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Migration Amendment Regulations 2001 (No. /)¹

Statutory Rules 2001 No. /²

27

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Migration Act 1958*.

Dated 22 FEB 2001 2001

WILLIAM DEANE
Governor-General

By His Excellency's Command

PHILIP RUDDOCK
Minister for Immigration and Multicultural Affairs

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1 Name of Regulations

These Regulations are the *Migration Amendment Regulations 2001* (No. ✓).

2 Commencement

These Regulations commence as follows:

- (a) on 27 February 2001 — regulations 1, 2 and 4, subregulation 3 (1) and Schedule 1;
- (b) on 1 March 2001 — the remainder.

3 Amendment of *Migration Regulations 1994*

- (1) Schedule 1 amends the *Migration Regulations 1994*.
- (2) Schedule 2 amends the *Migration Regulations 1994*.

4 Transitional

- (1) The amendment made by item [1] of Schedule 1 has effect whether or not the provision of the *Social Security Act 1991*, under which the Determination mentioned in paragraph (b) of the definition of *eligible New Zealand citizen* is made, formed part of that Act at the time Schedule 1 commences.
- (2) The amendment made by item [26] of Schedule 1 applies to an application for a Skilled — Australian-sponsored (Migrant) (Class BQ) visa made on or after 27 February 2001.

Schedule 1 Amendments commencing on 27 February 2001

(regulation 3)

[1] Regulation 1.03, definition of *eligible New Zealand citizen*

substitute

eligible New Zealand citizen means:

- (a) a New Zealand citizen who:
 - (i) at the time of his or her last entry to Australia, would have satisfied public interest criteria 4001 to 4004 and 4007 to 4009; and
 - (ii) either:
 - (A) was in Australia on 26 February 2001 as the holder of a Subclass 444 (Special Category) visa that was in force on that date; or
 - (B) was in Australia as the holder of a Subclass 444 visa for a period of, or periods that total, not less than 1 year in the period of 2 years immediately before 27 February 2001; or
- (b) a New Zealand citizen not mentioned in paragraph (a) who has a certificate, issued under the *Social Security Act 1991*, that states that the citizen was, for the purposes of that Act, residing in Australia on a particular date.

[2] After regulation 2.08C*insert***2.08CA Certain applicants taken to have applied also for Employer Nomination (Residence) (Class BW) visas**

- (1) An applicant for a Skilled — New Zealand Citizen (Residence) (Class DB) visa, who has been nominated by an employer in respect of an appointment in the business of that employer but is not sponsored by a person, is taken also to have applied for an Employer Nomination (Residence) (Class BW) visa on the day when Immigration receives the employer nomination, if each of the following requirements is satisfied as at that date:
- (a) the applicant was less than 45 years of age at the time of the application for the Class DB visa;
 - (b) a decision to grant, or refuse to grant, to the applicant a Subclass 861 (Skilled — Onshore Independent New Zealand Citizen) visa has not been made;
 - (c) the applicant:
 - (i) has been assessed in relation to a Subclass 861 visa under Subdivision B of Division 3 of Part 2 of the Act; and
 - (ii) was given an assessed score that is more than or equal to the applicable pool mark at the time when the score was assessed;
 - (d) the appointment for which the applicant has been nominated is an approved appointment for regulation 5.19 on the basis that the nomination meets the requirements of subregulation (4) of that regulation;
 - (e) the applicant:
 - (i) has vocational English; and
 - (ii) has a diploma (within the meaning of subregulation 2.26A (6)) or a higher qualification.

- (2) If subregulation (1) applies to an applicant for a Class DB visa, any other person included in the applicant's application is taken also to be included in the applicant's application for an Employer Nomination (Residence) (Class BW) visa.

[3] Regulation 2.26A, heading

substitute

2.26A Prescribed qualifications and number of points — Skilled — Australian-sponsored (Migrant) (Class BQ), Skilled — Independent (Migrant) (Class BN) and Skilled — New Zealand Citizen (Residence) (Class DB) visas

[4] Subregulation 2.26A (1)

substitute

- (1) This regulation applies to an applicant for a Skilled — Australian-sponsored (Migrant) (Class BQ), Skilled — Independent (Migrant) (Class BN) or Skilled — New Zealand Citizen (Residence) (Class DB) visa.

