (temporary) visa, the applicant may obtain certain concessions in relation to the assessment of sponsorship - see section 2.5 Concessions. Certain restrictions apply to subclass 173/884 visa holders. See

- Reg 2.07AI
- PAM3: Div2.2/reg2.07AI
- section 6.9 Bars on applying

- section 19.3 If the child has died.

3 Applications by holders of a substituted Subclass 600 visa

3.1 Background

On 1 March 2006, the Regulations were amended to make provision for holders of a ***substituted Subclass 600 visa***, granted following a decision by the Minister to substitute a more favourable decision, to enable them to apply for certain visas, including parent visa subclasses 143, 804, 864 and 884.

A substituted Subclass 600 visa, as defined by regulation 1.03, means a subclass 600 visa or a subclass 676 visa that was granted following a decision by the Minister to substitute a more favourable decision under section 345, 351, 391, 417, 454 or 501J of the Act. The parent visas to which these provisions apply are the:

- Aged Parent (Residence) visa (subclass 804)
- Contributory Parent (Migrant) visa (subclass 143)
- Contributory Aged Parent (Residence) visa (subclass 864) and
- Contributory Aged Parent (Temporary) visa (subclass 884).

Holders of a substituted class 600 visa who apply for one of the above parent visas are not required to satisfy:

- the age requirement
- the balance of family test
- PIC 4004 and
- PIC 4005 (must instead satisfy PIC 4007).

3.2 Temporary to permanent Contributory Parent category visa applications

Substituted Subclass 600 visa holder applicants are required to satisfy the delegate that they are a parent of a settled Australian citizen, an Australian permanent resident or an eligible New Zealand citizen. See:

- Regulation 1.03 - Substituted Subclass 676 visa

4 Bridging visas

4.1 Regulation 2.07A

Under regulation 2.07A, a substantive visa application made in Australia by an applicant in Australia is not a valid bridging visa application unless the substantive visa is of a kind that can be granted if the applicant is in Australia. For policy and procedure see:

- PAM3: Sch2Visa010 - Bridging A
- PAM3: Sch2 - Bridging visas.

4.2 Bridging B visa (subclass 020) (BVB)

Applicants who have applied for an onshore parent visa and have a compelling need to travel overseas while their substantive visa application is still being processed may consider applying for a BVB. See PAM3:Sch2Visa020 - Onshore parent visa applicants.

4.3 Bridging visas with nil conditions for certain onshore Parent visa applications

The instrument under clauses 010.611(1)(c) and 020.611(1)(b) was revised on 24 November 2012 to include applicants for the Aged Parent (Residence) Class BP, subclass 804, Contributory Aged Parent (Residence) Class DG, subclass 864 and Contributory Aged Parent (Temporary) Class UU, subclass 884 visas who are eligible for an associated BVA or BVB are to be granted that bridging visa with nil conditions imposed.

For policy and procedure, see:

- PAM3 - Sch2Visa010 - Bridging A - Certain Partner and Parent visa applications specified in an instrument
- PAM3 - Sch2Visa020 - Bridging B - Certain Partner and Parent visa applications specified in an instrument.

5 Other matters

5.1 Refusal on health grounds

If an applicant for a permanent parent visa (for example, BP-804 or DG-864):

- was in Australia at the time of that application
- is at least 50 years old
- has received a “Does not meet” opinion in relation to the health requirement

officers should treat the case with sensitivity. When undertaking the refusal for such cases, case officers should ensure that the refusal decision (and system notes) clearly indicates a refusal on **health** grounds (even if the refusal is due to **other** grounds **as well** as health).

In considering a refusal decision on health grounds, case officers should ensure that such applicants (or their sponsor) are aware of the provision for persons who:

- are in Australia
- at least 50 years old
- have been refused a permanent visa on health grounds and
- are found to be unfit to depart Australia

to be considered (on application) for a Medical Treatment visa (UB-602).

In these cases:

- it is not usually necessary for the applicant to undergo any further medical examination
- whether they are unfit to depart Australia is assessed initially “on the papers”, with a medical examination required only if necessary.

For these cases, s65 delegates can (if a successful UB-602 application is made) grant a UB-602 visa for longer stay than usual - for example, for stay longer than the standard 12 months for a Medical Treatment visa for applicants in Australia.

For UB-602 policy and procedure, see PAM3: Sch2Visa 602 - Medical Treatment.

5.2 Parent visa applicants and Visitor visas

From 24 November 2012, Parent (Subclass 103) visa applicants may be eligible for a 3 or 5-year validity multiple entry Visitor visa with a stay up to 12-months at a time. For more information on this

policy, see Gen Guide H - Visitor visas - Visa application and related procedures - Special arrangements for applicants in the parent migration queue.

Applying for a visa

6 Schedule 1 and related requirements

6.1 Schedule 1

The requirements for making a valid application for each subclass are outlined in Schedule 1. Schedule 1 items for parent visas are mostly self-explanatory.

There is only one visa subclass in each of the parent visa classes.

Subclass	103	143	173	804	864	884
Schedule 1 - Item	1124	1130	1221	1124A	1130A	1221A

See PAM3: GenGuideA - Visa application procedures - Applications for visas - What is a valid application.

6.2 Forms

The forms required for making a valid application are outlined in Schedule 1:

If applying for subclass	103	173	804	884
Schedule 1 - Item	1124(1)	1221(1)	1124A(1)	1221A(1)
All applicants	Form 47PA			
All sponsors	Form 40*			

If applying for subclass	143	864
Schedule 1 - Item	1130(1)	1130A(1)
173/884 visa holders	Form 47PT	

All applicants	Form 47PA
All sponsors	Form 40*

* The completion of form 40 is not a Schedule 1 requirement for lodging a valid application for a parent visa. Under policy however, the completion of form 40 is required to ensure that the sponsor is aware of, and understands, their sponsorship undertaking. See PAM3: Div1.4 - Form 40 sponsors and sponsorship.

Forms for application from 173/884 visa holder for a 143/864 visa

As provided for in Schedule 1 (items 1130(5) and 1130A(5)), a reference to an applicant who is the holder of a subclass 173/884 visa means a person, who as the case may be:

- currently holds a subclass 173/884 visa
- has held a subclass 173/884 visa at any time in the 28 days immediately before making a visa application for the corresponding permanent visa or
- has held a subclass 173/884 visa and provides the Department with evidence that compassionate and compelling circumstances exist for the person to be considered to be the holder of a subclass 173/884 visa for the purpose of the permanent visa application.

If a person is applying for a subclass 143/864 visa as a former holder of a subclass 173/884 visa who is seeking to regain their status as a subclass 173/884 visa holder by claiming compassionate and compelling circumstances (as specified in Schedule 1), along with the completed form 47PT and form 40, they must also provide evidence in the form of relevant documentation when they make their subclass 143/864 visa application - see Does the applicant hold a 173/884 visa.

The assessment of those circumstances is provided for at clauses 143.111 and 864.111, which enable a delegated officer to assess if compassionate and compelling circumstances exist when determining whether or not a subclass 143/864 visa applicant is taken to be the holder of a subclass 173/884 visa at time of application. See

- PAM3: Div1.4 - Form 40 sponsors and sponsorship
- Does the applicant hold a 173/884 visa.

6.3 Visa application charge (VAC)

Schedule 1 items prescribe the required amounts for the first and second instalments of the VAC. Acceptable methods of paying the VAC are by credit card, debit card in person, or by bank cheque or money order made payable to the "Department of Immigration and Citizenship". See

- PAM3: Div2.2A
- relevant Chief Executive Instructions.

VAC: MFU

Where a person has combined their application with the application of an applicant on the basis of their being a ***member of the family unit***, under regulation 2.12E only one first instalment VAC payment is required. However, each person who combines their application with another person is an applicant in their own right, so in law has made their own application. Therefore, each applicant must pay the relevant second instalment of the VAC.

Adding MFU to an application

Under regulation 2.08A, a partner or dependent child can also be added to the primary applicant's application before it has been decided at the written request of the primary applicant. In these circumstances, the application is deemed to be a combined application providing it satisfies the Schedule 1 requirements. Under regulation 2.12E, a person whose application is added to another application under regulation 2.08A is not liable for the first instalment of the visa application charge.

Subsequent application

In certain circumstances, an onshore member of the family unit can apply for a visa after the primary applicant has made their application and before it is decide - for example, where the member of the family unit is in Australia and the primary applicant has applied for an Aged Parent (subclass 804) or an Aged Contributory Parent visa (subclass 884 or 864). Alternatively, if the member of the family unit is in Australia and the primary applicant:

- was the holder of a temporary Contributory Parent (subclass 173) or 'substituted Subclass 600 - visa holder and
- applied for a permanent Contributory Parent (subclass 143) while they were in Australia.

In these cases the family members are *not making a combined application* but are applying in their own right. As a result they must both pay the first and second instalment of the VAC.

VAC: From subclass 173/884 visa to subclass 143/864 visa

As provided for in Schedule 1 items 1130(5) and 1130A(5), a reference to an applicant who is the holder of a subclass 173/884 visa means a person, who as the case may be:

- holds a subclass 173/884 visa at the time of application
- held a subclass 173/884 visa at any time in the 28 days immediately before making a visa application for a subclass 143/864 visa or
- held a subclass 173/884 visa and provides the Department with evidence that compassionate and compelling circumstances exist for the person to be considered to be the holder of a subclass 173/884 visa for the purpose of the subclass 143/864 visa application.

However, there are different first and second instalments of the VAC depending on the actual status of the applicant:

Status of the applicant	Visa applied for:	First instalment	Second instalment
Applicant actually held a 173 visa at the time of application	143	1130(2)(a)(i)	1130(2)(b)(i)
Applicant held a 173 visa at any time within the 28 days immediately before making their application	143	1130(2)(a)(ib)	1130(2)(b)(iia)
Applicant held a 173 visa more than 28 days before making their application and provides evidence that compassionate and compelling circumstances exist for the person to be considered to be the holder of a 173 visa and the decision maker is satisfied that compassionate and compelling circumstances exist	143	1130(2)(a)(ic)	1130(2)(b)(iib)

Applicant held a 173 visa more than 28 days before making their application and provides evidence that compassionate and compelling circumstances exist for the person to be considered to be the holder of a 173 visa and the decision maker is *not* satisfied that compassionate and compelling circumstances exist	143	1130(2)(a)(ic)	1130(2)(b)(iv)
Applicant actually held an 884 visa at the time of application	864	1130A(2)(a)(ii)	1130(2)(b)(i)
Applicant held an 884 visa at any time within the 28 days immediately before making their application	864	1130A(2)(a)(iib)	1130A(2)(b)(iia)
Applicant held a 884 visa more than 28 days before making their application and provides evidence that compassionate and compelling circumstances exist for the person to be considered to be the holder of a 884 visa and the decision maker is satisfied that compassionate and compelling circumstances exist	864	1130A(2)(a)(iic)	1130A(2)(b)(iib)
Applicant held a 884 visa more than 28 days before making their application and provides evidence that compassionate and compelling circumstances exist for the person to be considered to be the holder of a 884 visa and the decision maker is *not* satisfied that compassionate and compelling circumstances exist	864	1130A(2)(a)(iic)	1130A(2)(b)(iv)

See:

- PAM3:Div 2.2/reg2.07AI
- PAM3: Div2.2A - Visa application charge
- PAM3 GenGuideA - Combined applications
- section 6.2 Forms.

6.4 Where the applicant must be

For all parent visas listed below, if the person is in Australia, the person's immigration status might affect whether they can make a valid visa application - see section 6.9 Bars on applying.

Visa:	Where the applicant must be:	Sch 1, item:
103	Applicants may be in or outside Australia at the time the application is made.	1124
143	An applicant who is in Australia, and o is the holder of a subclass 173 visa or a substituted Subclass 600 visa or o is a member of the family unit of the holder a subclass 173 visa or a substituted Subclass 600 visa holder	1130(3)

	must apply in Australia (but not in immigration clearance). Other applicants may be in or outside Australia at the time the application is made.	
173	Applicants may be in or outsideAustralia at the time the application is made.	1221
804	Applicant must be in Australia but not in immigration clearance.	1124A(3)(b)
864	Applicant must be in Australia but not in immigration clearance.	1130A(3)(b)
884	Applicant (other than a CPNC) must be in Australia but not in immigration clearance.	1221A(3)(b)

- For CPNC, see PAM3: Div1.2/reg1.03 - Contributory parent new born child.

6.5 Members of the family unit - combined applications

Schedule 1 provides that certain applications by a person claiming to be a member of the family unit of an applicant for a parent visa may be made at the same time and place as, and combined with, the application of that person.

Subclass	103	143	173	804	864	884
Sch 1 - Item	1124(3)(b)	1130(3)	1221(3)(b)	1124A(3)(c)	1130A(3)(d)	1221A(3)(d)

For some visas, Schedule 2 prescribes that certain members of the family unit must make a combined application with the main applicant, while others may apply separately for these visas.

Subclass	103	143	173	864	884
Sch 2 - clause	103.311	143.311	173.311	864.311	884.311

Combined application from subclass 173/884 visa to subclass 143/864 visa

A temporary contributory parent visa holder applying for the corresponding permanent contributory parent visa on form 47PT is able to include members of the family unit (whether or not they hold a temporary contributory parent visa) in their application by having them complete a separate form 47PA. Both application forms 47PT and 47PA should be lodged together at the same time and same place. The application is taken to be a combined application.

A temporary contributory parent visa holder who has already applied for the corresponding permanent contributory parent visa on form 47PT can request to add a partner or dependent child to their application before it is finalised. The partner and/or children do not need to be holders of a temporary contributory parent visa and can be either in or outside of Australia. The application must be lodged in the same manner and place as the original application. If the partner and/or children are the holder of temporary subclass 173 visa, they should complete form 47PT, otherwise they should complete form 47PA. The application is taken to be a "combined application".

As outlined in regulation 143.311, members of the family unit of a person who:

- was a temporary contributory parent visa holder and has already applied for the corresponding permanent contributory parent visa and
- was in Australia at the time the application was made

can apply for a permanent contributory parent visa before the primary applicant's application is finalised. The family members do not need to be holders of a temporary contributory parent but must be in Australia at the time they make their permanent visa application. The application must be made in the same manner and place as the original application. If the partner and/or children are the holder of temporary subclass 173 visa, they should complete form 47PT , otherwise they should complete form 47PA. As each applicant is applying in their own right, it is *not a combined application*.

Under regulation 864.311, members of the family unit of a person who has applied for the corresponding permanent contributory aged parent visa, can also apply for a permanent contributory aged parent visa before the primary applicant's application is finalised. The family members do not need to be holders of a temporary contributory aged parent visa but must be in Australia. If they are the holder of temporary subclass 884 visa, they should complete form 47PT - otherwise they should complete form 47PA. The members of the family unit are applying for the visa in their own right so it is *not a combined application*.

Note: Regulation 2.12E provides that only one first instalment of the VAC is payable on *combined applications*. Members of the family unit applying in their own right will be required to pay the full first instalment of the VAC. Each person who is included in a Parent or Contributory Parent visa application must pay the second instalment of VAC.

Note: Separate arrangements apply where a child has been born to a 173/884 visa holder after grant of the temporary contributory parent visa, but before a decision has been made on the permanent contributory parent visa application - see PAM3: Div 1.2/reg1.03 - Contributory parent newborn child.

See:

- PAM3: Div1.2/reg1.12 - Member of the family unit
- (if MFU not a subclass 173/884 visa holder) section 23.2 Combined application
- (if MFU a subclass 173/884 visa holder) section 26.2 Combined application.

6.6 Where and how the application must be made

Subclasses 103 and 173 visas

For applications for a 103 visa or a 173 visa, Schedule 1 (items 1124(3)(aa) and 1221(3)(a) respectively) require that the application must be made by post or by courier to the addresses currently specified by legislative instrument.

Subclass 143 visas

For the 143 visa, Schedule 1 item 1130(3)(a) requires that, if the applicant is in Australia and is the holder of:

- a subclass 173 visa or
- a substituted Subclass 600 visa

the application must be made in Australia but not in immigration clearance. These applications can be made at any office of the Department in Australia or at the address currently specified by legislative instrument.

For 143 visa applicants who *do not hold* either:

- a subclass 173 visa or
- a substituted Subclass 600 visa

Schedule 1 item 1130(3)(b) requires the application to be made by post or by courier to the addresses currently specified by legislative instrument.

Subclasses 804, 864 and 884

For 804, 864 and 884 visas, Schedule 1 (items 1124A(3)(a), 1130A(3)(a) and 1221A(3)(a) respectively) require the application to be made in Australia at any departmental office. However, all new parent visa applications made at any STO are to be forwarded to PVC for processing.

6.7 No other parent visa applications

Schedule 1 provides that a valid visa application cannot be made if the person has (whether as the main applicant or family member) any other unfinalised parent visa application with the Department - see:

Subclass	103	143	173	804	864	884
Sch1 item:	1124(3)(ab)	1130(3)(d)	1221(3)(c)	1124A(3)(ba)	1130A(3)(c)	1221A(3)(c)

"***Parent visa*** application" includes applications for subclasses 103, 804, 143, 173, 864, and 884. Officers must check departmental records accordingly.

If the person has an unfinalised parent visa application with the Department, they must withdraw that application before they can validly apply for another parent visa. If they have not already withdrawn the existing application/s, they can do so by completing the relevant parts of forms 47PA and 47PT when applying for the other parent visa.

Cases under review (merits or judicial)

At the time of decision, the applicant must have no unresolved parent visa application, that is no pending merits review (MRT/AAT) or judicial (court) review of a refusal decision in relation to a parent visa application - see section 28 Finalisation of other Parent visa applications.

6.8 Sponsorship

Schedule 1 does not prescribe sponsorship as a requirement for making a valid application. However, sponsorship is a schedule 2 time of application criterion. A validly made application will fail unless it is

supported by acceptable sponsorship lodged either at the same time as or before a visa application is made. See:

- Sponsorship.

6.9 Bars on applying

Section 48

Parent visa classes are not prescribed by reg. 2.12 for s48 purposes. A person subject to a s48 bar cannot validly apply for *any* parent visa *while they are in Australia*.

Although clause 804.211 provides additional criteria to be satisfied by applicants who are subject to a s48 bar, the 804 visa is not a prescribed visa for the purposes of s48.

If a "no further stay" condition applies

Under s46(1A) of the Act, a valid parent visa application cannot be made if the person is in the migration zone and the visa currently held (or last held) by the person (whether seeking to apply as the main applicant or as a family unit member) has a "no further stay" condition (for example, 8503) unless that condition has been waived. See:

- PAM3: Sch8 - Visa conditions - "No further application" conditions
- PAM3: Sch8/8503
- PAM3: Div2.1/reg2.05.

Reg. 2.07AI - Bar on further visa applications by subclass 173/884 visa holders

Regulation 2.07AI prevents persons in Australia who have, since last entering Australia, held either a subclass 173 or 884 visa from validly applying for any visa other than:

- the corresponding permanent subclass 143/864 visa
- a Medical Treatment visa or
- a protection visa.

However, whether or not the person can make a valid application for one of these visas and meet the legal criteria for the grant of the visa will depend on all the facts of the case and is ultimately a matter for the decision maker - see PAM3:Div 2.2/reg2.07AI.

7 Immigration status

7.1 Schedule 1 and immigration status

For visas 103, 173, 804 and 884, subject to section 6.9 Bars on applying and section 17 Eligibility to apply, applicants can be lawful or unlawful when making a valid visa application. This is because nothing in Schedule 1 prevents an unlawful non-citizen from applying for these visas. However, for subclasses 143, 804, 864 and 884, Schedule 2 requires the applicant has to satisfy certain Schedule 3 criteria:

Subclass	143	804	864	884

Sch2 item:	143.211	804.213	864.211	884.211

For policy and procedures see PAM3: Sch3 - Additional criteria applicable to unlawful non-citizens and certain bridging visa classes.

An applicant who is the holder of a subclass 173/884 visa

For visas 143 and 864, Schedule 1 items 1130(5) and 1130A(5) provide that a reference to an applicant who is the holder of a subclass 173/884 visa means a person, who as the case may be:

- currently holds a subclass 173/884 visa
- has held a subclass 173/884 visa at any time in the 28 days immediately before making the subclass 143/864 visa application or
- has held a subclass 173/884 visa and provides the Department with evidence that compassionate and compelling circumstances exist for the person to be considered to be the holder of a subclass 173/884 visa for the purpose of the subclass 143/864 visa application.

Schedule 2 requires that applicants for a subclass 143/864 visa who were not the holders of a substantive visa at the time of application must satisfy certain Schedule 3 criterion 3002. If an applicant has held a subclass 173/884 visa and has not held a substantive visa for more than 12 months before applying for the permanent visa, they will not be able to satisfy the Schedule 2 criteria for the grant of a permanent visa.

For policy and procedures relating to former holders of a subclass 173/884 visas, see Does the applicant hold a 173/884 visa.

7.2 Schedule 2 and immigration status

A Transit (subclass 771) visa holder, or a person whose last substantive visa was a Transit visa, can cannot satisfy the Schedule 2 criteria time of application if they apply for a subclass 804, subclass 864 or subclass 884 visa. The application should therefore be refused in line with 804.211(1)/864.211(1)/884.211(1).

There are no immigration status requirements for an applicant who withdrew a subclass 804 visa application at the time of making an application for subclass 864/884 visa (that is, they are not required to satisfy criterion 3002). See PAM3: GenGuideA - Limitations on applying for visas in Australia.

Subclasses 103 and 173

There are no Schedule 3 requirements for these visa subclasses.

Subclass 143

Under clause 143.211, if the main applicant is not the holder of a substantive visa they are required to satisfy Schedule 3 criterion 3002. See PAM3: Sch3 - Additional criteria applicable to unlawful non-citizens and certain bridging visa holders - Criteria 3001 & 3002.

Subclass 804

Under clause 804.213, if the main applicant is not the holder of a substantive visa they are required to satisfy Schedule 3 criterion 3002. See PAM3: Sch3 - Additional criteria applicable to unlawful non-citizens and certain bridging visa holders - Criteria 3001 & 3002.

This means that an applicant who no longer holds a substantive visa and who decides to withdraw a Contributory Parent category visa and apply for a subclass 804 instead, will be required to meet criterion 3002.

Subclasses 864 and 884

Under clauses 864.211/884.211, if the main applicant is not the holder of a substantive visa they are required to satisfy Schedule 3 criterion 3002 - see PAM3: Sch3 - Additional criteria applicable to unlawful non-citizens and certain bridging visa holders - Criteria 3001 & 3002.

Balance of family test – regulation 1.05

8 Overview

The limited number of parent visas that can be granted in each Migration Program year necessitates prioritisation of eligibility for parent visas to be given only to parents who have close ties to Australia. To achieve this objective, the Balance of Family test is designed to determine the extent of the parent's links to their children in Australia and ensure only those with close ties to Australia are eligible for parent visas.

The balance of family test is concerned with the numeric distribution and geographical location of the children of the applicant and the applicant's partner and, if applicable, of the former partners of either the applicant. The test does not consider qualitative matters such as the closeness or the breakdown of the parent-child relationships or cultural factors dictating which child should take care of an aged parent.

The ***balance of family test*** applies to the offshore and onshore ***parent visa*** subclasses. The test must be met by the person who seeks to satisfy primary criteria (the parent).

See Children and the BoF test

Regulation 1.05 was amended on 1 July 2011 to ensure it supports the policy intention of the test. Among other things, the changes ensure that, with a few exceptions, all children and step-children of a visa applicant are counted when applying the 'balance of family' test and that a standard definition of 'step-child' is used.

The revised regulation 1.05 applies to visa applications made on or after 1 July 2011.

9 How the test is met

A parent will meet the balance of family test if at least half of the parent's children and step-children are "eligible children" or there are more "eligible children" than children living in any other single country. In short, "eligible children" include:

- Australian citizens;
- Australian permanent residents usually resident in Australia; or
- eligible New Zealand citizens usually resident in Australia

compared to children who are resident in any other one country

See regulation 1.05(2C) and 1.05(2D).

For example:

- If a parent and their partner have four children, of whom two are Australian citizens and two reside overseas as foreign nationals, the parent will satisfy the test.
- If a parent and their partner have three children, of whom one is an Australian citizen, one is resident in Australia as a temporary visa holder and the third is resident overseas as a foreign national, the parent does not satisfy the test.

See Table summary - Disposition of children.

section 11 "Eligible" and "ineligible" children

10 Visa eligibility

The circumstances in which a ***parent*** meets the balance of family test are prescribed in Regulations Schedule 2 for Parent visas. Generally the balance of family test must only be met at the time of application (reg 1.05).

There are 2 exceptions to the balance of family test requirement:

Subclass 143/864 Contributory Parent visa applicants	are not subject to the test (either at time of application or time of decision) if, at time of application, they held a ***Subclass 173/884 Contributory Parent (Temporary) visa*** or a ***substituted Subclass 600 visa***.
Subclass 804/884 Aged Parent visa applicants	are not subject to the test (either at time of application or at time of decision) if, at time of application, they held a ***substituted Subclass 600 visa***.

11 "Eligible" and "ineligible" children

Regulation 1.05(2) and (2A) specifies what kind of immigration status a child has in order to be considered eligible or ineligible.

11.1 Who is an eligible child?

Regulation 1.05(2)(a) defines an eligible child as a child of the parent who is:

- an Australian citizen;
- a permanent resident usually resident in Australia; or
- an eligible New Zealand citizen usually resident in Australia

There is no requirement that an Australian citizen has to be usually resident in Australia.

11.2 Usual residence for permanent residents and eligible New Zealand citizens

All children who are not Australian citizens must demonstrate:

- lawful and permanent residence; or
- if an eligible New Zealand citizen, usual residence. Eligible New Zealand is defined in regulation 1.03. See PAM3: Act - Identity, biometrics & immigration status - New Zealand citizens in Australia.

Schedule 2 criteria requires that this "residential requirement" be met:

- if the applicant is offshore - at both time of application and time of decision and
- if the applicant is onshore - only at time of application.

11.3 Lawful and permanent residence

Officers should be able to confirm a child's immigration status based on a certified copy of the child's passport and departmental records.

11.4 Assessing usually resident

Officers need to be satisfied that each child who is an Australian permanent resident or eligible New Zealand citizen lives in Australia and intends to reside in Australia indefinitely. All circumstances of the child's life are potentially relevant in establishing whether or not the necessary "intention" exists. The mere physical presence in Australia does not in itself make a child permanently resident in Australia.

An extended period of unbroken permanent residence in Australia is *not* required for a child to be counted favourably in the balance of family test. They could spend periods outside Australia, (for example on holidays, business or employment) and still be assessed as usually resident in Australia.

If doubt exists in such cases, officers may request evidence that the child permanently resides in Australia.

If a child has resided in Australia for only a short period, officers should request evidence that permanent residence is intended, for example, through evidence of permanent employment, bank accounts, driver's licence, purchase of house or car or attendance at English language classes.

Where a person stays in Australia only casually or intermittently they would not normally be assessed as "usually resident" in Australia. .

Further advice on how to assess usually resident is available in Part 18 of the Div1.4 Form 40 PAM3.

11.5 Who is an ineligible child?

If a child does not fall within any of the definitions specified in reg 1.05(2)(a), they are considered as an ineligible child, and therefore they are taken to be resident overseas. For example, if a child is on a Student visa or another type of a temporary visa and residing in Australia, the child would be counted as an ineligible child for the BoF test.

11.6 A child's whereabouts unknown

Under regulation 1.05(1)(b), if the child's whereabouts are unknown, the child is taken to be resident in the child's last known country of usual residence overseas:

- If the child has never travelled to Australia, this would be their last known overseas country of usual residence.
- If the child is believed to be in Australia but of unknown whereabouts, the child is an ineligible child. Under regulation 1.05(2A), ineligible children are taken to be resident overseas, normally in their last known country or usual residence or, alternatively, their country of citizenship (see regulation 1.05(2B)).

Children and the BoF test

12 Which children are counted in the BoF test

Under regulation 1.05(1)(a), children counted for the purpose of the balance of family test include all children and step-children of:

- the parent or
- the parent's ***spouse*** or ***de facto partner***.

No assessment of the nature of the parent-child relationship is necessary.

12.1 Establishing the existence (or not) of the child-parent relationship

All children are counted, regardless of their relationship status or whether they are dependent, self-supporting or institutionalised. However, there are a few specific exceptions, as outlined in The exclusion clauses

Parent-child relationships are normally evidenced by full birth certificates or family books that give details of parents and all children. Officers should also check and verify family composition details given in any previous applications.

12.2 Children born outside a partner relationship

Children of the applicant (that is, the applicant who needs to satisfy primary criteria) born outside a partner relationship, such as a casual, polygamous or from one or more concurrent partner relationships, the primary applicant's children (natural and adopted) are counted in the balance of family test as such children are still children of the applicant as defined by regulation 1.05(1)(a)(i).

However, children of partner of the applicant born under any kind of relationships described above are not counted in the BoF test, see Section 13.

13 Step-children and the BoF test

Where an applicant has a step-child, officers should use the table below to determine which regulations are applicable.

If the parent visa application was made:	
before 1 November 1999	officers need consider only reg. 1.05 (as in force at that time).
on or after 1 November 1999 but before 1 July 2011	officers must consider both reg. 1.05 (as in force at that time) and the reg. 1.03 definition of step-child, but under policy should apply the outcome that is most beneficial to the applicant.
on or after 1 July 2011	the reg. 1.03 definition of step-child applies to the application (together with current reg. 1.05) - see PAM: Act - Act-defined terms - s5G Relationship and family members. Adult step-children of former partners or former partners of the parent's current partner are not counted in the balance of family test, as they do not fall under the definition of step-child in regulation 1.03.

13.1 Reg 1.03 definition

The regulation 1.03 definition of step-child specifies that a step-child is a person who is the child of the parent's current spouse or de facto spouse regardless of the age of the child (reg 1.03(a)). The child of the parent's former spouse or former de facto partner can be included in the BoF test if they are under 18 and the parent has a parenting, guardianship or a custody order (reg 1.03(b).

The definition of step-child was inserted into the reg on 1 November 1999 and, for the purposes of the balance of family test, applies only to parent visa applications made on or after that date.

13.2 Reg 1.05 definition

For applications lodged prior to 1 July 2011, the definition of step-child included in reg 1.05 also included children of a former partner of the parent if that child was born while the parent was in a partner relationship with that former partner or before the relationship was formed.

13.3 Referral to National Office

Cases should be referred to Family Section, National Office if:

- the visa applicant is disadvantaged as a result of the reg 1.03 step-child definition; or
- the child in question is permanently and lawfully resident in Australia but does not meet the definition of step-child.

14 Which children are not counted in the BoF test

14.1 Child deceased or claimed to be deceased

Deceased children are not counted in the balance of family test. For the purpose of the test, officers must be satisfied on the evidence before them that the child is deceased.

In normal circumstances, the child's death is evidence by the child's death certificate or a court order declaring that the child is presumed dead. However, in countries where official documentation is unavailable or unreliable, officers are encouraged to seek evidence from a wide range of credible sources in order to determine whether the child is deceased.

Presumption of death

The applicant may, to support their claim that a child is deceased, include evidence that a court has applied the common law presumption of death.

In certain circumstances, a court may apply a legal presumption that a person is deceased although the death of the person cannot be proven as a matter of fact. Officers may use such evidence (a court declaration or other evidence that a court has applied the 'presumption of death') in coming to the conclusion that a child is deceased.

The court's presumption will be only one piece of evidence before the decision maker. However, in the absence of any other evidence that the child is alive, it should generally be given significant weight.

14.2 Children born to a partner's polygamous or concurrent relationship

Australia's migration legislation does not recognise polygamous or concurrent relationships as 'partner' relationships. Under s5F (Spouse) and s5CB (De facto partner) of the Act, for two persons to be considered each other's partner, they must 'have a mutual commitment to a shared life to *the exclusion of all others*'. If a polygamous or other concurrent relationship exists, none of the relationships can be considered to be 'to the exclusion of all others' and none of the parties can meet s5F of the Act to be a spouse or s5CB of the Act to be a de facto partner - see:

- PAM3: Act - Act defined terms - s5F - Spouse and
- PAM3: Act - Act defined terms - s5CB - De facto partner.

Therefore, in cases of polygamous or concurrent relationships, the 'partners' cannot be recognised as a spouse or de facto partner under s5F or s5CB for the reasons outlined above. This means none of the partners' children can be counted in the balance of family test under regulation 1.05(1)(a)(ii) as the applicant is not in a partner relationship with that child's parent.

Generally, this would also result in the claimed partner being refused a visa on the basis of inability to satisfy parent visa secondary criteria because they could not be assessed as the partner of the primary applicant.

15 The exclusion clauses - Reg 1.05(3)

There are three exceptions to the general rule that all children of the person must be counted in the Balance of Family test. The intention of the exclusions is to not unfairly disadvantage a parent who has children with whom they could not be expected to have a normal parent-child relationship.

Removed from parent - Reg 1.05(3)(a)

Under reg 1.05((3)(a) a child who has been removed from the exclusive custody of the parent by court order, adoption or operation of law (other than in consequence of marriage) is not counted in the balance of family test.

This refers to a situation in which a person, in the first instance, had exclusive custody of the child (for example, as a result of the death of a partner or awarding of sole custody by a court order) and, subsequently, that custody is removed (for example, as a result of the child being adopted out or removed by court order).

However, in practice, it would be rare for a child to be excluded from the balance of family test on the grounds that they had been removed from the exclusive custody of the parent.

Exclusive custody

A person will have had exclusive custody of the child if that person had:

the sole legal right to the daily care and control of the child and

the sole legal right and the sole legal responsibility to make decisions concerning the daily care and control of the child.

Sole custody

If an applicant parent has divorced and sole custody of a child is granted to the other parent, the applicant is *not* considered to have had that child removed from their exclusive custody.

Custody in marriage and de facto relationships

Custody of children in marriage and de facto relationships is considered to be shared custody in which both parents have a legal responsibility towards the children.

Adoption

The removal of a child from a parent by adoption should be interpreted as removal from exclusive custody as the adoption has the effect in law of severing the legal relationship to the natural parent. The adoption is valid for visa-related purposes only if it occurred when the child was under 18 years old.

For further advice on how to assess if a formal adoption has occurred see Adoption Reg 1.04 PAM3.

15.1 Human rights abuse situations - Reg 1.05(3)(b)

A child is not counted in the balance of family test if

- the child resides in a country where they suffer persecution or abuse of human rights and
- it is not possible to reunite the child and the parent in another country.

To satisfy this clause, the applicant or sponsor needs to provide evidence that support such claims. Simply to claim that a child residing in a country where persecution or human rights abuse occur would not be sufficient to meet this requirement. Similarly, a claim that a child is being persecuted or suffering human rights abuses is insufficient if it is not supported by evidence.

If supporting information provided by the applicant/sponsor, it is advisable to check the relevant country situation in general on CISNET database. If the information cannot be verified through that source, it is advisable to contact the Country Information Services helpdesk for confirmation or advice.

15.2 Refugee child in specified refugee camp - Reg 1.05(3)(c)

Under reg 1.05(3)(c) a child is not counted in the balance of family test if registered by the United Nations High Commissioner for Refugees (UNHCR) as a refugee and living in a camp operated by the UNHCR.

Verification

Verification of the child's location and refugee status should be sought from the post in the camp's region. The request should include details such as: full name, date and place of birth, country of last residence, camp of current residence, approximate date of arrival in camp, date the child obtained refugee status and details of any known contact with UNHCR.

The receiving post should seek verification of the child's circumstances through the local UNHCR representative; officers should *not* attempt to make personal contact with the child.

If no record

If there is no record of the child being registered as a refugee and living in a specified camp, the child should be regarded as being of unknown whereabouts and resident in the child's last known country of usual residence. See: subparagraph 15.3.

Table summary - Disposition of children

No. of children	Whereabouts							Parent meets test?
	Australia	Other countries						
		A	B	C	D	E	F	
1	1							Yes
2	1	1						Yes
2	2	–						Yes
3	1	2						No
3	1	1	1					No
3	2	1						Yes
3	3	–						Yes
4	1	2	1					No
4	1	1	1	1				No
4	2	2						Yes
4	3	1						Yes
5	1	1	1	1	1			No
5	1	2	1	1				No
5	2	3						No
5	2	2	1					No
5	2	1	1	1				Yes
5	3	2						Yes
6	1	1	1	1	1	1		No
6	1	2	1	1	1			No
6	2	1	1	1	1			Yes
6	2	3	1					No
6	2	2	2					No
6	3	3						Yes
7	1	1	1	1	1	1	1	No
7	1	2	4					No
7	2	1	1	1	1	1		Yes
7	2	2	1	1	1			No
7	2	3	1	1				No
7	2	2	2	1				No
7	3	1	1	1	1			Yes
7	3	4						No
7	3	3	1					No
7	4	3						Yes

The main applicant

Does the applicant hold a 173/884 visa

16 Compassionate and compelling circumstances

16.1 If a person is no longer a subclass 173/884 visa holder

Schedule 1 items 1130(5) and 1130A(5) provides a broad definition of when an applicant *is the holder* of a subclass 173/884 visa - see An applicant who is the holder of a subclass 173/884 visa.

In order to meet the requirements of Schedule 1 items 1130(5) and 1130A(5), an applicant whose 173/884 visa had ceased more than 28 days before making their 143/864 application must provide, with their application, documentation setting out their compassionate and compelling circumstances.

Note: An applicant who does not satisfy Schedule 3 criterion 3002 will not satisfy the Schedule 2 requirements for a permanent visa - see section 7 Immigration status.

If the applicant re-gains their subclass 173/884 visa status

Clauses 143.111(c)/864.111(c), which relate to compassionate and compelling circumstances, were inserted into the Regulations to allow certain persons, whose subclass 173/884 visa had ceased, to be able to regain the status of a holder of a subclass 173/884 visa for the purpose of being able to apply for a subclass 143/864 visa and consequently have certain visa processing concessions.

As such, if a person is able to regain their status as a subclass 173/884 visa holder at time of applying for the subclass 143/864 visa (although they might not be able to make a valid application for a bridging A visa at the same time, if they were unlawful at time of application) they will be eligible for certain Schedule 2 visa processing concessions when their subclass 143/864 visa is being processed, as provided in section 19.5 Continued eligibility at time of decision.

If the applicant does not re-gain their subclass 173/884 visa status

If a person is not able to regain their status as a holder of a subclass 173/884 visa, then they are only eligible to have their subclass 143/864 visa application processed as if they applied directly for *that* visa. The fact that they have previously held a 173/884 visa is not counted for the purposes of processing the subclass 143/864 visa application. For policy and procedures on immigration status, see section 7 Immigration status.

16.2 Bridging visas

Once a person is unlawful, for instance, if a person in Australia who previously held a subclass 173/884 visa that ceased before they applied for a subclass 143/864 visa, then the type of bridging visa that allows them to remain in Australia while their application is being processed is limited.

For example, if an unlawful non-citizen has already come to the attention of the Department and has consequently been granted a bridging E visa, then they cannot be granted any other type of bridging visa while they are in Australia and while their subclass 143/864 visa application is being processed. Alternatively, if an unlawful non-citizen has not yet come to the attention of the Department before they make their subclass 143/864 visa application, they may be eligible for a bridging C visa for the duration of the application processing. See

- PAM3: Sch2/Bridging visas
- section 7 Immigration status.

16.3 Entitlements may be affected

Applicants in Australia who regain the status of a "holder of a subclass 173/884 visa" (see If the applicant re-gains their subclass 173/884 visa status), may have their entitlements affected.

Centrelink

Applicants for a subclass 143/864 visa (even if they were a subclass 173/884 visa holder when they made their application) are not entitled to most social security payments made by Centrelink.

Work rights

Depending on the type of bridging visa they are granted, such persons may not be granted work rights again. Work rights may be granted if the applicant applies to the Department on hardship grounds. Officers should refer to the relevant bridging visa PAM.

Medicare and reciprocal health care arrangements

Medicare eligibility will have ceased once their subclass 173/884 visa ceased because that person did not apply for the subclass 143/864 visa while their subclass 173/884 visa was in effect. In accordance with the Health Insurance Act 1973, any applicant for a parent visa is not eligible for Medicare unless:

- they are a citizen of a country that has a reciprocal health care arrangement with Australia and consequently may have limited access to Medicare or
- they actually held the subclass 173/884 visa when they made their subclass 143/864 visa application, which even after their subclass 173/884 ceases will enable their Medicare access to continue while their subclass 143/864 visa application is processed.

However, if a person applies for a subclass 143/864 visa:

- within 28 days of their subclass 173/884 visa ceasing, they are able to regain eligibility for Medicare when they made their subclass 143/864 permanent visa application or
- more than 28 days after their subclass 173/884 visa has ceased and supplies information seeking to regain their subclass 173/884 visa status on compassionate and compelling grounds, it is not until a delegate has decided that compassionate and compelling circumstances do exist and has informed the applicant that they can regain eligibility to Medicare.

For more details about Medicare eligibility, see www.medicareaustralia.gov.au.

16.4 How to provide evidence of compassionate and compelling circumstances

Generally, the evidence that a former holder of a subclass 173/884 visa should provide is to be attached to the subclass 143/864 application form. The evidence should be in the form of a statement requesting consideration of compassionate and compelling circumstances and is to be accompanied by documentary evidence. For more information, see section 16.7 What are compassionate and compelling circumstances.

If this evidence is not attached, the application will be considered as if a person is applying directly for the subclass 143/864 visa and was not a subclass 173/884 visa holder at the time of application - see If the applicant does not re-gain their subclass 173/884 visa status.

If the applicant has not held a substantive visa for more than 12 months before they applied for the permanent subclass 143/864 visa, they should be counselled that they are unlikely to satisfy the Schedule 3 requirements for the grant of a visa and given the option of not making the application. Should the applicant choose to continue with the application, it should be assessed against the relevant Schedule 3 requirements before any assessment is made of the claimed compelling and compassionate circumstances.

16.5 Who can consider compassionate and compelling circumstances

Consideration of compassionate and compelling circumstance is not a decision that requires separate Ministerial delegation powers - it is part of the assessment process of the subclass 143/864 visa application. The assessment is undertaken by the s65 delegate who has power to make a decision on the visa application. However, under policy, the decision of whether or not compassionate and compelling circumstances exist should be made by the manager (EL1 level or equivalent).

16.6 When to consider

A person who has made a subclass 143/864 visa application and has provided evidence of compassionate and compelling circumstances as to why they should be considered to have been the holder of a subclass 173/884 visa at the time of the application, would have made a valid visa application as long as they had met all the other legal requirements at Schedule 1 Items 1130/1130A - see section 6 Schedule 1 and related requirements.

It may be that, in addition to providing evidence of compassionate and compelling circumstances at time of making a subclass 143/864 visa application, the applicant did not provide sufficient or clear information. If more information is required and/or needs to be clarified, a delegated officer could (in accordance with s56 of the Act) give the applicant and/or their sponsor a further opportunity to present information as to why they consider that compassionate and compelling circumstance exist as to why they should be considered to have been the holder of a subclass 173/884 visa at the time of the application. Officers are required under s54 of the Act to have regard to all the information in the application.

In Schedule 2 of the Regulations, clauses 143.111(c)/864.111(c) provide that a reference to a holder of a subclass 173/884 visa includes a person in relation to whom a delegated officer is satisfied that

compassionate and compelling circumstances exist for the person to be considered to have been the holder of a subclass 173/884 visa at time of application.

The delegated officer will actually assess time of application criteria sometime after the application has actually been made (possibly at the same time as they assess Schedule 2 time of decision criteria). They will be assessing whether or not they are satisfied that, at the time the person made the valid subclass 143/864 visa application in accordance with Schedule 1 items 1130/1130A, compassionate and compelling circumstances existed so that the person can be taken to be a holder of a subclass 173/884 visa for the purposes of the time of application criteria.

