

Migration (Liberia - United Nations Security Council Resolution No. 1343) Regulations 2001 2001 No. 241

EXPLANATORY STATEMENT

STATUTORY RULES 2001 No. 241

Issued by the Authority of the Minister for Immigration and Multicultural Affairs

Migration Act 1958

Migration (Liberia - United Nations Security Council Resolution No. 1343) Regulations 2001

Subsection 504(1) of the *Migration Act 1958* ("the Act") provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which are required or permitted to be prescribed by the Act, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, regulations may be made pursuant to the following powers under the Act:

- subsection 31(3) of the Act provides that the regulations may prescribe criteria for a visa or visas of a specified class;
- paragraph 116(1)(g) of the Act provides that, subject to subsections 116(2) and 116(3), the Minister may cancel a visa if he or, she is satisfied that a prescribed ground for cancelling a visa applies to the visa holder;
- subsection 116(2) of the Act provides that the Minister is not to cancel a visa if there exist prescribed circumstances in which a visa is not to be cancelled.

The purpose of the Regulations is to implement the objectives of the United Nations Security Council Resolution 1343 (2001) ("the Resolution"), which imposes sanctions against persons designated by a Committee of the Security Council established for the purposes of the Resolution. Australia is obliged under the Charter of the United Nations to comply with decisions of the Security Council.

The intended effect of the Regulations is to:

- prevent the grant of a visa to a person who falls within the definition of "designated person" under regulation 3 of the Regulations, unless the Minister is satisfied that certain circumstances exist; and
- allow the Minister to cancel a visa if the Minister is satisfied that that the visa holder falls within the definition of "designated person" under regulation 3 of the Regulations, unless the Minister is satisfied that certain circumstances exist.

A "designated person" is any of the following persons designated by the Committee established under paragraph 14 of the Resolution:

- a senior member of the Government of Liberia;
- a senior member of the Liberian armed forces;

- a spouse of either of the above;
- an individual providing financial or military support to armed rebel groups in countries neighbouring Liberia, in particular the Revolutionary United Front in Sierra Leone.

Details of the Regulations are set out in the Attachment.

The Regulations commence on 1 November 2001.

Attachment

Regulation 1 - Name of Regulations

Regulation 1 provides that these Regulations are the *Migration (Liberia - United Nations Security Council Resolution No. 1343) Regulations 2001*.

Regulation 2 - Commencement

Regulation 2 provides that the *Migration (Liberia - United Nations Security Council Resolution No. 1343) Regulations 2001* ("the Regulations") commence on 1 November 2001.

Regulation 3 - Definitions

Regulation 3 defines the meaning of the terms "Act", "Committee", "designated person" and "Resolution" for the purpose of the Regulations. In particular, "designated person" is defined to mean any of the following persons:

- a senior member of the Government of Liberia;
- a senior member of the Liberian armed forces;
- a spouse of a person mentioned above; or
- an individual providing financial or military support to armed rebel groups in countries neighbouring Liberia, in particular the Revolutionary United Front in Sierra Leone.

The definition of "designated person" is based on paragraph 7 (a) of the Resolution.

Regulation 4 - Application

Regulation 4 sets out how the Regulations are to be applied. The effect of the regulation is to ensure that the Regulations apply in addition to, and despite any provision to the contrary in, any other Regulations under the Act.

In particular, if an applicant for a visa is or becomes a "designated person" under regulation 3 of the Regulations at the time of decision for that visa, the applicant must meet the criterion set out in regulation 5, irrespective of the class of visa for which he or she has applied. That is, the criterion in regulation 5 must be satisfied in addition to the criteria specified for that visa class under the *Migration Regulations 1994*.

Regulation 5 - Special criteria for grant of visas

Subregulation 5(1) provides that regulation 5 applies in relation to an application for a visa made but not finally determined before 1 November 2001, or made on or after 1 November 2001.