[5] Paragraph 2.26A (2) (a)

omit

Subclass 136 (Skilled — Independent) or Subclass 137 (Skilled — State/Territory-nominated Independent) visa; and

insert

Subclass 136 (Skilled — Independent), Subclass 137 (Skilled — State/Territory-nominated Independent) or Subclass 861 (Skilled — Onshore Independent New Zealand Citizen) visa; and

[6] Paragraph 2.26A (2) (b)*omit*

visa.

insert

or Subclass 862 (Skilled — Onshore Australian-sponsored New Zealand Citizen) visa.

[7] Regulation 2.27A, heading*substitute***2.27A Combination of scores — points system:
applicants for Skilled — Australian-sponsored
(Migrant) (Class BQ) and Skilled — New
Zealand Citizen (Residence) (Class DB) visas****[8] Paragraph 2.27A (1) (a)***omit*visa (*the primary applicant*)*insert*visa, or an applicant for a Skilled — New Zealand Citizen (Residence) (Class DB) visa who has been sponsored, (*the primary applicant*)**[9] Paragraph 2.27B (1) (c)***omit*

(Class BQ) or Skilled — Independent (Migrant) (Class BN) visa; and

insert

(Class BQ), Skilled — Independent (Migrant) (Class BN) or Skilled — New Zealand Citizen (Residence) (Class DB) visa; and

[10] Schedule 1, paragraph 1114A (2) (a)*substitute*

- (a) First instalment (payable at the time application is made):
 - (i) In the case of an applicant who is taken, under regulation 2.08CA, to have applied for an Employer Nomination (Residence) (Class BW) visa: Nil
 - (ii) In any other case: \$1,595.

[11] Schedule 1, after item 1128C*insert***1128D. Skilled — New Zealand Citizen (Residence) (Class DB)**

- (1) Form: 47SK.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$1,595
 - (b) Second instalment (payable before grant of visa): Nil.
- (3) Other:
 - (a) Application must be made in Australia, but not in immigration clearance.
 - (b) Applicant must be in Australia, but not in immigration clearance.
 - (c) Applicant seeking to satisfy the primary criteria must be the holder of a Subclass 444 (Special Category) visa.
 - (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled — New Zealand Citizen (Residence) (Class DB) visa may be made at the same time and place as, and combined with, the application by that person.

(e) Application by an applicant seeking to satisfy the primary criteria must be accompanied by satisfactory evidence:

- (i) if the applicant has been sponsored — that a relevant assessing authority has assessed the skills of the applicant, or of the applicant's spouse, for his or her nominated skilled occupation; or
- (ii) in any other case — that a relevant assessing authority has assessed the skills of the applicant for his or her nominated skilled occupation.

(4) Subclasses:

- 861 (Skilled — Onshore Independent New Zealand Citizen)
- 862 (Skilled — Onshore Australian-sponsored New Zealand Citizen)
- 863 (Skilled — Onshore Regional-sponsored New Zealand Citizen)

[12] Schedule 1, after item 1214A

insert

**1214BA. New Zealand Citizen Family Relationship
(Temporary) (Class UP)**

- (1) Form: 147.
- (2) Visa application charge:
 - (a) First instalment (payable at the time application is made): \$150
 - (b) Second instalment (payable before grant of visa): Nil.
- (3) Other:
 - (a) Application may be made in or outside Australia (but not in immigration clearance).
 - (b) Applicant must be in Australia to make an application in Australia.

- (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a New Zealand Citizen Family Relationship (Temporary) (Class UP) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

461 (New Zealand Citizen Family Relationship (Temporary))

[13] Schedule 1, after paragraph 1219 (3) (b)

insert

- (c) Applicant is not the holder of a permanent visa.

[14] Schedule 2, clause 101.111, and the note

substitute

Note **eligible New Zealand citizen**, **dependent child** and **step-child** are defined in regulation 1.03, **adoption** is defined in regulation 1.04, and **spouse** is defined in regulation 1.15A. There are no interpretation provisions specific to this Part.