If the delegated officer is satisfied that compassionate and compelling circumstances exist in accordance with clause 143.111(c)/864.111(c), the applicant will be taken to have been the holder of a subclass 173/884 visa at time of application. If the delegated officer is not satisfied that compassionate and compelling circumstances exist, the applicant will not be taken to be the holder of a subclass 173/884 visa at time of application. This assessment will mean that the applicant will have to satisfy the legal criteria that apply to applicants who did not hold a subclass 173/884 visa at the time of application, for example, the balance of family test and payment of the full 2nd VAC.

16.7 What are compassionate and compelling circumstances

When the delegated officer makes the assessment of whether or not compassionate and compelling circumstances existed at time of application, they are to take into account the circumstances that the Minister considers to be compassionate and compelling. Generally, these circumstances would include a situation that was beyond the person's control.

Forgetting to apply in itself may not be considered a compassionate and compelling circumstance. However, the delegated officer would consider circumstances beyond the applicant's control that prevented them applying for the subclass 143/864 visa within the 2 year validity period of the subclass 173/884 visa, including but not limited to:

- medical reasons (for example, serious illness, hospitalisation, medically proven dementia or Alzheimer's disease, other psychological reasons) or
- family reasons (for example, unexpected serious or fatal family situations over which the applicant had no control, such as the incapacitation or death of a partner or child or another member of the family unit).

Along with a statement from the applicant requesting consideration of compassionate and compelling circumstances and the grounds for those claims, accompanying evidence to support these claims can include a doctor's certificate, other professional certifications or other documentary evidence.

The hardship that could result in not being able to satisfy the clause 143.111(c)/864.111(c) requirement of compassionate and compelling circumstances would not of itself be sufficient to justify assessment of meeting the criteria.

16.8 After assessment

Once a delegated officer has assessed whether or not compassionate and compelling circumstances existed, the officer must contact the applicant and/or the sponsor to advise them of the consequences of that assessment:

- if the applicant *did* satisfy clause 143.111(c)/864.111(c) that compassionate and compelling circumstances existed at time of application, then their application is assessed as being made by the holder of a subclass 173/884 visa. Therefore, in addition to giving information to the applicant about their immigration status and the subclass 143/864 visa processing concessions (including VACs), they must also be advised that if their application is successful they can be either in or outside Australia when their visa is granted. (For details on processing concessions, see IF A SUBCLASS 173/884 VISA HOLDER and section 2.5 Concessions) or
- if the applicant did not satisfy clause 143.111(c)/864.111(c) that compassionate and compelling circumstances existed, then their application will continue to be processed, but will be assessed

against the criteria applying to a person who is not the holder of a subclass 173/884 visa at time of application. The applicant and sponsor must be advised that that they did not satisfy the compassionate and compelling criterion at clause 143.111(c)/864.111(c) and that, therefore, they will need to meet all legal criteria for the grant of the subclass 143/864 visa, including the BoF test, PIC 4005 full health checks and payment of the full amount of the 2nd VAC. The applicant will then have the option of either continuing with their subclass 143/864 visa application or withdrawing that application should they so wish (but they will not be refunded the 1st VAC they paid when they made their subclass 143/864 visa application). In addition, the applicant must be advised about their immigration status and that they must be outside Australia when the visa is granted. See IF NOT A SUBCLASS 173/884 VISA HOLDER.

If the applicant wishes to continue with the processing of the subclass 143/864 visa application, the officer will then carry on assessing the applicant against the criteria applying to a person who is not the holder of a subclass 173/884 visa at the time of application (for policy and procedures, see IF NOT A SUBCLASS 173/884 VISA HOLDER). If the applicant satisfies all the criteria, then a subclass 143/864 visa will be granted (provided there are subclass 143/864 visa places available in the current Migration Program year). If the applicant does not satisfy any one of the criteria for the grant of the subclass 143/864 visa, the visa will not be granted.

16.9 Schedule 3 requirement

Clauses 143.211 and 864.211 require that former 173/884 visa holders applying for a subclass 143/864 visa are subject to Schedule 3 criterion 3002.

This requires the 143/864 visa application to be made within 12 months of the date on which the applicant's last substantive visa ceased.

See PAM3: Schedule 3: Additional criteria applicable to unlawful non-citizens and certain bridging visa classes. In particular see Criteria 3001 and 3002 - time limits for making an application.

IF NOT A SUBCLASS 173/884 VISA HOLDER

17 Eligibility to apply

17.1 If a person last held a subclass 173/884 visa

See section 16.1 If a person is no longer a subclass 173/884 visa holder.

17.2 Defined terms

For the defined terms for parent visas, see

- the corresponding regulation 1.03 definitions
- the corresponding PAM3. Div1.2/reg1.03 instructions.

For balance of family test, see

- reg. 1.05
- Balance of family test – regulation 1.05.

17.3 Relationship

In assessing the relationship requirements, see:

- the regulation 5.1 definition of parent
- PAM3: Act - Act-defined terms - s5(1) - Parent

- the regulation 1.03 definition of aged parent
- PAM3: Div1.2/reg1.03/Aged parent.

Note: *Parent* is not limited to being a 'natural' (that is, blood-related) parent.

See the relevant 'sponsorship' section.

Substituted subclass676 visa holders

Clauses 804.221(b), 864.212(ab) and 884.212(1)(a)(ii) provide that the holder of a ***substituted Subclass 600 visa*** is not required to meet the aged parent requirement. However, they are still required to be the parent of a person (the child) who is a settled Australian citizen, a settled Australian permanent resident, or a settled eligible New Zealand citizen - see:

- PAM3: Div1.2/Reg1.03/Substituted subclass 676 visa
- PAM3: Act - Minister's powers - Administration of the Minister's powers - Substituted subclass 676 (Tourist) visa.

In addition to the above, subclauses 143.211(b) and 864.212(b) provide that an applicant for the 143/864 visa who:

- held a substituted Subclass 600 visa at the time they applied for the subclass 143/864 visa and
- previously held a subclass 173/884 visa

does not need to be the parent of a settled Australian citizen, Australian permanent resident, or eligible New Zealand citizen if:

- the child with whom the applicant had such a relationship has died and
- there is no other child that would allow the applicant to meet that requirement.

17.4 Balance of family (BoF) test

Under clause 884.213, an applicant for a subclass 884 visa must satisfy the balance of family test unless they are the holder of a substituted Subclass 600 visa.

Under clauses 103.213, 143.213, 173.213,804.214, 864.214, applicants for other Parent visas must satisfy the balance of family test unless, at the time of application, they were the holder of:

- a subclass 884 visa or
- a substituted Subclass 600 visa.

In assessing the balance of family test in the above clauses, see:

- reg. 1.05 - Balance of family test
- Balance of family test – regulation 1.05.

Substituted subclass 676 visa holders

The above clauses also provide (by omission) that the holder of a substituted Subclass 600 visa is not required to satisfy the BoF test - see section 3 Applications by holders of a substituted Subclass 600 visa.

17.5 Continued eligibility at time of decision

For clauses 103.221, 143.221, 173.221, 804.221, 864.221 and 884.221, as applicants are required under s104 of the Act to notify the Department of changes in their circumstances, (which includes changes in the composition of their family as a result of, for example, birth, death or change in

relationship status), officers may, without further enquiry, consider this s104 related Schedule 2 criterion satisfied provided:

- there is no evidence (or notification) to the contrary and
- no significant time has elapsed since the visa application was made; otherwise, officers should check that there has been no material change in the circumstances of the applicant, their family or their Australian relative/sponsor.

18 Generic criteria - if not a subclass 173/884 visa holder

18.1 Character requirement

Clauses 103.224, 143.224, 173.224, 804.225, 864.223 and 884.224 provide that the main applicant must satisfy the prescribed PICs. See the corresponding PAM3: Sch4 documents.

18.2 Debts to the Commonwealth

Clauses 103.224, 143.224, 173.224, 804.225, 864.223 and 884.224 provide that the applicant (who was not the holder of a substituted Subclass 600 visa at the time of application) must satisfy PIC 4004. See PAM3: Sch4/4004 - Debts to the Commonwealth.

For substituted Subclass 600 visa holders

The above clauses also provide that if the main applicant is the holder of a substituted Subclass 600 visa, the applicant is not required to satisfy PIC 4004. However, they will still be required to make arrangements for repayment of the debt. Removal of the requirement to satisfy PIC 4004 does not mean that the debt itself is waived. Outstanding debts to the Commonwealth can only be waived by the Minister for Finance. If a waiver of the debt itself is not sought from the Minister of Finance, or the Minister for Finance refuses to waive the debt, it will remain at law and will continue to be recorded against the applicant's name on the Movement Alert List. See PAM3: Sch4/4004 - Debts to the Commonwealth.

18.3 Health requirement

For other than substituted Subclass 600 visa holders

Clauses 103.224(a), 143.225(1), 173.224(a), 804.225(1), 864.223(1)(b) and 884.224(1)(a) provide that if the main applicant is not the holder of a substituted Subclass 600 visa at the time of application they must satisfy PIC 4005. See PAM3: Sch4/4005-4007.

Under current arrangements, applicants applying for an "offshore" visa (103, 143 or 173) do not have to undertake a health assessment before they are allocated a queue date. However, they must satisfy the relevant health PIC prior to visa grant.

For substituted Subclass 600 visa holders

Under clauses 143.225(2)(b), 804.225(2), 864.223(2)(b) and 884.224(2)(a), if the main applicant was the holder of a substituted Subclass 600 visa at the time of application they are required to satisfy health PIC 4007 (instead of 4005).

In addition, clauses 143.225 and 864.223 also provide that if the main applicant was the holder of a substituted Subclass 600 visa at the time of application and has previously held a 173/884 visa, they are only required to undergo 'such health checks as the Minister considers appropriate - see PAM3: Sch4/4005-4007.

18.4 Settlement criteria

Clauses 103.224, 143.225, 173.224, 804.225, 864.223 and 884.224 provide that the main applicant must satisfy PICs 4009 and 4010, which relate to the settlement of the applicant in Australia. See

- PAM3: Sch4/4009
- PAM3: Sch4/4010.

18.5 Values Statement

Schedule 2 provides that main applicants who have turned 18 years at the time of application must satisfy PIC 4019, which relates to the signing of a values statement see:

Clauses:	103.224	143.224	173.224	804.225	864.223	884.224

See also PAM3: Sch4/4019.

18.6 Special return criteria

Clauses 103.225, 143.227, 173.225, 804.225 and 864.225 provide that, if the main applicant has previously been in Australia, they must satisfy the prescribed Schedule 5 special return criteria.

The 804 visa has no special return criteria.

18.7 Required assurance of support (AoS)

Clauses 103.226, 143.228, 804.224 and 864.226 provide that the main applicant must have an approved AoS. There is no discretion for officers to waive the AoS requirement. It is not necessary, however, for an AoS to be requested and accepted in order for the visa application to be queued - see:

- PAM3: Div1.2/reg1.03/Assurance of support
- PAM3: Div2.7
- PAM3: GenGuideB -Non-humanitarian migration (offshore and onshore) - Visa application and related procedures - Queuing.

Subclass 173/884 visa

There is no requirement for an AoS for these visa subclasses as they are allow the visa holder only temporary residence status in Australia. The AoS is only required for the grant of a permanent 143 or 864 visa.

18.8 Additional applicants

Clauses 103.228, 143.231, 173.228, 804.227, 864.229 and 884.228 provide that the main applicant cannot be granted a visa unless those members of the family unit who are under 18 and who are also visa applicants satisfy PICs 4015 and 4016. The main applicant cannot be granted a visa if granting a visa to a minor described in this provision would prejudice the custody (or similar) rights of another person.

18.9 "One fails, all fail" criteria

"One fails, all fail" criteria relating to members of the family unit apply to the main applicant.

Clauses 103.227, 143.229, 143.230, 173.226, 173.227, 804.226, 864.227, 864.228, 884.226 and 884.227 provide that the main applicant generally cannot be granted a visa unless, as provided in the above clauses:

- those family unit members who are visa applicants satisfy the relevant PICs prescribed and
- those family unit members who are not visa applicants also satisfy the relevant PICs prescribed.

See the corresponding PAM3: Sch4 instructions.

"One fails, all fail" criteria - Health Requirement for non- substituted Subclass 600 visa holders

Clauses 103.227(1)(a) and 103.227(2)(b), 143.229(1)(a) and 143.230(1)(b), 173.226(a) and 173.227(b), 804.226(1)(1)(a) and 804.226(2)(1)(b), 864.227(1)(a) and 864.228(1)(b) and 884.226(1)(a) and 884.227(1)(b) provide that the main applicant (who was not the holder of a substituted Subclass 600 visa at the time of application - by omission) must satisfy PIC 4005. See PAM3: Sch4/4005-4007.

Refer to Health Policy Section for policy advice on the health requirement prescribed in the above clauses ('unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment').

"One fails, all fail" criteria - Health requirement for substituted Subclass 600 visa holders

Under clauses 143.229(2)(b) and 143.230(2)(b), 804.226(1)(2)(a) and 804.226(2)(2)(b), 864.227(2)(b) and 864.228(2)(b) and 884.226(2)(a) and 884.227(2)(b), if the main applicant was the holder of a substituted Subclass 600 visa at the time of application they are required to satisfy health PIC 4007 (instead of 4005).

Refer to Health Policy Section for policy advice on the health requirement prescribed in the above clauses ('unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment').

In addition, clauses 143.225 and 864.223 also provide that if the main applicant was the holder of a substituted Subclass 600 visa at the time of application and has previously held a subclass 173/884 visa, they are only required to undergo 'such health checks as the Minister considers appropriate.', see PAM3: Sch4/4005-4007.

18.10 Finalisation of any other parent visa applications

Under clauses 103.229, 143.232, 173.229, 804.228, 864.230 and 884.229 provide that other parent visa applications must be finalised. See section 6.7 No other parent visa applications.

18.11 The passport requirement

Clauses 103.224(a), 143.224(a), 173.224(a), 804.225, 864.223, 864.224(a) and 884.224 require the applicant to satisfy PIC 4021, that is, either the applicant holds a valid passport or it would be unreasonable for the applicant to hold a valid passport. For policy and procedure, see PAM3: Sch4/4021 - The passport requirement.

18.12 Main applicant must be visaed first

The main applicant's secondary criteria prevent members of the family unit from being granted their visa unless/until the main applicant has been granted their visa first - see section 23.3 Continued eligibility at time of decision.

19 Eligibility to apply - if a subclass 173/884 visa holder

19.1 Visa status

See DOES THE APPLICANT HOLD A 173/884 VISA.

19.2 Relationship

143.211/864.212: See section 17.2 Defined terms.

For the defined terms in clauses 103.1, 143.1, 173.1, 804.1, 864.1 and 884.1, see:

- the corresponding regulation 1.03 definitions
- the corresponding PAM3. Div1.2/reg1.03 instructions.

For balance of family test, see

- reg. 1.05
- Balance of family test – regulation 1.05.

19.3 If the child has died

Clauses 143.212(4)/864.213(4) provide for circumstances where the child from whom the parent derived their subclass 173/884 visa relationship eligibility dies before the parent's subclass 173/884 visa ceases and before they apply for a 143/864 visa, and there is no other child who can meet the relationship requirements prescribed in 143.212(2) and (3) and 864.213(2) and (3). In such cases, the subclass 173/884 visa holder is not required to meet the relationship or sponsorship requirements.

19.4 No balance of family (BoF) test

Clauses 143.213, 143.223, 864.214 and 864.223 provide that persons who, at time of application for subclass 143/864 visa, hold a subclass 173/884 visa are not subject to the BoF test.

19.5 Continued eligibility at time of decision

If not a subclass 173/884 visa holder, for clauses 143.221 and 864.221 see section 17.5 Continued eligibility at time of decision.

Subclass 173/884 visa holder applicants receive certain concessions at Schedule 2 time of decision assessment of their subclass 143/864 visa application. These concessions include those related to:

- sponsorship
- debts to the Commonwealth - see section 20.2 Debts to the Commonwealth
- health - see section 20.3 Health requirement
- settlement - see section 20.4 Settlement criteria
- minors - see section 20.8 If a minor.

Clauses 143.231 and 864.229 provide that the subclass 173/884 visa holder main applicant for a subclass 143/864 visa cannot be granted a visa unless those members of the family unit who are under 18 and who are also visa applicants satisfy PICs 4015 and 4016. The main applicant cannot be granted a visa if granting a visa to a minor described in this provision would prejudice the custody (or similar) rights of another person.

"One fails, all fail" criteria cessation of dependency of members of the family unit - see section 2.5 Concessions.

20 Generic criteria - if a subclass 173/884 visa holder

20.1 Character requirement

143.224(a)/864.224(a): provide that a subclass 173/884 visa holder main applicant for a subclass 143/864 visa must satisfy the prescribed character PICs. See the corresponding PAM3: Sch4 documents.

20.2 Debts to the Commonwealth

A subclass 173/884 visa holder who is the main applicant for a subclass 143/864 visa is not required (by omission) to satisfy PIC 4004. However, they will still be required to make arrangements for repayment of the debt. Removal of the requirement to satisfy PIC 4004 does not mean that the debt itself is waived. Outstanding debts to the Commonwealth can only be waived by the Minister for Finance. If a waiver of the debt itself is not sought from the Minister of Finance, or the Minister for Finance refuses to waive the debt, it will remain at law and will continue to be recorded against the applicant's name on the Movement Alert List - see PAM3: Sch4/4004 - Debts to the Commonwealth.

20.3 Health requirement

Clauses 143.226 and 864.224(b) provide that the 173/884 visa holder main applicant for a 143/864 visa has undergone health checks the decision maker considers appropriate.. Applicants for a temporary Contributory Parent visa (173/884) would have undertaken full health examinations for a permanent visa. As they have already undertaken health examinations for a permanent visa, 173/884 visa holders are generally not required to undertake additional health checks for the grant of a subclass 143/864 visa.

If a concern arises about the applicant's health during the processing of the permanent visa application, decision-makers must contact Health Policy for advice before proceeding to finalise the application. .

See PAM3:Sch4/4005-4007 - Two Stage Processing.

20.4 Settlement criteria

A subclass 173/884 visa holder main applicant for a subclass 143/864 visa is not required (by omission) to satisfy PICs 4009 and 4010, which relate to the settlement of the applicant in Australia.

20.5 Values statement

Clauses 143.224(b) and 864.224(aa) provide that a subclass 173/884 visa holder main applicant for a subclass 143/864 visa, who has turned 18 years at the time of application must satisfy PIC 4019 which relates to the signing of a values statement - see PAM3: Sch4/4019.

20.6 Special return criteria

Clauses 143.227 and 864.225 provide that, if the 173/884 visa holder main applicant for a subclass 143/864 visa has previously been in Australia, they must satisfy the prescribed Schedule 5 special return criteria.

20.7 Required assurance of support (AoS)

Clauses 143.228 and 864.226 provide that the subclass 173/884 visa holder main applicant for a subclass 143/864 visa must have an approved AoS. An AoS is required by law for the 143/864 visas. There is no discretion for officers to waive the AoS requirement. It is not necessary, however, for an AoS to be requested and accepted in order for the visa application to be queued - see:

- PAM3: Div1.2/reg1.03/Assurance of support
- PAM3: Div2.7
- PAM3: GenGuideB -Non-humanitarian migration (offshore and onshore) - Visa application and related procedures - Queuing.

20.8 If a minor

Clauses 143.231 and 864.229 provide that the 173/884 visa holder main applicant for a 143/864 visa cannot be granted a visa unless those members of the family unit who are under 18 and who are also visa applicants satisfy PICs 4015 and 4016. The main applicant cannot be granted a visa if granting a visa to a minor described in this provision would prejudice the custody (or similar) rights of another person.

20.9 "One fails, all fail" criteria

Clauses 143.229 and 143.230 provide that the 173/884 visa holder main applicant for a subclass 143/864 visa is not subject to the "one fails, all fail" criteria prescribed in 143.229 and 143.230 (through omission) relating to members of the family unit (both applicants and non-applicants).

Therefore, even if one of the members of the family unit of the main applicant do not satisfy a criterion or criteria in 143.324, if applicable, the subclass 143 visa main applicant as well as other members of the family unit applicants can still be granted a subclass 143 visa.

Under clauses 864.227 and 864.228, the same principle applies to subclass 884 visa holders who apply for a subclass 864 visa.

20.10 Finalisation of any other parent visa applications

143.232/864.230, provide that other parent visa application must be finalised. See

- section 6.7 No other parent visa applications
- section 27.10 Finalisation of any other parent visa applications.

20.11 Applicant to hold a valid passport

For clauses 143.233 and 864.231, see PAM3: Act - Passports, travel documents & visa evidencing - Travel documents.

20.12 Main applicant must be visaed first

The secondary criteria for a subclass 173/884 visa holder main applicant for a subclass 143/864 visa prevent their members of the family unit from being granted their subclass 143/864 visa unless/until the main applicant has been granted their subclass 143/864 visa first. See section 27.12 Main applicant must be visaed first.

Sponsorship

This part discusses sponsorship limitations, sponsorship requirements, change in sponsor, death of sponsor and sponsorship on behalf of minor children.

More generic advice on sponsorship for parent visas is located in the form 40 PAM, and this section should be read in conjunction with that instruction. See:

- PAM3: Div1.4 Form 40 sponsors and sponsorship.

21 Sponsorship limitations and requirements

21.1 Sponsorship limitation

Regulation 1.20LAA imposes a sponsorship limitation to any parent, contributory parent or aged dependent relative (ADR) visa application made on or after 26 April 2008, where the sponsor is a holder or former holder of a subclass 802 visa whose application for that visa was supported by a letter of support from a state or territory government welfare authority (STGWA). For policy and procedures see:

- PAM3: Div1.4B - Limitation on certain sponsorships and nominations.

21.2 Sponsorship requirements

The sponsorship requirements for primary applicants are prescribed in clauses:

103.212 and 103.222	143.212 and 143.222	173.212 and 173.222	804.212 and 804.222	864.213 and 864.222	884.212 and 884.222

The sponsorship requirements for subclass 173/884 visa holders are prescribed in clauses:

- 143.212 and 143.222
- 864.213 and 864.222.

Note: Subclass 173/884 visa holders receive certain concessions at time of decision assessment of their subclass 143/864 visa application. For details of these concessions, see section 19.5 Continued eligibility at time of decision.

These regulations provide that a sponsor must be:

- the child of the applicant or the child's cohabiting partner
- aged 18 years or over and
- a settled Australian citizen, Australian permanent resident or an eligible New Zealand citizen.

For policy and procedure on the sponsorship obligations and undertaking, including assessing the information in the Sponsorship form (Form 40), see:

- PAM3: Div1.4 Form 40 sponsors & sponsorship.

21.3 Sponsorship on behalf of children under 18 years of age

If the child or child's cohabiting partner is unable to sponsor the applicant because they are under 18 years of age, the regulations provide for a relative, guardian or community organisation to sponsor on their behalf. However, the relative or guardian must also be aged 18 years or over and be a settled Australian citizen, Australian permanent resident or eligible New Zealand citizen.

For policy and procedure on sponsorship by community organisations, see section 22 Sponsorship by a community organisation.

21.4 Sponsorship of step-parents

Generally, a settled Australian citizen child, permanent resident or an eligible New Zealand citizen can sponsor their parents. If sponsorship is provided by a step-child, officers may refer these cases to the Family Section, National Office for advice.

21.5 Change in sponsor

The time of decision sponsorship clauses (103.222, 143.222, 173.222, 804.222, 864.222 and 884.222) provide that the approved sponsor does not need to be the same sponsor at time of application and at time of decision.

However, the new sponsor will still need to meet the sponsorship requirements and will need to submit a completed form 40 to the Department. See section 21.2 Sponsorship requirements.

21.6 If the sponsor dies

For all Parent visa applicants, if the sponsor at time of application dies, and the applicant can arrange a suitable new sponsor, change of sponsorship may be approved - see section 21.5 Change in sponsor.

However, if the sponsor of a 173/884 visa holder dies before the 143/864 visa application is made and decided, see:

- section 21.7 If the sponsor of a 173/884 visa holder dies before the 143/864 visa application is made and
- section 21.8 If the sponsor of a 143/864 visa applicant dies before the application is decided.

21.7 If the sponsor of a 173/884 visa holder dies before the 143/864 visa application is made

Clauses 143.212(4) and 864.213(4) provide that the applicant is taken to have met the sponsorship requirement for the purposes of the subclass 143/864 visa application if:

- the applicant is the holder of a subclass 173/884 visa at the time of application
- the person who sponsored the applicant for the subclass 173/884 visa dies before the subclass 173/884 visa ceases to be in effect and
- there is no other available sponsor (as described in 143.212 and 864.213) who could meet sponsorship requirements.

21.8 If the sponsor of a 143/864 visa applicant dies before the application is decided

Under clauses 143.222A/864.222(b), if:

- the subclass 143/864 visa applicant was a subclass 173/884 visa holder at time of their subclass 143/864 visa application
- their approved sponsor dies after the subclass 143/864 visa application is made, but before it is decided and
- there is no other eligible person (as described in clause 143.212/864.213) available to sponsor

the applicant is taken to still be sponsored for the subclass 143/864 visa application.

21.9 Sponsorship of member of family unit

Sponsorship of MFU is specified in the following clauses:

103.312 and 103.322	143.312 and 143.322	173.312 and 173.322	804.312 and 804.325	864.312 and 864.322	884.312 and 884.322

For 143.312 and 143.322, 864.312 and 864.322, see:

- section 21.7 If the sponsor of a 173/884 visa holder dies before the 143/864 visa application is made and
- section 21.8 If the sponsor of a 143/864 visa applicant dies before the application is decided.

22 Sponsorship by a community organisation

22.1 Sponsorship by a community organisation on behalf of a minor child.

If the person who would otherwise (by direct relationship to the visa applicant) be the sponsor is under 18 years old, Schedule 2 provides for a community organisation to be the sponsor.

22.2 Which community organisations are acceptable

The Regulations neither define "community organisation", nor prescribe further requirements that the organisation must meet. The types of organisations that, under policy, may be approved under regulation 1.20 as sponsors include, but are not limited to, community-based organisations, ethnic organisations or church-based groups, with which the minor has affiliation or which are assisting the minor in settling.

The organisation should establish that it has a relationship with the person under 18 years old or that it is willing to support the application by, for example, a local senior member of the organisation who is authorised to speak on behalf of the organisation providing a statutory declaration to this effect.

22.3 Establishing the legitimacy of a community organisation

To establish whether a community organisation is eligible to sponsor an applicant, a decision maker needs to be satisfied that the organisation:

- has been lawfully established in Australia
- has been actively operating in Australia for a period of at least one year and
- has the capacity to meet its financial commitments.

Decision makers may consider requesting the following documents to assist them in establishing the legitimacy and financial capacity of the Australian organisation:

- certificate of registration for tax purposes (Australian Business Number)
- certificate of registration of business name (if operating under a trading name)
- relevant pages of the trust deed specifying the parties to the trust (for a trust)
- relevant pages of the franchise agreement specifying the franchise arrangements (for a franchise/franchisor)
- financial or annual report including profit and loss statement and balance sheet. (If operating as a trust, financial statements must be in the name of the trust or the trustee for the trust)
- Business Activity Statements (BAS) for the last financial year
- bank statements.

22.4 Evidence of meeting sponsorship obligations by a community organisation

Decision makers need to be satisfied that the organisation is financially capable to provide financial support to an applicant during the time their application is being processed and within two years after the visa is granted.

Evidence that sponsorship obligations can be met may include but is not limited to the below documentation:

- statutory declarations
- financial statements such as bank statements or letters from a bank
- most recent tax assessments
- evidence of the availability and adequacy evidence of accommodation for the applicant or
- any other documents relevant to these requirements.

Any statutory declarations should be completed by a local senior member of the organisation who has a legal capacity to act on behalf of the organisation outlining their agreement to the sponsorship undertaking. The organisation's representative must complete and sign the relevant parts of the Sponsorship form (Form 40), including signing the undertaking at Part M.

22.5 Evidence of the relationship between the organisation and the family

It is also important for the decision-maker to consider the strength of the relationship between the community organisation and the family. This could be assessed by considering the duration, frequency and type of contact the community organisation has had with the family. The decision maker would also need to take into account the reasons why the community organisation is prepared to sponsor the applicant.

Family unit members

If MFU not a subclass 173/884 visa holder

23 Eligibility to apply - if MFU not a subclass 173/884 visa holder

23.1 Relationship

Clauses 103.311, 143.311, 173.311, 804.311(a), 864.311 and 884.311 require the applicant to be a member of the family unit of the person seeking to satisfy primary criteria. See regulation 1.12(1) and regulation 1.12(4) definitions of member of the family unit.

For guidelines on establishing the composition of the family unit, see:

- PAM3: Div1.2/reg1.12
- section 17.3 Relationship.

Note: For subclasses 804, 864 and 884 the aged parent requirement does not apply to members of family unit of a person seeking to satisfy the primary criteria. See PAM3: Div1.2/reg1.03/Aged parent.

23.2 Combined application

Provided the main applicant has not yet been granted or refused their visa:

- regulation 2.08 adds newborn children to the application (they are taken to have applied for a visa at time of birth) - see PAM3: Div2.2/reg2.08 and
- regulation 2.08A allows a partner or dependent child (only) to be added to the application at the main applicant's written request - see PAM3: Div2.2/reg2.08A.

In either situation, the relevant regulation states that the family member is taken to have applied with the main applicant and, therefore, are deemed to have made a combined application. Each person who is eligible to make a combined application with another person is an applicant in their own right so in law has made their own application.

Under clauses 103.311 and 173.311, members of the family unit who are not covered by regulations 2.08 or 2.08A (that is, a partner or dependent child/ren) must make a combined application with the main applicant - they cannot successfully apply separately for this visa.

Under clause 804.311, 864.311 and 884.311, members of the family unit who are not covered by regulations 2.08 or 2.08A (that is, a partner or dependent child/ren) may still apply separately from (that is, later than) the main applicant. However, for this criterion to be satisfied:

- the main applicant's application must still be undecided and
- the main applicant must appear to satisfy the corresponding criteria in 804.21, 864.21 and 884.21.

In certain circumstances, clause 143.311 allows members of the members of the family unit who are not covered by regulations 2.08 or 2.08A (that is, a partner or dependent child/ren) to apply separately from (that is, later than) the main applicant. However, for this criterion to be satisfied:

- the main applicant must have held a substituted Subclass 600 visa or a subclass 173 visa
- the main applicant's application must have been made while they were in Australia
- the main applicant's application must not have been decided
- the main applicant must appear to satisfy the corresponding criteria in 143.21 and
- the member of the family unit must be in Australia at the time they make their application.

In all other cases, members of the family unit who are not covered by regulations 2.08 or 2.08A (that is, a partner or dependent child/ren) must make a combined application with the main applicant for the Subclass 143 visa - they cannot successfully apply separately for this visa.

See PAM3 GenGuideA - All visa - Combined applications.

23.3 Continued eligibility at time of decision

Under clauses 103.321, 143.321,804.321 and 864.321, a family member who is a visa applicant must still, at time of decision, continue to be a member of the family unit of the visa main applicant.

Under clauses 173.321 and 884.321, unless the applicant is a Contributory Parent Newborn Child, a family member applicant must still, at time of decision, continue to be a member of the family unit of the visa main applicant.

These regulations also prevent members of the family unit from being granted their visa unless/until the main applicant has been granted their visa first. See:

- section 18.12 Main applicant must be visaed first
- PAM3: Div1.2/reg1.12 - Member of the family unit.

24 Sponsorship - if MFU not a subclass 173/884 visa holder

24.1 Sponsorship

Clauses:

143.312 and 143.322	103.312 and 103.322	173.312 and 173.322	804.312 and 804.325	864.312 and 864.322	884.312 and 884.322

25 Generic criteria - if MFU not a subclass 173/884 visa holder

25.1 Character requirement

Clauses 103.323(a), 143.323(a), 173.323(a), 804.322, 864.323(a) and 884.323 provide that the secondary applicant must satisfy the prescribed character PICs. See the corresponding PAM3: Sch4 documents.

25.2 Debts to the Commonwealth

Clauses 103.323(a), 143.324(1), 173.323(a), 804.322(1)(a), 864.324(1) and 884.323(1)(a) provide that if the secondary applicant (who was not the holder of a substituted Subclass 600 visa at the time of application - by omission) must satisfy PIC 4004. See the PAM3: Sch4/4004 - Debts to the Commonwealth.

Substituted subclass 676 visa holders

The above clauses also provide that if the secondary applicant is the holder of a substituted Subclass 600 visa, the secondary applicant is not required to satisfy PIC 4004. However, they will still be required to make arrangements for repayment of the debt. Removal of the requirement to satisfy PIC 4004 does not mean that the debt itself is waived. Outstanding debts to the Commonwealth can only be waived by the Minister for Finance. If a waiver of the debt itself is not sought from the Minister of Finance, or the Minister for Finance refuses to waive the debt, it will remain at law and will continue to be recorded against the applicant's name on the Movement Alert List. For policy and procedures see PAM3: Sch4/4004 - Debts to the Commonwealth.

25.3 Health requirement

For non-substituted Subclass 600 visa holders

Clauses 103.323(a), 143.324(1), 173.323(a), 804.322(1)(a), 864.324(1) and 884.323(1)(a) provide that the secondary applicant (who was not the holder of a substituted Subclass 600 visa at the time of application - by omission) must satisfy PIC 4005. See PAM3: Sch4/4005-4007.

For substituted Subclass 600 visa holders

Under clauses 143.324(2)(b), 804.322(2)(a), 864.324(2)(b) and 884.323(2)(a), if the secondary applicant was the holder of a substituted Subclass 600 visa at the time of application they are required to satisfy health PIC 4007 (instead of 4005).

In addition, clauses 143.324 & 864.324 also provide that if the secondary applicant was the holder of a substituted Subclass 600 visa at the time of application and has previously held a subclass 173/884 visa, they are only required to undergo 'such health checks as the Minister considers appropriate - see PAM3: Sch4/4005-4007.

25.4 Settlement criteria

Clauses 103.323(a), 143.324, 173.323(a), 804.322, 864.324 and 884.323 provide that the secondary applicant must satisfy PICs 4009 and 4010, which relate to the settlement of the applicant in Australia. See:

- PAM3: Sch4/4009
- PAM3: Sch4/4010.

25.5 Values statement

Clauses 103.323(b), 143.323(b), 173.323(b), 804.322, 864.323(b) and 884.323 provide that secondary applicants who have turned 18 years at the time of application must satisfy PIC 4019, which relates to the signing of a values statement - see PAM3: Sch4/4019.

25.6 Special return criteria

Clauses 103.324, 143.326, 173.324, 884.326 and 864.326 provide that, if the secondary applicant has previously been in Australia, they must satisfy the prescribed Schedule 5 special return criteria. See PAM3: Sch5 - Special return criteria.

For the 804 visa, there are no special return criteria for this visa subclass.

25.7 Required assurance of support (AoS)

Under clauses 103.325, 143.327, 804.323 and 864.327, the secondary applicant must be included in the main applicant's AoS or have an individual AoS that has been accepted by the Secretary of the Department of Family, Housing, Community Services and Indigenous Affairs (FaHCSIA).

An AoS is required by law for the above visas; there is no discretion for officers to "waive" the AoS requirement. It is not necessary, however, for an AoS to be requested and accepted in order for the visa application to be queued, see:

- PAM3: Div1.2/reg1.03/Assurance of support
- PAM3: Div2.7
- PAM3: GenGuideB -Non-humanitarian migration (offshore and onshore) - Visa application and related procedures - Queuing.

There is no requirement for an AoS for the temporary Contributory Parent category visa subclasses (173 and 884) as the AoS is only required for the grant of a permanent visa.

25.8 If a minor

Clauses 103.326, 143.328, 173.325, 804.324, 864.328 and 884.324 provide that secondary applicants who are under 18 years of age must satisfy PICs 4017 and 4018.

25.9 "One fails, all fail" criteria

See section 18.9 "One fails, all fail" criteria.

25.10 Finalisation of any other parent visa applications

Clauses 103.327, 143.329, 173.326, 804.326, 864.329 and 884.325 provide that other parent visa applications must be finalised - see section 6.7 No other parent visa applications.

25.11 The passport requirement

Clauses 103.323, 143.323(a), 173.328, 804.322, 864.323(a) and 884.328 require the applicant to satisfy PIC 4021, that is, either the applicant holds a valid passport or it would be unreasonable for the applicant to hold a valid passport. For policy and procedure, see PAM3: Sch4/4021 - The passport requirement.

25.12 Main applicant must be visaed first

Clauses 103.321, 143.321, 173.321, 804.321, 864.321 and 884.321 prevent a secondary applicant from being granted their visa unless/until the main applicant has been granted their visa first. See PAM3: Div1.2/reg1.12 - Member of the family unit.

If MFU a subclass 173/884 visa holder

26 Eligibility to apply - if MFU a subclass 173/884 visa holder

26.1 Relationship

143.311/864.311: See section 23.1 Relationship.

26.2 Combined application

To satisfy clause 1143.311/864.311, members of the family unit may make a combined application with the main applicant - see section 23.2 Combined application.

Regulation 2.08A allows subclass 173/884 visa holders to add a partner or dependent child to their subclass 143/864 visa application - see PAM3: Div2.2/reg2.08A - Adding a partner and dependent children to certain permanent visa applications. However, note that separate arrangements apply for CPNCs - see PAM3: Div1.2/reg1.03 - Contributory parent newborn child.

Under 864.311, members of the family unit who are not covered by regulations 2.08 or 2.08A may still apply separately from (that is, later than) the main applicant. However, for this criterion to be satisfied:

- the main applicant's application must not have been decided and
- the main applicant must appear to satisfy the corresponding criteria in 864.21.

In certain circumstances, clause 143.311 allows members of the members of the family unit who are not covered by regulations 2.08 or 2.08A to apply separately from (that is, later than) the main applicant. However, for this criterion to be satisfied:

- the main applicant must have held a substituted Subclass 600 visa or a subclass 173 visa
- the main applicant's application must have been made while they were in Australia
- the main applicant's application must not have been decided
- the main applicant must appear to satisfy the corresponding criteria in 143.21 and
- the members of the family unit must be in Australia at the time they make their application.

In all other cases, members of the family unit who are not covered by regulations 2.08 or 2.08A must make a combined application with the main applicant for the subclass 143 visa - they cannot successfully apply separately for this visa.

26.3 Continued eligibility at time of decision

For clauses 143.321 and 864.321, see section 23.3 Continued eligibility at time of decision.

In relation to cessation of dependency, regulation 1.12(3) and (4) specifically provides for a subclass 173/884 visa holder, where family members who have otherwise ceased to be dependent on the family head (the subclass 143/864 visa main applicant) since they were granted the subclass 173/884 visa, are still counted as being a member of the family unit for the purposes of the subclass 143/864 visa. Therefore, dependency does not have to be re-considered for the purposes of clause 143.321/864.321.

See:

- PAM3: Div1.2/reg1.05A - Dependent and
- PAM3: Div1.2/reg1.12 - Member of the family unit.

27 Generic criteria - if MFU a subclass 173/884 visa holder

27.1 Character requirement

143.323(a)/864.323(a) provide that the subclass 173/884 visa holder secondary applicant for a subclass 143/864 visa must satisfy the prescribed character PICs. See the corresponding PAM3: Sch4 documents.

27.2 Debts to the Commonwealth

A subclass 173/884 visa holder secondary applicant for a subclass 143/864 visa is not required (by omission) to satisfy PIC 4004. However, they will still be required to make arrangements for repayment of the debt. Removal of the requirement to satisfy PIC 4004 does not mean that the debt itself is waived. Outstanding debts to the Commonwealth can only be waived by the Minister for Finance. If a waiver of the debt itself is not sought from the Minister of Finance, or the Minister for Finance refuses to waive the debt, it will remain at law and will continue to be recorded against the applicant's name on the Movement Alert List - see PAM3: Sch4/4004 - Debts to the Commonwealth.

27.3 Health requirement

143.325/864.325 provide that the subclass 173/884 visa holder secondary applicant for a subclass 143/864 visa has undergone health checks the Minister considers appropriate. In line with the Health PAM, subclass 173/884 visa holders will only be required to undertake a new health assessment if the subclass 173/884 visa holder has:

- resided in a high risk or very high risk country for a specified period of time and/or
- health integrity concerns

This means that subclass 173/884 visa holders do not have to undertake a new health assessment for the subclass 143/864 visa application if there is:

- a deterioration in their health and/or
- a new medical condition

which have occurred following the granting of their subclass 173/884 visa.

See PAM3:Sch4/4005-4007 - Two Stage Processing.

27.4 Settlement criteria

A subclass 173/884 visa holder secondary applicant for a subclass 143/864 visa is not required (by omission) to satisfy PICs 4009 and 4010 which relate to the settlement of the applicant in Australia.

27.5 Values statement

143.323(b)/864.323(b): provide that a subclass 173/884 visa holder secondary applicant for a subclass 143/864 visa, who has turned 18 years at the time of application, must satisfy PIC 4019 which relates to the signing of a values statement. See PAM3: Sch4/4019.

27.6 Special return criteria

143.326/864.326: provide that if the subclass 173/884 visa holder secondary applicant for a subclass 143/864 visa has previously been in Australia, they must satisfy the prescribed Schedule 5 special return criteria. See PAM3:Sch5 - Special return criteria.

27.7 Required assurance of support (AoS)

143.327/864.327: provide that the subclass 173/884 visa holder secondary applicant for a subclass 143/864 visa must be included in the main applicant's AoS or have an individual AoS that has been accepted by the Secretary of the Department of Family, Housing, Community Services and Indigenous Affairs (FaHCSIA).

An AoS is required by law for the above visas; there is no discretion for officers to "waive" the AoS requirement. It is not necessary, however, for an AoS to be requested and accepted in order for the visa application to be queued, see

- PAM3: Div1.2/reg1.03/Assurance of support
- PAM3: Div2.7
- PAM3: GenGuideB -Non-humanitarian migration (offshore and onshore) - Visa application and related procedures - Queuing.

27.8 If a minor

143.328/864.328: provide that a subclass 173/884 visa holder secondary applicant for a subclass 143/864 visa, who is under 18 years of age, must satisfy PICs 4017 and 4018.

27.9 "One fails, all fail" criteria

143.229 and 143.230

864.227 and 864.228

A subclass 173/884 visa holder secondary applicant for a subclass 143/864 visa is not (by omission) subject to the "one fails, all fails" criteria relating to members of the family unit (both applicants and non-applicants). See section 14.9 - "One fails, all fail" criteria.

27.10 Finalisation of any other parent visa applications

For clauses 143.329 and 864.329, which provide that other parent visa applications must be finalised, see section 6.7 No other parent visa applications.

27.11 Applicant to hold valid passport

For clauses 143.330 and 864.330,

require the applicant to satisfy PIC 4021, that is, either the applicant holds a valid passport or it would be unreasonable for the applicant to hold a valid passport. For policy and procedure, see PAM3: Sch4/4021 - The passport requirement.

27.12 Main applicant must be visaed first

Clauses 143.321 and 864.321 prevent the subclass 173/884 visa holder secondary applicant for a subclass 143/864 visa from being granted their subclass 143/864 visa unless/until the main applicant has been granted their subclass 143/864 visa first.

Visa grant

28 Finalisation of other Parent visa applications

28.1 Requirements

Subclass	103	143	173	804	864	884
Sch2 clause:		143.232				

Before a parent visa can be granted, officers must ascertain whether there are any unresolved parent visa (or associated review) applications in respect of the applicant. This is because, for all applicants (whether or not main applicant or member of the family unit or subclass 173/884 visa holder), the relevant clauses in Schedule 2 require all other parent visa applications to have been finalised or withdrawn. If there is another parent visa application before the Department, see

- section 6.7 No other parent visa applications
- PAM3: Div1.2/reg1.03 - Parent visa.