Therefore, if an applicant for a visa is a "designated person" at the time of decision on or after 1 November 2001, that person will not be able to be granted a visa unless he or she satisfies the criterion set out in subregulation 5(2). However, an applicant will not have to satisfy subregulation 5(2) if, at the time of decision on or after 1 November 2001, the applicant is not a designated person.

Subregulation 5(2) sets out a criterion applicable at the time of decision to an application for a visa of any class by a designated person. Under subsection 65(1) of the Act, if the applicant does not satisfy the criterion in subregulation 5(2) of the Regulations, the Minister is to refuse to grant the visa.

The criterion only has to be satisfied at the time of decision. Therefore, it applies not only in relation to a person who is a designated person from the time of application until the time of decision, but also to a person who becomes a designated person after the time of application and who is therefore a designated person at the time of decision.

A designated person will be able to satisfy the criterion in regulation 5 if he or she satisfies the Minister in relation to either paragraph 5(2)(a) or 5(2)(b).

Paragraph 5(2)(a) is based on paragraph 7(b) of the Resolution.

Paragraph 5(2)(b) is intended to encompass the exceptions set out in paragraph 7(a) of the Resolution which relate to:

- a State not having to refuse entry into its territory to its own nationals;
- the intention not to impede the transit of representatives of the Government of Liberia to United Nations Headquarters to conduct United Nations business; and
- the intention not to impede the participation of the Government of Liberia in the official meetings of the Mano River Union, the Economic Community of West African States and the Organization of African Unity.

Regulation 6 - Prescribed ground for cancelling visas (Act s 116)

Regulation 6 sets out a prescribed ground for cancelling a visa, and prescribed circumstances in which a visa is not to be cancelled.

Subregulation 6(1) provides that regulation 6 applies to a visa granted on, before or after 1 November 2001. This makes it clear that existing visas as well as visas granted on or after 1 November 2001 are:

- subject to the cancellation ground set out in subregulation 6(2); and
- subject to the circumstances set out in subregulation 6(3) in relation to which the Minister is not to cancel a visa on the ground prescribed in subregulation 6(2).

Subregulation 6(2) prescribes a ground for cancelling a visa pursuant to paragraph 116(1)(g) of the Act. However, the visa cannot be cancelled on this ground if the Minister is satisfied that the visa holder meets the requirements of paragraph 6(3)(a) or 6(3)(b).

Subject to subregulation 6(3), the Minister may therefore cancel a visa if the Minister is satisfied that the holder of the visa is or becomes a designated person, unless the visa is one that was granted on the basis that the applicant satisfied the criterion in subregulation 5(2). The cancellation ground in subregulation 6(2) is therefore intended to apply in relation to visas granted prior to 1 November 2001, as subregulation 5(2) only has effect in relation to visas granted on or after that date.

The Regulations do not contain a ground for cancellation of a visa granted on or after 1 November 2001 where a person is or has become a designated person. This is because the power to cancel such a visa is already contained in paragraph 116(1)(a) of the Act. That is, on or after 1 November 2001, if an applicant was a designated person at the time of decision, then in order to have been granted a visa, the designated person must have satisfied subregulation 5(2). Paragraph 116(1)(a) of the Act allows the Minister to cancel a visa if the Minister is satisfied that any circumstances which permitted the grant of the visa no longer exist.

Subregulation 6(3) prescribes circumstances pursuant to subsection 116(2) of the Act in which a visa is not to be cancelled.

The circumstances are based on subregulation 5(2), except that the circumstances in subregulation 6(3) relate to the holder of a visa rather than an applicant for a visa.

As for subregulation 6(2), subregulation 6(3) is intended to apply in relation to visas granted prior to 1 November 2001. Therefore, if a person holds a visa that was granted prior to 1 November 2001 and that person is or becomes a designated person, the Minister is not to cancel the visa if the Minister is satisfied as to the circumstances set out in either paragraph 6(3)(a) or 6(3)(b).