[15] Schedule 2, paragraph 101.211 (1) (a)

omit

a New Zealand citizen

insert

an eligible New Zealand citizen

[16] Schedule 2, subparagraph 101.211 (1) (c) (i)

omit

New Zealand citizen

insert

eligible New Zealand citizen

[17] Schedule 2, subparagraph 101.211 (1) (c) (ii)

omit each mention of

a New Zealand citizen

insert

an eligible New Zealand citizen

[18] Schedule 2, paragraph 101.212 (b)

omit

a New Zealand citizen

insert

an eligible New Zealand citizen

[19] Schedule 2, subparagraphs 101.212 (c) (i) and (ii)

omit

New Zealand citizen

insert

eligible New Zealand citizen

[20] Schedule 2, paragraph 102.211 (2) (b)

substitute

(b) the applicant was adopted overseas by a person who:

(i) was, at the time of the adoption, an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and

(ii) had been residing overseas for more than 12 months at the time of the application; and

[21] Schedule 2, paragraph 102.211 (5) (b)

substitute

- (b) the applicant was adopted in accordance with the Adoption Convention, in an Adoption Convention country, by a person who was an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen when the adoption took place, or by such a person and that person's spouse.

[22] Schedule 2, paragraph 102.212 (a)

substitute

- (a) an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and

[23] Schedule 2, subclause 117.211 (2)

substitute

- (2) In this clause:

Australian relative, in relation to an applicant, means a relative of the applicant who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

[24] Schedule 2, subparagraph 117.212 (b) (ii)

substitute

- (ii) the spouse is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and

[25] Schedule 2, after clause 138.216

insert

- 138.217 If the applicant does not satisfy the criteria in clauses 138.214, 138.215 and 138.216 but it appears, on the basis of the information provided in the application,

that the applicant will satisfy the criterion specified in clause 138.225 if regulation 2.27A applies, the applicant's spouse is an applicant for a Subclass 138 visa who satisfies the criteria in clauses 138.214, 138.215 and 138.216.

[26] Schedule 2, clause 138.228

substitute

138.228 If the applicant does not satisfy the criteria in clauses 138.223, 138.224, 138.226 and 138.227:

- (a) the applicant satisfies the criterion specified in clause 138.225 because of regulation 2.27A; and
- (b) the applicant's spouse:
 - (i) continues to satisfy the criteria in each of clauses 138.214, 138.215 and 138.216; and
 - (ii) satisfies the criteria in clauses 138.223, 138.224, 138.226 and 138.227.

[27] Schedule 2, paragraph 139.226 (b)

omit

subclause

insert

paragraph

[28] Schedule 2, paragraphs 309.211 (2) (c) and (d)

substitute

- (c) an eligible New Zealand citizen.

[29] Schedule 2, subparagraphs 309.211 (3) (a) (iii) and (iv)

substitute

- (iii) an eligible New Zealand citizen; and

[30] Schedule 2, after Part 459

insert

**Subclass 461 New Zealand Citizen Family
Relationship (Temporary)**

461.1 Interpretation

Note There are no interpretation provisions specific to this Part.

461.2 Primary criteria

Note All applicants must meet the primary criteria.

461.21 Criteria to be satisfied at time of application

461.211 The applicant is not a New Zealand citizen.

461.212 (1) The applicant meets the requirements of subclause (2), (3) or (4).

(2) An applicant meets the requirements of this subclause if the applicant is a member of the family unit of:

- (a) a person who is in Australia as the holder of a Subclass 444 (Special Category) visa; or
- (b) a person who:
 - (i) is outside Australia; and
 - (ii) will be accompanying the applicant to Australia; and
 - (iii) will, on entry, be the holder of a special category visa.