The requirement to have no unresolved parent visa application includes merits review (MRT/AAT) or judicial (court) review of a refusal decision in relation to a parent visa application. Any such review applications must be withdrawn or finalised (which includes the period on which to seek review having passed) before the subclass 143 visa can be granted.

See

- IF A SUBCLASS 173/884 VISA HOLDER
- section 18.10 Finalisation of any other parent visa applications
- section 20.10 Finalisation of any other parent visa applications
- section 25.10 Finalisation of any other parent visa applications
- section 27.10 Finalisation of any other parent visa applications.

28.2 Applications at merits or judicial review

The requirement to have no unfinalised parent visa application includes those applicants under merits review (MRT/AAT) or judicial (court) review for a parent visa application. Any such review applications must be withdrawn or finalised (which includes the period in which to seek review having passed) before an applicant (whether or not main applicant or member of the family unit or subclass 173/884 visa holder) can be granted a parent visa. See:

- PAM3: Act - Merits review - Guide for primary decision-makers
- PAM3: Act - Merits review - Time-limited review by the MRT
- Migration Act, Part 7, Division 8 - Referral of decisions to Administrative Appeals Tribunal
- Migration Act, Part 8, Division 2 - Jurisdiction and procedure of courts.

28.3 Withdrawal

Completing the relevant part of forms 47PA and 47PT withdraws only an application before the Department. It does not withdraw any merits or judicial review application. The applicant is required to contact the relevant review body (merits or judicial) to arrange for withdrawal of that application and provide evidence of that withdrawal to the Department.

28.4 Combined applications

Officers should take care to only withdraw the application that has been requested to be withdrawn. An applicant who has made a combined application can withdraw from that application leaving their

partner as the main applicant. While policy recommends that couples apply together, there is currently no legal impediment to couples pursuing separate parent applications.

28.5 First entry date

In determining the first entry date, see

- GenGuideB - Non-humanitarian migration (offshore and onshore) - Visa application and related procedures
- section 32 Visa grant or refusal.

29 Where the applicant must be at time of visa grant

Visa	Clause		Where the applicant must be:
103	103.411	All applicants	*must be outside* Australia at time of visa grant.
143	143.411	Applicants who, at the time of application, were the: o holder of a 173 visa o holder of a substituted Subclass 600 visa or o member of the family unit of a holder of a substituted Subclass 600 visa or o member of the family unit of a 173 visa holder and both the 173 visa holder and the member of the family unit were in Australia at the time of application	may be in or outside Australia, but not in immigration clearance
143	143.412	All other applicants not covered by 143.411.	*must be outside* Australia at time of visa grant.
173	173.411	Applicants other than CPNCs	*must be outside* Australia at time of visa grant.
173	173.412	CPNCs	may be in or outside placecountry-regionAustralia, but not in immigration clearance
804	804.411	All applicants	*must be in* Australia at time of visa grant, but not in immigration clearance
864	864.411	All applicants	*must be in* Australia at time of visa grant, but not in immigration clearance

884	884.411	Applicants other than CPNCs	*must be in* Australia at time of visa grant, but not in immigration clearance
884	884.412	CPNCs	may be in or outside Australia, but not in immigration clearance

For policy and procedures, see:

- PAM3: GenGuideA - Circumstances applicable to grant
- PAM3: GenGuideB - Granting visas.

30 Payment of the second instalment of the VAC

Schedule 1 specifies that the second instalment of the VAC must be paid before the visa can be granted (s65(1)(a)(iv) of the Act). See

- Schedule 1
- regulation 2.12C
- PAM3: Div2.2A - Visa application charge - for guidelines on the VAC, including procedures for requesting payment of the second instalment.

31 When visa is in effect

Permanent visas

Clauses 103.511, 143.511, 804.511 and 864.511 provide that the permanent visa permits the holder to travel to and enter Australia for 5 years after the date of visa grant.

Temporary visas

Clauses 173.511 and 884.511 provide that, if the applicant is not a CPNC, a temporary visa will be granted permitting the holder to travel to, enter and remain in Australia for 2 years from a date specified by the Minister for that purpose.

For a subclass 173 visa holder, the temporary visa is in effect for a period of 2 years from the date of initial entry into Australia. This means that the visa will allow the subclass 173 holder to travel to, enter and remain lawfully in Australia for 2 years from the date of initial entry to Australia.

Note: When granting subclass 173 visas in the system, the “Entry Expiry” (travel facility) field is a mandatory field and must have a date entered into it. It currently should default to a date 2 years from the date of grant. Processing officers must not alter this date. Upon initial entry into Australia, the travel facility of the subclass 173 visa in IT systems will automatically set to 2 years from the initial entry date, allowing a full 2 years from the date of initial entry to Australia for the subclass 173 visa holder to travel to, and enter, Australia.

In addition, when entering the length of stay for a subclass 173 visa in the system, processing officers must always use “Y02” in the “Stay” field.
For a subclass 884 visa holder, the temporary visa is in effect for a period of 2 years form the date of visa grant.

CPNC

Clauses 173.512 and 884.512 provide that, if the applicant is a CPNC, a temporary visa will be granted permitting the holder to travel to, enter and remain in Australia from a date specified by the Minister - see PAM3: Div1.2/reg1.03 - Contributory parent newborn child.

32 Visa grant or refusal

32.1 Notification

For the requirements of s66 of the Act relating to notification of a decision, see:

- PAM3: Act - Code of procedure - Notification requirements
- PAM3: GenGuideA - All visas - Visa application procedures - Notification of decisions.

If the visa is granted, see also PAM3: Div5.3/reg5.17 for policy and procedures for informing visa holders of their entitlement (if any) to AMEP English tuition.

Under policy, officers should also advise applicants who are granted a subclass 173/884 visa of the effect of regulation 2.07AI - see Reg. 2.07AI - Bar on further visa applications by subclass 173/884 visa holders.

32.2 Merit review

Decisions to refuse to grant a parent visa are ***MRT-reviewable decisions*** under:

- s338 of the Act and
- in relation to CPNCs, regulation 4.02(4)(j) or (k).

Section 347 of the Act prescribes:

- how a review application is made
- who may apply for the review and
- whether the visa applicant must be in Australia when the review application is made.

For policy and procedures, see PAM3: Act - Merits review - Review by the MRT - Guide for primary decision makers.

33.1 If an applicant dies

If a visa applicant dies before a visa application is finally determined, there is no longer an application for that person. The application must be finalised on the system as "Otherwise finalised". See:

- PAM3: GenGuideA-All visas-Visa application procedures - If the applicant dies.

33.2 If the main applicant dies

If the main applicant dies, the processing office would normally request:

- a certified true copy of the death certificate (or confirm otherwise that the applicant is deceased) and
- a letter from the secondary applicant confirming that they wish to continue with the visa application.

The secondary applicant and sponsor are not requested to provide other forms or documents.

Once the above documents are received by the processing office, the role of the secondary applicant will be changed to a primary. The application stays in its position in the queue until visa grant consideration.

Note: For onshore parent visas, if the secondary applicant is not "aged", they remain in their queue position still, until their application is due for visa grant consideration. Once their visa application is considered for finalisation, if the "new" primary applicant (who was previously a secondary applicant) is still not an "aged parent", the application will be refused as the "time of decision" criteria, including "aged parent", are not met.

[Sch2Visa114] Sch2Visa114 - Aged Dependent Relative

About this instruction

Contents

This departmental instruction, which deals with Regulations Schedule 2 Part 114 criteria for the BO-114 visa, comprises:

- Introduction
- The BO-114 primary applicant
- BO-114 family unit members
- BO-114 visa grant.

Related instructions

- PAM3: Div1.2/reg1.03 – Aged dependent relative
- PAM3: Sch1 item 1123A - Other Family (Migrant) (Class BO)
- PAM3: GenGuideB - Non-humanitarian migration - Visa application and related procedures

Latest changes

Legislative – 25 September 2014

As the Senate has disallowed the Migration Amendment (Repeal of Certain Visa Classes) Regulation 2014, which on 2 June 2014 had, among other things, repealed Schedule 2 Part 114, the Part has been revived.

(The BO-114 visa was repealed and closed to new applications between 2 June 2014 and the moment the Senate voted to disallow this repeal on 25 September 2014. Visa applications made during the period when the visas were repealed are invalid and remain invalid despite the disallowance.)

Policy

This instruction, which is part of the centralised departmental instructions system (CDIS), was issued on 25 September 2014 It is an updated version of the instruction of the same name that existed prior to 2 June 2014.

Owner

Family Policy Section
Visa Framework and Family Policy Branch
Migration and Citizenship Policy Division
National Office.

Document ID

VM- 3078

Contents summary

Introduction

About the BO-114

1 Purpose

This visa is for persons outside Australia who are seeking a permanent visa on the basis of being an ***aged dependent relative*** of:

- an Australian citizen
- an Australian permanent resident or
- an eligible New Zealand citizen.

2 Interview requirements

See PAM3: Div1.2/reg1.03 - Aged dependent relative.

All applicants should be interviewed regarding their claims to entitlement to this visa.

3 Capping and queuing

Other Family category visas (including BO-114) are subject to a s85 cap and a s499 queuing direction - see:

- the current legislative instrument made for s85 purposes and
- the s499 direction - Order for considering and disposing of visa applications under section 91 of the Migration Act.

The BO-114 primary applicant

Eligibility

4 Must be an aged dependent relative

Clause 114.211 requires the applicant to be the ***aged dependent relative*** of a person who is an Australian citizen, Australian permanent resident or eligible New Zealand citizen.

For ‘aged dependent relative’, see:

- the regulation 1.03 definition of ***aged dependent relative***
- the 1.03 definition of ***relative*** and
- for policy and procedure on assessing claims, PAM3: Div1.2/reg1.03 - Aged dependent relative.

5 Continued eligibility

See 114.221.

All visa applicants are required by s104 of the Act to notify changes in circumstances, such as changes in the composition of their family as a result of birth, death or change in relationship status, or changes in the circumstances of their Australian relative.

Therefore, officers may without further enquiry consider 'time of decision' criterion 114.221 satisfied provided:

- there is no evidence (or notification) to the contrary **and**
- no significant time has elapsed since the visa application was made.

Otherwise, officers should **check** that there has been no material change in the circumstances of the applicant, their family or the Australian relative/sponsor.

Sponsorship requirements

6 Sponsorship

For 114.212 and 114.222, see:

- regulations 1.20(1), 1.20(2)(a) and 1.20(3) and
- PAM3: Div1.4 - Form 40 sponsors and sponsorship.

Form 40 (Sponsorship for migration to Australia) is the sponsorship form for this visa for regulation 1.20(3) purposes.

7 Who can sponsor

A person can sponsor a BO-114 applicant if the person:

- is a ***relative*** of the BO-114 primary applicant and
- has turned 18 and
- is a settled Australian citizen, Australian permanent resident or eligible New Zealand citizen and
- is usually resident in Australia

or if the person

- is the cohabiting partner of relative of the applicant and
- has turned 18 and
- is a settled Australian citizen, Australian permanent resident or eligible New Zealand citizen and
- is usually resident in Australia
-

8 Change of sponsor

There is no provision for BO-114 applicants to change sponsor.

9 The 'settled' requirement

Settled is defined in regulation 1.03. For policy and procedure on the term, see PAM3: Div1.4 - Form 40 sponsors and sponsorship.

10 Sponsorship limitations

Sponsorship limitations apply to this visa – see:

- regulation 1.20LAA
- PAM3: Div1.4B - Limitation on certain sponsorships under Division 1.4.

Briefly, regulation 1.20LAA imposes a sponsorship limitation to any aged dependent relative visa application made on or after 26 April 2008 if the sponsor is a holder or former holder of a BT-802 visa, and the application for that BT-802 visa was supported by a letter of support from a State/Territory government welfare authority (STGWA).

Generic criteria

11 Public interest criteria

To assess the public interest criteria (PICs) prescribed in 114.223, see the corresponding PAM3: Sch4 instructions.

12 Assurance of support

For 114.225 see PAM3: Div1.2/reg1.03 - Assurance of support.

13 Special return criteria

For 114.224 see PAM3: Sch5 – Special return criteria.

14 “One fails, all fail” criteria

Public interest criteria

The BO-114 primary applicant cannot be granted a visa unless those ***members of the family unit*** (as defined in regulation 1.12):

- who are also visa applicants satisfy the PICs prescribed in 114.226(1)
- who are **not** visa applicants satisfy the PICS prescribed in 114.226(2).

For policy and procedure see the corresponding PAM3: Sch4 instructions.

Special return criteria

For 114.226(1)(b), the BO-114 primary applicant cannot be granted a visa unless those ***member**s **of the family unit*** who are visa applicants satisfy the special return criteria prescribed in 114.226(1)(b). For policy and procedure see PAM3: Sch5- Special return criteria.

Custody of minors

The BO-114 primary applicant cannot be granted a visa if granting a visa to any minor described in 114.227 would prejudice the custody (or similar) rights of another person.

For policy and procedure, first see Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

BO-114 family unit members

Eligibility

15 Relationship

For 114.311, the applicant must be a ***member of the family unit*** (family unit member) of the BO-114 primary applicant - see:

- regulation 1.12 and
- for policy and procedure on establishing the composition of the family unit, PAM3: Div1.2/reg1.12 – Member of the family unit.

16 Combined application

Clause 114.311 requires family unit members to apply with the BO-114 primary applicant; they cannot successfully apply **separately** for this visa.

However, provided the primary applicant has not yet been granted or refused a visa:

- regulation 2.08, by operation of law, adds newborn children to the application (the child is taken to have applied for a visa at birth) and
- regulation 2.08A allows (in this instance, given the definition of ***aged dependent relative***) a dependent child (only) to be added to the application at the primary applicant's written request.

In either situation, the relevant regulation states that the family member is taken to have applied with the primary applicant, so this particular 114.311 criterion is satisfied.

Note: Although Regulations Schedule 1 item 1123A(3)(b) allows for valid combined applications by members of the family unit, if the visa application includes a spouse or de facto partner:

- the BO-114 primary applicant cannot meet the regulation 1.03 definition to be an ***aged dependent relative*** (they must be "single" both at the time of application and at the time of decision on the application) and, it follows,
- Schedule 2 criteria for visa grant cannot be satisfied.

17 Continued eligibility

See 114.321.

All visa applicants are required by s104 of the Act to notify changes in circumstances, such as changes in the composition of their family as a result of birth, death or change in relationship status, or changes in the circumstances of their Australian relative.

For 114.321, therefore, officers may without further enquiry consider 'time of decision criterion 114.321 satisfied provided:

- there is no evidence (or notification) to the contrary **and**
- no significant time has elapsed since the visa application was made.

Otherwise, officers should **check** that there has been no material change in the circumstances of the applicant, their family or the Australian relative/sponsor.

Other requirements

18 Sponsorship

For 114.312 and 114.322, see Sponsorship requirements.

19 Public interest criteria

For 114.323, see the corresponding PAM3: Sch4 instructions.

20 Special return criteria

For 114.324, see PAM3: Sch5 – Special return criteria.

21 Assurance of support

For 114.325, see section 12 Assurance of support.

22 If a minor

For 114.326, see Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

23 BO-114 primary applicant must be visaed first

Clause 114.321 is worded so that family unit members cannot be granted their visas unless/until the primary applicant has been granted **their** visa.

BO-114 visa grant

24 Where the applicant must be to be granted their visa

For 114.411, the applicant must be outside Australia when the visa is granted. See also PAM3: GenGuideA - All visas - Visa application procedures - Circumstances applicable to grant.

25 Payment of VAC

Together, s 65(1)(a)(iv) of the Act and Regulations Schedule 1 item 1123A(2)(b) require the second instalment of the visa application charge to be paid before visa grant.

For policy and procedure, see PAM3: Div2.2A – Visa application charge.

26 BO-114 visa condition

26.1 First entry date

For policy and procedure on deciding the “first entry date” specified in 114.611, see PAM3: Sch8/8504 - (First) Entry date condition.

26.2 Other conditions

For the discretionary conditions specified in 114.612, see:

- for 8502 - PAM3: Sch8/8502 - Not to arrive before person specified in visa
- for 8515 - PAM3: Sch8/8515 - Must not marry or enter into de facto relationship.

END OF DOCUMENT

[Sch2Visa838] Sch2Visa838 - Aged Dependent Relative

About this instruction

Contents

This departmental instruction, which deals with the Regulations Schedule 2 Part 838 criteria for the BU-838 visa, comprises:

- Introduction
- The BU-838 primary applicant
- BU-838 family unit members
- BU-838 visa grant.

Related instructions

- PAM3: Div1.2/reg1.03 – Aged dependent relative
- PAM3: GenGuideB - Non-humanitarian migration - Visa application and related procedures

Latest changes

Legislative – 25 September 2014

As the Senate has disallowed the Migration Amendment (Repeal of Certain Visa Classes) Regulation 2014, which on 2 June 2014 had, among other things, repealed Schedule 2 Part 838, the Part has been revived.

(The BU-838 visa was repealed and closed to new applications between 2 June 2014 and the moment the Senate voted to disallow this repeal on 25 September 2014. Visa applications made during the period when the visas were repealed are invalid and remain invalid despite the disallowance.)

Policy

This instruction, which is part of the centralised departmental instructions system (CDIS), was issued on 25 September 2014. It is an updated version of the instruction of the same name that existed prior to 2 June 2014.

Owner

Family Policy Section
Visa Framework and Family Policy Branch
Migration and Citizenship Policy Division
National Office.

Document ID

VM- 3082

Contents summary

20 Where the applicant must be at time of visa grant

21 Payment of VAC

Introduction

About the BU-838 visa

1 Purpose

This visa is for persons in Australia seeking a permanent visa on the basis of being the ***aged dependent relative*** of:

- an Australian citizen
- an Australian permanent resident or
- an eligible New Zealand citizen..

2 Interview requirements

See PAM3: Div1.2/reg1.03 - Aged dependent relative.

All applicants should be interviewed regarding their claims to entitlement to this visa.

3 Capping and queuing

Other Family category visas (including BU-835) are subject to a s85 cap and s499 queuing direction,- see:

- the current legislative instrument made for s85 purposes and
- the s499 direction - Order for considering and disposing of visa applications under section 91 of the Migration Act.

The BU-838 primary applicant

Eligibility

4 Must be an aged dependent relative

Clause 838.212 requires the applicant to be the ***aged dependent relative*** of a person who is an Australian citizen, Australian permanent resident or eligible New Zealand citizen.

For ‘aged dependent relative’, see:

- the regulation 1.03 definition of ***aged dependent relative***
- the 1.03 definition of ***relative*** and
- for policy and procedure on assessing claims, PAM3: Div1.2/reg1.03 - Aged dependent relative.

5 Continued eligibility

See 838.221.

All visa applicants are required under s104 of the Act to notify changes in circumstances, such as changes in the composition of their family as a result of birth, death or change in relationship status, or changes in the circumstances of their Australian relative.

Therefore, officers may without further enquiry consider 'time of decision' criterion 838.221 satisfied provided:

- there is no evidence (or notification) to the contrary **and**
- no significant time has elapsed since the visa application was made.

Otherwise, officers should **check** that there has been no material change in the circumstances of the applicant, their family or the Australian relative/sponsor.

6 Immigration status

Transit visa holders ineligible

Supporting the policy intention and purpose of transit visas, current/former transit visa holders cannot satisfy primary criteria for this visa - see 838.211(a) and 838.211(b)(ii).

If not a substantive visa holder

For 838.211(b)(i) and (iii), if the primary applicant does not hold a substantive visa see PAM3: Sch3 - Additional criteria applicable to unlawful non-citizens and certain bridging visa holders.

Sponsorship requirements

7 Sponsorship

For 838.213 and 838.227, see:

- regulations 1.20(1), 1.20(2)(a) and 1.20(3) and
- PAM3: Div1.4 – Form 40 sponsors and sponsorship.

Form 40 (Sponsorship for migration to Australia) is the sponsorship form for this visa for regulation 1.20(3) purposes.

8 Who can sponsor

A person can sponsor a BU-838 applicant if the person:

- is a ***relative*** of the BU-838 primary applicant and
- has turned 18 and
- is a settled Australian citizen, Australian permanent resident or eligible New Zealand citizen and
- is usually resident in Australia

or if the person:

- is the cohabiting partner of relative of the applicant and
- has turned 18 and
- is a settled Australian citizen, Australian permanent resident or eligible New Zealand citizen and
- is usually resident in Australia

9 Change in sponsor

There is no provision for BU-838 applicants to change sponsor.

10 The ‘settled’ requirement

Settled is defined in regulation 1.03. For policy and procedure on the term, see PAM3: Div1.4 – Form 40 sponsors and sponsorship.

11 Sponsorship limitations

Sponsorship limitations apply to this visa – see:

- regulation

  1.20LAA

- PAM3: Div1.4B - Limitation on certain sponsorships under Division 1.4.

Briefly, Regulation 1.20LAA imposes a sponsorship limitation to any aged dependent relative visa application made on or after 26 April 2008, if the sponsor is a holder or former holder of a BT-802 visa, and the application for that BT-802 visa was supported by a letter of support from a State/Territory government welfare authority (STGWA).

Generic criteria

12 Assurance of support

For 838.222, see PAM3: Div1.2/reg1.03 - Assurance of support.

13 Public interest criteria

To assess the public interest criteria (PICs) prescribed in 838.223, see the corresponding PAM3: Sch4 instructions.

14 “One fails, all fail” criteria”

Public interest criteria

The BU-838 primary applicant cannot be granted a visa unless those ***members of the family unit*** (as defined in regulation 1.12)

- who are also applicants satisfy the PICs prescribed in 838.224(1)
- who are not visa applicants satisfy the criteria prescribed in 838.224(2).

For policy and procedure see the corresponding PAM3: Sch4 instructions.

Custody of minors

The BU-838 primary applicant cannot be granted a visa if granting a visa to any minor described in 838.225 would prejudice the custody (or similar parental responsibility) rights of another person.

BU-838 family unit members

Eligibility

15 Relationship

For 838.311, the applicant must be a ***member of the family unit*** (family unit member) of the BU-838 primary applicant. See:

- regulation 1.12 and
- for policy and procedure on establishing the composition of the family unit, PAM3: Div1.2/reg1.12 – Member of the family unit.

16 Adding family members to the application

Provided the BU-838 primary applicant has not yet been granted or refused their visa:

- regulation 2.08 adds newborn children to the application (they are taken to have applied at birth) - see PAM3: Div2.2/reg2.08 - Application by newborn child and
- regulation 2.08A allows a partner or dependent child (only) to be added to the application at the primary applicant's written request - see PAM3: Div2.2/reg2.08A - Addition of certain applicants to certain applications for permanent visas.

Note: Although Regulations Schedule 1 item 1123B(3)(c) allows for valid combined (or separate) applications by members of the family unit, if the visa application includes a spouse or de facto partner:

- the BU-838 primary applicant cannot meet the regulation 1.03 definition to be an ***aged dependent relative*** (they must be "single" both at the time of application and at the time of decision on the application) and, it follows,
- Schedule 2 criteria for visa grant cannot be met.

17 Continued eligibility

See 838.321.

All visa applicants are required by s104 of the Act to notify changes in circumstances, such as changes in the composition of their family as a result of birth, death or change in relationship status, or changes in the circumstances of their Australian relative.

For 838.321, therefore, officers may without further enquiry consider time of decision criterion 838.321 satisfied provided:

- there is no evidence (or notification) to the contrary and
- no significant time has elapsed since the visa application was made.

Otherwise, officers should check that there has been no material change in the circumstances of the applicant, their family or the Australian relative/sponsor.

Other requirements

18 Sponsorship

For 838.312 and 838.325, see Sponsorship requirements.

19 Generic criteria

19.1 PICs

For 838.322, see the corresponding PAM3: Sch4 instructions.

19.2 Assurance of support

For 838.323, see PAM3: Div1.2/reg1.03 - Assurance of support.

19.3 If a minor

For 838.324, first see Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

19.4 BU-838 primary applicant must be visaed first

Clause 838.321 is worded so that family unit members cannot be granted their visa unless/until the BU-838 primary applicant has been granted their visa.

BU-838 visa grant

20 Where the applicant must be at time of visa grant

For 838.411, the applicant must be in Australia when the visa is granted. See also PAM3: GenGuideA –All visa s- Visa application procedures - Circumstances applicable to grant.

21 Payment of VAC

Together, s65(1)(a)(iv) of the Act and Regulations Schedule 1 item 1123B(2)(b) require the second instalment of the visa application charge to be paid before visa grant.

END OF DOCUMENT

PAM3: Sch2Visa115 Remaining Relative

About this instruction

Contents

This departmental instruction, which deals with Regulations Schedule 2 Part 115 criteria for the BO-115 visa, comprises:

- Introduction
- The BO-115 primary applicant
- BO-115 family unit members
- BO-115 visa grant.

Related instructions

- PAM3: Div1.2/reg1.15 - Remaining relative
- PAM3: Sch1 item 1123A - Other Family (Migrant) (Class BO)
- PAM3: GenGuideB - Non-humanitarian migration - Visa application and related procedures

Latest changes

Legislative – 25 September 2014

As the Senate has disallowed the Migration Amendment (Repeal of Certain Visa Classes) Regulation 2014, which on 2 June 2014 had, among other things, repealed Schedule 2 Part 115, the Part has been revived.

(The BO-115 visa was repealed and closed to new applications between 2 June 2014 and the moment the Senate voted to disallow this repeal on 25 September 2014. Visa applications made during the period when the visas were repealed are invalid and remain invalid despite the disallowance.)

Policy

This instruction, which is part of the centralised departmental instructions system (CDIS), was issued on 25 September 2014. It is an updated version of the instruction of the same name that existed prior to 2 June 2014.

Owner

Family Policy Section
Visa Framework and Family Policy Branch
Migration and Citizenship Policy Division
National Office.

Contents summary

Introduction

About the BO-115 visa

1 Purpose

This visa is for persons outside Australia who are seeking a permanent visa on the basis of being the remaining relative (outside Australia) of:

- an Australian citizen
- an Australian permanent resident or
- an eligible New Zealand citizen.

2 Interview requirements

See PAM3: Div1.2/reg1.15 – Remaining relative.

All applicants should be interviewed regarding their claims to entitlement to this visa.

3 Capping and queuing

Other Family category visas (including BO-115) are subject to a s85 cap and a s499 queuing direction - see:

- the current legislative instrument made for s85 purposes and
- the s499 direction - Order for considering and disposing of visa applications under section 91 of the Migration Act.

The BO-115 primary applicant

Eligibility

4 Remaining relative of an Australian relative

Clause 115.211 requires the applicant to be the ***remaining relative*** of their parent, brother, sister, step-parent, step-brother or step-sister (the ***Australian relative*** - see PAM3: Div1.2/reg1.03 - Australian relative), who must be an Australian citizen, Australian permanent resident or eligible New Zealand citizen. (***Relative*** is defined in regulation 1.03.)

For 'remaining relative', see:

- the regulation 1.15 definition of ***remaining relative*** and
- for policy and procedure on assessing claims, PAM3: Div1.2/reg1.15 – Remaining relative.

5 Continued eligibility

See 115.221.

All visa applicants are required by s104 of the Act to notify changes in circumstances, such as changes in the composition of their family as a result of birth, death or change in relationship status, or changes in the circumstances of their Australian relative.

Therefore, officers may without further enquiry consider time of decision criterion 115.221 satisfied provided:

- there is no evidence (or notification) to the contrary **and**
- no significant time has elapsed since the visa application was made.

Otherwise, officers should **check** that there has been no material change in the circumstances of the applicant, their family or the Australian relative/sponsor.

Sponsorship requirements

6 Sponsorship

For 115.212 and 115.222, see:

- regulations 1.20(1), 1.20(2)(a) and 1.20(3) and
- PAM3: Div1.4 - Form 40 sponsors and sponsorship.

Form 40 (Sponsorship for migration to Australia) is the sponsorship form for this visa for regulation 1.20(3) purposes.

7 Who can sponsor

A person can sponsor a BO-115 applicant if the person:

- is a parent, brother, sister, step-parent, step-brother or step-sister of the BO-115 primary applicant and
- has turned 18 and
- is a settled Australian citizen, Australian permanent resident or eligible New Zealand citizen and

- is usually resident in Australia

or if the person:

- is the partner of a parent, brother, sister, step-parent, step-brother or step-sister of the applicant and
- has turned 18 and
- is a settled Australian citizen, Australian permanent resident or eligible New Zealand citizen) and
- is usually resident in Australia and
- cohabits with their partner (who is the Australian relative).

8 Change of sponsor

BO-115 applicants can change their sponsor at any time prior to decision on the BO-115 visa application, subject to the new sponsor meeting the sponsorship requirements.

9 The 'settled' requirement

Settled is defined in regulation 1.03. For policy and procedure on the term, see PAM3: Div1.4 - Form 40 sponsors and sponsorship.

10 The 'usually resident' requirement

The regulation 1.15(1)(b) definition of remaining relative prescribes an additional requirement to be met by the Australian relative who is the sponsor, namely that the Australian relative be 'usually resident' in Australia. See:

- PAM3: Div1.2/reg1.15 - Remaining relative and
- PAM3: Div1.4 - Form 40 sponsors and sponsorship.

11 Sponsorship limitations

Sponsorship limitations apply to this visa - see:

- regulation 1.20K and
- PAM3: Div1.4B - Limitation on certain sponsorships under Division 1.4.

Regulation 1.20K limits who can sponsor a BO-115 visa applicant. Briefly, an Australian relative (or their spouse or de facto partner - 115.212(b)) cannot sponsor a remaining relative if the Australian relative has either been granted or previously successfully sponsored a person for (or their partner has sponsored another relative of the Australian relative for) a:

- 104 Preferential Family visa
- 115 Remaining Relative visa
- 806 Family visa
- 835 Remaining Relative visa.

Generic criteria

12 Public interest criteria

To assess the public interest criteria (PICs) prescribed in 115.223, see the corresponding PAM3: Sch4 instructions.

13 Special return criteria

For 115.224, see PAM3: Sch5 – Special return criteria.

14 Assurance of support

For 115.225, see PAM3: Div1.2/reg1.03 - Assurance of support.

15 "One fails, all fail" criteria

Public interest criteria

The BO-115 primary applicant cannot be granted a visa unless those ***members of the family unit*** (as defined in regulation 1.12):

- who are also BO-115 applicants satisfy the PICs specified in 115.226(1)
- who are **not** visa applicants satisfy the PICs specified in 115.226(2).

For policy and procedure, see the corresponding PAM3: Sch4 instructions.

Special return criteria

For 115.226(1)(b), the BO-115 primary applicant cannot be granted a visa unless those ***members of the family unit*** who are visa applicants satisfy the Schedule 5 criteria specified in 115.226(1)(b).

For policy and procedure, see PAM3: Sch5 – Special return criteria.

Custody of minors

For 115.227, the BO-115 primary applicant cannot be granted a visa if granting a visa to any minor described in 115.227 would prejudice the custody (or similar) rights of another person.

For policy and procedure, first see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

16 If the primary applicant is a minor

Clause 115.229 applies to BO-115 primary applicants under 18 years old. For policy and procedure, first see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

BO-115 family unit members

Eligibility

17 Relationship

For 115.311, the applicant must be a ***member of the family unit*** (family unit member) of the BO-115 primary applicant - see:

- regulation 1.12 and
- for policy and procedure on establishing the composition of the family unit, PAM3: Div1.2/reg1.12 – Member of the family unit.

18 Combined application

Clause 115.311 requires family unit members to apply with the BO-115 primary applicant; they cannot successfully apply **separately** for this visa.

However, provided the primary applicant has not yet been granted or refused a visa:

- regulation 2.08, by operation of law, adds newborn children to the application (the child is taken to have applied for the visa at birth) - see PAM3: Div2.2/reg2.08 - Application by newborn child and
- regulation 2.08A allows a partner or dependent child (only) to be added to the application at the primary applicant's written request – see PAM3: Div2.2/reg2.08A - Addition of certain applicants to certain applications for permanent visas.

In either situation, the relevant regulation states that the family member is taken to have applied with the primary applicant, so this particular 115.311criterion is satisfied.

Note: The existence of a partner, whether or not an applicant, potentially impacts on the eligibility of the primary applicant to be a ***remaining relative***.

19 Continued eligibility

See 115.321.

All visa applicants are required by s104 of the Act to notify changes in circumstances, such as changes in the composition of their family as a result of birth, death or change in relationship status, or changes in the circumstances of their Australian relative.

For 115.321, therefore, officers may without further enquiry consider 'time of decision criterion 115.321 satisfied provided:

- there is no evidence (or notification) to the contrary **and**
- no significant time has elapsed since the visa application was made.

Otherwise, officers should **check** that there has been no material change in the circumstances of the applicant, their family or the Australian relative/sponsor.

Other requirements

20 Sponsorship

For 115.312 and 115.322, see Sponsorship requirements.

21 Generic criteria

21.1 Public interest criteria

For 115.323, see the corresponding PAM3: Sch4 instructions.

21.2 Special return criteria

For 115.324, see PAM3: Sch5 – Special return criteria.

22 Assurance of support

For 115.325, see PAM3: Div1.2/reg1.03 - Assurance of support.

23 If a minor

For 115.326, first see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

24 BO-115 primary applicant must be visaed first

Clause 115.321 is worded so that family unit members cannot be granted their visas unless/until the primary applicant has been granted **their** visa.

BO-115 visa grant

25 Where the applicant must be to be granted their visa

For 115.411, see PAM3: GenGuideA – All visas – Visa application procedures - Circumstances applicable to grant.

26 Payment of VAC

Together, s65(1)(a)(iv) of the Act and Regulations Schedule 1 item 1123A(2)(b) require the second instalment of the visa application charge to be paid before visa grant.

For policy and procedure, see PAM3: Div2.2A – Visa application charge.

27 BO-115 visa conditions

27.1 First entry date

For policy and procedure on deciding the "first entry date" specified in 115.611, see PAM3: Sch8/8504 - (First) Entry date condition.

27.2 Other conditions

For the discretionary conditions specified in 115.612, see:

- for 8502 – PAM3: Sch8/8502 - Not to arrive before person specified in visa
- for 8515 - PAM3: Sch8/8515 - Must not marry or enter into de facto relationship.

END OF DOCUMENT

PAM3: Sch2Visa835 Remaining Relative

About this instruction

Contents

This departmental instruction, which deals with the Regulations Schedule 2 Part 835 criteria for the BU-835 visa, comprises:

- Introduction
- The BU-835 primary applicant
- BU-835 family unit members
- BU-835 visa grant.

Related instructions

- PAM3: Div1.2/reg1.15 - Remaining relative.
- PAM3: Sch1 – item 1123B - Other Family (Residence) (Class BU)
- PAM3: GenGuideB - Non-humanitarian migration - Visa application and related procedures.

Latest changes

Legislative – 25 September 2014

As the Senate has disallowed the Migration Amendment (Repeal of Certain Visa Classes) Regulation 2014, which on 2 June 2014 had, among other things, repealed Schedule 2 Part 835, the Part has been revived.

(The BU-835 visa was repealed and closed to new applications between 2 June 2014 and the moment the Senate voted to disallow this repeal on 25 September 2014. Visa applications made during the period when the visas were repealed are invalid and remain invalid despite the disallowance.)

Policy

This departmental instruction, which is part of the centralised departmental instructions system (CDIS), was issued on 25 September 2014. It is an updated version of the instruction of the same name that existed prior to 2 June 2014.

Owner

Family Policy Section
Visa Framework and Family Policy Branch
Migration and Citizenship Policy Division
National Office.

Contents summary

Introduction

About the BU-visa

1 Purpose

This visa is for persons in Australia seeking a permanent visa on the basis of being the remaining relative of:

- an Australian citizen
- and Australian permanent resident or
- and eligible New Zealand citizen.

2 Interview requirements

See PAM3: Div1.2/reg1.15.

All applicants should be interviewed regarding their claims to entitlement for this visa.

3 Capping and queuing

Other Family category visas (including BU-835) are subject to a s85 cap and s499 queuing direction,- see:

- the current legislative instrument made for s85 purposes and
- the s499 direction - Order for considering and disposing of visa applications under section 91 of the Migration Act.

The BU-835 primary applicant

Eligibility

4 Remaining relative of an Australian relative

Clause 835.212 requires the applicant to be the ***remaining relative*** of their parent, brother, sister, step-parent, step-brother or step-sister (the ***Australian relative*** - see PAM3: Div1.2/reg1.03 - Australian relative), who must be an Australian citizen, Australian permanent resident or eligible New Zealand citizen. (***Relative*** is defined in regulation 1.03.)

For 'remaining relative', see:

- the regulation 1.15 definition of ***remaining relative*** and
- for policy and procedure on assessing claims, PAM3: Div1.2/reg1.15 – remaining relative.

5 Continued eligibility

See 835.221.

All visa applicants are required by s104 of the Act to notify changes in their circumstances, such as changes in the composition of their family as a result of birth, death or change in relationship status, or changes in the circumstances of their Australian relative.

Therefore, officers may without further enquiry consider time of decision criterion 835.221 satisfied provided:

- there is no evidence (or notification) to the contrary **and**
- no significant time has elapsed since the visa application was made.

Otherwise, officers should **check** that there has been no material change in the circumstances of the applicant/s, their family or the Australian relative/sponsor.

6 Immigration status

Transit visa holders are ineligible

Supporting the policy intention and purpose of transit visas, current/former transit visa holders cannot satisfy primary criteria for this visa - see 835.211(a) and 835.211(b)(ii).

If not the holder of a substantive visa

For 835.211(b)(i) and (iii), if the primary applicant does not hold a substantive visa see PAM3: Sch3 - Additional criteria applicable to unlawful non-citizens and certain bridging visa holders.

Sponsorship requirements

7 Sponsorship

For 835.213 and 835.227, see:

- regulations 1.20(1), 1.20(2)(a) and 1.20(3) and

- PAM3: Div1.4 - Form 40 sponsors and sponsorship.

Form 40 (Sponsorship for migration to Australia) is the sponsorship form for this visa for regulation 1.20(3) purposes.

8 Who can sponsor

A person can sponsor a BU-835 applicant if the person:

- is a parent, brother, sister, step-parent, step-brother or step-sister of the BU-835 primary applicant and
- has turned 18
- is a settled Australian citizen, Australian permanent resident or eligible New Zealand citizen and
- is usually resident in Australia.

or if the person:

- is the partner of a parent, brother, sister, step-parent, step-brother or step-sister of the applicant and
- has turned 18 and
- is a settled Australian citizen, Australian permanent resident or eligible New Zealand citizen)
- is usually resident in Australia and
- cohabits with their partner (who is the Australian relative).

9 Change of sponsor

BU-835 applicants can change their sponsor at any time prior to decision on the BU-835 visa application, subject to the new sponsor meeting the sponsorship requirements.

10 The 'settled' requirement

Settled is defined in regulation 1.03. For policy and procedure on the term, see PAM3: Div1.4 - Form 40 sponsors and sponsorship.

11 The 'usually resident' requirement

The regulation 1.15(1)(b) definition of remaining relative prescribes an additional requirement to be met by the Australian relative who is the sponsor, namely that the Australian relative be 'usually resident' in Australia. See:

- PAM3: Div1.2/reg1.15 - Remaining relative and
- PAM3: Div1.4 - Form 40 sponsors and sponsorship.

12 Sponsorship limitations

Sponsorship limitations apply to this visa. See:

- regulation 1.20K
- PAM3: Div1.4B - Limitation on certain sponsorships under Division 1.4 - Sponsorship limitations - Remaining relative visas.

Regulation 1.20K limits who can sponsor a BU-835 applicant. Briefly, an Australian relative or their spouse or de facto partner (835.213(b)) cannot sponsor a remaining relative if the Australian relative has either been granted or previously successfully sponsored a person for (or their spouse or de facto partner has sponsored another relative of the Australian relative for) a:

- 104 Preferential Family visa
- 115 Remaining Relative visa
- 806 Family visa
- 835 Remaining Relative visa.

Generic criteria

13 Assurance of support

For 835.222, see PAM3: Div1.2/reg1.03 - Assurance of support.

14 Public interest criteria (PICs)

To assess the public interest criteria (PICs) prescribed in 835.223, see the corresponding PAM3: Sch4 instructions.

15 "One fails, all fail" criteria

PICs

The BU-835 primary applicant cannot be granted a visa unless those ***member**s of the family unit*** (as defined in regulation 1.12):

- who are visa applicants satisfy the PICs prescribed in 835.224(1) and
- who are **not** visa applicants satisfy the PICs prescribed in 835.224(2).

For policy and procedure, see the corresponding PAM3: Sch4 instructions .

Custody of minors

For 835.225, the BU-835 primary applicant cannot be granted a visa if granting a visa to any minor described in 835.225 would prejudice the custody (or similar) rights of another person.

For policy and procedure, first see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

16 If the primary applicant is a minor

Clause 835.226 applies to BU-835 primary applicants under 18 years old. For policy and procedure, first see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

BU-835 family unit members

Eligibility

17 Relationship

For 835.311, the applicant must be a ***member of the family unit*** (family unit member) of the BU-835 primary applicant - see:

- regulation 1.12 and
- for policy and procedure on establishing the composition of the family unit, PAM3: Div1.2/reg1.12 – Member of the family unit.

18 Adding family members to the application

Provided the BU-835 primary applicant has not yet been granted or refused their visa:

- regulation 2.08 adds newborn children to the application (they are taken to have applied at birth) - see PAM3: Div2.2/reg2.08 - Application by newborn child and
- regulation 2.08A allows a partner or dependent child (only) to be added to the application at the primary applicant's written request - see PAM3: Div2.2/reg2.08A - Addition of certain applicants to certain applications for permanent visas.

Note: The existence of a partner, whether or not an applicant, potentially impacts on the eligibility of the primary applicant to be a ***remaining relative***.

19 Continued eligibility

See 835.321.

All visa applicants are required by s104 of the Act to notify changes in circumstances, such as changes in the composition of their family as a result of birth, death or change in relationship status, or changes in the circumstances of their Australian relative.

For 835.321, therefore, officers may without further enquiry consider time of decision criterion 835.321 satisfied provided:

- there is no evidence (or notification) to the contrary **and**
- no significant time has elapsed since the visa application was made.

Otherwise, officers should **check** that there has been no material change in the circumstances of the applicant, their family or the Australian relative/sponsor.

Other requirements

20 Sponsorship

For 835.312 and 835.325, see Sponsorship requirements.

21 Generic criteria

21.1 Public interest criteria

For 835.322, see the corresponding PAM3: Sch4 instructions.

21.2 Assurance of support

For 835.323, see PAM3: Div1.2/reg1.03 - Assurance of support.

21.3 If a minor

For 835.324, first see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

21.4 BU-835 primary applicant must be visaed first

Clause 835.321 is worded so that family unit members cannot be granted their visas unless/until the primary applicant has been granted **their** visa.

BU-835 visa grant

22 Where the applicant must be to be granted their visa

For 835.511, see PAM3: GenGuideA - All visas – Visa application procedures - Circumstances applicable to grant.

23 Payment of VAC

Together, s65(1)(a)(iv) of the Act and Regulations Schedule 1 item 1123B(2)(b) require the second instalment of the visa application charge to be paid before visa grant.

For policy and procedure, see PAM3: Div2.2A – Visa application charge.

END OF DOCUMENT

PAM3: Sch2Visa116 Carer

About this instruction

Contents

This departmental instruction, which deals with the Regulations Schedule 2 Part 116 criteria for the BO-116 visa, comprises:

- Introduction
- The BO-116 primary applicant
- BO-116 family unit members
- BO-116 visa grant.