(3) An applicant meets the requirements of this subclause if the applicant:

- (a) either:
 - (i) is in Australia as the holder of a Subclass 461 (New Zealand Citizen Family Relationship (Temporary)) visa; or

- (ii) is not the holder of a substantive visa and the last substantive visa held by the applicant was a Subclass 461 visa; and
 - (b) is no longer a member of the family unit of the person in relation to whom the applicant was granted a Subclass 461 visa; and
 - (c) has not become a member of the family unit of another person (whether or not the applicant is still a member of the family unit of that other person).
- (4) An applicant meets the requirements of this subclause if the applicant:
- (a) is outside Australia; and
 - (b) either:
 - (i) the applicant was lawfully present in Australia as the holder of a Subclass 461 visa for a period of, or periods that total, not less than 2 years in the period of 5 years immediately before the application for the visa; or
 - (ii) the Minister is satisfied that the applicant:
 - (A) has substantial business, cultural, employment or personal ties with Australia which are of benefit to Australia; and
 - (B) has not been absent from Australia for a continuous period of 5 years or more immediately before the application for the visa, unless there are compelling reasons for the absence; and
 - (c) on last departure from Australia was a holder of a Subclass 461 visa; and
 - (d) is no longer a member of the family unit of the person in relation to whom the applicant was granted a Subclass 461 visa; and
 - (e) has not become a member of the family unit of another person (whether or not the applicant is

still a member of the family unit of that other person).

- 461.213 If the application is made in Australia, the applicant:
- (a) is the holder of a substantive temporary visa other than a Subclass 426 (Domestic Worker (Temporary) — Diplomatic or Consular) visa; or
 - (b) does not hold a substantive visa and:
 - (i) immediately before ceasing to hold such a visa was the holder of a substantive temporary visa other than a Subclass 426 visa; and
 - (ii) satisfies Schedule 3 criteria 3002, 3003, 3004 and 3005.

461.22 Criteria to be satisfied at time of decision

- 461.221 The applicant continues to satisfy the criterion in subclause 461.212 (1).
- 461.222 The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.
- 461.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4007, 4008, 4009, 4010, 4013 and 4014.
- 461.224 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.
- 461.225 If the application is made in Australia, the applicant has complied substantially with the conditions to which the visa held, or last held, by the applicant is, or was, subject.
- 461.226 If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

461.3 Secondary criteria

Note All applicants must satisfy the primary criteria.

461.4 Circumstances applicable to grant

461.411 If the application is made outside Australia, the applicant must be outside Australia at the time of grant.

461.412 If the application is made in Australia, the applicant must be in Australia at the time of grant.

461.5 When visa is in effect

461.511 Temporary visa permitting the holder to travel to, and enter and remain in, Australia for a period of 5 years from the date of grant.

461.6 Conditions

461.611 Either or both of conditions 8303 and 8501 may be imposed.

461.7 Way of giving evidence

461.711 Visa label affixed to a valid passport.

[31] Schedule 2, paragraph 773.213 (2) (zn)

substitute

(zn) Other Family (Residence) (Class BU);

(zo) Skilled — New Zealand Citizen (Residence) (Class DB).

[32] Schedule 2, after paragraph 773.213 (3) (i)

insert

(ia) New Zealand Citizen Family Relationship (Temporary) (Class UP);

[33] Schedule 2, paragraph 857.213 (b)*substitute*

(b) either:

(i) in the case of an applicant who is taken, under regulation 2.08CA, to have applied for an Employer Nomination (Residence) (Class BW) visa:

(A) had not turned 45 at the time of the application for a Skilled — New Zealand Citizen (Residence) (Class DB) visa; and

(B) has vocational English; and

(C) has a diploma (within the meaning of subregulation 2.26A (6)), or a higher qualification, that is, unless the appointment is exceptional, relevant to that appointment; and

(D) is, or is eligible to become, the holder of a qualification of a kind specified in subregulation 5.19 (3A) if it is mandatory in Australia, in respect of work of the kind to be performed under the appointment, that a person be the holder of the qualification; or

(ii) in any other case and unless the appointment is exceptional:

(A) has not turned 45; and

(B) has functional English; and

(C) has a diploma (within the meaning of subregulation 2.26A (6)) or a higher qualification that is relevant to that appointment; and

[34] Schedule 2, after Part 859*insert***Subclass 861 Skilled — Onshore Independent
New Zealand Citizen****861.1 Interpretation**

861.111 In this Part:

completed includes having met the requirements for award of a degree, diploma or trade qualification.

degree and *diploma* have the meanings given in subregulation 2.26A (6).

employed has the meaning given in subregulation 2.26A (7).

trade qualification has the meaning given in subregulation 2.26A (6).