Related instructions

- PAM3: Sch1 – item 1123A - Other Family (Migrant) (Class BO)
- PAM3: Div1.2/reg1.15AA - Carer
- PAM3: GenGuideB - Non-humanitarian migration - Visa application and related procedures.

Latest changes

Legislative – 25 September 2014

As the Senate has disallowed the Migration Amendment (Repeal of Certain Visa Classes) Regulation 2014, which on 2 June 2014 had, among other things, repealed the BO-116 visa, the visa has been revived.

(The BO-116 visa was repealed and closed to new applications between 2 June 2014 and the moment the Senate voted to disallow this repeal on 25 September 2014. Visa applications made during the period when the visas were repealed are invalid and remain invalid despite the disallowance.)

Policy

This instruction, which is part of the centralised departmental instructions system (CDIS), was issued on 25 September 2014. It is an updated version of the instruction of the same name that existed prior to 2 June 2014.

Owner

Family Policy Section
Visa Framework and Family Policy Branch
Migration and Citizenship Policy Division
National Office.

Contents summary

Introduction

About the BO-116 visa

1 Purpose

The BO-116 visa reflects immigration principles relating to reunion of relatives in recognition of kinship ties and the bonds of mutual dependency and support within families. It is for persons outside Australia who are seeking a permanent visa on the basis of being the ***carer*** of:

- an Australian citizen
- an Australian permanent resident or
- eligible New Zealand citizen

usually resident in Australia.

2 Interview requirements

See PAM3: Div1.2/reg1.15AA. Briefly:

- applicants should be interviewed regarding their claims to entitlement to this visa
- the relevant Australian relative (usually also the sponsor) should be interviewed.

3 Capping and queuing

Other Family category visas (including BO-116) are subject to a s85 cap and a s499 queuing direction - see:

- the current legislative instrument made for s85 purposes and
- the s499 direction - Order for considering and disposing of visa applications under section 91 of the Migration Act.

4 Division 116.1 defined terms

For 116.1:

- for ***carer*** and ***Australian relative***, see section 5 Carer-specific criteria
- for the other terms listed, see section 6 Sponsorship requirements.

The BO-116 primary applicant

Eligibility

5 Carer-specific criteria

For the 'time of application' criterion 116.211(1), the applicant need only **claim** to be a carer of an Australian relative.

For the 'time of decision' criterion 116.221 the applicant must **be** a ***carer*** (as defined).

For the meaning of ***carer***, see regulation 1.15AA. For policy and procedure on assessing claims, see PAM3: Div1.2/reg1.15AA. The ***Australian relative*** referred to in that term will usually also be the sponsor – see section 6 Sponsorship requirements.

6 Sponsorship requirements

For 116.212 and 116.222, see:

- regulation 1.20 and
- PAM3: Div1.4 - Form 40 sponsors and sponsorship.

Form 40 (Sponsorship for migration to Australia) is the sponsorship form for this visa.

Who can sponsor

The persons who can sponsor BO-116 applicants are:

- the settled adult Australian relative of the BO-116 primary applicant or
- the settled adult cohabiting partner of the adult Australian relative of the primary applicant.

The 'settled' requirement

Settled is defined in regulation 1.03. For policy and procedure on the term, see PAM3: Div1.4 - Form 40 sponsors and sponsorship.

Generic criteria

7 Public interest criteria

To assess the public interest criteria (PICs) prescribed in 116.223, see the corresponding PAM3: Sch4 instructions.

8 Special return criteria

For 116.224, see PAM3: Sch5 – Special return criteria.

9 "One fails, all fail" criteria

See 116.226.

Public interest criteria

The BO-116 primary applicant cannot be granted a visa unless those ***member***s ***of the family unit*** (as defined in regulation 1.12)

- who are also BO-116 applicants satisfy the PICs specified in 116.226(1)(a)
- who **are** not visa applicants satisfy the PICs criteria specified in 116.226(2).

For policy and procedure, see the corresponding PAM3: Sch4 instructions.

Special return criteria

For 116.226(1)(b), the BO-116 primary applicant cannot be granted a visa unless those ***member***s ***of the family unit*** who are visa applicants satisfy the Schedule 5 criteria specified in 116.226(1)(b).

For policy and procedure see PAM3: Sch5 – Special return criteria.

Custody of minors

For 116.227, the BO-116 primary applicant cannot be granted a visa if granting a visa to any minor described in 116.227 would prejudice the custody (or similar) rights of another person.

For policy and procedure, first see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

10 If the primary applicant is a minor

Clause 116.229 applies to BO-116 primary applicants under 18 years old. For policy and procedure, first see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

BO-116 family unit members

Eligibility

11 Relationship

For 116.311, the applicant must be a ***member of the family unit*** (family unit member) of the BO-116 primary applicant. See:

- regulation 1.12 and
- for policy and procedure on establishing the composition of the family unit, PAM3: Div1.2/reg1.12 – Member of the family unit.

12 Combined application

Clause 116.311 requires family unit members to apply with the BO-116 primary applicant; they cannot successfully apply **separately** for this visa.

However, provided the primary applicant has not yet been granted or refused a visa:

- regulation 2.08, by operation of law, adds newborn children to the application (the child is taken to have applied for a visa at birth) - see PAM3: Div2.2/reg2.08 and
- regulation 2.08A allows a partner or dependent child (only) to be added to the application at the primary applicant's written request - see PAM3: Div2.2/reg2.08A.

In either situation, the relevant regulation states that the family member is taken to have applied with the primary applicant, which means that this particular 116.311 criterion is satisfied.

13 Continued eligibility

See 116.321.

All visa applicants are required by s104 of the Act to notify changes in circumstances, such as changes in the composition of their family as a result of birth, death or change in relationship status, or changes in the circumstances of their Australian relative.

For 116.321, therefore, officers may without further enquiry consider 'time of decision criterion 116.321 satisfied provided:

- there is no evidence (or notification) to the contrary **and**
- no significant time has elapsed since the visa application was made.

Otherwise, officers should **check** that there has been no material change in the circumstances of the applicant, their family or the Australian relative/sponsor.

Other requirements

14 Sponsorship

For 116.312 and 116.322, see section 6 Sponsorship requirements.

15 Generic criteria

15.1 Public interest criteria

For 116.323, see the corresponding PAM3: Sch4 instructions.

15.2 Special return criteria

For 116.324, see PAM3: Sch5 – Special return criteria.

15.3 If a minor

For 116.326, first see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

15.4 BO-116 primary applicant must be visaed first

Clause 116.321 is worded so that family unit members cannot be granted their visas unless/until the primary applicant is granted **their** visa.

BO-116 visa grant

16 Where the applicant must be to be granted their visa

For 116.411, see PAM3: GenGuideA – All visas- Visa application and related procedures - Circumstances applicable to grant.

17 Payment of the VAC

Together, s65(1)(a)(iv) of the Act and Regulations Schedule 1 item 1123A(2)(b) require the second instalment of the visa application charge to be paid before visa grant.

For policy and procedure, see PAM3: Div2.2A – Visa application charge.

Note: For policy and procedure on the Carer visa-specific circumstances in which no second instalment VAC is payable, see PAM3: Div1.2/reg1.15AA – Carer visas and the VAC second instalment.

18 BO-116 visa conditions

18.1 First entry date

For policy and procedure on deciding the "first entry date" specified in 116.611, see PAM3: Sch8/8504 - (First) Entry date condition.

18.2 Other conditions

For the discretionary conditions specified in 116.612, see:

- for 8502 – PAM3: Sch8/8502 - Not to arrive before person specified in visa
- for 8515 - PAM3: Sch8/8515 - Must not marry or enter into de facto relationship.

END OF DOCUMENT

PAM3: Sch2Visa836 Carer

About this instruction

Contents

This departmental instruction, which deals with the Regulations Schedule 2 Part 836 criteria for the BU-836 visa, comprises:

- Introduction
- The BU-836 primary applicant
- BU-836 family unit members
- BU-836 visa grant.

Related instructions

- PAM3: Sch1 – item 1123B - Other Family (Residence) (Class BU)
- PAM3: Div1.2/reg1.15AA - Carer
- PAM3: GenGuideB - Non-humanitarian migration - Visa application and related procedures.

Latest changes

Legislative

Nil since 25 September 2014, when this visa was revived.

Policy

This instruction, which is part of the centralised departmental instructions system (CDIS), was issued on 23 November 2014 to include guidance on bridging visa eligibility – see section 4 BU-836 and bridging visa eligibility.

Owner

Family Policy Section
Visa Framework and Family Policy Branch
Migration and Citizenship Policy Division
National Office.

Contents summary

Introduction

About the BU-836 visa

1 Purpose

The BU-836 visa reflects immigration principles relating to reunion of relatives in recognition of kinship ties and the bonds of mutual dependency and support within families. It is for persons in Australia who are seeking a permanent visa on the basis of being the ***carer*** of:

- an Australian citizen
- an Australian permanent resident or
- an eligible New Zealand citizen

usually resident in Australia.

2 Interview requirements

See PAM3: Div1.2/reg1.15AA. Briefly:

- applicants should be interviewed regarding their claims to entitlement for this visa and
- the relevant Australian relative (usually also the sponsor) should be interviewed.

3 Capping and queuing

Other Family category visas (including BU-836) are subject to a s85 cap and s499 queuing direction – see:

- the current legislative instrument made for s85 purposes and
- the s499 direction - Order for considering and disposing of visa applications under section 91 of the Migration Act.

4 BU-836 and bridging visa eligibility

Provided they:

- give the department with 'satisfactory evidence' (that is, the letter from Bupa Medical) showing the carer medical assessment process has begun (for background, see PAM3: Div1.2/reg1.15AA – Carer and
- satisfy other time of application and bridging visa criteria

BU-836 primary applicants should be eligible to be granted a bridging visa at the time of BU-836 application.

This is because:

- like many other application forms, the form 47OF is also an application for a bridging visa (BVA, BVC, or BVE depending on the applicant's circumstances and immigration status) and
- subject to the requirements in 836.211(b), there is no requirement for a BU-836 primary applicant to be a visa holder at time of application.

If an applicant **cannot** provide 'satisfactory evidence' that the medical assessment has begun, the BU-836 application will not be valid and, it follows, there will be no bridging visa application to be considered:

- In such cases, however, the applicant can apply for and be considered for the grant of a bridging visa (either BVD or BVE 050) on the basis that they **will** be able to make a valid application in the near future.
- If the applicant has not made the BU-836 application in person, regulation 2.22 (Invalid application for a substantive visa), prescribes circumstances in which the applicant taken to have applied for a BVD.

For more information about bridging visa eligibility see:

- PAM3: Sch2 Bridging visas - Visa application and related procedures

and the applicable bridging visa instruction:

- for BVA, PAM3: Sch2Visa010 – Bridging A
- for BVC, PAM3: Sch2Visa030 – Bridging C
- for BVD, PAM3: Act - Compliance and Case Resolution - Bridging D visas
- for BVE 050, PAM3: Act - Compliance and Case Resolution - Program visas - Bridging E visas.

The BU-836 primary applicant

Eligibility

5 Carer-specific criteria

For the time of application criterion 836.212, the applicant need only **claim** to be a carer of an Australian relative.

For the 'time of decision' criterion 836.221, the applicant must **be** a ***carer*** (as defined).

For the meaning of ***carer***, see regulation 1.15AA. For policy and procedure on assessing claims, PAM3: Div1.2/reg1.15AA. (The ***Australian relative*** referred to in that term will usually also be the sponsor - see section 7 Sponsorship requirements.)

6 Immigration status

Transit visa holders are ineligible

Support the policy intention and purpose of transit visas, current/former transit visa holders cannot satisfy primary criteria for this visa – see 836.211(a) and 836.211(b)(ii).

If not the holder of a substantive visa

For 836.211(b)(i) and (iii), if the primary applicant does not hold a substantive visas, see PAM3: Sch3 - Additional criteria applicable to unlawful non-citizens and certain bridging visa holders.

7 Sponsorship requirements

For 836.213 and 836.227, see:

- regulation 1.20 and
- PAM3: Div1.4 - Form 40 sponsors and sponsorship.

Form 40 (Sponsorship for migration to Australia) is the sponsorship form for this visa.

Who can sponsor

The persons who can sponsor BU-836 applicants are:

- the settled adult Australian relative of the BU-836 primary applicant or
- the settled adult cohabiting partner of the adult Australian relative of the primary applicant.

The 'settled' requirement

Settled is defined in regulation 1.03. For policy and procedure on the term, see PAM3: Div1.4 - Form 40 sponsors and sponsorship.

Generic criteria

8 Public interest criteria

To assess the public interest criteria (PICs) prescribed in 836.223, see the corresponding PAM3: Sch4 instructions.

9 "One fails, all fail" criteria

Public interest criteria

The BU-836 primary applicant cannot be granted a visa unless those ***member**s **of the family unit*** (as defined in regulation 1.12)

- who are also BU-836 applicants satisfy the PICs specified in 836.224(1)
- who are **not** visa applicants satisfy the PICs specified in 836.224(2).

For policy and procedure, see the corresponding PAM3: Sch4 instructions.

Custody of minors

For 836.225, the BU-836 primary applicant cannot be granted a visa if granting a visa to any minor described in 836.225 would prejudice the custody (or similar parental responsibility) rights of another person.

For policy and procedure, first see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

10 If the primary applicant is a minor

Clause 836.226 applies to BU-836 primary applicants who are minors. For policy and procedure, first see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

BU-836 family unit members

Eligibility

11 Relationship

For 836.311, the applicant must be a ***member of the family unit*** (family unit member) of the BU-836 primary applicant. See:

- regulation 1.12 and
- for policy and procedure on establishing the composition of the family unit, PAM3: Div1.2/reg1.12 - Member of the family unit.

12 Adding family members to the application

Provided the primary applicant has not yet been granted or refused their visa:

- regulation 2.08 adds newborn children to the application (they are taken to have applied at birth) - see PAM3: Div2.2/reg2.08 and
- regulation 2.08A allows a partner or dependent child (only) to be added to the application at the primary applicant's written request - see PAM3: Div2.2/ reg2.08A.

13 Continued eligibility

See 836.321.

All visa applicants are required by s104 of the Act to notify changes in circumstances, such as changes in the composition of their family as a result of birth, death or change in relationship status and changes in the circumstances of their Australian relative.

For 836.3321, therefore, officers may without further enquiry consider 'time of decision' criterion 836.321 satisfied provided:

- there is no evidence (or notification) to the contrary (for example, the Australian relative has withdrawn their sponsorship) **and**
- no significant time has elapsed since the visa application was made.

Otherwise, officers should **check** that there has been no material change in the circumstances of the applicant/s, their family and their Australian relative/sponsor.

Other requirements

14 Sponsorship

For 836.312 and 836.325, see section 7 Sponsorship requirements.

15 Generic criteria

15.1 Public interest criteria

For 836.322, see the corresponding PAM3: Sch4 instructions.

15.2 If a minor

For 836.324, first see PAM3: Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

15.3 BU-836 primary applicant must be visaed first

Clause 836.321 is worded so that family unit members cannot be granted their visas unless/until the primary applicant is granted **their** visa.

BU-836 visa grant

16 Where the applicant must be at time of visa grant

For 836.411, see PAM3: GenGuideA - All visas - Visa application procedures - Circumstances applicable to grant.

17 Payment of the VAC

Together, s65(10(a)(iv) of the Act and Regulations Schedule 1 item 1123B(2)(b) require the second instalment of the visa application charge to be paid before visa grant.

For policy and procedure, see PAM3: Div2.2A – Visa application charge.

Note: For policy and procedure on the Carer visa-specific circumstances in which no second instalment VAC is payable, see PAM3: Div1.2/reg1.15AA –Carer visas and the VAC second instalment.

END OF DOCUMENT

New Zealand Citizen Family Relationship (subclass 461) visa

Procedural Instruction

The purpose of this procedural instruction (PI) is to identify the legal requirements and related policy and procedures that apply to the New Zealand Citizen Family Relationship (subclass461) visa.

Related Framework Documents

- Reg 1.03 – Eligible New Zealand Citizen (ENZC)
- Sch2Visa444 - Special Category
- Div1.2/reg1.12 - Member of the family unit
- Sch2 RRV - Resident return visas - BB-155 - Five Year Resident Return - Substantial ties of benefit to Australia
- Sch3 - Additional criteria applicable to unlawful non-citizens and certain bridging visa holders
- Sch8 - Visa conditions - About visa conditions - Substantial compliance with visa conditions
- GenGuideA - All visas - Visa application procedures - Circumstances applicable to grant
- Sch8 - Visa conditions - About visa conditions - Mandatory and discretionary visa conditions
- Sch8/8303 - Not become involved in disruptive activities
- Visa Condition 8501 Maintain Health Insurance
- Act - Act-defined terms - s5G - Relationships and family members - Child-parent relationships - s5CA - Child of a person

Latest Changes

Reissued 29 February 2020

Mandatory Review Date

February 2023

Contact

Family Migration Program Management

Email

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Document ID

VM-3072

Table of Contents

1. Purpose

The purpose of this procedural instruction (PI) is to identify the legal requirements and related policy and procedures that apply to the New Zealand Citizen Family Relationship (subclass 461) visa. Officers are required to understand and apply the relevant law as set out in the *Migration Act 1958* (the Act) and the *Migration Regulations 1994* (the Regulations). Many of the requirements in the Act are expressed in objective terms and do not allow any discretion for officers. To the extent that the Act allows for discretion, officers should consider the Department's approved policy and procedures where relevant and appropriate in decision-making. This ensures that decision-making is consistent to the extent that it is appropriate, allowing arbitrary outcomes to be avoided.

However, policy and procedures do not have the force of law. When exercising powers or making decisions under legislation, officers should give policy documents due weight, but they should not apply policy inflexibly, and instead consider the merits of each individual case. In order to make a fair, reasonable and lawful decision, it may be necessary to depart from the approved policy and procedures, depending on the facts of the particular case. Before departing from approved procedure, officers should first discuss with their immediate manager, and escalate to the instruction owner only when required. In all cases, a note of the reasons for departing from approved procedure must be added to the client record in the relevant departmental system.

2. Scope

This PI covers administering migration law in relation to subclass 461 visa applications.

This PI applies to all officers as defined in section 5(1) of the Act and in particular, officers that are visa decision makers exercising powers delegated to them under the Act. Other persons reading this PI should keep in mind that they are not the primary audience and therefore not utilise contact channels specified for departmental staff only.

3. Procedural Instruction

3.1. Policy Statement

The New Zealand Citizen Family Relationship visa supports family unity and social cohesion by allowing non-New Zealand family members of some New Zealand citizens to enter and remain in Australia temporarily.

The New Zealand citizen must:

- hold, or be eligible for, a Special Category (subclass 444) visa (SCV); and
- **not** be an eligible New Zealand citizen (ENZC).

Subclass 444 visa holders

The subclass 444 visa enables New Zealand citizens to enter and stay in Australia as long as they remain New Zealand citizens. As subclass 444 visa holders may be residing in Australia for an indefinite period, the subclass 461 visa may be an option for non-New Zealand citizen family wishing to accompany the subclass 444 visa holder in Australia for up to 5 years. Subclass 444 visa holders cannot sponsor family members for other types of family visa applications, such as Partner, Parent, and Child visas.

Eligible New Zealand Citizens

An ENZC is a person who is defined as a 'protected SCV' holder under the *Social Security Act 1991*.

Protected SCV holders are those who arrived in Australia on a New Zealand passport and were:

- in Australia on 26 February 2001; or
- in Australia for at least 12 months in the 2 years immediately before 26 February 2001; or
- assessed as protected SCV holders under the *Social Security Act 1991.*

While family members of ENZCs are not eligible for a subclass 461 visa, they can be sponsored by ENZCs for a number of other types of family visa applications.

3.2. Sponsorship/AOS

The New Zealand (NZ) citizen (SCV holder) is not required to sponsor, nominate or otherwise give any "support" to this application. Nor is there any assurance of support criterion for this visa, even though the visa leads to very long-term (temporary) residency. Consequently, there are no sponsorship limitations associated with this visa.

3.3. The subclass 461 visa applicant

3.3.1. Eligibility

Subclause 461.212(1) of the Regulations requires the applicant to meet clauses 461.212(2), (3) or (4).

3.3.2. Members of the family unit of SCV holder

Paragraph 461.212(2)(a) is the general provision covering an applicant who is a member of the family unit of a person in Australia who holds an SCV. See also section 3.5 - Immigration status of the NZ citizen.

3.3.3. Members of the family unit of prospective SCV holder

Paragraph 461.212(2)(b) is the general provision covering an applicant who is a member of the family unit of a NZ citizen who is outside Australia and who will be 'accompanying' the applicant to Australia. That NZ citizen must intend to accompany the applicant to Australia and be a person who will, on entry, be the holder of a SCV.

For paragraph 461.212(2)(b) to be met, the decision maker must be satisfied that the NZ citizen will be travelling to Australia before, with, or within a reasonable period after, the visa applicant. Material that may be accepted as evidence of the NZ citizen's intention to travel includes, but is not limited to, travel bookings, accommodation arrangements and acceptance of an offer of employment.

3.3.4. No longer a member of the family unit of an SCV holder

Subclause 461.212(3) provides for rollover of the visa for an applicant who is in Australia and no longer a member of the family unit of an SCV holder.

Subclause 461.212(4) provides for rollover of the visa on the same basis as subclause 461.212(3), except the applicant is outside Australia and must meet the additional criteria in paragraph 461.212(4)(b) and paragraph 461.212(4)(c).

See section 3.6 – Subclass 461 eligibility - If the family relationship has ended.

3.3.5. Ineligibility - NZ citizens

Clause 461.211 merely reflects the fact that subclass 461 visas are not available to NZ citizens, regardless of whether they would be eligible for an SCV visa in their own right.

3.3.6. Eligibility - Initial/subsequent subclass 461 visa

Clause 461.212(2) covers the following circumstances:

- the grant of a subclass 461 visa to a member of the family unit of a subclass 444 (SCV) holder who is in Australia
- the grant of a subclass 461 visa to a member of the family unit of a subclass 444 (SCV) holder who is outside Australia
- the grant of a subsequent visa to a member of the family unit of a subclass 444 (SCV) holder who is in Australia
- the grant of a subsequent visa to a member of the familt unit of a subclass 444 (SCV) holder who is outside Australia.

Note: The subclass 461 visa is a temporary visa allowing the holder to enter and remain in, Australia for 5 years from the date of grant.

3.3.7. Subclass 403 visa holders are ineligible

Paragraph 461.213(a) applies to applications made in Australia by:

- substantive temporary visa applicants *other than* Temporary Work (International Relations) (subclass 403) visa holders; or
- non-substantive visa holders whose last substantive visa was not a subclass 403 visa and the applicant satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

3.4. Relationship

3.4.1. Overview

To meet subclause 461.212(2), the applicant must be a member of the family unit of a New Zealand citizen, other than an ENZC, who holds or will upon entry to Australia, hold an SCV - see:

- Regulation 1.12 – *Member of the family unit*
- for guidelines on assessing the family relationship, Div1.2/reg1.12 - Member of the family unit.

Note: The regulation 1.12 term ‘‘member of the family unit” does not include fiancé/es or parents.

3.4.2. If the applicant claims to be the partner of a NZ citizen

When assessing a partner (spouse or de facto) relationship, all circumstances of the claimed relationship need to be considered. The four matters outlined in the following subregulations are not exhaustive, but may be used as a guide:

- De facto partners – refer to reg. 1.09A(3)
- Spouses – refer to reg. 1.15A(3).

It’s worth noting that each individual matter being assessed does not need to be ‘met’. The matters are circumstances to be considered and may assist in determining whether the definition of *De facto partner* or *Spouse*, as outlined in ss. 5CB and 5F of the Act, respectively, is met.

3.4.3. If the applicant claims to be a dependant of the NZ citizen or of another subclass 461 applicant

All applicants must meet the primary criteria of being a MOFU of the NZ Citizen, regardless of their relationship with, and/or dependency on, other subclass 461 visa applicants.

Refer to Div1.2/reg1.12 - Member of the family unit.

3.4.4. Cases involving surrogacy

For cases involving surrogacy, see Act - Act-defined terms - s5G - Relationships and family members - Child-parent relationships - s5CA - Child of a person.

3.5. Immigration status of the NZ citizen

3.5.1. If the NZ citizen is in Australia

For paragraph 461.212(2)(a), if the NZ citizen is in Australia, officers need to verify from departmental records that the person is ***not*** an ENZC and still holds an SCV.

3.5.2. If the NZ citizen is outside Australia

For paragraph 461.212(2)(b), officers first need to verify that the NZ citizen is not an ENZC and is outside Australia. Officers may then accept without further enquiry the NZ citizen’s eligibility on arrival for an SCV provided:

- the person’s current (valid) NZ passport is seen; and
- there is no reason to believe that the NZ citizen is a health concern non-citizen or a behaviour concern non-citizen (as per the definitions of these terms in s5(1) of the Act). This means that, unless there is reason to believe otherwise, officers may assume that the NZ citizen meets the health and character requirements for an SCV. For example, a CMAL alert would be considered a reason to not assume that the character requirements for the NZ citizen are met.

3.5.3. Assessing subparagraph 461.212 (2)(b)(ii) - Accompanying NZ citizen

For subparagraph 461.212(2)(b)(ii) a flexible approach should be taken in interpreting this regulation. This means the ‘accompanying’ NZ citizen does not always need to enter Australia with the applicant and activate their subclass 444 visa, but must demonstrate they intend to join the applicant. While a specific timeframe is not imposed on when the NZ citizen enters Australia, the expectation is they will

enter before, with or within a reasonable time after the applicant. This time period may vary depending on the circumstances of the NZ citizen. The policy intent is that the non-New Zealand family member reside in Australia with the NZ citizen.

Evidence the NZ citizen is likely to reside in Australia could include, but is not limited to:

- Travel bookings/airline tickets
- Accommodation arrangements in Australia/property purchase, rental agreement
- Acceptance of Employment offer in Australia
- School enrolment of any children of the relationship
- Sale of property offshore
- Expiry of rental agreement offshore
- Cessation of employment offshore.

Case officers can also consider departmental movement records. Where these indicate the NZ citizen has been residing in Australia, they may be satisfied without further evidence that the NZ citizen intends to continue residing in Australia.

NZ citizens should be given an opportunity to provide evidence of their intention to reside in Australia. If no evidence of their intention to reside in Australia is provided, they may not meet subparagraph 461.212(2)(b)(ii) and the subclass 461 application may be refused.

3.6. Subclass 461 eligibility - If the family relationship has ended

3.6.1. Onshore – continued eligibility

Subclause 461.212(3) is a continued eligibility provision covering applicants who:

- hold a subclass 461 visa, or whose last substantive visa was a subclass 461; and
- are no longer a member of the family unit of the person in relation to whom the applicant was granted the subclass 461.

To be eligible under this provision, the applicant also must *not* have become a member of the family unit of another person, regardless of whether that subsequent relationship has since ended.

3.6.1.1. Must be in Australia

Paragraph 461.212(3)(a) requires the applicant to be in Australia and have held a 461 visa.

Officers confirm from departmental databases that the applicant is in Australia.

3.6.1.2. Must hold (or have held) a Subclass 461 visa

Subparagraphs 461.212(3)(a)(i) and (ii) require the applicant to hold, or to have last held, a subclass 461 visa. Officers should confirm the visa details from departmental database records.

If the subclass 461 visa is no longer in effect, see section 3.8 - If an unlawful non-citizen, Schedule 3 applies.

3.6.1.3. Must no longer be a MOFU

For paragraph 461.212(3)(b), it is sufficient that the applicant tells the Department that they are no longer a member of the family unit of a SCV holder. Further evidence is not required.

The reasons for their no longer being a family member (for example, no longer being dependent, a relationship breakdown or family violence) are irrelevant for subclass 461 visa purposes, but keep in

mind the separate criterion under paragraph 461.212(3)(c) which requires the applicant to not become a member of the family unit of another person.

3.6.1.4. Must not have since been a member of the family unit of anyone else

For paragraph 461.212(3)(c), the application form for this visa does not require the applicant to state whether they have become a family member (for example, a partner) of anyone else. If it is known or suspected that the applicant is no longer part of the original SCV holder's family unit, the applicant should be asked to clarify, in particular, their current relationship status.

3.6.1.5 If a subclass 461 visa holder becomes a MOFU of a non-SCV holder

Eligibility for a further subclass 461 visa ceases if the subclass 461 visa holder:

- ceases to be a family unit member of an SCV holder; and
- becomes, by marriage/de facto partner relationship, a member of the family unit of a non-SCV holder (for example, Australian citizen, Australian permanent resident, temporary resident or overseas student) even if that relationship has since ceased - see paragraphs 461.212(3)(c)/461.212(4)(e).

However, under policy, neither of the above is grounds for visa cancellation. Rather, the person will simply be unable to successfully apply for a further subclass 461 visa and, if they wish to stay in Australia, should instead consider applying for a class of visa more appropriate to their current circumstances, whether or not on the basis of the new relationship.

3.7. Offshore – continued eligibility

If the applicant is still in a MOFU relationship with the person in relation to whom they were previously granted a subclass 461 visa (or in a new MOFU relationship), assess the application against subclause 461.212(2). See section 3.4 - Relationship.

Subclause 461.212(4) is the continued eligibility provision covering an offshore applicant who is no longer a MOFU of the person in relation to whom they were previously granted a subclass 461 visa and:

- has not become a member of the family unit of another person; and
- has been in Australia for at least 2 years in the 5 years immediately before the application; or
- has ongoing ties with Australia and has not been absent from Australia for a continuous period of 5 or more years before the visa application.

3.7.1. Must be outside Australia

Paragraph 461.212(4)(a) requires the applicant to be outside Australia. This should be apparent from the information in the application and supporting travel document.

3.7.2. Must have maintained ties with Australia

Subparagraph 461.212(4)(b)(i) simply requires officers to calculate and confirm that the applicant has been in Australia for a total of at least 2 years in the 5 years immediately before the application.

If, however, subparagraph 461.212(4)(b)(ii) applies (applicant has been outside Australia for a continuous period of at least 5 years), officers should:

- note that the requirements mirror a similar concession available to Australian permanent residents in relation to eligibility for a Return (Residence) (subclass 155) visa; and

- in assessing this criterion, apply the same policy guidance that is provided for under subclauses 155.212(3) and 155.212(3A), as applicable - see Sch2 RRV - Resident return visas - BB-155 - Five Year Resident Return - Substantial ties of benefit to Australia.

Keep in mind, however, that the criteria are not quite identical.

3.7.3. Must have left Australia holding a Subclass 461 visa

Paragraph 461.212(4)(c) supports the policy intention underlying paragraph 461.212(4)(b) and ensures parity with the "onshore" requirements as prescribed in paragraph 461.212(3)(a). There is no need for the subclass 461 applicant to still hold a subclass 461 visa at time of application outside Australia, but when they left Australia, they must have held a subclass 461 visa that was in effect.

This might be apparent from supporting documentation, for example, the travel document on which they left Australia. In all cases, however, officers should verify from departmental database records that the visa was still in effect (for example, had not been cancelled prior to departure).

3.7.4. Must no longer be a MOFU

For paragraph 461.212(4)(d), see section 3.6.1.3 - Must no longer be a MOFU.

3.7.5. Must not have since been a MOFU of anyone else

For paragraph 461.212(4)(e), see section 3.6.1.5 - If a subclass 461 visa holder becomes a MOFU of a non-SCV holder.

3.8. If an unlawful non-citizen, Schedule 3 applies

For subparagraph 461.213(b)(ii), if Schedule 3 applies, see Sch3 - Additional criteria applicable to unlawful non-citizens and certain bridging visa holders

3.9. Other subclass 461 requirements - All cases

3.9.1. Continued eligibility

For clause 461.221, be aware that applicants are required under section 104 of the Act to notify, for example, changes in the composition of their family as a result of birth, death or change in relationship status. Officers may therefore, without further enquiry, consider section 104-related criterion under clause 461.221 is satisfied provided:

- there is no evidence or notification to the contrary; and
- no significant time has elapsed since the visa application was made, otherwise officers are expected to take reasonable steps to satisfy themselves that there has been no material change in the circumstances of the applicant for the initial subclass 461 visa application or the SCV holder.

3.9.2. Generic criteria

3.9.2.1. Public interest criteria (PICs)

For policy and procedure on the PICs prescribed in clause 461.223, see the corresponding Public Interest Criteria instructions. Note that:

- the SCV holder is not subject to any health/character assessment other than, if applicable, in relation to subparagraph 461.212(2)(b)(iii) - see section 3.5 - Immigration status of the NZ citizen

- even though this visa leads to very long-term (temporary) residency in Australia, “one fails, all fail” criteria do not apply (except, depending on the circumstances, in regard to the requirements of PIC 4020).

3.9.2.2. Compliance with visa conditions

For clause 461.222 (intention to comply with visa conditions), see section 3.10.3 - Subclass 461 visa conditions.

3.9.2.3. If application made in Australia

For clause 461.225 (compliance with visa conditions), see Sch8 - Visa conditions - About visa conditions - Substantial compliance with visa conditions.

If the visa held (or last held) was a subclass 461 visa, see also section 3.10.3 - Subclass 461 visa conditions.

3.9.2.4. If a minor

For clause 461.224 (PICs 4017 and 4018), which applies to applicants under 18 years old, see Sch4/4015-4018 - Custody (parental responsibility) and best interests of minor children.

3.9.2.5. If application made outside Australia, special return criteria apply

For clause 461.226 - the Schedule 5 special return criteria that apply to applicants whose applications are made outside Australia.

3.10. Subclass 461 visa grant

3.10.1. Where the applicant must be to be granted their visa

For clauses 461.411 and 461.412, see GenGuideA - All visas - Visa application procedures - Circumstances applicable to grant.

3.10.2. The subclass 461 visa period

Under clause 461.511, the subclass 461 visa period is for a fixed period of 5 years, even if, after grant of the initial subclass 461 visa, the applicant ceases to be a member of the original SCV holder’s family unit.

3.10.3. Subclass 461 visa conditions

3.10.3.1. No mandatory conditions

Under clause 461.611, the two Schedule 8 conditions applicable to this visa are not mandatory. They are imposed at the discretion of the decision maker, but with due regard to policy. (See also Sch8 - Visa conditions - About visa conditions - Mandatory and discretionary visa conditions).

3.10.3.2. Discretionary condition 8303

For visa condition 8303, see Sch8/8303 - Not become involved in disruptive activities.

3.10.3.3. Discretionary condition 8501

For visa condition 8501, see Visa Condition 8501 Maintain Health Insurance, specifically, Adequate level of cover and minumum standard of health insurance.

As this is a discretionary condition, officers should keep in mind that this visa leads to very long-term temporary stay when deciding whether to attach this condition.

Unless satisfied that a reciprocal health care agreement with another country exists and will cover or, if applicable, continue to cover the visa applicant, officers should, as a matter of policy, consider imposing this condition. As a general guideline 'adequate arrangements' is the level of cover set out in Attachment A to the standard template for use by health insurers, which is itemised on the Department's website at https://immi.homeaffairs.gov.au/help-support/meeting-our-requirements/health/adequate-health-insurance. If an applicant provides this template as completed by an Australian based insurance provider, this is sufficient evidence to consider this requirement met. The SCV holder's eligibility for Medicare is not a relevant factor for the grant of a subclass 461 visa.

This should not, however, be read as requiring the applicant to show evidence of having taken out insurance for the full 5 year visa period given that 12 months is usually the longest period that a person could pre-pay insurance or any other specific period. It is for the decision maker, having regard to local circumstances, to decide what is 'adequate' for the case in question. However, at minimum, the applicant should be able to provide evidence of having taken out health insurance for at least the initial 12 month period of their stay.

As well, mere failure to maintain health insurance would not in itself usually result in cancellation of the subclass 461 visa. However, it could result in refusal of any further subclass 461 visa application made in Australia, given that failure to maintain adequate arrangements for health insurance could be sufficient grounds for the applicant to fail the criterion under clause 461.225. Applicants seeking a further subclass 461 visa will need to provide evidence of their having taken out and maintained adequate health care for the preceding 5 year period, as well as evidence of having taken out adequate health insurance for the first 12 months of the new visa term. The concept of 'substantial compliance' should be applied when assessing this matter. See: Sch8 – About visa conditions – Substantial compliance with visa conditions.

3.11. Other matters

3.11.1. Merits review

3.11.1.1. Only for applicants who are in Australia

As this is not a sponsored visa, only applicants who were in Australia when the application was made are able to seek merits review of a decision to refuse them a subclass 461 visa (see s338(2) of the Act).

4. Accountability and responsibility

Role	Description
Officers as defined in section 5(1) of the Act and, in particular, officers that are visa decision makers exercising powers delegated to them under the Act	Responsible for implementing and applying this instruction to their decision making as part of making lawful, fair and reasonable decisions. For further information on the Instrument of Delegation refer to: • Citizenship and Social Cohesion Group AND Immigration and Settlement Services Group (Minister) Instrument 2019 (LIN 19/033)
Supervisors and managers	Responsible for ensuring delegates are: • applying the policy set in out this instruction • exercising their powers appropriately.

Any officers providing advice on AAT matters	Responsible for providing accurate and appropriate advice in accordance with this Instruction, as it relates to matters before the AAT.
Any officers providing training to stakeholders	Responsible for ensuring that training content is accurate and is in accordance with this Instruction and related legislation.
Family Migration Program Management (FMPM) section	Responsible for providing accurate and appropriate advice in accordance with this instruction and related legislation.
Director – FMPM	Accountable for ensuring that the information contained in this Instruction is up to date, accurate and meets stakeholder requirements.
Assistant Secretary – Skilled and Family Visa Program branch	Accountable for the quality and delivery of the policy and programs owned by this branch. Also responsible for ensuring this instruction is fit for purpose and reviewing its implementation.

5. Version control

Version number	Date of issue	Author(s)	Brief description of change
V0.1	19/07/2019	Family Migration Program Management	• Transitioning the old-style PAM to a PI document. Original PAM: Sch2 Visa 461 - New Zealand citizen family relationship] • Revising content in consultation with stakeholders and providing additional guidance to decision makers.

Attachment A – Definitions

Term	Acronym (if applicable)	Definition
PAM3	N/A	Policy Advice Manual – predecessor to Procedural Instructions
Sch 2	N/A	Schedule 2 to the Migration Regulations 1994
PIC	PIC	Public Interest Criteria
SCV	N/A	Special Category (subclass 444) visa
Subclass 461 visa	N/A	New Zealand Citizen Family Relationship (Subclass 461) visa

Subclass 403 visa	N/A	Domestic worker (subclass 403) visa
MOFU	N/A	Member of the Family Unit
ENZC	N/A	Eligible New Zealand Citizen

Attachment B – Assurance and Control Matrix

1.1 Powers and Obligations

Legislative Provision			Is this a delegable power?	If delegable, list the relevant instruments of delegation
Legislation	**Reference (e.g. section)**	**Provision**		
Migration Act 1958	s65	Decision to grant or refuse to grant visa	Yes	Minister of Home Affairs Instrument No. 4 of 2018

1.2 Controls and Assurance

Related Policy	n/a
Procedures / Supporting Materials	Related instructions: • Reg 1.03 – Eligible New Zealand Citizen (ENZC) • Sch2Visa444 - Special Category • Div1.2/reg1.12 - Member of the family unit • Sch2 RRV - Resident return visas - BB-155 - Five Year Resident Return - Substantial ties of benefit to Australia • Sch3 - Additional criteria applicable to unlawful non-citizens and certain bridging visa holders • Sch8 - Visa conditions - About visa conditions - Substantial compliance with visa conditions • GenGuideA - All visas - Visa application procedures - Circumstances applicable to grant • Sch8 - Visa conditions - About visa conditions - Mandatory and discretionary visa conditions • Sch8/8303 - Not become involved in disruptive activities • Visa Condition 8501 Maintain Health Insurance • Act - Act-defined terms - s5G - Relationships and family members - Child-parent relationships - s5CA - Child of a person
Training/Certification or Accreditation	Migration (and Citizenship) training applicable to all officers undertaking duties under the Migration Act 1958 and Migration Regulations 1994 (as well as Australian Citizenship Act 2007).

Other required job role requirements	None required
Other support mechanisms (eg who can provide further assistance in relation to any aspects of this instruction)	Delegates should raise any questions with their supervisors/managers in the first instance. Internal enquiries should be forwarded to the FMPM section mailbox: family.program.management@homeaffairs.gov.au
Escalation arrangements	Escalation, if required, is to the Director, FMPM section.
Recordkeeping (eg system based facilities to record decisions)	• Relevant processing systems, including ICSE. • TRIM records management system.
Control Frameworks (please refer to a specific document outlining QA or QC arrangements)	It is anticipated that the revised quality management framework, a key element of the Visa and Citizenship Operating Model (VCOM2020), will be implemented in the 2019-20 program year. This will inform enhanced quality approaches across Divisions and Branches. Migration and Citizenship have been identified as one of the first caseloads to be incorporated into the revised quality management framework.
Job Vocational Framework Role	Visa Processing

Attachment C – Consultation

1.1. Internal Consultation

- Family Policy Section, Humanitarian, Family and Citizenship Policy Branch
- Records Management Section, Information Management Branch
- Secrecy and Disclosure Section
- Privacy and Review Section
- Integrity and Professional Standards Branch.

1.2. External Consultation

- Nil.

Sch4/4005-4007 - The Health Requirement

Procedural Instruction

This Procedural Instruction provides guidance on the administration of the health PICs under Schedule 4 of the Regulations.

Related Framework Document

- Sch4/4005-4007 - The Health Requirement [Policy Statement]
- Health Governance Framework [Policy Statement]

Latest Changes

26 February 2021

Mandatory Review Date

30 December 2023

Contact

Health Policy

Email

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Document ID

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Refusal on health grounds

1. Purpose

It is important for Australia and for the continuation of visa programmes that public health risks and health costs are not unduly increased by travellers and migrants. For this reason, applicants for visas to visit, or migrate to Australia are required to meet certain health requirements which are outlined in the *Migration Regulations 1994* (the Regulations) and policy framework.

A key focus of the health requirement is to protect the Australian community from increased public health risks, including Tuberculosis and emerging health epidemics.

Most visa subclasses are subject to the health requirement as a criterion for visa grant. The health requirement is set out in the Public Interest Criteria (PICs) (4005, 4006A and 4007) under Schedule 4 of the Regulations. The purpose of the health requirement is to:

- Protect the Australian community from threats to public health
- Contain public expenditure on health and community services and
- Safeguard the access of Australian residents to health and other community services in short supply.

2. Scope

This Procedural Instruction provides guidance on the administration of the health PICs under Schedule 4 of the Regulations. The required medical assessments for PICs 4005, 4006A and 4007 are set out in *Instrument* 15/144- *Required Medical Assessment* which provides a risk based approach to determine the type of medical examinations and processes an applicant will need to undergo for the purpose of meeting the health requirement. This approach is known as the 'Health Matrix and the settings are based on a number of factors including the applicants country of citizenship/ residence and its Tuberculosis incidence rate, their intended activities (as defined in the Health Matrix) and length of stay in Australia.

This Procedural Instruction and associated Instruments are available on LEGEND for external audiences, including Migration Agents. Other persons reading this instruction must keep in mind that they are not the primary audience and therefore must not utilise contact channels specified for departmental officers only.

In conjunction with this Procedural Instruction, there are additional supporting documents which are related (some of these documents are not available on LEGEND), including:

- Australian Immigration Panel Member Instructions
- Departure Health Check Instructions
- Notes for Guidance for Medical Officers of the Commonwealth of Australia.
- Medical Officer of the Commonwealth (MOC) Advice Pack

The Australian Immigration Panel Member Instructions are used by Australias panel clinics globally to assist with the conduct of immigration medical examinations, applicant identity verification, and applicant immunisation status and to report their findings through the use of the eMedical system.

The Departure Health Checks (DHC) Instructions for Refugee and Humanitarian entrants to Australia is a guide for Panel Physicians and their administrators that outlines the process and standards required by Department of Home Affairs (the Department) to perform and record DHCs.

The Notes for Guidance (NfG) for Medical Officers of the Commonwealth of Australia (MOCs) are supporting documents primarily used by MOCs who work for the Department and the Migration Medical Services Provider (MMSP) to determine whether an applicant meets the health requirement. The NfG details the financial implications and consideration of prejudice of access to services of varying medical conditions and provides guidance to MOCs on how to apply these principles when assessing an applicant against the health requirement.

The MOC Advice Pack provides policy support for MOCs when formulating their opinions on whether applicants who undertake immigration medical examinations meet the health requirement. It is primarily for use by MOCs who work for the Departments MMSP, and provide health assessments on Australian immigration medical examinations conducted both in Australia and offshore.

3. The Health Requirement

Required Medical Examinations

The immigration medical examinations that a temporary or permanent visa applicant is required to undergo to determine that they meet the health requirement are specified in the *Instrument* 15/144 - *Required Medical Assessment*, referred to as the 'Health Matrix. These examinations are set out as per the following table. The "Country TB-risk levels" in the Health Matrix are based on World Health Organization (WHO) data.

Table 1 - Minimum Immigration Medical Examinations required for visa applicants

Country TB-risk level*	**Temporary stay in Australia of less than 6 months**	**Temporary stay in Australia of 6 months or more**	**Permanent and provisional visa applicants**
Countries that do **not** generally require immigration medical examinations. **Note:** These countries are referred to as "Lower TB-risk" for the purposes of these instructions.	No immigration medical examination required unless special significance applies.	No immigration medical examination required unless special significance applies.	medical examination (501) chest x-ray (502) (if 11 years or older) HIV test (707) (if 15 years or older) Any special significance requirements must also be met.
Countries that **do** require immigration medical examinations. **Note:** These countries are referred to as "Higher TB-risk" for the purposes of these instructions.	No immigration medical examination required unless special significance applies	501 medical examination 502 chest x-ray (if 11 years or older) Any special significance requirements must also be met.	medical examination (501) chest x-ray (502) (if 11 years or older) HIV test (707) (if 15 years or older) Children 2 years of age but under 11 years old are required to complete a TB Screening test (TST or IGRA)(719) Any special significance requirements must also be met.

*The legislative Instrument IMMI 15/144 sets out the list of countries which do not generally require immigration medical examinations. Any countries not specifically listed in this Instrument should be considered as countries that **do** require immigration medical examinations.

Important: Immigration medical examinations for each applicant in a family unit are determined individually. However, if there are Tuberculosis (TB) related health concerns for any member of the family unit (migrating or non-migrating) or concerns regarding a medical condition that could be shared, the rest of the family unit may be required to undergo the same immigration medical examinations.

In circumstances where a member of the family unit is undergoing TB investigation, but the visa of another family member has already been granted and an immigration medical examination was not completed (this may occur where no health declarations were made by the family members), visa processing officers have no legislative basis to enforce the completion of immigration medical examinations for **visa holders**. However, visa processing officers can encourage the visa holders to undergo a medical examination (501) and chest x-ray (502) to screen for public health concerns post visa-grant. For information on how to process these requests offline, refer to Assessing Public health risk only post visa outcome.

If a visa holder refuses to undergo the requested immigration medical examination, visa processing officers are unable to enforce this, and should instead add a CMAL alert, requiring the visa holder to undergo an immigration medical examination should they apply for a future visa application. Visa processing officers should also counsel visa holders to follow-up with their family physician to ensure that they are screened for TB.

Immigration medical examinations required for protection, refugee and humanitarian visa applicants

The below table summarises the immigration medical examinations required for protection, refugee and humanitarian visa applicants.

Table 2 - Immigration Medical Examinations for protection and humanitarian visa applicants

Visa Type	**Under 2 years old**	**2 years or older but under 11 years old**	**11 years or older but under 15 years old**	**15 years or older**
Humanitarian Stay (Temporary) (449) Temporary (Humanitarian Concern) (786) Resolution of Status (851) Onshore protection visa (866)	medical examination (501)	medical examination (501) TB Screening test (TST or IGRA)(719)	medical examination (501) chest x-ray (502)	medical examination (501) chest x-ray (502) HIV test (707) hepatitis B test (708) hepatitis C test (716) syphilis test (712)
Onshore temporary protection visas (subclasses 785, 790)	medical examination (501)*	medical examination (501)* TB Screening test (TST or IGRA)(719)*	medical examination (501)* chest x-ray (502)	medical examination (501)* chest x-ray (502)* HIV test (707)* hepatitis B test (708)* hepatitis C test (716)* syphilis test (712)*
Offshore refugee and humanitarian visas (200 series)	medical examination (501)	medical examination (501) TB Screening test (TST or IGRA)(719)	medical examination (501) chest x-ray (502)	medical examination (501) chest x-ray (502) HIV test (707) syphilis test (712)

* Subclass 785 and 790 applicants who were born onshore to IMA parents, or came onshore as IMA children (under 15 years) are not required to undergo this exam, refer to Requirements for children who arrived as, or are born onshore to IMA parents

Note:

- All unaccompanied humanitarian minors must also complete HIV (707) and Hepatitis B (708) testing regardless of age. Visa processing officers will be required to manually add these examinations in HAP – Health Declarations.
- eMedical will auto-generate a Resettlement Needs examination (948) for all offshore refugee and humanitarian visa applicants.
- It is a requirement for all Permanent Protection Visa (PPV), Temporary Protection Visa (TPV) and Special Humanitarian Entrant Visa (SHEV) applicants to complete their medical history online and consent to using eMedical before attending a MMSP clinic, using the eMedical Client functionality.
- The Minister has approved both the MMSP and the International Health and Medical Services (IHMS) to carry out health examinations for PV applicants.

Requirements for refugee and humanitarian visa applicants (offshore)

Refugee and humanitarian visa applicants are subject to the PIC 4007, and as such a MOC assesses these applicants against threats to public health, health care and community service costs and access to health and community services in short supply in Australia. Where these applicants fail to meet the health requirement, a health waiver is available to be considered, refer to PIC 4007 Waivers for Humanitarian visas.

Requirements for onshore Protection visa applicants

Due to the different health criteria in the Regulations for Protection Visas, health examination results for this group are assessed slightly differently, because the MOC needs to assess only whether the applicant might be a public health risk to the Australian community.

If the MOC decides that the applicant is a public health risk to the Australian community, the MOC may determine that the applicant should complete a health undertaking (Form 815) before a decision is made on their visa application. The visa officer will be notified of this requirement through the visa processing system (ICSE/IRIS) and will then be responsible for ensuring the applicant completes the Form 815, and for recording details into HAP – Health Assessments. For further details refer to Health Undertakings.

A PV applicant will not be required to complete new examinations if they have already completed:

- The required medical examinations while in detention as part of a Health Induction Assessment, or
- Medical examinations for another substantive visa application (regardless of when they were completed)

and

- There is evidence available in HAP or other departmental systems that all the medical examinations prescribed by the Regulations and policy have been undertaken
- The results are reflected in HAP – Health Assessments by visa processing officers following the HAP – Health declarations processes tipsheet on Bordernet
- The applicant has complied with any health undertakings, and
- The applicant has not travelled overseas.

In these circumstances the HAP – Health Assessments record should be finalised accordingly by the visa processing officers.

Note: A PV should not be granted to any applicant who has an existing health undertaking if there is no evidence that the applicant has met, or is progressing towards meeting, the requirements of that health undertaking. For further information, refer to Compliance with Health Undertakings for PV applicants.

Requirements for children who arrived as, or are born onshore to IMA parents

The health requirements for children who arrived as, or are born onshore to IMAs are based on the understanding that they have had their health care largely managed through Australias healthcare system (Medicare).

Managing the health requirement for children who are born onshore to IMAs

Children born onshore to IMAs can be assessed “on the papers” for TPV and SHEV applications. That is, they do not need to physically attend the Migration Medical Services Provider for a physical examination. This concession **is not** limited to 6 months for this cohort, instead children born onshore to IMAs will be able to use this concession with no restrictions. For further information refer to, Managing the health requirement for newborns under 6 months old in Australia.

No further tests are required for babies born onshore unless they have travelled overseas to a higher TB-risk country for more than six months. For further information, refer to Protection visa applicants and overseas travel.

Reaching an age milestone

TPV and SHEV applicants are not required to undergo additional health examinations if they have reached an age milestone of 2 and 15, provided that:

- the applicant was born in Australia to IMA parents or,
- the applicant arrived in Australia as a child (under 15 years of age) as an IMA.

Note: On 2 March 2019, TPV and SHEV regulations were amended and as a result, subsequent TPV/SHEV applicants who have turned 11 since their last TPV/SHEV was granted are not required to undergo an x-ray examination as part of the visa health requirements.

Protection visa applicants and overseas travel

A visa processing officer should always consider whether an applicant has travelled offshore prior to:

- The grant of a Permanent Protection visa (PPV), or
- The further grant of a TPV, or SHEV (as Irregular Maritime Arrivals cannot travel before the first TPV or SHEV grant).

If a PPV applicant, or a TPV or SHEV holder, has been outside Australia in a higher Tuberculosis risk country:

- For less than six months continuous absence- no examinations are required as a matter of policy, or
- For six months or more continuous absence- the person should be asked to complete:
  - a medical examination (501) and chest x-ray (502)- if 11 years or older
  - a medical examination (501) and a TB screening test (719)- if 2 years or older but under 11 years
  - a medical examination (501) - if under 2 years old

Visa Subclasses with no Health Requirement

Visa subclasses listed in Table 3 are not subject to health screening as they do not have a health PIC or any health requirement.

Table 3 - Visa Subclasses with no Health Requirement

Visa Subclasses with no Health Requirement	
ZM 988 – Maritime Crew	TF 995 – Diplomatic
BB 155 – Resident Return	TY 444 – Special Category
BB 157 – Resident Return	Special Purpose visas
GD 403 – International Relations (Privileges and Immunities stream applicants only)	

Managing adverse health information for visa applicants who have no health requirement

If adverse health information for visa applicants who have no health requirement (that is, PICs 4005, 4006A and 4007 do not apply) is identified or available to the Department, e.g. a CMAL alert due to health concerns, there is no legislative basis for the Department to request the applicant undergo an immigration medical examination. Where there are concerns the applicant has TB, visa processing officers should counsel the applicant to seek medical follow-up for their potential health condition. Visa processing officers should also add a CMAL alert to ensure that, should the applicant apply for a subsequent visa which has a health requirement, the applicant would be required to undergo an immigration medical examination.

Applying the Health Requirement as per the Health Matrix

Business rules based on the health requirement are built into the HAP – Health Declarations so that the HAP-Health Declarations automatically generates the correct medical examinations for each visa applicant without intervention by officers.

There may be some situations where officers are required to manually assess which medical examinations are required. All provisional and permanent visa applicants **must** undergo an Immigration Medical Examination to a permanent standard.

A temporary visa applicant **may** be required to undergo an IME. In these cases, officers will need to know:

- The total length of the applicants stay in Australia (determined by the period of stay allowed on their visa) and any cumulative stay period,
- The applicants passport country or countries (if multiple passports held), country of residence, and TB-risk level, and
- Whether the applicant intends to undergo any activities in Australia which make their health of special significance.

Note: The total length of the applicants stay in Australia must be based on the maximum period of stay allowed on their visa. For example, if a Student visa applicant applies for a three year period of stay, the relevant ‘stay period which the health requirement is based on is three years. If an applicant applies for a three month Visitor visa, but the standard visa product allows for a validity of 12 months with a three month period of stay in Australia, the three month period of stay is the relevant ‘stay period which the health requirement is based on.

Period of stay

For the purpose of the Health Matrix, the relevant period of stay is the applicants **total** period of stay in Australia- that is:

- **if outside Australia:** the stay period for the new visa that they have applied for, or
- **if in Australia:** the period from when they last arrived in Australia until their intended departure date (that is, the date their new visa will cease).

The cumulative stay rule

The cumulative stay period is only applicable to higher-TB risk applicants who:

- have previously been granted a visa, and
- at the time of visa application has not spent 28 consecutive days or more outside Australia.

Visa applicants may apply for multiple short-stay visas in Australia. The cumulative stay policy ensures that higher-TB risk applicants are screened in accordance with their actual length of stay in Australia, rather than periods of stay on individual visas, and request health examinations in accordance with the Health Matrix.

Calculation of cumulative stay period

The cumulative stay rule requires the visa applicant to have been outside Australia for 28 consecutive days or more at the time of visa lodgement. If the applicant has not been outside Australia for more than 28 consecutive days, the relevant period of stay considered would be from when the visa applicant initially entered Australia.

Note:

- For ICSE cases, the HAP- Health Declarations automatically applies this rule.
- For IRIS cases, if an applicant outside Australia has been in Australia within the last 28 days, **IRIS users must record in the cumulative stay field in the HAP – Health Declarations the number of days the applicant has already spent in Australia**, to ensure that the full period is taken into account. Any period of 28 consecutive days or more outside Australia will "break" the applicants stay period, and their cumulative stay in Australia will no longer be relevant for health purposes.

Under policy (reflected in the HAP – Health Declarations), the cumulative stay rule also **does not** apply if the applicant is in Australia and is seeking an additional stay of less than 29 days. These applicants are **not** required to undertake new medical examinations unless they declare a significant health condition in their new visa application.

The following scenarios help explain how the 'cumulative stay rule' is applied:

Scenario one: Miss AB is a South African passport holder who has been working in Australia for the last 3 months on a Subclass 400 (Short Stay Specialist) Temporary Work visa, and is now applying to extend her stay in Australia as a visitor for a further 3 months on a Subclass FA-600 (Tourist) visa. As Miss AB has not departed Australia before applying for another substantive visa, the cumulative stay rule **does** apply. In this case, 6 months is the relevant stay period for Health Matrix purposes as this is calculated from the date Miss AB first entered Australia. As South Africa is a higher-TB risk country the applicant will be required to undergo health examinations.

Scenario two: Mr XY is a Nepalese passport holder who was studying in Australia on a TU-500 Student visa for the last 5 months. Mr XY departed Australia 3 weeks ago and is now applying for a FA-600 Tourist visa for a 3 month period of stay. As Mr XY has not spent 28 days outside of Australia before lodging another substantive visa, the cumulative stay rule **does** apply. In this case, 8 months is the applicants relevant period of stay for Health Matrix purposes. As Nepal is a higher-TB risk country, the applicant will be required to undergo health examinations.

Scenario three: Mrs LM is a Brazilian passport holder who had been in Australia for 4 months. Mrs LM's visa expired so she departed Australia to visit New Zealand for 35 days (5 weeks). Mrs LM returned on a FA-600 visitor visa valid for 3 months. It is soon expiring so Mrs LM is seeking an extension on her visitor visa for a further 2 months. Mrs LMs relevant stay period for Health Matrix

purposes is 5 months as it is calculated from when she entered in on her FA-600 visa (second visa), until her intended departure date. The initial 4 month period is not relevant because Mrs LM was outside Australia for more than 28 consecutive days. As the relevant period of stay is only 5 months, Mrs LM would not be required to undergo health examinations.

Note:

- The cumulative stay rule does not apply to Working Holiday (TZ-417) visa applicants. These applicants are assessed against the Health Matrix for their proposed stay of up to 12 months on their Working Holiday visa only. These arrangements are reflected in the HAP – Health Declarations business rules.
- The cumulative stay rule **does not** apply to applicants from lower TB-risk countries because, irrespective of their period of stay in Australia, these visa applicants would not ordinarily be required to complete health examinations.

Country TB-risk level

An applicant should be assessed against the country TB-risk level (whichever has the greater TB-risk level) of:

- Their country of citizenship as evidenced by the travel document (for example, passport) that they are using for the visa application that is currently being processed, or
- Their country of residence, or
- Any country (or combination of countries) in which the applicant, at the time of lodging their visa application, has spent more than 3 consecutive months (calculated by the HAP – Health Declarations as 90 days) in the last five years.

Note: Where a visa officer is aware that the applicant has a second passport which is not being used in the current visa application being processed, the visa officer should also consider this passport when determining the applicants country TB-risk level. If the passport being used for the current visa application is of a lower-risk country, but the second passport is of a higher-risk country, the applicant should then be assessed as higher-risk.

For example:

- A person who was born in Sweden (lower TB-risk) travels on an Indian passport (higher TB-risk) but has lived in Canada (lower TB-risk) continuously for the past six years will still be assessed as per requirements for higher TB-risk applicants.
- A person who has visited India (higher TB-risk) for an unbroken period of more than three months should be assessed as per the higher TB-risk requirements, regardless of their citizenship or country of residence.
- A person who has visited Vietnam (higher TB-risk) for two months followed by travel to Thailand (higher TB-risk) for two months should be assessed as per the higher TB-risk requirements as their combined travel results in over three consecutive months spent in a combination of higher TB-risk countries.
- A person who has visited China (higher TB-risk) for one month, followed by four months in New Zealand (lower TB-risk), should be assessed as per the lower TB-risk levels, as the time spent in a higher TB-risk country is less than three consecutive months.
- A person who travels on a US passport (lower TB-risk) but also holds a Nepalese passport (higher TB-risk) that allows travel, will still be assessed as per requirements for higher TB-risk applicants.

Special significance

Where an applicant for a temporary or permanent visa declares they intend to participate in any of the special significance activities in the below table, additional immigration medical examinations are required, irrespective of the applicants period of stay in Australia or TB-risk country. The HAP – Health Declarations will generate the required immigration medical examinations automatically if the applicant answers the relevant health declaration question positively in their visa application or My Health Declaration questions.

Note: Special significance does not apply to the eVisitor visa subclass (651), unless related to TB, identified by the visa applicant.

Table 4 - Special Significance Categories

Intended Activities	**Immigration Medical examinations required**
If from a **higher** TB-risk country and likely to enter a **health care or hospital** environment*	medical examination (501) chest x-ray (502) (if 11 years or older)
If **pregnant** and intending to give birth **in Australia** (either onshore or offshore visa applicant)	hepatitis B test (708)
If 15 years or older and intending to work as (or study to be) a **doctor, dentist, nurse or ambulance paramedic**	medical examination (501) chest x-ray (502) HIV test (707) hepatitis B (708) hepatitis C test (716)
If likely to work (or be a trainee) at an Australian childcare centre (including preschools and crèches)	medical examination (501) chest x-ray (502)
If **75 years or older** and applying for a Visitor visa (**FA-600**)	medical examination (501)

*A nursing home is considered to be a health care environment, however, a private doctor or dental practice is not. Similarly, alternative medical clinics such as an acupuncturist or Chinese medicine clinic are not considered a hospital or health care environment.

Additional blood testing will also be required for certain groups of permanent visa applicants as indicated in the following table. Visa processing officers will be required to manually generate these examinations in the HAP – Health Declarations.

Table 5 - Additional tests required

Type of applicant	**HIV test (707)**	**Hepatitis B test (708)**	**Hepatitis C test (716)**
All children who have been, or are to be, adopted by Australian citizens or permanent residents on an adoption visa (AH-102), Child visa (802) or as a dependent on any permanent visa.	Yes	Yes	No

Persons with clinical indicators or history giving rise to a possibility of infection (for example, biological mother positive)	Yes	Yes	Yes

Additional examinations

Officers should also be aware that although routine levels of evidentiary requirements are described in this instruction, these are the minimum examinations required. They may, with good reason, request additional examination(s) for any visa applicant. For example, if possible deception is discovered in relation to the applicants previous immigration medical examinations, or if it is discovered that the applicants health has significantly deteriorated prior to grant of a subsequent visa application.

The HAP – Health Declarations allows officers to add additional examinations provided a reason is given. For more information refer to the Bordernet - Immigration Health processing guidelines for visa officers.

Validity of a health clearance

To be granted a visa, a visa applicants immigration medical examination results must be assessed and they must be granted a **health clearance**. Types of clearances available include:

- an opinion provided by a MOC that an applicant meets the health requirement
- a decision by a s65 delegate that a person meets the health requirement as per Local Clearance arrangements
- cases that are recommended cleared by the MMSP health processing staff or auto-cleared by the HAP – Health Assessments.

What officers need to know about the validity and health clearance

A visa cannot be granted unless an applicant has a valid health clearance. Health clearances are valid for a limited time only from the date the clearance was provided, as outlined in the below table.

Table 6 - The validity of a health clearance/outcome

Type of clearance/outcome	Type of visa application	Type of undertaking	Validity period	Are extensions available
Meets (MOC opinion) Locally Cleared Recommend Cleared Auto-cleared Meets (Reduced Stay)	Class XB Refugee and Humanitarian	N/A	12 months	No

Meets (MOC opinion) Locally Cleared Recommend Cleared Auto-cleared	All other types	N/A	12 months	Yes, a **6 month extension** is available in limited circumstances outlined in When can the validity of a health clearance be extended
Meets (Reduced Stay)	All	N/A	12 months	No
Meets with Undertaking	All	Tuberculosis	6 months	No
Meets with Undertaking	All	All other types	6 months	Yes, a **6 month extension is** available in limited circumstances outlined in When can the validity of a health clearance be extended
Does Not Meet with Undertaking	All	Hepatitis B Hepatitis C Leprosy	12 months	No
Does Not Meet with Undertaking	All	All other types	6 months	
No Clearance Required (with or without undertaking)	Onshore protection visas and Subclass 802 (Vulnerable child applicants only)	Does not expire	Does not expire	N/A

Note:

- Electronic immigration medical examinations are valid for 12 months from the date they are first submitted to the Department. If a health case is deferred and finalisation of a health case is delayed, a MOC will determine whether additional immigration medical examinations are required.
- The validity of health clearances for non-migrating family members can be extended in certain circumstances. Visa processing officers should give consideration to the circumstances outlined in the Non-Migrating Family Members (NMFMs) section to determine whether there is a likelihood the NMFM will ultimately seek to migrate to Australia. Where it is unlikely, visa processing officers can extend the validity of health to allow for visa grant of migrating applicants.

- A health clearance can only be extended if the health clearance has expired in the past six months, or will expire within the next six months.

When can the validity of a health clearance be extended

With the exception of health clearances with an undertaking, a health clearance is only valid for a period of 12 months. Visa processing officers can, in certain situations, extend the validity of an applicants health clearance. Visa processing officers should only be extending the validity of a health clearance in very **exceptional circumstances.** Such extensions should **not** be given automatically. This is because an applicants health condition may change over time, in particular where an applicant is residing in a higher TB risk country.

If the validity period of a health clearance can be extended (refer to Table 6), this extension can be granted for a maximum period of **6 months** only**.** The following scenarios outline when a health clearance can be extended.

Scenario 1: *The health clearance has expired on the current visa application being processed*
Where an applicants health clearance has expired during the processing of their visa application, the health clearance can be extended where:

- there are delays in processing the visa application for which the immigration medical examinations were completed **and** these were not caused by the visa applicant, or
- there are compassionate or compelling reasons.

Scenario 2: *The applicant has re-used a health clearance for a new visa application, and the health clearance subsequently expires prior to visa grant.*
Where a health clearance is re-used for a new visa application, and the health clearance subsequently expires prior to visa grant, the expired health clearance can only be extended in limited circumstances. Delays in processing would not generally be considered a reason for extending the health clearance, however these health clearances may be extended if there are compassionate and compelling circumstances of the case.

Scenario 3: *The applicant was granted a visa, and the health clearance on that visa has expired. The visa officer is considering extending the health clearance on the granted visa to facilitate 're-use of the health clearance for a second visa application.*

In most circumstances, the expired health clearance on the finalised visa cannot be extended to facilitate re-use for a second visa application. In this circumstance a health clearance can only be extended with approval from Health Policy. Delays in processing would not generally be considered a reason for extending the health clearance to facilitate re-use, however these health clearances may be extended if there are compassionate and compelling circumstances of the case.

In order to facilitate the health clearance extension, visa officers are to contact health@homeaffairs.gov.au outlining:

- The compassionate and compelling circumstances of the case, and
- The duration of the extension sought (noting the maximum extensions that are available as per (Table 6).

Health Policy will consider the circumstances of the case and advise whether an extension and re-use is available.

Scenario 4: *The applicants health clearance has expired on a granted visa. The visa officer wishes to extend the health clearance to issue a revised travel facilitation letter.*
Visa processing officers are required to contact health@homeaffairs.gov.au requesting that the health clearance be extended in order to issue a revised travel facilitation letter. For further information refer to Assessing Public Health Risk only post health outcome.

Note:

- Extensions beyond those above are **not available in any circumstances** and visa processing officers should manage this. If it appears that a health clearance is about to expire before visa grant, visa processing officers should organise for health examinations to be undertaken again.
- Where the applicants health clearance has expired, and no further extensions are available, applicants are required to re-complete immigration medical examinations.
- AAT remit cases do not constitute as delays in processing not caused by the visa applicant nor 'compassionate and compelling reasons. If a case has been remitted by the AAT (for non-health related reasons), an extension is not available.

When can health information be re-used

It is quite common for applicants to apply within a relatively short period of time for several different visas with different immigration medical examination requirements. Consequently, applicants may wish to "re-use" existing medical examinations or a health clearance to avoid additional costs or inconvenience.

If an applicant makes an electronic visa application, they will be asked whether they have completed any immigration medical examinations and to provide their HAP ID. HAP – Health Declarations will then automatically check whether the applicant can re-use their existing health clearance and/or examinations.

Similar arrangements are in place for paper visa applications, in which case, when launching the HAP – Health Declarations manually, visa processing officers will be advised whether re-use of existing health clearance and/or examinations is available.

When can health clearances be re-used

For an applicant to re-use an existing health clearance for a new visa application:

- the clearance must still be **valid,** and
- **all** the immigration medical examinations required for the new visa application were completed (for example, a medical examination (501) and chest x-ray (502) were required for the new visa application and these have been completed).

In addition:

- If the applicant is applying for a **permanent visa**, it must be a **permanent clearance.**
- If the applicant is applying for a **temporary visa** and:
  - The health clearance is a MOC opinion (for example, a 'Meets clearance), then the health clearance can be re-used if the MOC opinion assessment period is greater than or equal to the new temporary visa assessment period.

Note : If the health clearance is a 'Meets (Reduced Stay) due to health concerns identified, then the healthclearance cannot be re-used for a new temporary visa application and/or further stay on an existing visa application. Such cases need to be referred to a MOC for a reassessment for the new stay period. Individual immigration medical examinations associated with a Meets (Reduced Stay) can be re-used as long as the examinations are still valid (that is, less than 12 months have elapsed since the examination was submitted electronically).

- The health clearance is a non-MOC outcome (for example, Recommend cleared, Locally cleared, or Auto-cleared), then the health clearance can be re-used for a subsequent temporary visa, irrespective of the period of visa grant on the subsequent temporary visa. This is because no health concerns have been identified, and had the applicant applied for a visa with a longer grant period initially, their health clearance would have been cleared for the longer stay.
- **No clearance required** outcomes only apply to visa subclasses where Schedule 2 health provisions apply. A No Clearance Required outcome cannot be re-used for another permanent or temporary visa.
- **Does Not Meet** outcomes are not a health clearance and cannot be re-used.

If an applicant has a valid health clearance but it is attached to a different applicant in the Client Search Portal (CSP) you must complete a request for the applicants records be merged in CSP. Refer to **Health Declaration Processes** for to obtain further instruction. Once the health records are merged, you can then re-launch the HAP – Health Declarations to facilitate re-use of this health clearance.

Some visa applicants may reach a new age milestone during the processing of their visa. Refer to Reaching Age Milestones for further details on how to manage these cases.

Note: A previous health clearance is not to be re-used if the visa officer believes that it may have been obtained fraudulently, or not carried out by an approved health provider. In such circumstances, before an applicant can satisfy the health requirement, the applicant must undergo the immigration medical examinations required of their new visa application with an approved panel physician.

Health Clearance with an undertaking and re-use

Permanent health clearances with an undertaking can be re-used where there is no evidence that the applicant has failed to comply with their undertaking. To arrange re-use of the health clearance, visa processing officers are to contact health@homeaffairs.gov.au, as the HAP – Health Declarations will not automatically re-use the health clearance.

Applicants with a temporary health clearance with an undertaking **cannot** re-use this clearance.

When can individual results of health examinations be re-used

Where an applicant is unable to re-use their health clearance, the applicant may be able to re-use results of individual immigration medical examinations provided that:

- the relevant examination was completed electronically, **and**
- the examination is still valid (that is, less than 12 months have elapsed since the examination was submitted electronically).

If immigration medical examinations are available for re-use, the immigration medical examination results will be pre-populated in the health case (HAP ID) for the new visa application so that the results can be considered by the panel clinic together with the results of any remaining medical examinations and submitted through to the Department. That is, immigration medical examinations being used or re-used for the one visa application should not appear on different HAP IDs.

Note:

- The validity of individual immigration medical examinations cannot be extended.
- Where a visa applicant received a **Does Not Meet** outcome, individual immigration medical examinations can be re-used if still valid and no new health information is available.

Does Not Meet outcomes

Where a Does Not Meet outcome is provided, and **18 months or more** has passed from the date the MOC provided the Does Not Meet opinion, the applicant will be required to re-complete immigration medical examinations prior to finalisation of the visa outcome.

Note: the expiry/validity dates for Does Not Meet outcome with undertakings vary – refer to Table 6 – Validity of health clearance/outcome.

This is important to ensure that the MOC opinion and any associated cost estimates relied on for the visa decision making purposes are current, particularly if a health waiver is a being considered, or a visa will be refused. In some cases, the applicant may even subsequently meet the health requirement due to a change in their health condition.

If HAP – Health Declarations has indicated that re-use is not available

If the HAP- Health Declarations indicates that re-use is not available, this is likely to be because any existing health clearances or immigration medical examinations do not meet the requirements for re-use under current health policy arrangements.

Special Health Arrangements

While most visa applicants are required to complete immigration medical examinations in accordance with the Health Matrix there are, under policy, special arrangements in place for specified visa applicants, as outlined below.

Sponsored Parent (Temporary) visa

Visa applicants for the Sponsored Parent (Temporary) visa (subclass 870) are required to undertake all Immigration Medical Examinations. This includes a medical examination (501), chest x-ray examination (502) and HIV test (707). This requirement reflects the fact that the age of this cohort and the long validity, multi-entry nature of this visa presents a unique risk in terms of health. The health of this cohort is likely to deteriorate quickly, with significant cost to the Australian community if they are unable to depart.

Aged visitors (75 years of age or older)

Visa applicants for the Tourist visa (**FA-600)**, who are 75 years or older at time of application, are required to undertake a medical examination (501) unless they meet certain alternative requirements and/or DFAT supports an exemption from standard arrangements being granted. This requirement reflects the fact that the health of this cohort is more likely to deteriorate quickly, with significant cost to the Australian community if they are unable to depart. These requirements do not apply to other short stay visa subclasses.

Note:

- Normal matrix requirements still also apply to this group (e.g. they may be required to undergo a chest x-ray depending on their length of stay in Australia)
- An immigration medical examination is not required if an applicant reaches 75 after application but prior to visa grant.

Exemption Criteria

Subclass 600 applicants are exempt from the above requirement if they are:

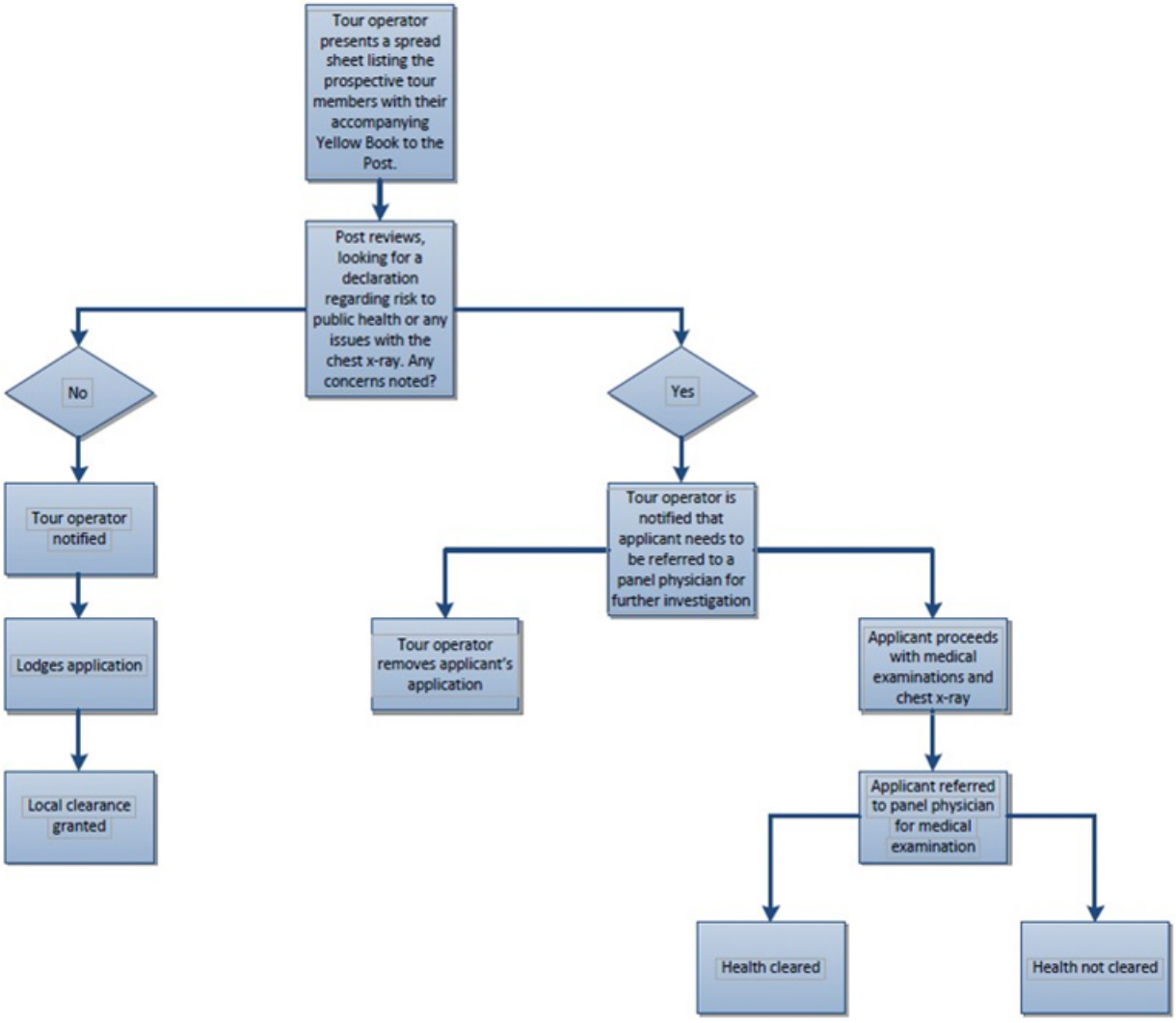
- assessed as a high profile aged visitor (whether due to their position as a community leader or a case-specific exemption- see guidelines below), or
- an APEC Business Travel Card (ABTC) holder, or
- applying under the Approved Destination Status (ADS) stream and have provided their ‘Yellow Book- that is, a health certificate issued by the State Administration for Entry-Exit Inspection and Quarantine which shows that they are cleared of any public health concerns or that they have no abnormal chest x-ray/lung findings.

ADS Stream applicants over 75

HAP- Health Declarations will automatically generate a medical examination (501) for all subclass 600 applicants aged 75 or over. Where an ADS applicants Yellow Book indicates any public concerns or abnormal chest x-ray/lung findings, these visa applicants will be required to complete a medical examination (501) **and** a chest x-ray (502) with an appointed panel physician. Visa processing officers will be required to manually add the chest x-ray (502) examination in HAP – Health Declarations.

For ADS applicants where the Yellow Book indicates that they have been cleared of any disease which is a risk to public health visa processing officers must edit out the generated medical examination (501) in HAP – Health Declarations.

The below flowchart provides further guidance for visa processing officers when determining whether an ADS applicant is required to undergo an immigration medical examination.



Who is a high profile aged visitor?

The following individuals are considered to be *high profile aged visitors* on the basis of their current (or former) position as a community leader and can be exempted from the immigration medical examination requirement where the processes outlined at the end of this instruction are followed:

- Heads of state (including Presidents, Prime Ministers, Governor-General)
- Royals (including Kings, Queens, Crown Princes, Emperor, Empress)
- Religious/ spiritual head figures (including Pope, Patriarchs, Cardinals, Rabbis, Imams), and
- Partners of any of the above if aged over 75 years of age.

These exemptions are in place to reflect that such applicants generally;

- visit Australia for a very short duration (e.g. a few days to attend a conference or similar);
- are usually in receipt of high-quality medical care in their own country; and

- are unlikely to remain in Australia after their intended visit, and therefore less likely to require ongoing medical care in Australia at a cost to the Australian community.

Other high-profile aged visitors

Visa processing officers are encouraged to restrict application of this exemption to the groups of individuals listed above who are considered to be high profile on the basis of their position. This is to ensure that a consistent approach is taken to screening aged visitors and additional costs and pressures on Australia's health care system are avoided where possible.

Exemptions can be provided on a case by case basis to other types of community leaders and/or high level professionals who wish to travel to Australia for a short period to participate in a high profile event (for example, they will be speaking at an international conference or will be attending international government agency meetings).

Scenario 1: DFAT supported

- the Department of Foreign Affairs and Trade (DFAT) or equivalent at mission requests an exemption in writing due to foreign policy or reasons of national interest;
- the applicant has provided a medical statement which does not indicate any adverse health information; and
- the relevant processing office is going to grant a single entry, three-month stay visa with a validity period of no more than 12 months.

Scenario 2: ETA eligible nationals

- the applicant would be eligible for an ETA - but is applying for subclass 600 instead; and
- the applicant provides evidence of comprehensive health insurance that will cover them during their period of stay in Australia; and
- the applicant has provided a medical statement which does not indicate any adverse health information; and
- the relevant processing office is going to grant a single entry, three month stay visa with a validity period of no more than 12 months.

Note: Decisions to extend exemption arrangements should be made by a **Principal Migration Officer** or, if onshore, by a **Director**.

What is the process for applying an exemption?

Where a decision has been made at the appropriate level to exempt a *high-profile aged visitor* from the immigration medical examination requirement, the visa processing officer should ask the applicant to provide **a statement from their general practitioner** outlining any health conditions that may affect the applicants ability to travel and return home within the proposed validity period of the visa **in lieu of the immigration medical examination**.

Visa processing officers do **not** need to consult with Health before applying this exemption **unless** there is adverse health information available regarding the visa applicants health condition- whether obtained from:

- departmental systems (e.g. CMAL); or
- the applicants general practitioner statement outlining existing health conditions.

In this case, **prior to visa grant** the details of the case and the statement **must** be sent through to health@homeaffairs.gov.au for consideration by health to assess whether immigration medical examinations are required to rule out any potential threats to public health.

Note: Where this exemption is applied, the visa processing officers must edit out the generated medical examination (501) in HAP – Health Declarations with advice that *'high profile aged visitor exemption applied* so that health can continue to monitor use of these arrangements.

Bridging Visas B and the health requirement

In assessing **Regulation 020.213 "***The applicants return to Australia would not be contrary to the public interest",* officers must consider whether it is likely that the person would engage in activities during the proposed travel that might result in their subsequent return to Australia not being in the public interest. Issues to consider include the:

- intended destination(s);
- purpose of the proposed travel;
- possibility of exposure to infectious diseases that may cause a risk to public health; and
- risk posed from a current health condition that might exacerbate public health threat on return.

Where a BVB applicant may have active TB or is undergoing treatment for active TB, under policy, this is considered a relevant consideration in terms of regulation 020.213. This is because it is the only condition that in itself is defined as a risk to public health.

Applicants who have been referred for investigation of possible active TB will have a 'deferred opinion in the HAP – Health Assessments with an examination code of 603, 606 or 607 **OR** an outstanding 603 examination in eMedical that has not been completed. A CMAL alert will also be in place for these applicants.

As a general rule, a BVB should NOT be granted to any applicant being investigated or treated for active TB.

This is because TB remains the top infectious disease killer worldwide and where individuals are being treated it is critical that they are monitored effectively during this period. Deviations from such arrangements would be contrary to World Health Organisation (WHO) recommendations regarding Directly Observed Therapy in TB management.

Health Policy does, however, recognise that there may be **rare** circumstances where there might be compelling or compassionate reasons for travel.

Under policy, exceptions allowing BVB grant should only be exercised where an applicant meets **all** the compassionate and compelling criteria outlined below **and**, depending on the applicants circumstances, either scenario (a), (b), or (c).

Important: If the applicant **does not meet** the compassionate and compelling criteria then the applicant **should not** be cleared to travel, even if the applicant has commenced treatment for TB.

Compassionate and Compelling Criteria

An applicant is required to meet **both** the below criteria:

- the applicant has a 'close relative' (as defined in *Regulation 1.03)* who is seriously ill, or has recently died, overseas; **and**
- the proposed overseas stay (and BVB grant) period is for one month or less.

a. Applicant is waiting to attend an appointment with a specialist chest clinic in Australia

Where applicants have met the compassionate and compelling criteria, however have not yet attended a specialist chest clinic in Australia for follow-up or treatment, visa processing officers are to contact the Migration Medical Service Provider (MMSP) directly. The MMSP will then contact the State or Territory Specialist Chest Clinic on behalf of the applicant to seek a priority appointment, in an attempt to obtain advice regarding the applicants fitness to travel.

b. Applicant has attended an appointment with a specialist chest clinic in Australia

Where an applicant has attended an appointment with a specialist chest clinic in Australia, however has not yet completed their treatment, a letter from the treating clinic must be provided stating:

- the details of care provided to date and ongoing management; **and**
- that they are fit to travel and are not a risk to public health (i.e. infectious) for the purpose of travelling by air or sea; **and**
- what appropriate management plan is proposed to supervise treatment whilst offshore (which includes references to the uninterrupted supply of all required medication for the duration of the proposed journey).

Where the applicant meets both the compassionate and compelling criteria, **and** provides a letter from a specialist chest clinic outlining the above requirements, the visa officer can make the decision regarding clearance to travel. Visa processing officers are not required to contact Health to request a MOC provide clearance to travel.

The applicants health case will remain as deferred until the applicant has completed their treatment with the specialist chest clinic.

c. Applicant has completed their treatment with a specialist chest clinic in Australia

In instances where an applicant has advised that they have fully completed their prescribed treatment with a specialist chest clinic in Australia, the visa officer should first check the HAP – Health Assessments to determine whether the health case has been finalised.

If the case is yet to be finalised (i.e. remains deferred), the visa officer should contact the MMSP directly to request an update on the applicants case.

Note: Applicants who have successfully completed treatment for TB are not required to demonstrate compassionate and compelling criteria. Where the specialist chest clinic notifies the MMSP that the applicant has successfully completed TB treatment and is clear from active TB, the MMSP will update the health case in HAP – Health Assessments.

For guidelines for communicating with the MMSP, refer to Bordernet - Migration medical services provider communication protocols.

Children born in Australia

Children born to substantive visa holders in Australia

Children born in Australia to a visa holder (whether a temporary or permanent visa) are not required to undergo an immigration medical examination until their parent applies for a new visa.

This is because under s78 of the Act, a child born in Australia who is a non-citizen when born, and whose parents hold visas at the time of the birth, is taken to have been granted, at the time of the birth, visas of the same kind and class and on the same terms and conditions (if any) as the visas held by the parents.

Parents should provide, as a minimum, the child's birth certificate to a departmental office as evidence of that childs birth in Australia.

Newborn children included in their parent’s visa application

When visa holders who have given birth to a child during their stay in Australia apply for a further visa before the childs birth, the child is considered to have applied for the same visa as their parent(s) (regulation 2.08) - refer to GenGuideA - All visas- Visa application procedures - Adding child born after parent has applied (reg. 2.08).