Note 1 For *relevant assessing authority* and *skilled occupation*, see regulation 1.03.

Note 2 For *vocational English*, see regulation 1.15B.

861.2 Primary criteria

Note The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this Subclass need satisfy only the secondary criteria.

861.21 Criteria to be satisfied at time of application

861.211 The applicant is less than 45 years of age.

861.212 The applicant has nominated a skilled occupation in his or her application.

861.213 (1) Subject to subclause (2), the applicant has been employed in a skilled occupation:

- (a) if 60 points are specified by Gazette Notice as available for the skilled occupation nominated in the application — for a period of, or for periods

totalling, at least 12 months in the period of 18 months immediately before the day on which the application was made; or

- (b) if 40 or 50 points are specified by Gazette Notice as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 24 months in the period of 36 months immediately before the day on which the application was made.

(2) Subclause (1) does not apply to an applicant who has, in the 6 months immediately before the day on which the application was made, completed a degree, diploma or trade qualification for award by an Australian educational institution as a result of at least 1 year of full-time study in Australia.

- 861.214 The applicant is in Australia and is the holder of a Subclass 444 (Special Category) visa.

861.22 Criteria to be satisfied at time of decision

- 861.221 If regulation 2.27B applies, the applicant provides, for the purposes of the application, the assessment of his or her skills mentioned in subregulation 2.27B (4).

- 861.222 The skills of the applicant for the nominated skilled occupation have been assessed by the relevant assessing authority as suitable for that occupation.

- 861.223 The applicant has the qualifying score when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act.

Note That Subdivision of the Act provides in sections 92 to 96 for the application of a points system, under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark. The prescribed points and the manner of their allocation are provided for in Division 2.2 (see regulation 2.26A), and Schedule 6A, of these Regulations. Pool marks and pass marks are set from time to time by the Minister by notice in the *Gazette* (Act, section 96).

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- 861.224 The applicant has vocational English.
- 861.225 No evidence has become available since the time of application that the information given or used as part of the assessment mentioned in paragraph 1128D (3) (e) of Schedule 1 is false or misleading in a material particular.
- 861.226 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 861.227 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 861.228 If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.
- 861.229 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 861 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 861 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
 - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 861.230 If a person (in this clause called the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
 - (b) has not turned 18; and

- (c) made a combined application with the applicant —

public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

861.231 Approval of the application would not result in either:

- (a) the number of Subclass 861 visas granted in a financial year exceeding the maximum number of Subclass 861 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes (including Subclass 861) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

861.3 Secondary criteria

Note These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

861.31 Criteria to be satisfied at time of application

861.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 861.21.

861.32 Criteria to be satisfied at time of decision

861.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 861 visa.

861.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

861.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

861.324 Either:

- (a) the applicant is included in any assurance of support given in respect of the person who satisfies the primary criteria, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

861.325 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

861.4 Circumstances applicable to grant

861.411 The applicant must be in Australia when the visa is granted.

861.5 When visa is in effect

861.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

861.6 Conditions: Nil

861.7 Way of giving evidence

861.711 Visa label affixed to a valid passport.

Subclass 862 Skilled — Onshore Australian-sponsored New Zealand Citizen

862.1 Interpretation

862.111 In this Part:

completed includes having met the requirements for award of a degree, diploma or trade qualification.

degree and *diploma* have the meanings given in subregulation 2.26A (6).

employed has the meaning given in subregulation 2.26A (7).

trade qualification has the meaning given in subregulation 2.26A (6).

Note 1 For *relevant assessing authority* and *skilled occupation*, see regulation 1.03.

Note 2 For *vocational English*, see regulation 1.15B.

862.2 Primary criteria

Note The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this Subclass need satisfy only the secondary criteria.

862.21 Criteria to be satisfied at time of application

862.211 The applicant has one of the following relationships to a person (the *sponsor*) who has turned 18 and is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen:

- (a) a parent;
- (b) a child or adoptive child, or a step-child, who is not a dependent child of the sponsor;
- (c) a brother or sister, an adoptive brother or sister or a step-brother or step-sister;
- (d) a nephew or niece, an adoptive nephew or niece or a step-nephew or step-niece.