Subject to age considerations, the child must undergo whichever immigration medical examinations are required for their (parents) proposed additional period of stay. Special arrangements are, however, in place for newborn children who are under 6 months.

Note: The above applies also to children born to provisional visa holders do not have a finalised permanent visa application. Normally, the parent(s) would have already completed immigration medical examinations to a permanent standard and will not be required to undergo any further examinations. The child, however, not having had any immigration medical examinations, will have to undertake immigration medical examinations to the permanent standard before being granted the permanent visa.

Managing the health requirement for newborns under 6 months old in Australia

As a concession, newborns under 6 months old in Australia (either born in Australia or born offshore and completed an IME for visa grant and is now onshore and applied for another visa) can be assessed "on the papers", that is, they do not need to physically attend the Migration Medical Services Provider for a physical examination. Their medical status can be assessed by a MOC using medical documentation provided.

This policy only applies to newborns who are currently onshore, regardless of country of birth. Newborns who are offshore must attend a Panel Physician to complete an immigration medical examination.

If an on the papers assessment is applicable, be aware that the required documentation (specified below) must be received by the MMSP **no later than 5 days prior to the child turning 6 months of age** to allow for sufficient time for processing. If the MMSP receives the documentation after this time, the MMSP will not be able to process the case and will advise visa processing officers to request that the child undergo the standard onshore immigration medical examination process. That is, they will need to have a HAP ID, medical history completed online, and a valid passport for identity verification purposes.

In order to request an on the papers assessment, visa processing officers will need to request that the childs parents or guardians of the child obtain:

- a letter regarding the health of the child from their childs Australian treating general practitioner, paediatrician or obstetrician. The letter should state that the doctor has examined the child and provided details of the childs health and development including but not limited to:
  - General health, growth parameters (height, weight and head circumference) hearing, vision, and if relevant, chromosomal abnormalities, physical or intellectual impairment, or conditions that may result from maternal-foetal or maternal- neonatal transmission (for example, HIV infection), and
  - a signed eMedical consent form.

Once the documentation is obtained, the visa officer should send the letter, eMedical consent form **and** a request for an "on the papers assessment" form to BMVS via email to HomeAffairs-enquiries@bupamvs.com.au in order for them to complete the on the papers assessment of the childs ability to satisfy the health requirement.

Note: This concession is **not** limited to 6 months for newborns born onshore to IMAs that hold a TPV or SHEVs. For further information refer to Requirements for children who arrived as, or are born onshore to IMAs.

For the required templates for requesting an on the papers assessment, refer to Bordernets Immigration health processing guidelines for visa officers.

Concession for certain GD-403 applicants

GD-403 visa applicants (including family members) applying under the **Privileges and Immunities stream** (refer to regulation 403.25) are **not** subject to any Schedule 4 health criteria. Consequently, they are not required to complete immigration medical examinations.

GD-403 visa applicants (including family members) applying under the **Temporary Work (International Relations)** may generally be considered as meeting health requirements if they:

- are applying under the Foreign Government Agency stream and
- are from lower TB-risk countries and
- present a Third Person Note (TPN) from their foreign affairs agency.

The TPN must also address the following matters:

- the applicant has undergone a chest x-ray to screen for TB, with satisfactory identification procedures, and found to be free of active TB
- if there is hospital, nursing, dentistry or paramedic work intended, a medical examination and blood tests for HIV/ Hepatitis B/ Hepatitis C have also resulted in clearances
- the applicant will be covered by comprehensive insurance and prompt payment by the sending government for medical and related services (for example, ambulance, rehabilitation, respite care, special education and income support), including for all dependants
- the applicant will be covered for any and all illness or injury, whether pre-existing or arising in Australia
- the applicant will be medically evacuated to their home country if a need arises for dialysis or organ transplant
- payment arrangements shall be by (for instance) submission of treatment plan, or invoice, or hospital admission enquiry to the specified Embassy/High Commission/ Consulate-General/Consulate and
- there shall be no delay in reimbursing hospitals or treating practitioners for their services pending insurance reimbursements or the like.

The HAP – Health Declarations will generate a message for lower TB-risk Foreign Government Agency stream applicants indicating that a TPN may be sufficient for the applicant to meet the health requirement, providing the above criteria are addressed. If this option is available, officers can edit the medical examinations that have been generated by the HAP- Health Declarations in line with the matrix.

Health Care Workers (HCWs) and Health Care Students (HCSs)

Additional immigration medical examinations apply if an applicant 15 years or older intends to **work as**, or **study to be**, a **doctor, dentist, and nurse or ambulance paramedic in a health care environment**. In such cases, the following examinations are required:

- medical examination (501)
- chest x-ray (502)
- HIV test (707)
- hepatitis B test (708)
- hepatitis C test (716)

The HAP – Health Declarations (for temporary visa applicants) and eMedical systems (for permanent visa applicants) will generate the appropriate immigration medical examinations once the visa applicant completes their visa health screening questions or the panel clinic identifies this requirement.

These additional requirements apply because, although HIV and Hepatitis are not generally considered to be threats to public health, HCW and HCS applicants assessed as having these conditions may be found to be a threat to public health **if they intend to be involved in Exposure Prone Procedures (EPPs).** An Exposure Prone Procedure (EPP) as defined by the Communicable Diseases Network of Australia (CDNA) is a procedure where there is a risk of injury to the HCW resulting in exposure of the patients open tissues to the blood of the worker. These procedures include those where the workers hands (whether gloved or not) may be in contact with sharp instruments, needle tips or sharp tissues (spicules of bone or teeth) inside a patients open body cavity, wound or confined anatomical space where the hands or fingertips may not be completely visible at all times.

As a result, in assessing HCWs and HCSs against the health requirement, a MOC needs to know whether or not they will be performing EPPs as part of their employment/ education in Australia. A HCW/HSC who is identified to have a BBV may have their cases deferred by a MOC with the serial code 721 “Health Care Worker Duty Statement.” Applicants are then required to provide a statement from their prospective employer or educational institution/supervisor stating that they will not be involved in EPPs. A statutory declaration can be submitted if such a statement is not available (e.g. if the applicant does not have a prospective employer). These statements are to be uploaded into HAP-Health Assessments for a MOC to review.

Note:

- HCW applicants who have a BBV but are found to meet the health requirement or have a health waiver exercised (following a Does Not Meet opinion) can have their visa applications finalised.
- The question whether their health condition should be disclosed to their employer or schooling institution by the Department is not a matter for consideration for officers. There are other policies that govern such disclosures (for example, screening guidelines by DoH, State/Territory jurisdictions and meeting professional registration standards).
- Visa applicants coming to Australia to work as a doctor, dentist or nurse, but not in an Australian health care environment are not required to undergo additional exams. For example, a Doctor applying for Temporary Activity visa (subclass 408) to attend an international sporting event such as the Commonwealth Games or the Invictus Games as medical support staff, would not be required to undergo additional exams if they will not be involved in EPPs, or in contact with patients in an Australian health care environment.

These additional health requirements **do not apply** to persons working or studying in the following health care professions:

- Audiologists
- Chemists or Pharmacists
- Chiropractors
- Dental nurse or assistant (not performing any exposure prone procedures)
- Dental technicians
- Dieticians
- Mammographers
- Medical administrators
- Medical technicians
- Occupational therapists
- Optometrists
- Orthotist/prosthetist
- Osteopaths
- Physiotherapists
- Psychologists
- Radiographers
- Social workers or counsellors
- Sonographers
- Speech pathologists.

If an occupation does not appear in the above list, and if unsure as to whether an applicant is required to undergo the additional tests, officers should request additional information about the occupation and confirm whether it will be in a health care setting. If, after receiving the additional information, officers are still unsure, they should consult health@homeaffairs.gov.au for clinical advice, providing the specific details of the applicants intended occupation and duration of stay in Australia.

Managing Declared Conditions (and adverse health information)

If a temporary visa applicant answers **yes** to a health declaration question in their visa application form regarding a health condition, the HAP – Health Declarations will automatically generate a medical examination (501) and a chest x-ray (502). Visa processing officers are to refer to the ‘Managing Declared Conditions tipsheet on Bordernet to determine if the generated health examinations are required.

Note:

- Applicants are only required to complete a medical examination and a chest x-ray where close household contact with TB occurred **within the past five years** prior to the Immigration Medical Examination. This policy applies to **all** visa applicants, including temporary applicants and irrespective of age.
- Where the Department has adverse health information regarding an applicant, for example a previous Does Not Meet opinion, the applicant will be required to complete medical examinations in accordance with the Managing Declared Conditions tip sheet. Visa processing officers will, however, need to manually add these medical examinations into the HAP Health Declarations.
- Transit visa applicants are not required to complete medical examinations where the Department has adverse health information about these applicants, unless that adverse health information is in regards to Tuberculosis. Transit visa applicants who provide a letter from a TB Specialist that is no older than 12 months, indicating that they are not a risk to public health are not required to complete a medical examination and chest x-ray.

Medical Treatment visa applicants

For information on the policy and processing arrangements of Medical Treatment (UB-602) visa applications, refer to Sch2 Visa 602 - Medical Treatment.

For information on granting a Medical Treatment visa in an emergency situation, refer to the 'Urgent Medical Treatment visa (MTV) and Emergency Evacuation Procedure tipsheet on Bordernet.

New Zealand Citizens

Some New Zealand (NZ) citizens in Australia who hold Special Category (TY-444) visas are ***Eligible New Zealand Citizens*** (ENZC) (defined in regulation 1.03).

ENZCs are not required to meet health requirements where they are sponsoring a person for a migrant/ residence visa (for example, a partner visa). NZ citizens who are **not** ENZCs must undertake immigration medical examinations if required as per normal health policy arrangements.

New Zealand citizen family relationship visa (subclass 461)

The New Zealand Citizen Family Relationship visa (subclass 461) has a fixed stay period of five years. As such, an applicants health examinations must be assessed for a five year period of stay.

Non-migrating family members

When are non-migrating family members required to undertake health examinations in alignment with the Health Matrix

The Schedule 2 criteria for certain visa subclasses require all ***members of the family unit*** (as defined in regulation 1.12) of the applicant seeking to satisfy the primary criteria to meet the health requirement, regardless of whether they themselves are a visa applicant and/or intend to join an applicant in Australia or are already resident in Australia on a temporary visa. This requirement applies to almost all permanent visas, as well as those provisional and/or temporary visas that lead to a permanent visa. For these visas, the health requirement is a 'one fails, all fail criterion. That is, if any member of the applicants family unit fails to meet the health requirement and no health waiver is available, no family member (including the applicant seeking to satisfy the primary criteria) can be granted a visa.

For provisional and permanent visas, where there is a legal requirement under the Migration Regulations for Non-Migrating Family Members to meet the health requirement, the Regulations also allow for the requirement to be set aside in circumstances where a s65 delegate is satisfied that it would be 'unreasonable' to require the person to undergo immigration medical examinations.

As **'unreasonable'** does not have a legislated definition, officers must give it its usual dictionary meaning. Under health policy, it is considered **'unreasonable**' for Non-Migrating Family Members to complete health examinations. That is, Non-Migrating Family Members are not ordinarily required to complete health examinations.

However, in specified circumstances and where there is a strong reason, visa processing officers should give consideration as to whether a Non-Migrating Family Member should undertake health examinations, on the basis that it would be 'reasonable'.

Circumstances requiring completion of health examinations

Circumstances which would warrant the request of health examinations may include where the Non-Migrating Family Member:

- Is a young child remaining in their country of origin without parental support (as the parents are migrating)
- Is an adult dependent child who is unable to care for their own daily living needs, and no suitable long-term arrangements are in place
- Is remaining in their country of origin where there is on-going conflict and instability
- Was withdrawn from the visa application, or a previous visa application, after being requested to complete immigration medical examinations
- Has previously failed to meet the health requirement
- Has been refused a visa due to concerns around genuine intent to travel to Australia
- Where there is evidence that the Non-Migrating Family Member will ultimately seek to migrate to Australia, for example, a letter from the migrating parent provided during the visa application

Important: Visa processing officers are not limited to requesting health examinations for the Non-Migrating Family Member in the above circumstances only. Visa processing officers may, at their discretion, request health examinations for any Non-Migrating Family Member.

Note:

- The Health Assessment Portal will not generate health examinations for Non-Migrating Family Members. Where an s65 delegate makes an assessment that it is reasonable for a Non-Migrating Family Member to complete health examinations, these examinations will need to be manually added into the Health Assessment Portal.
- Visa processing officers should counsel visa applicants that if their circumstances change and the Non-Migrating Family Member does apply to migrate, the family member would be required to undergo a health assessment at the time of visa application.

Visa Subclasses without the 'unreasonable' provision

There are a handful of permanent skilled visas (Subclasses 890, 891, 892 and 893) which can only be applied for if a corresponding provisional visa is held, which do not have the **'unreasonable'** provision in the Schedule 2 criteria. Non-Migrating Family Members of these visa subclasses will still need to undertake health examinations and the 'one fails', all fails rule applies.

Note: The HAP – Health Declarations will not generate health examinations for these visa subclasses. Visa processing officers will be required to manually add the required health examinations as per the Health Matrix.

Pregnant visa applicants

If a visa applicant declares that they are pregnant, more information should be sought as to whether the applicant intends to give birth in Australia, the due date, and future travel plans. If there is any doubt regarding whether the applicant intends to give birth in Australia, a letter from the applicants treating doctor, including her likely due date, may be requested.

Note: International air travel is not recommended after the 36th week of a single pregnancy and the 32nd week of a multiple pregnancy.

Pregnant applicants from lower TB-risk country

The following table summarises the requirements for pregnant visa applicants from lower TB-risk countries.

Table 7 - *Immigration Medical Examinations required for low-TB risk pregnant visa applicants*

Scenario	**Medical examinations required**
If pregnant and **intending to give birth in Australia**	Hepatitis B test (708)
A pregnant applicant answers 'yes' to the health declaration question: 'During your proposed visit to Australia, do you, or any other person included in this application, expect to incur medical costs, or require treatment or medical follow up for pregnancy?'	Medical examination (501) Chest x-ray (502)*

*The HAP – Health Declarations will generate both a medical examination (501) and chest x-ray (502) for this scenario. The chest x-ray (502) requirement is **not** to be edited out by visa processing officers. When a pregnant applicant from a lower TB-risk country attends an eMedical clinic to undergo their health examinations, the required chest x-ray (502) will be automatically set aside in the system. The panel clinic or MMSP will be able to submit the health case without the chest x-ray (502) having been completed. **No pregnancy undertaking is required.**

Pregnant applicants from higher TB- risk country

Table 8 - Immigration Medical Examinations required for higher-TB risk pregnant visa applicants

Scenario	**Immigration Medical Examinations required**
If a pregnant applicant is likely to enter a **health care or hospital environment**	Medical examination (501) Chest x-ray (502)
A pregnant applicant answers 'yes' to the health declaration question: 'During your proposed visit to Australia, do you, or any other person included in this application, expect to incur medical costs, or require treatment or medical follow up for pregnancy?'	Medical examination (501) Chest x-ray (502)
If pregnant and **intending to give birth in Australia**	Hepatitis B test (708)*

*Offshore applicants will not be required to complete a Hepatitis B test if they choose to defer their chest x-ray while pregnant, as they will not be able to travel to Australia to give birth.

Applicants from a higher TB-risk country must be screened for active TB by completing a chest x-ray (502). Other tests, such as Tuberculin Skin Tests (TST, or Mantoux tests), Interferon Gamma Release Assays (IGRAs), or sputum testing **will not be accepted** in lieu of the chest x-ray. Pregnant applicants from higher TB-risk countries need to discuss their options with their own treating doctor/obstetrician, and receive a full explanation of the risks by the examining panel physician or radiologist. Written consent from the applicant must be obtained in such cases.

Clear guidelines for Panel Radiologists are available in the Panel Member Instructions. Special precautions must be taken (for example, using a double protective lead shield and not undergoing the x-ray if less than 14 weeks - that is, she must wait until at least the second trimester of pregnancy).

The HAP – Health Declarations will generate a chest x-ray if one is required, and if the applicant chooses not to proceed with the chest x-ray while pregnant, the requirement to complete a chest x-ray will be deferred until after the birth of the child. This requirement **cannot** be set aside.

If the applicant chooses not to proceed with the chest x-ray, the applicants health case will be deferred until after giving birth unless:

- A valid chest x-ray (502) is available for re-use by the pregnant visa applicant from a previous visa application.
- Applicant is no longer pregnant and breast feeding then they must comply with the request to undertake a chest x-ray (502).

Pregnant applicants applying for an onshore protection visa

If an applicant for an onshore protection visa is pregnant at the time they undertake their health examinations, and is required to complete an x-ray, an applicant may either:

- Elect to proceed with their chest x-ray, or
- Sign a pregnancy undertaking (form 1392) agreeing to complete their chest x-ray after the birth of their child.

Prior to the pregnant applicant making a decision to proceed with the chest x-ray, a full explanation of the risks must be provided by the Panel Member or the pregnant applicants treating physician/obstetrician and written consent must be obtained. Special precautions must be taken (for example, using a double protective lead shield and not undergoing the x-ray if less than 14 weeks - that is, she must wait until at least the second trimester of pregnancy).

Hepatitis B testing

Hepatitis B infection is a potentially serious infection that a mother might transmit to her baby at, or about, the time of birth. Infants who are infected during birth are at a high risk of becoming chronic carriers of the virus. This significantly increases their risk of developing chronic liver disease, which may cause premature death. If the mother is diagnosed with hepatitis B before the baby is born, the newborn infant can receive appropriate immunisation immediately in the delivery room.

Note: Applicants who are **not intending to give birth in Australia**, are not required to complete a Hepatitis B test.

Pregnant visa applicants outside Australia (intending to give birth in Australia) are required to undertake a hepatitis B (708) test with a Panel Physician. Hepatitis B testing completed with a non-panel appointed doctor **will not** be accepted. Offshore applicants who are required to complete a chest x-ray, and elect to defer this examination until after the birth of their child, are not required to complete a Hepatitis B test, noting they will not be able to travel to Australia to give birth without completing a chest x-ray.

For **pregnant visa applicants in Australia** (intending to give birth in Australia), the following rules apply:

- Applicants from higher TB-risk countries who elect to proceed with their chest x-ray and medical examination while pregnant should complete their Hepatitis B test with the MMSP. Applicants who elect not to proceed with their chest x-ray, and defer their health case until after the birth of their child, can undergo the Hepatitis B test with their regular doctor as part of their ante-natal care regime, and provide the Department with the results.
- Applicants from lower TB-risk countries who are required to undertake a hepatitis B test only (that is, due to their pregnancy) can undergo this test with their regular doctor as part of their ante-natal care regime, and provide the Department with the results.
- Applicants from lower TB-risk countries who are required to undertake a hepatitis B test and a medical examination (that is, due to declaring they will incur costs or seek treatment for their pregnancy), should complete their Hepatitis B test with the MMSP.
- Applicants from either a lower or higher TB-risk country who have already completed their health examination (without a Hepatitis B test), and have subsequently advised of their pregnancy prior to visa grant, should undertake a hepatitis B test with their regular doctor in Australia, and provide the Department with the results.

The following table outlines the action required to manage the Hepatitis B test results where applicants provide these results to the Department.

Table 9 - Reporting Hepatitis B examination results

Scenario	**Hepatitis B Results**	**Action Required**
The Hepatitis B test is the only requirement, or the only outstanding requirement.	Reactive (positive)	Visa processing officers must finalise the Hepatitis B exam, attach these results to the HAP – Health Assessments, and refer these to the MMSP for assessment.
The Hepatitis B test is the only requirement, or the only outstanding requirement.	Non-reactive (negative)	Visa processing officers must finalise the Hepatitis B exam, attach these results to the HAP - Health Assessments, and finalise this health case through Local Clearance arrangements.
The Hepatitis B test is not the only requirement, other health examinations are outstanding (for example, a chest x-ray).	Reactive (positive) or Non-reactive (negative)	Visa processing officers must finalise the Hepatitis B exam, attach these results to the HAP- Health Assessments, and the results will be assessed by the MMSP when assessing all the health examinations.

Note:

- If the applicant has completed the Hepatitis B test with the MMSP then the visa officer will not be required to manage this examination in the HAP - Health Assessments.
- There may be situations where HAP – Health Declarations has not generated the required examinations, for example, the applicant did not complete their health declarations correctly, or their circumstances have changed since completion of their declarations. Visa processing officers must edit the Health Declarations screen in HAP - Health Declarations to amend the applicants declarations, which will generate the required examinations for the applicant.

For guidance on processing in HAP, visa processing officers should refer to Bordernet - Immigration health processing guidelines for visa officers.

Retirement visa applicants

Retirement (TQ-410) visa applicants

With limited exceptions, the TQ-410 (Retirement) visa has been closed to new applicants since 1 July 2005. Roll-over applications may still, however, be made by existing subclass 410 visa holders.

Roll-over 410 applicants are required to meet clauses 410.221(8) (b) and (c). This means that the applicant must be free of TB, and of any condition that could result in endangering the health of the Australian community.

It is policy that, for this criterion to be assessed, visa applicants must complete a chest x-ray where they have:

- Spent three months or more in the last five years in a higher TB-risk country, and/or
- Had close household contact with TB within the last five years.

Note: Where a visa applicant declares they have had close household contact with TB within the last five years, HAP – Health Declarations will not automatically generate a chest x-ray. Visa processing officers need to manually add this examination in HAP – Health Declarations.

If the applicant applying for the subsequent rollover visa is physically unable to attend a MMSP clinic for sensitive, compelling and/or compassionate reasons, the visa officer should contact health@homeaffairs.gov.au seeking special clinical consideration in the case. The visa officer should provide all supporting evidence consisting of relevant medical reports, and a letter from a medical practitioner outlining the health condition and reasons why the person is unable to attend a physical examination at a MMSP clinic.

Refer also to Subclass 410 (Retirement) visa

Investor Retirement (UY-405) visa applicants

Because UY-405 visa holders are likely to remain in Australia for an extended period, persons applying for their first UY-405 visa are required to undertake immigration medical examinations to the permanent standard, as per Regulation clause 405.227(6) and (7).

Note: Where an applicant declares that they will be working as a Health Care Worker, the HAP– Health Declarations will not automatically generate a Hepatitis B or Hepatitis C examination. Visa processing officers are to manually add these examinations into the HAP – Health Declarations.

Second or subsequent UY-405

Standard health requirements (that is, PIC 4005) do **not** apply to second or subsequent UY-405 visa applicants (“rollover” applicants). Rather, clauses 405.228 (7), (8), and (9) must be met. This means that the applicant must be free of TB, and of any condition that could result in endangering the health of the Australian community.

It is policy that, for this criterion to be assessed, applicants must complete a chest x-ray where they have:

- Spent three months or more in the last five years in a higher TB-risk country, and/or
- Had close household contact with TB within the last five years.

Note: Where the HAP – Health Declarations generates additional health examinations for this cohort outside the chest x-ray requirement (e.g. a HIV test), visa processing officers are to manually edit out the additional examinations.

If the applicant applying for the subsequent rollover visa is physically unable to attend a MMSP clinic for sensitive, compelling and/or compassionate reasons, the officer should contact health@homeaffairs.gov.au seeking special clinical consideration in the case. The officer should provide all supporting evidence consisting of relevant medical reports, and a letter from a medical practitioner outlining the health condition and reasons why the person is unable to attend a physical examination at a MMSP clinic.

Note that these criteria are “one fails, both fail”; failure of either primary applicant or partner to satisfy the health requirements prescribed means that the primary applicant cannot satisfy UY-405 primary criteria.

Refer also to Subclass 410 (Retirement) visa

Two stage processing

This section explains the special health arrangements, known as “two stage processing”, in place for persons who hold or previously held (**within the last 12 months**) a substantive temporary or provisional visa, and then apply for the corresponding permanent visa.

Note: If the HAP– Health Declarations has not generated the correct immigration medical examination requirements, officers should re-launch the HAP– Health Declarations and edit out the requirements accordingly - refer to Bordernet - Immigration health processing guidelines for visa officers.

Table 10 - Two-stage visas overview

Visa category	**Temporary or Provisional visa held (full-permanent medicals required)**	**Permanent visa applied for (no immigration medical examinations required)**
Partner	309/820/445	100/801
Prospective Marriage	300	820/801
Parent	173/884	143/864
Business Skills	188	888
Business Skills (pre 1 July 2012)	160/161/162/163/164/165	845/890/891/892/893
Business Skills	457IE/457IEFAO (pre-24 November 2012 subclass 457 categories)	888
Business Skills (pre 1 July 2012)	457IE/457IEFAO	845/846/892

Skilled visas (pre 16 November 2019)	489	887
Skilled visas (pre 1January 2013)	487/489	887
Skilled Regional	491/494	191
GSM (pre 1 July 2012)	475/487/ 495/496	857/887
Provisional Resident Return	159	808

At temporary/ provisional visa stage ("the first stage")

The legislative instrument Visa subclasses for the purposes of the health requirement (clauses 4005, 4006A and 4007) specifies that visa applicants for a temporary and provisional visa are required to undertake a health assessment to the permanent standard. This is because applicants for these visas are intending to stay permanently in Australia in the longer term. The "one fails, all fail" health criterion also applies.

At the permanent visa stage ("the second stage")

When the time comes to process their permanent visa application, such applicants who received a permanent health clearance for their provisional visa (or had a health waiver exercised) are not ordinarily required to undertake any additional health checks at the "second stage". This is not considered to be 're-use', but rather a policy decision to exempt applicants from undertaking additional health screening at the permanent visa stage.

Important: The only situations in which repeat immigration medical examinations should be requested at the "second stage" are:

- Where the delegate has reason to believe that the applicant failed to disclose a health condition at the first stage, or there are concerns that fraud may have been involved, or if the Department has information the applicants health condition has changed since the first stage, or
- Where the applicants temporary or provisional visa **ceased** more than 12 months prior to the delegate commencing assessment of the associated permanent visa.

Note:

If the applicant was required to sign a health undertaking at the "first stage" **and** has one of the following three statuses in HAP – Health Assessments:

- Primary non-compliant - follow up
- Secondary non-compliant or
- Non-compliant

The applicant should be advised to contact the MMSP and arrange to comply with their health undertaking before visa processing can continue. If the applicant does not comply with this request then they will be required to complete immigration medical examinations as per the health matrix.

Children who have not completed any immigration medical examinations at the first stage, and are being included as a dependent on the permanent visa, will be required to complete immigration medical examinations at the second stage. This may occur where the child was not adopted, or born, until after the provisional visa was granted. Visa processing officers will need to manually add the required immigration medical examinations in accordance with the health matrix.

Visitor visa applicants

Visitor (FA-600) visa applicants (all streams) are generally required to undertake the standard immigration medical examinations outlined in the matrix and be assessed against the health requirement.

Longer validity visas granted to parents

An exception to the above is when considering granting a longer validity Visitor visa (that is, 18 months, three or five year validity period) to an applicant who is a parent of an Australian citizen, permanent resident or an eligible New Zealand citizen.

Under policy, these applicants should be required to complete immigration medical examinations equivalent to a 12 month stay in Australia as per the Health Matrix- with the HAP – Health Declarations edited to reflect a stay of 12 months.

APEC Business Travel Card (ABTC) holders

Although PIC 4005 applies to the FA-600 Business Investor stream, APEC Business Travel Card holders generally do not undertake any immigration medical examinations. This is because they do not make a health declaration as part of their ABTC application. They are also exempt from the requirement to undertake an immigration medical examination if 75 years or older.

eVisitors and ETA

Although PIC 4005 applies to the eVisitor (TV-651) and ETA (UD-601) visa subclasses, these applicants do not generally undertake any immigration medical examinations. This is because they do not make a health declaration as part of their application.

Auto-grant of these visas may, however, be blocked if the Department has previous adverse health information available regarding the applicant (such as previous Does Not Meet opinion). In these situations, visa processing officers should be guided by the Managing Declared Conditions (and adverse health information) section to determine whether immigration medical examinations are required.

Visitor Visa (Subclass 600) Frequent Traveller Stream

The Frequent Traveller stream is for applicants who travel frequently to Australia for a short visit for tourism, visiting family or friends or for business purposes. This visa allows a maximum of three months stay on each visit to Australia, however applicants must not stay in Australia for more than 12 months in any period of 24 months.

Applicants for this stream are to comply with the general requirements set out in the Health Matrix unless they fall into a special significance category or declare an existing medical condition. Where a visa applicant declares a medical condition, the applicant will be required to complete an immigration medical examination. If the MOC provides a ‘Meets opinion, the visa is granted for the validity period of the visa which is up to 10 years. However, if the MOC opinion is a ‘Does Not Meet opinion, the applicant can be assessed for a shorter stay period – see the section titled Temporary visa applicants not assessed against correct period of stay.

Persons requiring a review/assessment of their medical condition

There are other situations in which the Department may require a persons medical condition to be reviewed or assessed, other than as part of the standard visa application process. Such an assessment will require consideration of the persons health condition and may include consideration as to whether any of the persons medical conditions would prevent or hinder his/her ability to travel in any way. This is not a Fitness To Travel (FTTA) Assessment as the person is not in immigration detention. These may include:

- persons who have applied for Ministerial Intervention to stay in Australia
- persons with a 8503 waiver condition who claim they cannot travel to depart Australia on the basis of medical claims. Waiver requests made on medical grounds may be referred for a review/assessment if doubts exist as to the genuineness or seriousness of the claim itself, or in relation to the evidence provided to support their claim. Refer to Div2.1/reg2.05 - Conditions applicable to visas - Waiver of “no further application conditions in LEGEND.

For planned compliance activities, a persons medical condition may be assessed on the papers to determine whether any special considerations need to be made to transfer the person to an immigration detention centre. Where information is available and especially if the person has been detained previously, this can be undertaken by the Detention Health Services Provider, via a request to the Detention Health Operations Section - refer to Field Operations (Field Compliance)(BE-5351).

Note: Visa processing officers should refer to the Departments Fitness to Travel integrated health policy if they want further information on how a person is assessed as Fit to Travel.

Form 1148 (Assessment of Medical Condition (Referred Health Assessment)), which is available only via LEGEND is to be used to undertake a fitness to travel assessment.

Officers should use the assessment referral letter saved in HPE Records Manager (ADD2014/633949) to request from the applicant further medical documentation as required. Copies of any relevant documents should then be emailed to the MMSP with a form 1148 for an “on the papers” assessment.

Note: If the medical advisor cannot make an “on the papers” assessment, the applicant will be asked to attend a physical examination. In such cases, officers should:

- explain that the MMSP will assess their medical condition and that there will be a charge for this service
- phone or email the MMSP to make an appointment for the applicant and provide the applicant with the assessment referral letter saved in HPE Records Manager (ADD2014/633949) and advise the applicant to take a passport photo, their passport and any relevant medical reports and test results to their appointment.

Unfit to depart- Medical Treatment visa applicants

There are some situations where the Department may require an assessment of whether a Medical Treatment visa applicant is ‘Unfit to Depart' from Australia.

For more information on the relevant criteria, refer to Sch2 Visa602 - Medical Treatment - 4.9 MTV eligibility - Unfit to depart.

Visa options for seriously or terminally ill patients

There are currently limited visa options available for terminally or seriously ill patients who may not be in a position to leave Australia:

- if the applicant still holds a substantive visa, or has done so within the last 28 days, a Medical Treatment (UB-602) visa may be appropriate - refer to Sch2Visa602 - Medical Treatment

- alternatively, it may be appropriate for the applicant to remain on a bridging visa until they are well enough to depart, or to refuse their current visa application on health grounds and suggest they consider other visa options to remain lawful in Australia.

Completing Immigration Medical Examinations

Front-end loading Immigration Medical Examinations

If an applicant completes their immigration medical examinations before applying for their visa, this is known as 'front- end loading. Front-end loading is done using the My Health Declarations online service.

Front-end loading is not recommended for all visa applicants, as outlined on the Home Affairs website.

Where a visa applicant has front end-loaded their immigration medical examinations, and processing delays have meant that their immigration medical examinations have expired, visa applicants **will be required to undergo new immigration medical examinations at their own expense**.

Note: The recommendation does not apply to No Clearance Required outcomes, such as those protection visa applicants. These applicants are only required to complete health requirement, and the No Clearance Required outcome does not expire.

Front-end loaded health cases will be processed by the Department as normal, with two exceptions:

- health results will not be provided to the applicant before their visa application is lodged, and
- if a significant health condition is identified by a MOC that may result in the applicant failing to meet the health requirement, a MOC opinion will not be provided until a visa application is lodged. This is because front-end loading arrangements do not equate to a pre-visa assessment service. They are designed to facilitate the health and visa application process, not enable applicants to get an opinion up-front as to whether they meet the health requirement.

Permanent health assessed up-front

Visa applicants who front-end load their immigration medical examinations can indicate online when they complete the My Health Declarations that they wish to complete permanent health examinations even though they are only applying for a temporary visa.

All other visa applicants who have their health examinations processed in eMedical for temporary visa subclasses will be asked by the panel physician whether they:

- Intend to stay permanently in Australia
- Would like their health to be assessed up-front for a permanent stay in Australia

If a visa applicant answers yes to the above questions, permanent health examinations will then be added to their health case (subject to age considerations), including:

- Medical Examination (501)
- Chest x-ray (502)
- HIV test (707)
- TB screening test (719) (If the applicants passport country is higher TB-risk and they are aged 2 years or over but under 11).

Visa applicants may wish to have their health assessed to a permanent standard up-front if their near future plan is to stay in Australia permanently, and hence wish to avoid having to undergo repeat health examinations in the near future. Visa applicants need to be aware that the standard health validity rules will apply, and to consider this when deciding whether to front-end load permanent health examinations.

Note: A temporary visa should **not be refused on health grounds** on the basis of a failure to meet the permanent standard. If an applicant receives a Does Not Meet opinion for a permanent stay in Australia, a new MOC opinion should be requested against the appropriate temporary stay. Refer to the Bordernet - HAP Health Assessment processes.

What identity documents do applicants need to bring to their immigration medical examination

Refer to identity requirements outlined on the Home Affairs website, Your health examinations appointment page, and Immigration health processing guidelines for visa officers available on Bordernet.

When can immigration medical examinations be completed?

If applicants are asked to undergo immigration medical examinations after making a visa application they should be advised to complete these within 28 days of the date of request **unless** the officer is aware that visa grant may be significantly delayed for non-health reasons (for example, delay in police clearances or lengthy processing queues), taking into account the period for which immigration medical examinations remain valid.

Completing immigration medical examinations outside Australia

Applicants completing immigration medical examinations outside Australia must be examined by an Australian designated panel physician. For a list of panel physicians, refer to the Home Affairs website Immigration panel physicians page.

In exceptional circumstances (for example, an emergency in a serious security situation), requests to undergo an immigration medical examination with a non-panel physician should be referred to health@homeaffairs.gov.au for consideration.

Completing immigration medical examinations in Australia

All applicants in Australia are required to undertake their immigration medical examinations with the MMSP or their regional network unless they are currently in hospital or another institution (for example, an aged care facility) and therefore unable to attend a service providers clinic to undergo the required examination.

In exceptional circumstances (for example, an emergency or a serious security situation), **hospitalised applicants** or their representatives may be able to provide copies of blood test reports from their treating hospital and have these referred to the MMSP for assessment. Visa processing officers are to refer these directly to the MMSP, these cases do not need to be referred to the Health mailbox.

“In home” assessments

If an applicant is unwell and unable to attend the MMSPs office for an immigration medical examination, officers should notify them of the 'In home' assessment service offered by the MMSP. Officers should be fair and reasonable and demonstrate sensitivity in dealing with applicants, especially those who are frail and/or vulnerable, for example visa applicants:

- with a significant permanent (diagnosed, treated, and stabilised) medical condition (e.g. diagnosed agoraphobia, immunosuppression, medically verified unfit for travel)
- in a hospital or healthcare facility (e.g. nursing home).

Such cases should be escalated to the Health mailbox.

Payment for immigration medical examinations

Regardless of whether an applicant is onshore or offshore, applicants are required to pay for the costs of their immigration medical examinations, including repeat or additional examinations as requested.

Applicants for a PPV, TPV or a SHEV who are recipients of the SRSS Programme may be eligible to have their immigration medical examination costs covered by their service provider. For further information about the SRSS or an applicants eligibility for assistance, email SRSS Programme Management for advice.

If an Irregular Maritime Arrival (IMA) had, while in detention, completed some or all of the health examinations required for a PPV, TPV or SHEV but the results were not recorded in HAP – Health Assessments, the applicant will not be required to pay to undergo new or repeat examinations. Please refer to Examinations required for protection and humanitarian visa applicants.

All offshore refugee and humanitarian applicants are not required to pay the costs of their immigration medical examination, as these costs are covered by the Department.

Assessing Public Health Risk only post health outcome

Some visa holders may be requested to undergo medical examinations post health outcome for 'public health risk **only** purposes. *This generally only occurs if a visa has been granted but the visa holder has not entered Australia prior to their* (First) Entry Date (FED) (condition 8504)*, or in Does Not Meet cases where a health waiver has been exercised. For further information, refer to* Does Not Meet Cases.

Note: Where a visa has not yet been granted, and the health clearance has expired and cannot be extended, or the health waiver has not yet been considered, applicants will be required to re-complete health examinations as per the Health Matrix.

Visa holder failed to travel to Australia before FED and health clearance has expired

Once a visa has been granted, and if a visa holder breaches the FED, visa processing officers can consider whether cancellation of the visa is appropriate. It is at the discretion of the visa officer whether or not to pursue cancellation for a breach of this condition.

If a decision is made that the visa should not be cancelled, visa processing officers must then facilitate the visa holders travel to Australia. Visa processing officers have two options:

- If a health clearance has expired, visa processing officers should consider whether an extension of the validity of the health clearance is available. In this case, the visa holder can be given a travel facilitation letter with a revised date of travel in accordance with the date of the extended health clearance. Visa processing officers will need to contact health@homeaffairs.gov.au to request this health clearance, refer to When can the validity of a health clearance be extended.
- If extension of the validity period is not available under policy, visa processing officers should advise the visa holder that, because their health clearance is no longer valid, additional health examinations will be required to screen the visa holder for public health risks, before they can be provided with a revised travel facilitation letter, refer to Which examinations should be requested.

Note: Visa holders who refuse to complete additional public health screening should be considered for visa cancellation for breach of the FED condition.

Does Not Meet Cases

Applicants may also be required to undergo additional medical examinations for public health screening purposes where a MOC opinion was a DNM, and a health waiver has been exercised, but the visa decision is still pending. This applies where the date of the last chest x-ray (or equivalent,

subject to age considerations) is dated more than the prescribed period listed below, an applicant will then be required to re-complete medical examinations.

- For DNMs with Undertakings- 6 months
- For DNMs (without Undertakings) relating to offshore Refugee visas- 12 months
- For DNMs (without Undertakings) relating to other visa types- 18 months

Which examinations should be requested?

- If the visa holder is 11 years or older - a medical examination (501) and chest x-ray (502) (regardless of TB-risk level)
- If the visa holder is 2 years or older but under 11 years old - a medical examination (501) (regardless of TB-risk level) plus, if higher TB-risk, a TB screening test (719)
- If the visa holder is under 2 years old - a medical examination (501) (regardless of TB-risk level).

How are immigration medical examinations requested?

Visa processing officers should **not** create a new assessment in the HAP – Health Assessments as eMedical, HAP and ECS do not cater for these scenarios. All requests for public health risk only assessments should be managed offline.

Onshore – Public Health Risk Assessment exams

There is an interim process for managing onshore public health risk assessment cases – for further information contact Health Policy on health@homeaffairs.gov.au

Offshore – Public Health Risk Assessment exams

Visa processing officers must provide visa holders with an eMedical exemption letter, form 26 and 160, please refer to **Attachment A**.

To manage public health only medical examinations (usually post-visa grant where the FED has expired), the following process should be followed by visa processing officers:

1. Request the examining panel clinic email the visa officer directly (and not to health@homeaffairs.gov.au) with:
- The required reports or examinations, and
- Any chest x-ray image in dicom format and compressed (i.e. dcm)- where applicable

Where a panel clinic is unable to provide the chest x-ray image electronically, this film should be sent directly to the requesting visa officer by courier.

2. Upload the reports into HAP – Health Assessments (the chest x-ray image should be titled *Public Health Risk CXR).* **Do not create a New Assessment**. If a new assessment has been created in HAP – Health Assessments in error, please contact health@homeaffairs.gov.au to have the case rectified.

Note: If the visa processing officer is unable to upload the reports into HAP – Health Assessments, they will need to forward the reports to the MMSP via internal mail.

3. Visa processing officers should then email the MMSP on HomeAffairs-Offshoreservices@Bupamvs.com.au – for non-urgent cases, HomeAffairs-Escalations@bupamvs.com.au – for urgent or time critical cases requesting that an offline assessment is provided, using the email subject line 'Request for a MOC Assessment- Public Health Risk only. Suggested wording is included below. The HAP ID, visa holder name (surname and first name) and visa subclass should also be included.

Public Health Risk email template

The following visa holder received a MOC outcome <outcome, e.g. DNM> on <insert date>. Additional examinations (e.g. chest x-ray and medical examination) have been requested for Public Health Risk only purposes, and this has already been attached to the HAP <or, attached to this email/ sent via internal mail> for the MOCs assessment. The attached files are saved as <enter title, e.g. CRX Public Health Risk only>.

Grateful if a MOC could please provide an offline assessment of the attached for 'Public Health Risk' only purposes, and leave a note in HAP advising whether the visa holder is free of active TB. A subsequent response to the DIBP officer of this outcome would be appreciated.

If, after providing the relevant examinations, the visa holder is found not to be a public health risk, the MMSP will update the HAP – Health Assessments indicating the visa holder is not a public health risk and will contact the visa officer via email to notify of the outcome.

Where abnormalities are identified during the visa holders public health screening, the visa holder will be requested to complete follow-up testing, and subsequently may be required to complete TB treatment. The visa holders travel to Australia will need to be delayed until such time as the visa holder is no longer considered a public health risk. The MMSP will notify the visa officer of this outcome.

Health changes post visa grant

Once an applicant has met the health requirement and been granted a visa, the Department currently has no legislative power to request additional medical examinations until the person applies for a further visa. Therefore, the Department cannot enforce a visa holder to undertake additional medical examinations if, for example, the visa holder subsequently decides to work or study to be a doctor or a nurse unless they make an application for a new visa.

Where the Department is aware of changes in the applicants health status post-visa grant, the visa processing officer should create a MAL alert including the following text '*The visa holder has notified the Department that he/she has recently been diagnosed with <insert name of condition>. Health policy advises that the visa holder will need to complete medicals for any future visa application regardless of the length of proposed stay*.

In situations where a visa applicant declares a health condition and is requested to complete immigration medical examinations, however then withdraws their visa application, a CMAL alert should also be created using the proposed text above. This will ensure that scenarios do not occur where applicants subsequently travel to Australia on a visa which does not ordinarily require health declarations, for example, an ETA visa.

Failure to undergo immigration medical examinations

All health PICs (4005, 4006A and 4007) provide for refusal of a visa if an applicant refuses to undertake the required immigration medical examinations (see extracts below in context of PIC 4005).

PIC 4005(1)(aa)(i)
Must undertake any medical assessment specified in the instrument; and

PIC 4005(1)(ab)
(iii) must comply with a request by a Medical Officer of the Commonwealth to undertake a medical assessment; and

Note: When recording a refusal on the above grounds, officers must make sure that they refer to the correct provisions within the relevant health PIC. A refusal can be considered if an applicant:

- refuses to complete any required health examinations (for example, a medical examination (501) or chest x-ray (502)).

- does not respond to a request to undertake the required medical examinations within the specified timeframe for providing a response.
- refuses to undertake the correct immigration medical examinations - for example they offer a blood test for TB rather than a required chest x-ray (502).
- refuses to complete examinations by a panel physician (if outside Australia) or the MMSP or their regional network if in Australia.
- receives a deferred opinion but does not complete the additional medical examination(s) that the MOC has requested (including where the applicant subsequently applies for a reduced period of stay where health examinations would not ordinarily be required).

To ensure that the refusal decision on these grounds is recorded correctly, officers should also refer to the Bordernet – Recording a refusal based on health in ICSE. If a person is required to undertake immigration medical examinations in accordance with the PIC and associated instrument, and fails to do so, officers must send them a reminder letter. The visa applicant should be given a reasonable timeframe (which should be longer than the prescribed periods described in the Acts Code of procedure) to **complete** their required immigration medical examinations. (E.g. At least 28 days plus the 21 days taken for the applicant to receive notice).

Section 65 delegates should not proceed to a decision if there are genuine reasons for a delay. For example, if the applicant is required to attend a chest clinic for treatment of TB, there may be delays for appointment times at chest clinics and the treatment for TB can take several months. Evidence of any delays in responding to a request, or a delay in finalising the immigration medical examination(s) should be requested as supporting documentation and a delegate should consider all factors applicable to the case prior to a refusal decision based on medical grounds.

Protection visa applicants

If an applicant fails to undergo the relevant immigration medical examinations or respond to a request for information showing that they have taken appropriate action in relation to these requirements within a prescribed time, they will fail to satisfy the criteria in the Regulations relating to health. Therefore, under s65(1)(b) of the Act, the visa must be refused. This refusal must occur even if the applicant has been found to be a person who engages Australias protection obligations - refer, as applicable, to the Refugee and Humanitarian Instructions.

Visa officers should first determine whether the applicant engages Australias protection obligations. If protection obligations are not engaged, the application should be refused on that ground rather than on the ground of the applicants failure to meet the health requirement.

If an applicant engages Australias non-refoulement obligations but fails or refuses to undergo the immigration medical examinations required for them to be granted a Protection Visa, Australia is bound by those obligations not to remove that person to a country where they face persecution or significant harm.

Therefore, if a PV is refused on the ground that the applicant did not satisfy the health requirement, a ‘client of interest note should be placed on ICSE, noting that ‘the applicant was found to engage Australia's protection but was refused a Protection Visa because the they did not undergo the requested immigration medical examinations and, therefore, not all visa criteria could be met. Details of the cases should then be emailed to the Protection Visa Helpdesk (email Refs Help Onshore) for guidance on how the cases should be managed.

The MOC Assessment

Referring cases to MOCs

Health cases that cannot be locally cleared or auto-cleared must be referred to a MOC for a formal opinion:

- For **electronic** cases, this will happen automatically based on auto-clearance rules, and/or via manual intervention by MMSP staff.

- For **paper** cases, refer to Bordernet for health processing guidelines.

Assessing the lawfulness of a MOC opinion

Visa processing officers need to assess the lawfulness of a MOC opinion, particularly if:

- It has been found that the applicant does not meet the health requirement and may therefore have their visa refused, or
- A health waiver is available and the delegate decides not to exercise the health waiver

Visa processing officers must confirm that the MOC has:

- listed the **reports** that they have considered in forming the opinion
- stated the **health condition** that the applicant has
- described the **severity** of the condition
- described the **health care or community services** likely to be required by a **hypothetical** person who has the same condition as the applicant (including the same severity), and
- specified the **period** of stay the applicant has been assessed against.

If the MOC has cited the wrong PIC (for example, PIC 4007 instead of PIC 4005), the officer should, prior to visa decision, request a MOC to provide a new opinion with the correct PIC via the HAP – Health Assessments new assessment functionality.

If an s65 delegate assesses that the MOC opinion is inaccurate for other reasons, they should consult the Health mailbox. After discussion with Health Policy, it may be appropriate to request an updated opinion from the MMSP MOC.

Under regulation 2.25A(3), if lawful, the MOCs opinion must be taken as correct by the officer. It is not open to officers to dispute or “review” the MOCs opinion.

Significant costs

MOCs must provide an opinion as to whether an applicants condition or disease would be likely to result in health care and ***community service*** costs if a visa were to be granted.

Under its regulation 1.03 definition, ***community services*** includes the provision of an Australian social security benefit, allowance or pension. Under policy, it is also taken to include services such as supported accommodation, special education, home and community care.

The policy threshold for the level of costs regarded as ‘significant is currently AUD 49 000.

When assessing ‘costs', an applicant is assessed against the health requirement for:

- a period for which the Minister (or delegate of the Minister) *intends to grant the visa* if the visa applicant has applied for a *temporary* visa
- a *permanent stay* (i.e. a period commencing when the application is made) in Australia if the visa applicant has applied for a *permanent* or *provisional* visa.
- see PIC 4005(2), and PIC 4007(1A)

For **temporary** visa applicants (other than applicants for provisional visas), the estimated costs for their proposed stay in Australia is assessed over the period of stay that the visa officer intends to grant the visa. For example, a student visa applicant with health care costs of AUD 16 000 who will be granted a one year visa should be found to meet the health requirement. On the other hand, a student visa applicant with costs of AUD 16 000 a year who will be granted a four year visa would not meet the health requirement.

For temporary visas, certain health care and community services are excluded from the cost assessment - refer to the legislative instrument made under 4005, 4006A and 4007(1B).

For **permanent and provisional** visa applicants, the time period for estimating health care and community service costs against the significant cost threshold (AUD 49 000) is calculated as follows:

- if *the applicant is aged less than 75 years:* a five year period; or,
- if *the applicant is aged 75 years or older:* a three-year period;

unless:

- *the applicant has a condition that is permanent and the course of the disease is inevitable or reasonably predictable (65% likelihood) beyond the five year period* - in these circumstances, the applicant would be assessed for a maximum of 10 years. When assessing costs, the MOC should estimate costs for a period up to the maximum of 10 years.
- *the applicant has an inevitable or reasonably predictable (65% likelihood) reduced life expectancy due to their health condition or disease* - in this case, the applicant should be assessed for a reduced life expectancy up to a maximum of 10 years.

Table 11 - Visa type and MOC cost assessment consideration

Visa Type	**MOC cost assessment period**	
Temporary	Maximum period of stay allowed on the visa and/or the period of stay the visa delegate intends to grant the visa for	
Permanent and Provisional	• Applicants aged 75 years or older	Three years
	• Applicants with reasonably predictable (beyond a five year period) permanent condition	A maximum of 10 years
	• Applicants with reasonably predictable (>65% likelihood) reduced life expectancy	A maximum of 10 years if greater than five years
	• All other permanent and provisional applicants	Five years

Prejudice to access

MOCs must also assess whether an applicants condition or disease would be likely to prejudice the access of Australians to health care and community services if a visa were to be granted, that is, the applicant would require access to health care or community services that are in short supply (as advised by the Department of Health).

Under policy, prejudice to access will occur if in the MOCs opinion a hypothetical person with a condition of the same form and severity as the applicants would be likely to require access to the following services, which are considered to be in short supply:

- organ transplants (including bone marrow transplants), and
- dialysis.

Note: Occasionally, applicants who are known to require renal replacement therapy, including dialysis, may seek to enter Australia for short periods of time (e.g. on a holiday, including on a cruise ship, or to visit family). The Department will support this for visa applicants already on dialysis for a

maximum period of **one month**, provided that the applicant has made his or her own arrangements **in advance**, and that suitable financial arrangements have been put in place (i.e. that the onshore dialysis unit or cruise ship has accepted the visa applicant and has confirmed financial arrangements in writing). Visa processing officers should upload the relevant documentation, confirming above, into HAP – Health Assessments. If this is not provided, MOCs will defer the case and request the required information (using the 950 serial code). Visa processing officers then need to submit the requested information and, if satisfied, MOCs will provide a meets opinion for a maximum period of one month.

Applicant unlikely to return home

In some circumstances, the applicant may, technically, and if the costs are proportionately reduced, meet the health requirement for the reduced duration of stay, but they may have a condition that will mean they are unlikely to be able to return home at the end of their proposed stay (such as assessed as requiring aged care accommodation due to cognitive disorder).

In these circumstances, a MOC will provide a Does Not Meet opinion, regardless of proposed duration of visa grant, with the same costs, indicating in the opinion that the applicants condition is of such severity that they are unlikely to be able to return home at the end of the proposed stay.

Note: The only exception to the above is where the visa applicant is completing full permanent immigration medical examinations for a temporary visa and is being assessed 'upfront for a permanent stay in Australia. In this circumstance, if a DNM opinion is provided for a permanent stay, it is the visa officers responsibility to request a new assessment for the appropriate temporary assessment period.

Responding to enquiries about MOC Costing breakdowns

Where a visa applicant receives a DNM outcome for the health requirement due to significant costs, the applicant will receive a DNM letter which states the services for which the MOC calculated as expected to incur significant costs. Upon receipt of this letter, visa applicants and/or their Migration Agents, may contact the Department requesting a breakdown of the costs of the services identified.

How to respond to requests for MOC costing breakdowns

The breakdown of the MOC costings, contained within the 'Significant Cost' section of the DNM outcome in HAP – Health Assessments, can be provided directly to visa applicants and Migration Agents if requested. There is no need to submit a Freedom of Information (FOI) request. Documents can be released outside of the FOI Act, such as administratively or under the Privacy Act.

If visa processing officers receive these requests, visa processing officers are to respond directly. These requests **do not need to be sent to Health**. Visa processing officers can access this information directly from the HAP – Health Assessments, located within the DNM assessment. Please note that no further information is available other than what is included in HAP- Health Assessments, neither Health Policy nor the MMSP are able to provide further details. Visa processing officers are to use the following template in their response, along with a screen shot of the cost breakdown (please ensure that the MOC name is not included in the screenshot):

This costing is calculated by the Medical Officer of the Commonwealth (MOC) applying their clinical judgment regarding the applicants specific condition, guided by the information contained within the Department of Home Affairs Notes for Guidance. A visa applicant (or a non-migrating family member) cannot be found to meet the health requirement for the grant of certain visas if they have a disease or condition that is likely to result in a "significant cost" to the Australian community in the areas of health care or community services. Under policy, the threshold at which costs are currently considered to be significant is AUD 49 000.

When assessing the likely costs involved with a disease and/or condition that an applicant has, a MOC applies the hypothetical person test. MOCs take into account the cost of health care or community services for which a hypothetical person with the same form and level of the applicants

condition would be eligible. This includes the expected duration of services likely to be required by the applicant

Please note that no further breakdown or information regarding this costing can be provided.

Public Health Risks

In addition to the standard health policy and processing arrangements outlined in this instruction, additional health processes and requirements may be put in place to manage emerging public health issues as they arise.

Specific processing arrangements are in place for Yellow Fever and Polio to ensure the diseases are not imported into Australia.

Polio

The World Health Organization (WHO) declared wild poliovirus as a Public Health Emergency on 5 May 2014. To mitigate any potential risk to Australia, the Department requires that travellers from countries that have the potential to spread the disease internationally present a valid certificate of vaccination. This advice is consistent with the direction from the WHO and the Global Polio Eradication Initiative.

Which countries are affected?

To determine which travellers should be presenting a valid vaccination certificate, visa processing officers need to refer to the Departmental risk systems, which list the affected countries. Migration Health maintains the list of countries in the departmental risk systems, this list is based on information contained on the Global Polio Eradication Initiative website (http://polioeradication.org/), and risk analysis undertaken in conjunction with the Australian Department of Health. Not all countries listed on the Global Polio Eradication Initiative website will require a valid vaccination certificate. The relevant departmental risk system will prompt the visa processing officers when a vaccination is required.

What is a valid vaccination certificate?

A vaccination certificate is considered valid if a visa applicant had their polio vaccination within the previous 12 months, and was issued with a certificate confirming the vaccination.

Who should present a valid vaccination certificate?

Australia has remained polio free since 2000. To assist with minimising the risk of importation of polio into Australia, visa processing officers should request a valid polio vaccination certificate from all applicants, aged 6 weeks and over, who have spent 28 days or more in a country listed in the Departmental risk systems. A vaccination certificate should be requested irrespective of the visa applicants proposed length of stay in Australia.

All visa applicants who meet the relevant departmental risk system criteria should be requested to provide the vaccination certificate, unless they fall into an exemption category listed below. Visa applicants who have had polio in the past should still have the vaccination, noting there are multiple strains of poliovirus.

It is important to note that the submission of the polio vaccination certificate is **not** a legislative requirement, and as such is not a mandatory requirement for visa grant. Considering that this requirement is not mandatory, visa processing should continue if all other requirements for the visa have been met.

Note: If directed by Australian Department of Health, special visa processing and border measures may be introduced for some countries. However, Health Policy will communicate this to you if this occurs.

Exemptions

Some visa applicants may be exempt from the requirement to provide a vaccination certificate. If an applicant falls within an exemption category and the visa application is processed without the vaccination certificate, please encourage the applicant to have the vaccination as soon as they arrive to Australia. Please note that the WHO mandates that countries with a risk of exporting the disease must ensure all travellers out of that country to hold a vaccination certificate.

The following circumstances specify where an applicant is exempt:

- Persons who have lodged a visa application onshore, and have not travelled to a polio affected country for more than 28 days since May 2014.
- Visa applicants of the following subclasses:
  - Resident Return visas- Subclasses 155 and 157
  - Temporary Work (International Relations)- Subclass 403
  - Special Category visa- Subclass 444
  - Transit visa- Subclass 771
  - Maritime Crew visa- Subclass 988
  - Diplomatic visa- Subclass 955
  - Declaratory visa- Subclass 998
  - Electronic Travel Authority visa – Subclass 601
  - eVisitor visa – Subclass 651
- Visa applicants who need to travel urgently and cannot undergo the vaccination prior to travel.
- Non-migrating family members
- If the vaccine is not available in the applicants location, or if the applicant is unable to access a panel physician or family physician to undergo the vaccination due to war or unstable security situations.
- Visa applicants who are exempt from the requirement to provide biometrics
- Visa applicants who refuse to undergo the vaccination, e.g. due to religious or moral reasons, or due to being fearful of having a reaction to the vaccine.
- Pregnant or breast-feeding applicants who have been advised by their treating physician to not undergo the vaccination.
- High-profile visitors or Government representatives.
- Visa applicants who have a medical condition, or state that a close family member is immunocompromised.

Note: Visa applicants being assessed at the second stage, where two-stage processing applies, should be requested to provide a valid polio vaccination certificate if the applicant has travelled offshore to a polio affected country for more than 28 days since May 2014.

Polio vaccination certificate

The International Certificate of Vaccination or Prophylaxis is the standard vaccination certificate that is used in most countries. It is also known as the ‘Yellow Booklet' and the policy preference is that the applicants submit a completed yellow booklet which includes information about the applicants polio vaccination. Please refer to the WHO website to view the certificate sample. http://www.who.int/ihr/ports_airports/icvp/en/.

A statutory declaration **cannot** be accepted as an alternative to the certificate, and the visa applicant should be instructed to obtain a valid certificate. Alternative certificates may be accepted provided that the document includes:

- persons full name and date of birth
- details of the vaccine given, including the brand name, batch number and dose number

- date and time of vaccination
- place where vaccination administered
- the name and designation of the person providing the vaccine
- the date the next vaccination is due (*if any).*

Tuberculosis

Tuberculosis (TB) is the only health condition in itself prescribed in migration law as specifically precluding the grant of a visa. This is because, although a treatable condition in most cases, it remains a major cause of death worldwide, particularly in higher TB burden countries. It is considered a potential public health risk because it is an airborne infection.

Transmission occurs mainly via inhalation of infectious droplets produced during coughing by persons with active pulmonary (lung) TB disease. This occurs most commonly where there is close household contact (for example persons living in the same household). Persons in casual contact with infectious persons are at low risk.

TB which is sensitive to commonly used medication takes approximately six to nine months to treat. If multi-drug resistance TB (MDRTB) or extensively drug resistant TB (XDRTB) are identified, treatment can take up to two or three years. Such treatment is complex and can be very expensive.

To ensure that the Australian community remains protected against these risks, each Schedule 4 health criterion requires applicants to be free from active TB. **There are no exceptions.**

Tuberculosis testing arrangements

Applicants must generally undertake a medical examination (501) and chest x-ray (502) in order to be screened for active TB, with the possibility of further sputum testing. This includes all permanent visa applicants eleven years or older, and temporary visa applicants on a risk assessment basis.

Screening in children is more complex because TB in children less commonly involves the lungs. The Department has in place different arrangements for TB screening in children. This screening is designed to detect both **active TB** (as described below) and what is known as **latent TB**. Treatment for latent TB is sometimes required to prevent active disease.

Tuberculosis testing arrangements for children

Children under two years old only need to complete a medical examination (501) for TB testing purposes.

Children two years or older but under eleven years old are required to complete a medical examination (501). However, they may also be required to complete a 719 TB Screening test, as prescribed in the Health Matrix, Schedule 2 health criteria, and Managing Declared Conditions (and adverse health information).

The 719 TB Screening test involves completion of either:

- A Tuberculin Skin Test (TST), or
- An Interferon-Gamma Release Assay (IGRA).

If the 719 TB screening test is positive, the following tests are required to rule out active pulmonary (lung) TB:

- a 502 chest x-ray **and**
- a 510 lateral chest x-ray examination.

If the 502 and 510 examinations are normal, the MOC will provide an opinion ‘Meets with Health Undertaking' for offshore visa applicants. Applicants onshore will be found to meet the health requirement but referred to a TB specialist in Australia for possible treatment.

Active Tuberculosis

Applicants outside Australia who are found to have active TB cannot be granted a visa, because they will be unable to satisfy health-related visa criteria. Visa applications from such persons will have their health cases deferred until the applicant successfully completes TB treatment.

In higher risk locations, TB diagnostic facilities used by panel members offshore are reviewed to ensure high quality facilities are used. A list of these designated facilities is found in the Panel Member Instructions. Applicants in the listed countries must attend or have their sputum specimens processed by the designated TB diagnostic facility to ensure the integrity of the test and results. Laboratory results provided by non-designated facilities in higher risk locations do not provide the same level of assurance as the designated list. Therefore these visa applicants will need to wait 6 months and provide sputum tests from a designated TB facility, as well as completion of a chest x-ray.

Similarly, TB treatment facilities have also been designated in higher risk countries. Where applicants have been treated by a non-designated treatment facility in these higher risk countries, further assessment as to whether they are free from TB is required. The MOC will defer the case for 12 months for further review and assessment. After this period, applicants will need further clinical review (either by the panel physician or the chest specialist) and repeat sputum testing at a designated facility. Where an applicants immigration medical examinations have expired, applicants will be required to re-complete these examinations.

Note, however, that:

- it normally takes at least 6 months to complete TB treatment, and
- treatment may take significantly longer if drug-resistant TB is identified, and a subsequent monitoring period may be required before the applicant can be found to be ‘free from TB. In such cases, the Department liaises with an expert panel of TB specialists in Australia to determine the length of such a monitoring period, and any other requirements. This monitoring period may be quite significant (one to two years).

If an applicant **in Australia** is found to have active TB (or for whom active TB has not been ruled out), their health case should remain deferred and processing of their visa application on hold, until they are assessed as being free from TB.

As treatment can take some time, officers are asked not to issue “Request for Information” letters inviting applicants to provide evidence that they are clear of TB.

If a visa holder in Australia is found to have active TB and they have not lodged a further visa application, Health Policy should be consulted to discuss further steps.

Latent Tuberculosis

Persons with latent TB have been exposed to the TB germ, but they do not and may never show, any signs of illness. However, it is important that they be monitored and/or treated once in Australia.

Applicants outside Australia who are found to have latent TB can still travel to Australia but, if applying for permanent migration, it is likely they will be asked to comply with a health undertaking. This is because TB can develop at any time- even forty years after initial exposure.

Applicants in Australia who are found to have latent TB are not placed on a health undertaking but are provided with an information sheet and asked to attend a health clinic for further monitoring.

Children who have a positive 719 TB screening test, but have a clear chest x-ray (502 and 510), have latent TB. They will be found to meet the health requirement but referred to a TB specialist chest clinic in Australia for possible treatment.

Tuberculosis suspected prior to immigration clearance

Non-citizens who answer 'yes' to the Incoming Passenger Card question 'Do you have Tuberculosis?' will be referred to an officer on arrival in Australia to ascertain whether the non-citizen is receiving TB treatment and has brought their medication with them. For further advice, refer to Arrival, immigration clearance and entry Instructions.

Yellow Fever

It is strongly recommended that all applicants aged 12 months and over, who travelled to a declared yellow fever country within 6 days prior to arrival into Australia, hold and present an international yellow fever vaccination certificate. These certificates have a lifetime validity.

If the visa holder does not hold an international yellow fever certificate they can still enter Australia, although they will be presented with a 'Yellow Fever Action Card' upon arrival. This card provides instructions on what visa holders should do if symptoms develop.

For further information regarding Yellow Fever, and for a list of affected countries, please refer to the Department of Health website;
http://www.health.gov.au/internet/main/publishing.nsf/content/health-pubhlth-strateg-communic-factsheets-yellow.htm

The Hypothetical Person Test

When assessing the likely costs involved with a disease and/or condition that an applicant has, a **MOC must apply the hypothetical person test**, which was clarified in the case of *Robinson v Minister for Immigration and Multicultural and Indigenous Affairs and Another* 92005) 148 FCR 182.

MOCs must therefore take into account the cost of health care or community services for which a **hypothetical person with the same form and level of the applicant's condition** would be eligible. This test is given effect by the statement in the health PICs that they apply '*regardless of whether health care or community services will actually be used.*'

When considering if an applicant is likely to meet the health requirement, MOCs must not consider personal circumstances above and beyond the:

- nature of the health condition
- severity of the health condition
- age of the applicant
- type of visa applied for
- visa period.

If a hypothetical person is likely to require a particular service on medical or other grounds, a MOC is required to assume that they will use it.

As a result, an applicant would still, for example, fail to meet the health requirement despite their argument that they would not be a significant cost to the community because:

- they indicate they will choose not to use available services
- their costs will be met through a variety of alternative means such as their savings, reciprocal health care agreements or their comprehensive health insurance
- they will not require the services they have been costed for as they will bring their own supply of medication or be travelling with a carer
- another part will cover the costs such as a foreign government (e.g. scholarship)

- their family members will be caring for them or providing support
- the services required are not available in particular locations in Australia.

The costs of such services cannot be excluded for the MOC costing.

This is because there is no way such intentions can be legally enforced once permanent residency is obtained. For example, an applicant's medical, financial or marital circumstances may change, resulting in a reappraisal of their need not to use the care or services. Alternatively, some applicants may simply change their mind regarding services once residence is achieved and the full level of costs is realised.

Temporary visa applicants not assessed against correct period of stay

It is essential that visa applicants are assessed against the correct period of stay.

Before any decision to refuse to grant a visa based on the applicant's failure to meet the health requirement, officers should determine, in consultation with the applicant if relevant, whether a shorter stay period would be appropriate for the purpose of the visa grant.

Temporary visa applicants (except provisional applicants who must complete permanent immigration medical examinations) must be assessed against the cost and prejudice to access elements of the health PICs based on the period of stay for which the officer will grant the visa.

Under policy, all temporary visa applicants, unless they request assessment for a permanent stay 'upfront', are assessed, in the first instance, against the health requirement for the **maximum** period of stay of relevant visa subclass that they have applied for (that is, the standard HAP period).

If, however, the applicant fails to meet the health requirement for this period of stay and the officer intends to grant the visa for a shorter period of stay, a new MOC opinion **must** be requested from the MMSP, refer to Requesting a New Assessment on a health case, unless:

- the visa cannot be granted for a shorter period (for example the confirmation of enrolment or employment contract is for the period of stay that the applicant has been assessed against, or the visa product only provides for certain stay periods - for example, Working Holiday (TZ-417) visas) and Temporary Skill Shortage (xx-482) visas) or
- the officer does not intend to grant the visa for a shorter period of stay than the applicant has been assessed against.

This is because although an applicant may fail to meet the health requirement for the maximum time period, if assessed against a shorter period, they may subsequently meet the requirement. Therefore, if the officer is considering the grant of a visa for a shorter stay period than initially assessed, it is essential to request a new MOC opinion to determine whether the applicant will meet the health requirement for a "reduced stay" period.

If the applicant meets the health requirement for the shorter stay period the s65 delegate should counsel the applicant that they have met the health requirement for that period of stay only.

If a MOC has assessed a visa applicant against a shorter time-frame, this is indicated in HAP- Health Assessments and the Client Search Portal (CSP) as a "Meets - Reduced Stay".

Requesting a new assessment on a health case

Once visa applicants have completed their required immigration medical examinations, their results will be assessed and they will be given an outcome in the HAP Health Assessments. For example, a MOC may provide a 'Meets' opinion, or the health case may be 'Auto-cleared' in the HAP – Health Assessments. Ordinarily, visa processing officers can then proceed to finalise the visa application subject to any other outstanding requirements. There are a number of circumstances where a visa officer must request a new assessment in HAP, refer to **Table 12** below. For assistance on

processing in HAP refer to the Bordernet- Immigration health processing guidelines for visa officers– HAP Health Assessments.

Table 12 - When will a new assessment be required

Reason listed in HAP – Health Assessments	**When should this be used?**	**When will this be available?**
Request a new assessment against a different Regulation	Visa applicant's health clearance has been assessed against the wrong Regulation and the visa officer requires the MOC to re-assess against the correct PIC.	• If the health case has an outcome • Only if the visa subclass has multiple PICs
Organise for the applicant to complete repeat medical examinations	Visa applicants are required to re-complete medical examinations as their previous ones have, or are about to, expire on the visa being processed. **Note:** HAP – Health Assessments will generate standard examinations. Visa processing officers need to check to ensure that all required examinations have been generated in accordance with health policy.	• Health case is expired • Health case will expire within six months • Health case is not a DNM
Request a new assessment based on additional medical information received	The visa applicant has received an outcome, however the visa applicant or Panel Physician has provided new medical information that a MOC needs to consider and provide a new opinion. This is mainly relevant for cases where the MOC provides a DNM opinion.	• If the health case has an outcome
Request a new assessment for a different assessment period	The visa officer intends to grant the visa for a shorter period than the applicant was originally assessed for. **Note:** • This is relevant for cases where the MOC provided a DNM opinion • If the applicant received a DNM when completing permanent health examinations for a temporary stay, a new assessment must be requested for the correct period of stay.	• Only for temporary visa subclasses • If the health case has a DNM opinion
Request a new assessment as the applicant intends to study and/or work in health care	The visa applicant is intending to work as (or study to be) a doctor, dentist, nurse, or paramedic, but failed to declare this in their visa application form or visa MHDs. Consequently, their health case does not contain all the required medical examinations. **Note:**	• If the health case has an outcome • The health case is not expired • The health case does not have all the correct medical examinations • The health case is not a DNM or No

	If the health case has any medical examinations that are 'Finalised Incomplete' that examination will be re-added to the health case.	Clearance Required outcome

There may be other circumstances where a new assessment is required, however the visa officer is unable to facilitate this request in HAP – Health Assessments. In the circumstances outlined below, visa processing officers should contact health@homeaffairs.gov.au requesting assistance:

- The health case is attached to a visa that has already been finalised, for example withdrawn or refused, and the applicant is required to undertake health examinations again due to a change in circumstance (e.g. remitted by the AAT for non-health related circumstances).
- The status in HAP – Health Assessments is 'Health Not Completed', however the visa applicant has advised they intend to complete the required examinations.
- The health case is a Does Not Meet or a No Clearance Required outcome, and the visa applicant is required to complete a new immigration medical examination, e.g. due to studying or working in health care.
- The visa officer has created a new assessment, however the required examinations have not been generated by the HAP – Health Assessments.
- The visa applicant has a Meets with Undertaking outcome, and the 815 form has already been recorded. The visa applicant now has to complete additional health examinations, or re-complete their health examinations, e.g. if their health clearance has expired.
- The visa applicant only requires a specific health examination added in HAP – Health Assessments, and does not need to repeat existing health examinations which are valid.

Note:

- If the health status in HAP – Health Assessments is 'Not Required', but it is determined that health examinations are required, visa processing officers are required to re-active the health case, rather than manually creating a new assessment. For assistance on managing this process, refer to the Bordernet- Immigration health processing guidelines for visa officers.
- Visa processing officers need to be cautious when requesting a new assessment. If a new assessment is created in error, contact health@homeaffairs.gov.au for assistance.
- PIC 4007 is the default PIC for the Subclass 802 (Child) visa. Vulnerable child applicants of the Subclass 802 who fail to meet the health requirement should be re-assessed against Regulation 802.226A.

Managing new information received after a MOC opinion has been provided

If visa applicants do not meet the health requirement, they are provided an opportunity to submit additional health information for reconsideration as part of the Natural Justice process.

Non-medical information is provided

In response to advice that they have not met the health requirement, visa applicants may provide non-medical information that is **not** relevant to the MOC opinion that they do not meet the health requirement (e.g. letters of support that raise compassionate circumstances that they want the MOC or Department to take into account). Visa processing officers are **not** to send this information to a MOC.

Medical information is provided

Where an applicant has provided additional medical information prior to a decision on their visa application (e.g. a more recent specialist report), a visa processing officer should create a new assessment directly in the HAP – Health Assessments and attach any relevant medical information provided by the applicant.

The MOC must then consider this information and then provide a new assessment in HAP – Health Assessments (i.e. a new MOC opinion), even if the additional medical information does not change the outcome.

This will ensure that:

- a lawful MOC opinion that is based on the most current information is taken into account when making a visa or health waiver decision and
- officers are not making a visa or health waiver decision based on medical evidence that they are not appropriately qualified to assess.

If this new MOC opinion is not provided, any subsequent visa decision may be affected by jurisdictional error.

Note: Where an applicant provides new medical information that is **not materially different** to medical information considered in the initial/previous MOC opinion, then this medical information **does not** need to be referred for a further MOC opinion, for example, where the applicant re-submits the same report (or a report which provides identical information).

If a MOC opinion needs clarifying

If the visa processing officer finds that the MOC's advice is not clear or detailed to make the necessary connection to the health requirement, they should obtain this information directly from the MMSP before finalising the application.

Managing Paper Health Examinations

Most health cases are processed in eMedical, which means they are either auto-cleared with no manual intervention required, or may be 'recommend cleared' by administrative staff who work for the MMSP. Where a panel clinic is not eMedical enabled, panel clinics are required to send all medical reports and examination results to the MMSP. In limited circumstances, visa processing officers will be required to manage a locally cleared health case, or send health examinations onshore for processing. Where a visa officer is required to locally clear a health case, the below process applies.

What are local clearance arrangements?

In circumstances where a visa processing officer intends to locally clear a health case, the visa processing officer will need to request the Panel Physician send the results of the immigration medical examination to them directly.

Regulation 2.25A of the Regulations requires visa processing officers to seek a MOC opinion on all immigration medical examination reports, unless the relevant visa application is for:

- a temporary visa and there is no information known to Immigration (either through the application or otherwise) that the applicant will not meet the health requirement, or
- a permanent visa, and the application was made in an eligible country specified in Instrument IMMI 13/161, and there is no information known to the Department (either through the application or otherwise) that the applicant will not meet the health requirement.

Local clearance is restricted to specified countries or panel physicians based on varying levels of integrity and performance. There may be times where local clearance arrangements are suspended, and all health examinations required to be referred to a MOC. The HAP– Health Assessments will not permit auto-clearance where the immigration medical examinations were completed at a particular clinic.

Visa officers should contact health@homeaffairs.gov.au if they are unsure about the correct local clearance arrangements for their Post.

How are local clearance cases assessed?

As a general rule, **A graded** cases (no significant findings) can be locally cleared. **B graded** cases (significant findings identified) must be assessed further to determine whether the local clearance process can continue.

Visa processing officers must check and consider the health examination reports thoroughly and not rely solely on the final grading provided by the panel physician when making their determination. If any other conditions (aside from the ones listed in **Table 13** below) are identified (past or present) the case must be referred to a MOC.

Table 13 - Local Clearance criteria

Report	Requirement
X-ray examination report (160)	The reporting radiologist must have answered all questions and made no mark or comment indicating any abnormality. There must be no evidence of TB or lung-field problems reported.
HIV test results	If HIV testing has been completed, there must be an accompanying HIV test report where applicable and it must be negative.
Hepatitis B and/or Hepatitis C test results	If hepatitis testing was completed, there must be an accompanying test report where applicable and it must be negative.
Major illnesses	There must be no indication on the Form 26 that the applicant has, or has had: • Tuberculosis, AIDS, or HIV, Hepatitis B or C, leprosy, syphilis • Epilepsy, paralysis, multiple sclerosis • Diabetes, renal failure, organ transplant • Cancer, leukaemia • Heart disease, stroke • Psychiatric illness, intellectual impairment, learning difficulties, autism, special education
Other illnesses/ operations	There must be no indication on Form 26 that the applicant has had an illness or operation within the previous five years.
Drug usage	There must be no indication on Form 26 that the applicant has used illegal drugs or been addicted to legal or illegal drugs at any time.
Blood pressure	If the applicant is 15 or older, the blood pressure readings must not be >160/100

Eyesight	There must be no indication on the Form 26 that the applicant has abnormal vision with the exception of corrective problems (e.g. needs glasses).
Further investigations	The panel physician must not have recommended or suggested further investigations of any kind.
Other reports	If the panel clinic has completed any additional examinations other than the standard health examinations required (e.g. Medical examination- Form 26, x-ray examination- Form 160, and/or blood tests for HIV, Hepatitis B or Hepatitis C), the health case cannot be locally cleared.

Deferred MOC Opinion

A deferred MOC opinion means that a decision cannot be made on a visa application at this point as the applicant has not yet met, or failed to meet, the health requirement. For information regarding the deferred medical examination process, refer to the Bordernet - Immigration health processing guidelines for visa officers.

Note: Although the MMSP will contact applicants directly regarding deferred opinions for visa applications processed in ICSE, it remains the responsibility of the officer to contact the applicant regarding deferred cases that are processed in IRIS.

For each opinion, a formal decision record (a form 884 Opinion of a Medical Officer of the Commonwealth) will be created electronically as a PDF document and stored in HPE Records Manager. The relevant HPE Records Manager reference will be in HAP – Health Assessments.

If a MOC has made additional comments that the MOC wishes the officer to read, these will be included in HAP – Health Assessments and in the covering email to the officer/in HPE Records Manager.

For IRIS cases, however, an email with the 884 attached will be sent to the relevant post mailbox if the case is deferred or a “Does Not Meet” outcome is provided.

Review cases

Some applicants whose cases have been through the review process (merits and/or judicial review) may seek to re-use their health clearances (obtained during either the original visa application or merits review processes) once their case is remitted to the Department.

The re-use rules still apply to this group. However, in addition:

- if the applicant has been found by the review body to meet all requirements under PIC 4005-4007, the applicant does not need to undertake any new immigration medical examinations and should not be asked to do so, even if their previous health clearance is no longer valid; and
- if the applicant has been found by the review body to meet only part of the health requirement (for example, only PIC 4005(1)(c)), and if the applicant’s previous health clearance is no longer valid, they will need to undertake a new chest x-ray (502) and medical examination (501), to ensure that they meet the rest of the health requirement (that is, that they are free from TB).
- Repeat medical examinations may be required for review of a visa refusal decision if the reason for the refusal was not related to health criteria.

Review medical assessments are carried out by appointed MOCs from the MMSP. The MMSP also conducts the internal review procedures for AAT cases refused on medical grounds.

If an applicant has been advised by the Department that their visa application has been refused on health grounds and they choose to seek a review of that decision, they pay the review application fee (regulation 4.13(1)). Once deemed eligible for review, the review body notifies the review applicant that there is an additional fee for a review medical assessment (regulation 5.41(2)). There is no provision to waive this fee for a further medical opinion. The review applicant is also liable for the expense of any repeat or additional testing, which is non-refundable.

Payment details and methods for lodging (from within or outside Australia) are on the Home Affairs website Fees and charges for other services page.

Refer also to AAT review of Part 5 – reviewable decisions – guide for primary decision makers.

Health undertakings

About health undertakings

If an applicant has a non-threatening condition such as inactive Tuberculosis, Hepatitis B, Hepatitis C or leprosy, and for Protection Visa applicants HIV and pregnancy, a MOC may request a health undertaking (Form 815) as a prerequisite for an applicant being regarded as satisfying the health requirement - refer to PIC 4005(1)(d), and PIC 4007(1)(d)). A health undertaking is required for all *Meets with Undertaking* outcomes, and can also be requested for *Does Not Meet* opinions (where a health waiver is available) and *No Clearance Required* outcomes.

A health undertaking is an agreement that an applicant makes with the Australian Government to attend a health clinic in Australia to follow up on the condition for which the health undertaking was requested. Applicants will not meet the health requirement until their Form 815 is signed and returned by the applicant, or an appropriate adult guardian, parent or other responsible person (for example, prospective adoptive parent(s) for an adoption visa application).

This form includes an agreement by the applicant to:

- contact the Health Undertaking Service (HUS) within 28 days of arrival in Australia and provide the required information
- contact or be contacted by the State/Territory health authority based on the contact information provided with the referral by the MMSP
- place themselves under the supervision of that State/Territory health authority
- undergo any course of treatment or investigation the State/Territory health authority directs, and
- keep the State/Territory health authority informed of their current contact details while under supervision.

The MMSP will then notify the visa holder in writing as to which specific State/Territory health authority they should contact, or which State/Territory health authority they should expect to be contacted by, with an automated referral also sent to the relevant State/Territory health authority by HAP - Health Assessments.

Visa processing officers need to ensure that the applicant is provided with a copy of Form 815, and record the received 815 form in HAP - Health Assessments prior to finalising the visa application. Visa grant in ICSE or IRIS will be blocked until this step has been completed in HAP – Health Assessments.

Important: Only a MOC can provide a '*Meets with Undertaking'* opinion which requires a visa applicant to sign a health undertaking, visa processing officers have no authority to determine that a health undertaking is required. The information will be displayed in the HAP– Health Assessments and it will also be indicated in the Form 884 opinion generated by the MOC.

Arrangements for visa applicants in Australia

Visa applicants in Australia (except certain visa applicants, for example, onshore protection visa applicants) are no longer asked to sign a health undertaking. Applicants in Australia who are found to have latent TB are not placed on a health undertaking but are given an information sheet and asked to attend for further monitoring.

Following completion of the required immigration medical examination(s) with the MMSP, these visa applicants will either receive a “deferred” opinion or a “meets” opinion.

The MMSP MOC will provide applicants who receive a “meets” opinion with information regarding their condition and the visa officer may proceed to finalise the visa application.

If an applicant has a “deferred” opinion, they will be referred by the MMSP to the relevant State/Territory chest clinic for review and possible treatment. The MMSP will finalise the health outcome only after the State/Territory chest clinic advises that the applicant is not considered a threat to public health.

Important: If the applicant receives a “deferred” opinion, they have **not** met the health requirement for the grant of the visa and visa processing must be deferred until the applicant receives a subsequent MOC clearance. For information regarding the deferred medical examination process, refer to the Bordernet - Immigration health processing guidelines for visa officers.

Monitoring of compliance with health undertakings

The MMSP monitors applicants on a health undertaking who have arrived in Australia. They manage these cases in HAP– Health Assessments, with the current status of visa holders in terms of their compliance with signed undertakings reflected in the CSP.

If:

- the MMSP is unable to get in contact with the visa holder after three separate attempts and/or
- the visa holder does not attend their clinic appointment.

they will be referred to health@homeaffairs.gov.au to make a determination that the applicant has not complied with their undertaking.

If a non-compliant outcome is recorded in HAP– Health Assessments, this will generate a CMAL record. These CMAL records will be updated by the Health section if subsequent information is received which indicates that the visa holder has now complied with their health undertaking.

Where a visa holder has been non-compliant for some time and their health examinations were completed prior to eMedical and electronic health processing, they may be required to undertake another chest x-ray (502) examination with the MMSP at their own expense before being referred to a State and Territory health authority.

Compliance with health undertakings for PV applicants

Grant of a PV should not take place for any applicant who, at the time of decision, has an existing undertaking and has not complied with the undertaking (that is, completed the required treatment) or has not progressed towards complying with their health undertaking (that is, commenced the required treatment). The exception to this is pregnant applicants who have not yet given birth at the time of decision.

Information about any health undertakings for applicants, including whether an undertaking has been complied with, is provided in HAP– Health Assessments (including under the “Current health case” field in the “Notes” section).

However, the meaning of 'complied' and the relevant actions are different, depending on which of the following two applies:

- For health compliance with **the Code of Behaviour** - check the HAP– Health Assessments. If an officer establishes from HAP – Health Assessments that an applicant has a health undertaking but they are unsure whether the applicant has commenced the treatment required in their undertaking, they should email the Health Mailbox for advice. Compliance for IMAs is on treatment discharge (noting this could take some months), so it is sufficient (for the purposes of a PV grant) that they are 'progressing toward' the end of treatment at the time of decision.
- For a health undertaking associated **with a previous visa grant**, check HAP – Health Assessments. Compliance for this cohort (for the purposes of a PV grant) is when they attend an appointment with an MMSP clinic. It is the officer's role to determine compliance at the time of decision through checking the Department's health systems. If the compliance cannot be identified through this, it is assumed that they have not complied. In these circumstances it is the responsibility of the applicant to show that they have complied by ensuring that the MMSP clinic has provided their compliance update to the Department.

Waivers

Overview

What is a Health Waiver?

The *Australian Migration Act (1958)* and Regulations (1994) stipulate that most visa applicants need to meet Public Interest Criteria (PIC). The health related PICs (4005-4007) stipulate the health requirement that must be met before the grant of a visa.

To meet the health requirement to be granted a visa, a visa applicant's immigration medical examination results must be assessed and they must be granted a health clearance. If the health outcome is a "Does Not Meet", the applicant has not met the health requirement and a visa cannot be granted unless a health waiver is available and exercised.

Where PIC 4005 applies, if an applicant (or a non-migrating family member) fails to meet the health requirement for a visa, there is no provision for a health waiver to be considered.
A health waiver can only be exercised for visa applicants (and any non-migrating family members) for certain visas to which PIC 4007 applies. This includes:

- all Class XB Refugee and Humanitarian visas
- certain skilled, business and other non-humanitarian migration visas
- the TU-500 (Foreign Affairs or Defence Sector) student visa
- the Temporary Skill Shortage (subclass 482) visa

Delegation to waive

Waiving the need to meet the health requirement may have significant implications for Australia's health care and community services. Consequently, under policy, only officers who are at the EL1 level or above **and** delegated under Section 65 of the Act (s65) to grant or refuse visas may make a health waiver decision.

Section 65 delegates at lower than the EL1 level who are assessing a visa application that requires consideration of a health waiver should complete the relevant health waiver submission template and refer it to a s65 delegate at the EL1 level or above. Visa processing officers overseas without an appropriately delegated officer should refer the case to their supervising post to assign the visa application to an s65 delegate at the EL1 level or above.

Important: The EL1 or above s65 delegate who makes the decision on whether or not to exercise a PIC 4007 waiver must also make the decision to grant or to refuse to grant the visa to avoid split decision making.

PIC 4006A (pipeline UC-457 cases only)

PIC 4006A was a prescribed Schedule 2 criterion for the UC-457 Temporary Work (Skilled) visa only. It applied to both the main applicant and any dependent visa applicants. PIC 4006A still applies to pipeline subclass 457 cases pending finalisation only. For guidance on PIC 4006A, officers should refer to the relevant stack in LEGEND.

Note: UC-457 was repealed in March 2018 when the Temporary Skill Shortage (subclass 482) visa (known as TSS visa) was introduced. The TSS visa is subject to PIC 4007.