862.212 The applicant is sponsored by the sponsor.

862.213 An assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

862.214 The applicant is less than 45 years of age.

862.215 The applicant has nominated a skilled occupation in his or her application.

862.216 (1) Subject to subclause (2), the applicant has been employed in a skilled occupation:

- (a) if 60 points are specified by Gazette Notice as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 12 months in the period of 18 months immediately before the day on which the application was made; or
- (b) if 40 or 50 points are specified by Gazette Notice as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 24 months in the period of 36 months immediately before the day on which the application was made.

(2) Subclause (1) does not apply to an applicant who has, in the 6 months immediately before the day on which the application was made, completed a degree, diploma or trade qualification for award by an Australian educational institution as a result of at least 1 year of full-time study in Australia.

862.217 The applicant is in Australia and is the holder of a Subclass 444 (Special Category) visa.

862.218 If the applicant does not satisfy the criteria in clauses 862.214, 862.215 and 862.216 but it appears, on the basis of the information provided in the application, that the applicant will satisfy the criterion specified in clause 862.225 if regulation 2.27A applies, the applicant's spouse is an applicant for a Subclass 862 visa who satisfies the criteria in clauses 862.214, 862.215 and 862.216.

862.22 Criteria to be satisfied at time of decision

862.221 The sponsorship referred to in clause 862.212 has been approved by the Minister and is still in force.

862.222 The assurance of support referred to in clause 862.213 continues to be acceptable to the Minister.

862.223 If regulation 2.27B applies, the applicant provides, for the purposes of the application, the assessment of

his or her skills mentioned in subregulation 2.27B (4).

862.224 The skills of the applicant for the nominated skilled occupation have been assessed by the relevant assessing authority as suitable for that occupation.

862.225 The applicant has the qualifying score when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act.

Note That Subdivision of the Act provides in sections 92 to 96 for the application of a points system, under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark. The prescribed points and the manner of their allocation are provided for in Division 2.2 (regulation 2.26A), and Schedule 6A, of these Regulations. In certain circumstances, attributes of the spouse of an applicant may be taken into account (regulation 2.27A). Pool marks and pass marks are set from time to time by the Minister by notice in the *Gazette* (Act, section 96).

862.226 The applicant has vocational English.

862.227 No evidence has become available since the time of application that the information given or used as part of the assessment mentioned in paragraph 1128D (3) (e) of Schedule 1 is false or misleading in a material particular.

862.228 If the applicant does not satisfy the criteria in clauses 862.223, 862.224, 862.226 and 862.227:

- (a) the applicant satisfies the criterion specified in clause 862.225 because of regulation 2.27A; and
- (b) the applicant's spouse:
 - (i) continues to satisfy the criteria in each of clauses 862.214, 862.215 and 862.216; and
 - (ii) satisfies the criteria in clauses 862.223, 862.224, 862.226 and 862.227.

862.229 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

- 862.230 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 862.231 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 862 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 862 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
 - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 862.232 If a person (in this clause called the *additional applicant*):
- (a) is a member of the family unit of the applicant; and
 - (b) has not turned 18; and
 - (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.
- 862.233 Approval of the application would not result in either:
- (a) the number of Subclass 862 visas granted in a financial year exceeding the maximum number of Subclass 862 visas, as determined by Gazette Notice, that may be granted in that financial year; or

- (b) the number of visas of particular classes (including Subclass 862) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

862.3 Secondary criteria

Note These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

862.31 Criteria to be satisfied at time of application

- 862.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 862.21.
- 862.312 The sponsorship referred to in clause 862.212 in respect of the person who satisfies the primary criteria includes sponsorship of the applicant.
- 862.313 Either:
- (a) the applicant is included in the assurance of support given in respect of the person who satisfies the primary criteria, and that assurance has been accepted by the Minister; or
 - (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

862.32 Criteria to be satisfied at time of decision

- 862.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 862 visa.
- 862.322 The sponsorship referred to in clause 862.312 has been approved by the Minister and is still in force.
- 862.323 The assurance of support referred to in clause 862.313 continues to be acceptable to the Minister.

862.324 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

862.325 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

862.326 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

862.4 Circumstances applicable to grant

862.411 The applicant must be in Australia when the visa is granted.

862.5 When visa is in effect

862.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

862.6 Conditions: Nil

862.7 Way of giving evidence

862.711 Visa label affixed to a valid passport.

Subclass 863 Skilled — Onshore Regional-sponsored New Zealand Citizen

863.1 Interpretation

863.111 In this Part:

completed includes having met the requirements for award of a degree, diploma or trade qualification.

degree has the meaning given in subregulation 2.26A (6).

designated area means an area specified by Gazette Notice under item 6701 in Schedule 6 as a designated area.

diploma has the meaning given in subregulation 2.26A (6).

employed has the meaning given in subregulation 2.26A (7).

trade qualification has the meaning given in subregulation 2.26A (6).

Note 1 For **relevant assessing authority** and **skilled occupation**, see regulation 1.03.

Note 2 For **vocational English**, see regulation 1.15B.

863.2 Primary criteria

Note The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this Subclass need satisfy only the secondary criteria.

863.21 Criteria to be satisfied at time of application

863.211 The applicant has one of the following relationships to a person (the **sponsor**) who has turned 18 and is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen:

- (a) a parent;
- (b) a child or adoptive child, or a step-child, who is not a dependent child of the sponsor;
- (c) a brother or sister, an adoptive brother or sister or a step-brother or step-sister;
- (d) a nephew or niece, an adoptive nephew or niece or a step-nephew or step-niece;
- (e) a grandchild or first cousin.

863.212 The applicant is sponsored by the sponsor.

863.213 The sponsor:

- (a) is resident in a designated area; and

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- (b) was resident in one or other of the designated areas throughout the period of 12 months immediately before Immigration receives the relevant sponsorship (except for short absences for the purposes of business or recreation).
- 863.214 An assurance of support in relation to the applicant has been given, and has been accepted by the Minister.
- 863.215 The applicant is less than 45 years of age.
- 863.216 The applicant has nominated a skilled occupation in his or her application.
- 863.217 (1) Subject to subclause (2), the applicant has been employed in a skilled occupation:
- (a) if 60 points are specified by Gazette Notice as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 6 months in the period of 12 months immediately before the day on which the application was made; or
- (b) if 40 or 50 points are specified by Gazette Notice as available for the skilled occupation nominated in the application — for a period of, or for periods totalling, at least 12 months in the period of 18 months immediately before the day on which the application was made.
- (2) Subclause (1) does not apply to an applicant who has, in the 6 months immediately before the day on which the application was made, completed a degree, diploma or trade qualification for award by an Australian educational institution as a result of at least 1 year of full-time study in Australia.
- 863.218 Despite clauses 863.215, 863.216 and 863.217, the applicant satisfies the criteria in each of those clauses if the applicant's spouse is an applicant for a Subclass 863 visa who satisfies each of those criteria.
- 863.219 The applicant is in Australia and is the holder of a Subclass 444 (Special Category) visa.

863.22 Criteria to be satisfied at time of decision

- 863.221 The sponsorship referred to in clause 863.212 has been approved by the Minister and is still in force.
- 863.222 The sponsor is still resident in a designated area.
- 863.223 The assurance of support referred to in clause 863.214 continues to be acceptable to the Minister.
- 863.224 If regulation 2.27B applies, the applicant provides, for the purposes of the application, the assessment of his or her skills mentioned in subregulation 2.27B (4).
- 863.225 The skills of the applicant for the nominated skilled occupation have been assessed by the relevant assessing authority as suitable for that occupation.
- 863.226 Either the applicant has vocational English, or:
- (a) he or she has proficiency in English of at least the standard required for the award of 10 points for the language skill factor of the general points test specified in item 6311 of Schedule 6; and
 - (b) his or her sponsor lives in a State or Territory specified by Gazette Notice as a State or Territory in which arrangements are established for suitable English-language training for applicants to whom this paragraph applies; and
 - (c) the Minister is satisfied that he or she has paid any fee or charge for that training.
- 863.227 No evidence has become available since the time of application that the information given or used as part of the assessment mentioned in paragraph 1128D (3) (e) of Schedule 1 is false or misleading in a material particular.
- 863.228 Despite clauses 863.224, 863.225, 863.226 and 863.227, the applicant satisfies the criteria in each of those clauses if:
- (a) the applicant satisfied the criteria in clause 863.218 at the time of application; and