When can a waiver be exercised

Important Note: **No health waiver is available if the applicant has failed to meet health on TB, danger to the community, or other public health risk grounds - refer to PIC 4007(1)(a) and (b).**

A health waiver can only be exercised in accordance with PIC 4007(2) if:

- the visa applicant (or non-migrating family member) has failed to meet the health requirement, because, in accordance with PIC 4007(1)(c), a MOC has assessed them as having a disease or condition that is:
  - likely to result in health care and community service costs that are regarded as 'significant' under policy **or**
  - prejudice the access of Australian citizens or permanent residents to such services
- the visa applicant(s) satisfies all other criteria for the grant of the visa, and
- the s65 delegate is satisfied that the granting of the visa would be unlikely to result in:
  - **undue cost** to the Australian community or
  - **undue prejudice** to the access to health care or community services of an Australian citizen or permanent resident.

Note:

- If a health waiver is available, it must be considered, documented and recorded in the HAP.
- A health waiver should be the last stage in visa assessment prior to grant or refusal. All other requirements for the grant of the visa should be met prior to waiver consideration. Once a health waiver decision is made, the visa application should be decided as soon as practicable to ensure that the health results remain valid and as health costs and conditions can change.
- If more than one applicant on a visa application fails to meet health on the grounds of significant cost and/or prejudice to access, health waiver submissions for those applicants must be considered together and if a recommendation is required from Health Policy Section, the cases must be sent via the HAP at the same time.

What is the Significant Cost Threshold

The MOC provides an opinion as to whether an applicant's condition or disease would likely to result in health care and community service costs if a visa were to be granted.

Under its regulation 1.03 definition, community services includes the provision of an Australian social security benefit, allowance or pension. Under policy, it is also taken to include services such as supported accommodation, special education, home and community care.

When assessing 'costs', an applicant is assessed against the health requirement for:

- a period for which the Minister (or delegate of the Minister) intends to grant the visa if the visa applicant has applied for a temporary visa
- a *permanent stay* (i.e. a period commencing when the application is made) in Australia if the visa applicant has applied for a *permanent or provisional* visa

Currently, the policy threshold for the level of costs to be regarded as significant is AUD 49 000, and the MOC will assess an applicant as not meeting the health requirement if the potential costs over their proposed period of stay are above that figure.

What is Prejudice to Access?

Prejudice to Access is identified when the applicant's medical condition would be likely to prejudice the access of Australian citizens and permanent residents to health care and community services that are currently in short supply. As at January 2018, and as advised by the Department of Health, this includes organ transplants (including bone marrow transplants), and dialysis.

What does 'undue' mean

Although 'undue' is not defined in migration law, the dictionary definition of undue is "unwarranted; excessive; too great", and a broad range of discretionary considerations may be taken into account in determining whether costs or prejudice to access are 'undue'.

What does 'mitigate' mean

Although 'mitigate' is not defined in migration law, the dictionary definition of mitigate is to "lessen" or "to make less severe", and a broad range of discretionary considerations may be taken into account in determining whether an applicant has the capacity to 'mitigate' the potential costs identified.

Considering a health waiver

A health waiver submission template, available on the internal Bordernet 'Health waivers' page, must be prepared for all health waiver decisions, and attached in the Health Assessment Portal (HAP).

The visa applicant or Migration Agent is required to complete Part A of the Health Waiver Submission, with Part B to be completed by the visa officer.

Important: Visa applicants **must be** provided with an opportunity to comment on the MOC opinion through a s57 notification **prior to** a health waiver submission being sent to the visa applicant or their Migration Agent. Section 57 requirements must be followed for all DNM opinions. This is essential as a MOC opinion may subsequently change based on new medical information provided by the applicant. For further information refer to Migration Act s57 requirements- Notification Requirements.

HAP will indicate whether a referral to the Health Policy Section (health@homeaffairs.gov.au) for a recommendation is required before the delegate makes a health waiver decision. This will include:

- cases (other than offshore humanitarian cases) where the estimated costs are AUD 500 000 or more and
- cases where Prejudice to Access has been identified

Note: Cases where more than one applicant has failed to meet the health requirement, and the total costs identified are AUD 500 000 or more will also require referral to the Health Policy Section for a recommendation before the delegate makes a health waiver decision.

In cases where the estimated costs are less than AUD 500,000, and no Prejudice to Access has been identified, the s65 delegate can proceed to make a final decision on both the health waiver and the visa application, however, a recommendation may also be requested from Health Policy Section if the delegate needs further guidance to inform their decision.

Important: The Health Policy Section Director will only provide a **recommendation**. The final **decision** as to whether to exercise a health waiver rests with the s65 delegate.

If, however, a delegate does not agree with a recommendation from the Health Policy Director, the delegate should clearly document and record the information and considerations they are placing

weight on in the HAP, and make a further request for a recommendation from the Health Policy Section Director before making a final decision. If the delegate ultimately decides to make a decision that is counter to the Health Policy recommendation, their reasoning should be clearly documented.

Regardless of whether or not a health waiver is exercised, all health waiver decisions must be fully documented and recorded in the Health Assessment Portal (HAP).

Decisions are reviewed regularly and reported to Senior Executive by the Health Policy section.

Assessing PIC4007 waivers for non-humanitarian visas

What to take into account

Given the broad range of discretionary considerations that can be taken into account, the individual circumstances of the visa applicant need to be considered in coming to a conclusion about whether the granting of the visa would be unlikely to result in undue cost or undue prejudice to access.

Each health waiver case must be considered on its merits, with all relevant factors taken into account, including the capacity to mitigate the potential costs or prejudice to access identified, and the strength of any compelling and/or compassionate circumstances.

When making a waiver decision, section 65 delegates should consider the following policy guidelines for the relevant type of visa being processed, as the nature of the individual circumstances involved are likely to vary depending on the type of visa that has been applied for (even though the same PIC applies).

Note: Delegates should scrutinise and assess cases where the potential costs are under $500,000 and do not require a recommendation from Health Policy as carefully as those that do require a recommendation.

Prejudice to access - factors afforded weight under policy

All cases where prejudice to access is identified are referred to Health Policy section for a recommendation.

If the MOC has identified the applicant is likely to require **organ transplantation**, consideration should be given as to whether the organ could be provided through live donation (such as a kidney or bone marrow), or if the donation would, by its nature, need to be from a deceased donor (such as a heart):

- **if a live donor option is available***:* favourable consideration may be given to documentary evidence that the applicant has a family member (preferably in Australia or migrating) who has been compatibility tested, and is willing to donate an organ (directly or through a scheme such as the Paired Kidney Donor Scheme). Favourableconsideration may also be given if documentary evidence from the treating specialist/doctor has indicated that it would be unlikely that the applicant would be placed on a transplant list
- **If a deceased donor is required***:* favourableconsideration may be given if documentary evidence from the treating specialist/doctor has indicated that it would be unlikely that the applicant would be placed on a transplant list.

If the MOC has identified the applicant is likely to require **dialysis**, favourable consideration may be given if documentary evidence has been provided that the applicant:

- has a **demonstrated history** of accessing, and of having the financial capacity to continue accessing dialysis at a private clinic; or
- has Private Health Insurance which will cover the cost, **and** has a **demonstrated history** of accessing dialysis at a private clinic; or

- has reached an agreement with a Public Hospital who has agreed to provide dialysis to the applicant under the reciprocal health care agreement between the applicant's home country and Australia.

Note: A lack of the documentary evidence mentioned above would be likely to lend weight to a recommendation being provided by Health Policy not supporting a health waiver being exercised.

Significant Cost - Factors afforded significant weight under policy

Compassionate and Compelling circumstances

It should be noted that merely meeting the legislative criteria for the grant of a particular visa (for instance being in a genuine and continuing relationship for a Partner visa, or residing in a regional area for a Skilled (Regional Sponsored) visa) would not generally be considered as strongly compassionate or compelling circumstances, unless there are other factors which add weight to a favourable outcome.

Criteria which may be considered to be compassionate and compelling include (but are not limited too) **where documentary evidence** has been provided that:

- an Australian citizen sponsor has been diagnosed with a health condition and would be unable to access appropriate treatment if forced to relocate.
- there is no permanent migration pathway to the applicant's home country (or another country that the couple have the legal right to reside in) available to the sponsor (for example, because same-sex migration to that country is not available).
- the sponsor would be seriously adversely affected financially, such that they would be unable to subsist (maintain or support themselves at a minimal level) in the applicant's home country due to a lack of language skills, family support and/or employment opportunities.
- the sponsor holds/held a Protection or Refugee/Humanitarian visa and a decision not to waive would separate him/her from his/her spouse/children as he/she is unable to return to the country from which he/she fled and there is no third country option.
- there is evidence of an adverse impact on Australian citizen minor children if a decision not to waive is made (for instance, the sponsor has provided evidence that he/she is prevented by the other parent from removing minor children from Australia).
- the sponsor has significant family links to Australia, and has demonstrated caring or financial obligations towards them.
- Australia would miss out on a significant benefit that the applicant/sponsor could contribute to Australia's business, economic, cultural or other development (for example, a specialised skill/business that is highly sought after in Australia) or are providing a valuable community service (for instance through their employment and/or volunteering activities).
- the sponsor/family is already settled in a remote, rural or regional area.
- the sponsor/applicant and/or other working family members in a non-Skilled visa application have occupational skills in high demand (refer to the Medium and Long-term Strategic Skills List (MLTSSL) of the Skilled Occupation List)
- for Skilled visas, the applicant and/or other working family members have occupational skills that are found on the Department of Jobs and Small Business Skilled Shortage lists (found at https://www.jobs.gov.au/national-state-and-territory-skill-shortage-information).
- if not on the MLTSSL or the Department of Jobs and Small Business Skilled Shortage lists, the applicant/sponsor has a unique skillset that is vital to their employer's business, and/or there is evidence that the employer would suffer detriment if a health waiver was not exercised.
- there are any other compelling or compassionate factors including the location and circumstances of the applicant and/or sponsor's family members.

Capacity to Mitigate Significant Costs

It should be noted that the fact that an applicant and/or sponsor is paying taxes in Australia would not generally be considered as indicating a strong capacity to mitigate the potential costs, unless there are other factors which add significant weight to a favourable outcome.

Criteria considered to demonstrate an applicant's ability to mitigate the significant costs includes (but is not limited to) where **documentary evidence has been provided** that:

- the applicant/sponsor and/or other family members have substantial (in relation to the potential cost identified) income, assets, savings or another demonstrated ability to mitigate the costs involved (for example due to private care arrangements and/or support being available). Any available care cannot, however, be at a level that the Australian community would find unacceptable. No person requiring care in Australia should be expected to accept a lesser standard of health care, food, accommodation, work environment or social interaction than that which would be expected to be available to Australian residents. The care arrangements should also be considered with regard to their durability, for example, care that is provided by an ageing family member may not be feasible in the longer term.

Significant Cost - Factors that would add weight to a waiver not being exercised

Factors that would impact on a waiver not being exercised include a lack of documentary evidence that demonstrate:

- strong compassionate and compelling circumstances.
- close family, social, emotional and community ties to Australia.
- ties to Australia more generally (for example, if the applicant/sponsor have been absent from Australia for a significant period of time/majority of their life, and there is no reason why they cannot continue to reside in another country).

And/or

- There is little/limited/no capacity to mitigate the potential costs identified.
- The applicant, sponsor and their immediate family have the legal right to enter and reside in another country with no particular hardship (for example, the sponsor has only recently been granted a permanent Australian visa/citizenship, and still holds citizenship for another country, or the family have been residing in another country for a significant period and are eligible to remain there).

Special Circumstances

Two Stage Visa Processing

If a health waiver has been exercised at the first stage of visa processing and a provisional visa has been granted, no further assessment is generally required at the second stage of processing.

Second stage visa applicants rarely complete immigration medical examinations again when their permanent visa application is being decided, however, in the rare instances where visa applicants are, under policy, requested to complete repeat immigration medical examinations at the second stage, and receive a DNM opinion, a health waiver will need to be considered.

Non-migrating family members

For applications lodged after 1 July 2017, non-migrating family members are generally not required to undergo medical examinations unless specials circumstances apply. For further information see Non-migrating Family Members.

If, however a non-migrating family member has completed medical examinations and has failed to meet the health requirement, a health waiver must be fully considered and documented. When considering whether to exercise a health waiver, the s65 delegate should carefully assess the likelihood of the non-migrating family member ultimately seeking to migrate. In particular, delegates are required to give careful consideration to circumstances where:

- The non-migrating member was originally included in the application but has since been withdrawn.
- There is evidence provided in the visa application or in supporting documentation that the non-migrating family member will ultimately seek to migrate.
- A dependent child is remaining in their country of origin without parental support (as the parents are migrating), and:
  - The care arrangements are not suitable long-term arrangements (for example, a child under eighteen is residing with their elderly grand-parents)
  - The care arrangements are of a recent nature
  - There is no legality to the proposed arrangements (for example, the child is residing with their neighbour, family friend or relative)
  - No alternative or contingency arrangements have been evidenced in the event the current arrangements are no longer suitable (for example, should the child's grandparents inevitably become ill as they age)

Where the s65 delegate considers that it is likely that the non-migrating family member will ultimately seek to migrate, an assessment must be made that considers all health waiver aspects as if the non-migrating family member was migrating, refer above to Assessing PIC 4007 waivers for non-humanitarian visas.

Important: If a visa delegate ultimately decides to exercise a health waiver for a non-migrating family member, the primary applicant should be counselled in writing that should the non-migrating family member later seek to migrate, there is no guarantee that a health waiver would be available, or would be exercised, for that subsequent application.

Child visa applicants

When considering applications by a biological child of the sponsor, consideration and weighting should be given (where applicable) to:

- whether or not the child was declared and/or included in any previous applications for a permanent visa.
- the circumstances that led to the child not being included in the parent/s successful migration application (for instance if the child was a non-migrating dependent (in the custody of another person), whose condition was not disclosed to the department and/or who did not complete medical examinations for that application, why is the child now migrating?).
- circumstances where a child was declared to be non-migrating, however, a Child visa application was lodged shortly after the parent's permanent visa was granted; and
- whether the family has the legal right, and could easily enter and reside in another country with no particular hardship (for example, the sponsor has only recently been granted a permanent Australian visa/citizenship, and still holds citizenship for another country, or the family have been residing in another country for a significant period and are eligible to remain there)

PIC 4007 waivers for Humanitarian visas

All applicants for Class XB Refugee and Humanitarian visas (XB-200, XB-201, XB-202, XB-203 and XB-204) (and any non-migrating family members) must be considered for a discretionary waiver of the health requirement if they fail to meet the health requirement on significant cost or prejudice to access grounds (that is, they fail to satisfy PIC 4007(1)(c)).

From 1 July 2012, under policy, if the Refugee and Humanitarian visa applicant fails to meet the health requirement on **significant cost grounds only**, the s65 delegate should automatically consider these costs as 'not undue'. They should exercise the health waiver and record it in the HAP, and proceed to visa grant if all other visa criteria have been met.

If the Refugee and Humanitarian visa applicant failed to meet the health requirement on **prejudice to access grounds**, before making a waiver decision, an assessment as to whether the prejudice to access identified is likely to be considered "undue" must be undertaken. A recommendation from Health Policy **must** be obtained via the HAP.

Note: If a MOC has identified costs regarded as 'significant' under policy as well as prejudice to access, the cost element should still automatically be considered "not undue".

Assessing a health waiver for a humanitarian visa where prejudice to access has been identified

It can be particularly difficult to assess whether it is appropriate or not to exercise a waiver for humanitarian visa applicants, particularly given:

- the inherently compelling and compassionate nature of these cases; and that
- humanitarian applicants will rarely be able to mitigate the potential prejudice to access involved through evidenced means.

Therefore, in considering whether the granting of a humanitarian visa would be likely to result in 'undue' prejudice to access, delegates should focus on any compelling and compassionate circumstances, placing significant weight on:

- whether there are any migrating family members may be willing to be compatibility tested for a live donor organ transplant.
- the applicant's family links to Australia and the likelihood that those family members already residing in Australia could assist in mitigating the prejudice to access identified (for example, a family member may be willing to be compatibility tested for a live donor organ transplant, or may have a capacity to financially assist the applicant to access dialysis at a private clinic or facility).
- information which suggests that it would be unlikely that the applicant would be placed on a transplant list (for instance an elderly applicant with other health issues such as dementia).
- the educational background, any qualifications or skills and the employment history of the applicant or other family members (which may help them to readily gain employment, possibly assisting them to have the financial capacity to access dialysis at a private clinic or facility)
- whether the case has been referred by the UNHCR for priority resettlement: and
- where there are "split family" situations or applicants in particularly vulnerable situations (for example, woman at risk, or survivors of torture or trauma).

PIC 4007 waivers for Foreign Affairs or Defence Sector students

Applicants for a Foreign Affairs or Defence Sector (TU-500) student visa must be considered for a health waiver if they fail to meet the health requirement on health cost or prejudice to access grounds (that is, if they fail to satisfy PIC 4007(1)(c)).

Assessing a health waiver for a TU-500 (Foreign Affairs or Defence Sector) visa applicant

Note: Regardless of whether the waiver applicant is a primary or dependent applicant, the following advice applies.

When assessing a health waiver for a TU-500 (Foreign Affairs or Defence Sector) visa, delegates must consider all relevant circumstances. Under policy, delegates should, however, put significant weight on the whether or not documentary evidence has been provided that:

- Foreign Affairs or Defence have confirmed in writing that they will meet any health costs.
- the student has the support of his/her home government.
- the student has the support of an Australian university or education provider.
- there is strong support from family or community groups; and/or
- the student has the capacity to mitigate the potential costs or prejudice to access themselves
- (for example, due to private care arrangements and/or support being available, or having the financial capacity to access dialysis at a private clinic/facility, or that an organ transplant is planned in the applicant's home country).
- **Note**: Any available private care cannot be at a level that the Australian community would find unacceptable.

PIC 4006A (pipeline UC-457 cases only)

PIC 4006A was a prescribed Schedule 2 criterion for the UC-457 Temporary Work (Skilled) visa only. It applied to both the main applicant and any dependent visa applicants. PIC 4006A still applies to pipeline subclass 457 cases pending finalisation only. For guidance on PIC 4006A, officers should refer to the relevant stack in LEGEND. **Note**: UC-457 was repealed in March 2018 when the Temporary Skill Shortage (subclass 482) visa (known as TSS visa) was introduced. The TSS visa is subject to PIC 4007 and should be assessed as per Assessing PIC 4007 waivers for non-humanitarian visas.

Health Waivers remitted by the Administrative Appeals Tribunal (AAT)

Some visa applicants whose visa is refused due to a health waiver not being exercised can seek a review of the decision from the AAT.

Where the AAT remits the case on the basis the applicant meets PIC 4007(2) (that is, that a health waiver should be exercised on the basis that the health costs or prejudice to access are not considered 'undue'), section 65 delegates are only required to record the health waiver outcome in HAP.

However, depending on the validity of the medicals, it may be necessary for the applicant to complete additional health examinations to rule out active TB. For further information on whether additional health examinations are required, refer to Review Cases.

If all health related requirements are met (AAT remit and there are no outstanding health examination requirements), the VPO can finalise the health waiver case in the HAP and proceed to grant the visa if all other requirements have been met.

AAT cases - HAP and IRIS

When processing a visa in IRIS, VPOs are required to finalise the health waiver case in the HAP before proceeding to a visa grant. VPOs will need to finalise the health waiver case in HAP using the initial health waiver outcome, and then proceed to finalise the remitted health waiver case.

This is vital to ensure the accuracy of health reports for health waiver cases and AAT remitted cases. For processing assistance in finalising a remitted health waiver case, refer to Bordernet - Managing health waivers in the HAP.

Health processing

Checking all immigration medical examination reports

Officers must satisfy themselves as to the following for all cases:

- the identity of the person examined and
- for paper cases: the identity of the examining doctor, that is, officers must check that an approved panel physician and/or that a radiologist at an approved panel clinic completed the forms (unless the applicant was given special permission to use a non-panel doctor).
- In **all** cases, officers are to investigate and resolve any discrepancies before finalising a visa application**.**
- This is the responsibility of the visa decision maker, not the MMSP, or the panel clinic or the Department's Health sections.

For paper immigration medical examinations

- the photographs provided match those provided on the visa application form and/or identity documentation presented, and

- there are no inconsistencies between the information in the applicant's visa application form and medical examination forms (for example, the applicant's signature and/or answers to health declaration questions).

For electronic immigration medical examinations

- the photograph available in HAP – Health Assessments matches that submitted with the paper visa application form and/or identity documentation presented, and
- there are no inconsistencies between the information in the applicant's visa application form and immigration medical examination forms (for example, the answers to health declaration questions).

If an identity concern has been raised during electronic health processing

Panel clinics or the MMSP will raise identity concerns in eMedical if:

- there are inconsistencies between the identity information in eMedical and the identity information an applicant presents at their clinic or
- there is no identity information available in eMedical to facilitate a comparison (MMSP only) or
- they have concerns about the identity of the person who completes the immigration medical examination at their clinic.
- This process is designed to enable the relevant officer to review and verify the applicant's identity during the visa assessment process.
- The officer will be required to resolve the identity concern prior to finalising the application. A decision bar will prevent visa grant until the identity concern is resolved.
- For further advice including how to resolve an identity concern raised by a panel clinic or the MMSP refer to the Bordernet - Immigration health processing guidelines for visa officers.
- If fraud is suspected, this should be referred to the relevant areas of the Department for advice and for any action under PIC 4020 (if applicable) that is considered appropriate.

Time lapse and appearance change in child passport holders

- Passports for children are generally valid for five years. If the passport was obtained when the child was an infant, considerable physical changes to facial features are likely to have occurred over the five year period. If this is the case, the MMSP or panel physician may not be able to verify the identity of the child and, if so, an identity concern will be raised in eMedical.
- When this occurs, officers should ask the primary visa applicant to provide a statutory declaration(s) signed by an Australian citizen or permanent resident who is not the child's relative:
  - the declaration should have appropriate photographic evidence that the child presented for their medical examination (501) is the same as the child photographed in the passport and
  - the declarant should confirm that all the photos in the declaration are of the same child. Officers should be vigilant to where the change in appearance may genuinely be due to time lapse or where residual identity concerns exist.

If:

- a statutory declaration(s) cannot be provided by an Australian citizen or permanent resident who is not the child's relative or
- officers are still not satisfied (after receiving the appropriate statutory declaration) that the child who attended the medical examination (501) is the same child applying for the visa, the child must be requested to undertake a new medical examination performed with a new passport that accurately portrays the child's current appearance. If a Statutory Declaration is not provided, or the Statutory Declaration is not accepted by the visa officer, please contact health via health@homeaffairs.gov.au to request a new assessment be created and required immigration medical examinations be added in HAP – Health Assessments.

Process and results

Panel physicians and radiologists will complete the required immigration medical examinations electronically in eMedical or on the appropriate paper forms. They will record their clinical findings, any abnormalities or significant conditions detected during the examination, as well as a "grading":

- an "A" grading means no significant history or abnormal findings are present or
- a "B" grading means significant history or abnormal findings are present.

They are instructed **not** to give an opinion as to the applicant's ability to meet the health requirement, as this is the role of:

- a s65 delegate if local clearance is available, or
- a Medical Officer of the Commonwealth.

Whether a case is graded "A" or "B" may impact on the steps required to clear the health cases.

Legislation

Condition 8504 (First Entry Date)

In accordance with condition 8504, persons outside Australia granted a permanent visa are required to enter Australia before a date specified by the s65 delegate - refer to:

- Sch8/8504 - (First) Entry date condition and
- Sch8 - Visa conditions - Breach of entry-related conditions (including first entry date).

As per the policy guidelines, this first entry date (FED) is usually set based on the expiry date of the visa applicant's health clearance, security clearance or sponsorship, whichever is earliest (some exceptions apply). For further information refer to Sch8/8504 - (First) Entry date condition.

Condition 8527

Mandatory conditions are also imposed on eVisitor and ETAs, requiring the applicant to be free from TB (condition 8527).

If the visa holder has active TB their visa may be cancelled on the grounds that:

- they have breached condition 8527 or
- their presence in Australia would be a risk to the health, safety or good of the Australian community.

Visas can be cancelled under s116 on the basis of non-compliance with visa conditions.

A person will not breach condition 8527 until they actually travel to, or enter Australia. Furthermore, the officer must more than suspect that the visa holder has active TB. For example:

- the visa holder must have admitted to having active TB;
- the immigration inspector locates medication for TB in the visa holder's luggage or
- a Medical Officer of the Commonwealth has confirmed that the visa holder has active TB.

Officers do not have the power to require a visa holder to undergo medical tests after a visa has been granted. Officers should contact the Health mailbox and/or Compliance Policy Section, National Office for advice in relation to difficult cases.

Cancellation for non-compliance with condition 8527 should not be pursued in immigration clearance but only after the visa holder has been immigration cleared and deemed fit to travel after treatment.

For policy and procedure, refer to:

- Sch2 Visa 601 - Electronic Travel Authority (ETA)
- Sch2 Visa 651 – eVisitor
- General visa cancellation powers (s109, s116, s128, s134B and s140) and
- Act – Arrival, immigration clearance & entry - Immigration clearance at airports & seaports

Health and the Migration Act (the Act)

Section 60 of the Act enables the Minister to require a visa applicant to visit, and be examined by, a 'person qualified to determine the applicant's health'.

Section 65 of the Act enables s65 delegates to grant or refuse a visa depending on whether the s65 delegate is satisfied that the applicant meets the health criteria.

Section 496 of the Act enables the Minister to delegate separately, the powers to consider and decide whether an applicant meets the health criterion, and all other aspects of the application. Consequently, in many cases, a Medical Officer of the Commonwealth (MOC) will provide an opinion that an applicant meets the health criterion. The s65 delegate must use this opinion in deciding the relevant visa application.

Medical Officers of the Commonwealth (MOC) in the regulations

Regulation 1.16AA enables the Minister to appoint a MOC. To be appointed, new MOCs must have their name listed in a revised legislative instrument made under regulation 1.16AA. They may work directly for the Department, or be employed by the Migration Medical Services Provider (MMSP).

Regulation 2.25A requires s65 delegates to seek a MOC's opinion as to whether an applicant meets the health requirement, except in certain circumstances (for example, if local clearance arrangements exist). **The MOC's opinion must be taken to be correct**.

In accordance with regulation 5.41, a further MOC opinion may be sought if a review body (such as the Administrative Appeals Tribunal (AAT)) is reviewing a decision to refuse a visa wholly or in part because the applicant did not meet the health requirement.

Migration Act s57 requirements – Notification Requirements

Section 57 of the Migration Act requires that, **before** deciding a visa application, officers must:

- provide applicants in certain circumstances with adverse information that may lead to a decision to refuse a visa and
- give the applicant an opportunity to comment.

Refer to Notification requirements.

If the s57 adverse information is that a MOC has provided an opinion that the health requirement has not been met, a copy of the form 884 must be provided to the applicant, inviting comment and any supporting evidence for a claim that the opinion is incorrect.

Section 57 requirements must be followed for all DNM opinions, regardless of whether or not a waiver of the health requirement is available. In cases where a waiver is available, the s57 process must be undertaken first, because if a new MOC opinion is provided as a result of an applicant providing supporting evidence, and that opinion is that the health requirement is met, waiver consideration is not required.

If an applicant provides supporting evidence for a claim that the MOC opinion is incorrect, only evidence of a medical nature such as specialist reports should be sent to the MOC for consideration. For guidance on processing in HAP, visa processing officers should refer to Bordernet - Immigration health processing guidelines for visa officers.

Refusal on health grounds

When advising that a visa has been refused on health grounds, visa processing officers should tell the applicant the reasons in terms of both the Regulations and the medical condition - as explained in the form 884 MOC opinion. The reasons should be conveyed to the applicant in the standard way for notifying applicants of visa refusal for that particular visa class/subclass - refer to Notification requirements.

Note: Although the MOC's name will not be on the form 884, officers must ensure that they remove the MOC's name from any other documentation provided to the applicant.

The only situation in which adverse medical information should not be given directly to the applicant, is if the MOC has recommended against it. In this case, the form 884 should be provided to a doctor nominated by the applicant and the doctor should discuss the condition with the applicant.

Officers can identify whether a MOC has left a comment for the officer by clicking on the "view" icon in the HAP – Health Assessment against the assessment made Comments for officers will also appear in the 884 cover letter, but not in the 884 itself.

To ensure that the refusal decision on these grounds is recorded correctly, officers should refer to the Bordernet - Immigration health processing guidelines for visa officers.

Required immigration medical examinations and assessment period are prescribed by instrument

The immigration medical examinations that an applicant is required to undergo to determine that they meet the health requirement are specified in a legislative instrument IMMI 15/144 (Required health assessment (clauses 4005, 4006A and 4007)), as well as policy guidelines provided in this instruction.

A legislative instrument (Visa subclasses for the purposes of the health requirement (clauses 4005, 4006A and 4007)) also outlines the period for which a MOC must assess an applicant against the health requirement. It clarifies that for certain specified temporary and provisional visas a MOC must assess applicants for a permanent stay in Australia.

Schedule 2 health-related criteria

The standard health requirement (that is, PICs 4005-4007) does not apply to protection visa (PV) applicants.
The health criteria for PV applicants are instead prescribed in Regulations Schedule 2 in clauses:

- 866.223 to 866.224B for permanent protection visas (PPVs)
- 785.222 to 785.225 for temporary protection visas (TPVs) and
- 790.222 to 790.225 for Safe Haven Enterprise visas (SHEVs).

Under these provisions, before any PV applicant can be granted a visa, they are required to undergo medical examinations conducted by a relevant medical practitioner or radiologist.

The health requirement for PV applicants is different from the requirements for applicants for other visas because Australia must provide protection to persons who engage Australia's protection obligations regardless of the condition of their health. Consequently:

- a PV can be granted even if the applicant has a serious health condition and
- at the time of decision, for the health requirement to be met, a PV applicant only has to have undergone the required medical examinations and to have complied with any health undertakings

Schedule 4 health-related criteria

The “standard” legislative framework of the health requirement is provided at PIC 4005.
To meet the health requirement, applicants must complete any requested immigration medical examinations **and** must not be assessed by a MOC as having:

- **active TB**
- a condition that may result in them being a **threat to public health** or a **danger to the community**
- a condition that is likely to result in **cost** to the Australian community in the areas of health care and community services (that is, under policy is likely to require health care and community services which are estimated to cost more than the significant cost threshold of AUD 49 000) and/or
- a condition that would **prejudice the access** of Australian citizens or permanent residents to services that are considered to be in short supply (currently, organ transplants and dialysis).

All applicants for visas to which the PICs 4005, 4006A and 4007 apply must satisfy the s65 delegate that they meet the health requirement in order to be granted a visa, unless a health waiver is available (under PIC 4007) and exercised by the visa delegate.

Visa cancellation on health grounds

Visa cancellation on health grounds must be evidence based, and may be considered when the presence of its holder in Australia is, or would be, a risk to the health, safety or good order of the Australian community (refer to s116(1)(e) of the Act).

If visa cancellation is being considered because the holder “is or would be a risk to health of the Australian community” medical evidence that the applicant has active TB must be presented rather than basing a decision on a suspicion of TB.

Please note that the conditions HIV and Hepatitis B are not threats to public health, therefore do not warrant a cancellation. Only when a person with HIV or Hepatitis is conducting EPPs would that be considered a circumstance where a visa holder would be considered a threat to public health.

In all other circumstances, officers **must** consult the Health mailbox to obtain clinical advice and inform all stakeholders. Officers should email the applicant’s scanned immigration medical examination reports to the Health Mailbox (if not already electronically available) with “Attn: visa cancellation on public health risk grounds” as the subject.

If a case does not appear to meet the requirements for a s116 (1)(e) cancellation, for example, the applicant has provided incorrect information in their application form or during their medical process; officers should consider whether any other power/grounds are available for visa cancellation.

For policy guidance on s116(1)(e) and other cancellation powers, refer to General visa cancellation powers (s109, s116, s128, s134B and s140).

Further Guidance

CMAL and health

Health Policy owns Alert Reason Code / ARC 06 Health Concerns. For information on how to understand health processing and ARC 06, refer to Bordernet - ARC 06 Health concerns.

Communication with the MMSP

For guidelines for communicating with the MMSP, refer to Bordernet - Migration medical services provider communication protocols. These guidelines also outline issues relating to the MMSP that should be referred to the Migration Health Branch that manages the MMSP contract.

Health information in health and visa systems

For advice on the Department's health systems including HAP and eMedical, refer to:

- Bordernet's Immigration health systems information and training page, and
- Bordernet's Immigration health processing guidelines for visa officers page

which provides advice on health information in other visa processing systems and portals such as ICSE, IRIS and the CSP.

My Health Declarations

My Heath Declarations is a service available via the ImmiAccount that enables applicants who are yet to make a visa application to:

- Answer their health declaration questions.
- Determine whether immigration medical examinations are required for their intended visa application.
- Generate a health identifier (HAP ID) to facilitate their immigration medical examinations before making a visa application.

For further information, refer to the Meeting our requirement – Health page on the Home Affairs website.

Health Policy Enquiries

For all Health related enquiries, including Health Policy enquiries, please email health@homeaffairs.gov.au.

4. Accountability and Responsibility

Role	**Description**
Division Head	The Chief Medical Officer (CMO) / Surgeon General (SG) has overall responsibility for providing expert clinical advice and high level health strategy to the Executive. The CMO/SG oversees health policy, health related issues and standards across the whole portfolio, including detention health, immigration health and workplace health and safety. The role is also responsible for clinical governance oversight and investigative functions for the purposes of monitoring, review and identifying risks and opportunities for improving the delivery of health related services and outcomes across the portfolio. The Division Head has overall responsibility for the Health Requirement Policy Statement and underpinning Framework documentation.
The Health Services Division	The Health Services Division ensures that clinical expertise and advice is integral to all Departmental decision making, in strategy and policy, which impacts on health and in health operations involving travel and migration across Australia's border. The Health Services Division is responsible for providing expert clinical advice, setting health policy and monitoring standards of health service provision to ensure quality, safe health care provision to both Departmental staff and applicants.

Chief Medical Officer/ Surgeon General Executive Office	The Chief Medical Officer/ Surgeon General Executive Office is responsible for the coordination of Question Time Briefs, media, Senate Estimates, Hot Issue Briefs, briefings, the Divisional Secretariat, finance/corporate services, contracts, change requests and the coordination of policies across the Department that have health implications.
Migration Health Section	The Migration Health section is responsible for managing the health helpdesk, health systems (HAP and eMedical), the MMSP contract including undertakings, and implementing operational and strategic health policy. The section is also responsible for clinical safety and assurance, audit and panel management and the clinical governance and standards.
Department of Health (DoH)	The DoH provides high-level policy advice and clinical information to the Department in relation to public health and broader health issues. It has an advisory role assisting the Department in formulation of health requirements expressed in the Regulations and associated procedures and guidelines. This includes the provision of advice as to the availability of Australian healthcare services to enable the Department to update its list of health and community services in limited supply.
Migration Medical Services Provider (MMSP)	The MMSP is the Department's contracted service provider responsible for assessing all health cases (including the provision of MOC opinions) for which auto-clearance is not available.
Panel Physicians	Doctors and radiologists, referred to as panel physicians, who are members of the Australian Panel Physician Network managed by the Migration Health Branch.

Attachment A

eMedical Exemption- Permission to Process Paper Examinations

Dear Panel Physician,

The client(s) below are not eligible for electronic processing via eMedical. On this occasion, I therefore authorise you to examine the client(s) conducting only the specified examination(s) below for 'Public Health Risk' only purposes and sending their health examination results to the visa officer via email.

If for technical reasons the results cannot be emailed, please then post the results to the visa officer as per normal processes. The officer's name, email address and postal address can be located in the signature block at the bottom of this exemption letter.

Client(s) details and examination(s) required are as follows:

Given Name 1: xxx
Family Name 1: xxx
Date of Birth: xxx
Passport Number: xxx
Examination Code: xxx
Given Name 2: xxx
Family Name 2: xxx
Date of Birth: xxx
Passport Number: xxx
Examination Code: xxx

Please ensure that a copy of this letter is sent with the results to the officer.

Should you have any further enquiries in regards to this request, please contact health@homeaffairs.gov.au.

Yours sincerely,

<Insert Name>

Department of Home Affairs

Date:

Attachment B – Definitions

Term	Acronym(if applicable)	Definition
Active Tuberculosis	Active TB	A person who is currently infected with TB and can infect others.
Blood Borne Viruses	BBV	These viruses are passed from person to person through blood to blood contact, and includes hepatitis B and C and HIV.
Department of Health	DoH	A department of the Government of Australia which seeks to promote, develop, and fund health and aged care services for the Australian public.
Department of Home Affairs		A department of the Government of Australia that brings together Australia's federal law enforcement, national and transport security, criminal justice, emergency management, multicultural affairs and immigration and border-related functions and agencies, working together to keep Australia safe.
Does not meet	DNM	The applicant has not met the health requirement and a visa cannot be granted unless a health waiver is available and exercised.
Electronic Travel Authority	ETA	An ETA allows the holder to travel to Australia multiple times within the validity period which is 12 months from the date of issue. The maximum length of each visit is three months.

Extensively drug resistant TB	XDRTB	A form of TB caused by bacteria that are resistant to some of the most effective anti-TB drugs. Strains have arisen after mismanagement of individuals with multi-drug-resistant TB.
Form 1148		This form is used to undertake a fitness to travel assessment.
Form 26		This form is for applicants who are required to undergo an immigration medical examination as part of an application for an Australian visa.
Form 160		This form is for applicants who are required to undergo a chest x-ray as part of an application for an Australian visa.
Health		Immigration Health Branch
Health Assessment Portal	HAP	A departmental system that allows officers to record applicant health declaration data, determine what immigration medical examinations applicants are required to undertake, and generate health identifiers and documentation.
Health Care Worker/Student	HCW/HCS	A person who works, or studies, in a hospital or health care centre.
Health Matrix		The Health Matrix is used to determine the type of health assessment the visa applicant will have to undertake based on several risk based factors.
Health Undertaking	HU	An undertaking that a visa holder gives to the Australian Government to attend a health clinic in Australia to follow-up on the condition for which the Health Undertaking was requested.

Health Waiver		Certain visa subclasses (subject to PIC 4007) have the provision of a health waiver.
Integrated Client Services Environment	ICSE	Is a departmental visa processing system which provides support for the processing and evidencing of citizenship applications as well as other onshore visa processing tasks.
Immigration Medical Examination	IME	The medical examinations required to determine whether a visa applicant satisfies the health requirement.
Immigration Records Information System	IRIS	IRIS is a departmental visa processing system used primarily to support the processing of visa applications offshore. Used to be the primary offshore visa processing system.
Interferon Gamma Release Assay	IGRA	A blood test that can aid in the diagnosis of TB infection. It does not differentiate latent TB infection from tuberculosis disease.
Latent Tuberculosis	Latent TB	A state of persistent immune response to stimulation by tuberculosis antigens without evidence of clinically manifested active TB.
Medical Officer of the Commonwealth	MOC	Registered medical practitioner appointed by the Department of Home Affairs. They may work directly for the Department, or be employed by the Migration Medical Services Provider.
Medical Treatment Visa	MTV	A visa which allows people to travel to, enter and remain in Australia for medical treatment or consultations and to support someone needing medical treatment or to donate an organ.
Migration Medical Services Provider	MMSP	A network of physicians contracted by the Department to complete applicants' immigration medical examinations in Australia.

Multi-drug resistant TB	MDRTB	A form of TB infection caused by bacteria that are resistant to treatment by both isoniazid and rifampicin.
Notes for Guidance for Medical Officers of the Commonwealth	NfG	Provides clinical guidance to MOCs about the costs of specific health conditions and prejudice to access.
Regulation 1.16AA	REG 1.16AA	Enables the Minister to appoint a MOC.
Regulation 2.25A	REG 2.25A	Requires s65 delegates to seek a MOC's opinion as to whether an applicant meets the health requirement, except in certain circumstances.
Review Medical Officers of the Commonwealth	RMOC	RMOC's undertake the review of a decision which a MOC has made previously.
Section 60		Enables the Minister to require the visa applicant to visit and be examined by a 'person qualified to determine the applicant's health'.
Section 65	s65	The Act enabling delegates to grant or refuse a visa depending on whether the s65 delegate is satisfied that the applicant meets, amongst other things, the health requirement.
Section 496		Enables the Minister to delegate separately the powers to consider and decide whether an applicant meets the health criterion, and all other aspects of the application.
State and Territory Health Clinic	STHC	The designated authority within that state or territory that deals with the comprehensive investigation, management, treatment and reporting of a specific health condition.
Third Person Note	TPN	A TPN is an official communication introducing a traveller to a foreign consulate of embassy.
Tuberculosis	TB	An infectious bacterial disease characterised by the growth of nodules (tubercules) in the tissues, especially in the lungs.
Tuberculin skin Test	TST	This test is done to see if an applicant has ever been exposed to tuberculosis. The test is done by putting a small amount of TB protein under the top layer of skin on an applicant's inner forearm. If an applicant has ever been exposed their skin will react after 2 days. forearm. If an applicant has ever been exposed their skin will react after 2 days.
8504- (First)entry date	FED	Visa holders outside Australia who are granted a permanent visa are required to enter Australia by a set date which is usually linked to the expiry of the health and character clearance (Some exceptions apply. For further information refer to Sch8/8504 - (First) Entry date condition)

Attachment C – Assurance and Control Matrix

1.1. Powers and Obligations

Implementation of this procedural instruction supports the requirements under *Migration Act 1958, Migration Regulations 1994 (the Regulations)* and Legislative Instrument IMMI15/144 - Required medical assessment but does not require any powers, delegations or authorisations.

1.2. Controls and Assurance

Related Policy	Health Governance Framework [Policy Statement] Sch4/4005-4007 - The Health Requirement [Policy Statement]
Procedures / Supporting Materials	Nil.
Training/Certification or Accreditation	No Specialist Training required
Other required job role requirements	Nil.
Other support mechanisms (eg who can provide further assistance in relation to any aspects of this instruction)	Queries can be submitted to health@homeaffairs.gov.au
Escalation arrangements	Escalation of concerns or issues regarding this Health Procedural Instruction can be sent to the Director, Migration Health via health@homeaffairs.gov.au. The email should be marked to the attention of the Director in the subject heading.
Recordkeeping (eg system based facilities to record decisions)	Correspondence in relation to the Health Procedural Instruction, within Migration Health , is held in TRIM.
Control Frameworks (please refer to a specific document outlining QA or QC arrangements)	Sch4/4005-4007 - The Health Requirement [Policy Statement] articulates over-arching principles of assurance and control supported by the Health Governance Framework [Policy Statement]
Job Vocational Framework Role	Policy and Program Implementation roles as well as Enabling and Support roles

Attachment D – Consultation

1.1. Internal Consultation

- Clinical Advisory Team – Immigration Health Policy and Assurance Branch
- Skilled and Family Visa Program
- Family Policy
- Border Entry Visa
- Character Integrity and Identity Policy
- Family Policy
- Refugee, Citizenship & Multicultural Programs Divisions

- Refugee and International Law Section
- Legal Framework and Notifications
- Health and Digital Correspondence Section
- Administrative Compliance Branch
- Temporary Partner Visa – Temporary Visa Programme Branch
- Visa Business Optimisation Branch
- Client Correspondence Team
- Global Feedback Unit
- Identity and Biometrics Program Management Section
- Visa Framework Section
- Deregulation Branch – Enterprise Governance and Performance Branch

1.2. External Consultation

The Department takes advice from the Department of Health on various topics which are documented in this procedural instruction.

Consultation occurred with the contracted Migration Medical Services Provider as required.