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- (b) the applicant's spouse continues to satisfy the criteria in each of clauses 863.215, 863.216 and 863.217; and
- (c) the applicant's spouse satisfies the criteria in each of clauses 863.224, 863.225, 863.226 and 863.227.
- 863.229 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 863.230 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 863.231 Each member of the family unit of the applicant who is an applicant for a Subclass 863 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- 863.232 Each member of the family unit of the applicant who is not an applicant for a Subclass 863 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 863.233 If a person (in this clause called the ***additional applicant***):
- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant —
- public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant.

863.234 Approval of the application would not result in either:

- (a) the number of Subclass 863 visas granted in a financial year exceeding the maximum number of Subclass 863 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes (including Subclass 863) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

863.3 Secondary criteria

Note These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

863.31 Criteria to be satisfied at time of application

863.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 863.21.

863.312 The sponsorship referred to in clause 863.212 in respect of the person who satisfies the primary criteria includes sponsorship of the applicant.

863.313 Either:

- (a) the applicant is included in the assurance of support given in respect of the person who satisfies the primary criteria, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

863.32 Criteria to be satisfied at time of decision

- 863.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 863 visa.
- 863.322 The sponsorship referred to in clause 863.312 has been approved by the Minister and is still in force.
- 863.323 The assurance of support referred to in clause 863.313 continues to be acceptable to the Minister.
- 863.324 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 863.325 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 863.326 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

863.4 Circumstances applicable to grant

- 863.411 The applicant must be in Australia when the visa is granted.

863.5 When visa is in effect

- 863.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

863.6 Conditions: Nil**863.7 Way of giving evidence**

- 863.711 Visa label affixed to a valid passport.

Schedule 2 Amendments commencing on 1 March 2001

(regulation 3)

[1] Regulation 1.03, after definition of *step-child*

insert

student visa means a Student (Temporary) (Class TU) visa.

[2] Schedule 4, after paragraph 4013 (2) (c)

insert

(ca) because the person held a student visa and the Minister was satisfied that a ground mentioned in paragraph 116 (1) (fa) of the Act applied to the person; or

Notes

- These Regulations amend Statutory Rules 1994 No. 268, as amended by 1994 Nos. 280, 322, 376 and 452; 1995 Nos. 3, 38, 117, 134, 268, 302 and 411; 1996 Nos. 12, 75 (regulations 7 and 8 were disallowed by the Senate on 11 September 1996), 76, 108, 121, 135, 198, 211 (regulations 4, 10, 11, 13.3, 14-37, 47-49, 51, 53-55, 74, 77.16, 77.19, 78, 85, 119 and 114 were disallowed by the Senate on 7 November 1996) and 276; 1997 Nos. 17, 64, 91, 92, 109, 137, 184, 185, 216, 263, 279, 288, 301 and 354; 1998 Nos. 36, 37, 104 (regulation 15 was disallowed by the Senate on 2 July 1998), 139, 210, 214, 284, 285 (disallowed by the Senate on 31 March 1999), 304, 305, 306 and 322; 1999 Nos. 8, 58, 64, 68 (as amended by 1999 Nos. 81 and 132), 76 (as amended by 1999 Nos. 81 and 132), 81 (as amended by 1999 No. 132), 82, 132, 155, 198, 220 (as amended by 1999 Nos. 259 and 321), 243, 259 (as amended by 2000 No. 259), 260 (as amended by 1999 No. 321), 321 and 325; 2000 Nos. 52, 62, 108, 192, 259 (as amended by 2000 No. 284) (item [4108] of Schedule 4 was disallowed by the Senate on 1 November 2000), 284 and 335.

- Notified in the *Commonwealth of Australia Gazette* on 2001.

27 February