Commonwealth Coat of Arms

Migration Amendment Regulation 2013 (No. 2)

Select Legislative Instrument No. 75, 2013

I, Quentin Bryce AC CVO, Governor‑General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Migration Act 1958*.

Dated 16 May 2013

Quentin Bryce

Governor‑General

By Her Excellency’s Command

Brendan O’Connor

Minister for Immigration and Citizenship

Contents

1 Name of regulation 1

2 Commencement 1

3 Authority 1

4 Schedule(s) 1

Schedule 1—Amendments 2

Migration Regulations 1994 2

1 Name of regulation

This regulation is the *Migration Amendment Regulation 2013 (No. 2)*.

2 Commencement

This regulation commences on 1 June 2013.

3 Authority

This regulation is made under the *Migration Act 1958*.

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Migration Regulations 1994

1 Subitem 1402(2) of Schedule 1

Repeal the subitem, substitute:

(2) Visa application charge:

(a) First instalment (payable at the time the application is made):

| **Item** | **Column 1**  **For...** | **Column 2**  **the charge is...** |
| --- | --- | --- |
| 1 | an applicant whose application includes a proposal by an approved proposing organisation described in Part 200, 201, 202, 203 or 204 of Schedule 2 | $2,680 |
| 2 | any other applicant | nil |

(b) Second instalment (payable before grant of visa):

| **Item** | **Column 1**  **For...** | **Column 2**  **the charge is...** |
| --- | --- | --- |
| 1 | an applicant:  (a) whose application includes a proposal by an approved proposing organisation described in Part 200, 201, 202, 203 or 204 of Schedule 2; and  (b) who satisfies the primary criteria for the grant of the visa | $16,444 |
| 2 | an applicant:  (a) whose application includes a proposal by an approved proposing organisation described in Part 200, 201, 202, 203 or 204 of Schedule 2; and  (b) who satisfies the secondary criteria for the grant of the visa | $2,680 |
| 3 | any other applicant | nil |

2 Paragraph 1402(3)(a) of Schedule 1

Omit “in a Gazette Notice”, substitute “by the Minister in an instrument in writing”.

3 After subitem 1402(3) of Schedule 1

Insert:

(3A) In addition to subitem (3), for an application that includes a proposal by an approved proposing organisation described in Part 200, 201, 202, 203 or 204 of Schedule 2:

(a) the applicant may be a person who made a valid application for a visa, in accordance with form 842, before 1 June 2013 (whether or not the application was accompanied by form 681); and

(b) the application must include form 1417, completed by the approved proposing organisation; and

(c) an application that includes a proposal by an approved proposing organisation must not include form 681.

Note 1: This subitem commenced on 1 June 2013 as part of the Department’s Community Proposal Pilot program. Applicants who made a valid application for a Refugee and Humanitarian (Class XB) visa, using form 842, before 1 June 2013 may make a new application for a Refugee and Humanitarian (Class XB) visa as part of that program, but are not required to do so.

Note 2 Applicants wishing to make a new application for a Refugee and Humanitarian (Class XB) visa as part of the Community Proposal Pilot program must not include form 681 as part of that application.

4 Clause 200.111 of Schedule 2

Insert:

***approved proposing organisation*** means an organisation in relation to which the following requirements are met:

(a) the organisation has entered into a deed with the Department relating to:

(i) the proposal of applicants for a Refugee and Humanitarian (Class XB) visa; and

(ii) the provision and management of resettlement services to an applicant that it has proposed;

(b) the deed:

(i) is in effect; and

(ii) is not suspended under the terms of the deed.

Note: When this definition commenced on 1 June 2013, these requirements were part of the Department’s Community Proposal Pilot program.

5 Subclause 200.211(1) of Schedule 2

Omit “The applicant:”, substitute “If the application does not include a proposal by an approved proposing organisation, the applicant:”.

6 After clause 200.211 of Schedule 2

Insert:

200.212

If the application includes a proposal by an approved proposing organisation:

(a) the applicant is subject to persecution in the applicant’s home country and is living in a country other than the applicant’s home country; and

(b) the proposal is not made on behalf of another person who is mentioned in subregulation 2.07AM(5); and

(c) the applicant is still proposed by the approved proposing organisation.

7 Clause 200.221 of Schedule 2

Repeal the clause, substitute:

200.221

(1) If the criteria in clause 200.211 apply to the applicant, the applicant continues to satisfy the criteria.

(2) If the criteria in clause 200.212 apply to the applicant, the applicant continues to satisfy the criteria.

8 Clause 200.222 of Schedule 2

Omit “The Minister is satisfied”, substitute “(1) If the application does not include a proposal by an approved proposing organisation, the Minister is satisfied”.

9 At the end of clause 200.222 of Schedule 2

Add:

(2) If the application includes a proposal by an approved proposing organisation, the Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a permanent visa, having regard to:

(a) the degree of persecution to which the applicant is subject in the applicant’s home country; and

(b) the extent of the applicant’s connection with Australia; and

(c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant’s settlement and protection from persecution; and

(d) the capacity of the approved proposing organisation to provide for the permanent settlement of the applicant in Australia.

10 Paragraph 200.311(a) of Schedule 2

Repeal the paragraph, substitute:

(a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of:

(i) paragraphs 200.211(1)(a) or (aa); or

(ii) paragraph 200.212(a); or

11 Paragraph 200.321(a) of Schedule 2

Repeal the paragraph, substitute:

(a) continues to be a member of the family unit of a person who, having satisfied the primary criteria and, in particular, having met the requirements of:

(i) paragraph 200.211(1)(a); or

(ii) paragraph 200.211(1)(aa); or

(iii) paragraph 200.212(a);

is the holder of a Subclass 200 visa; or

12 At the end of clause 200.411 of Schedule 2

Add:

Note: If the application includes a proposal by an approved proposing organisation, the second instalment of the visa application charge must be paid before the visa can be granted.

13 Clause 201.111 of Schedule 2

Insert:

***approved proposing organisation*** means an organisation in relation to which the following requirements are met:

(a) the organisation has entered into a deed with the Department relating to:

(i) the proposal of applicants for a Refugee and Humanitarian (Class XB) visa; and

(ii) the provision and management of resettlement services to an applicant that it has proposed;

(b) the deed:

(i) is in effect; and

(ii) is not suspended under the terms of the deed.

Note: When this definition commenced on 1 June 2013, these requirements were part of the Department’s Community Proposal Pilot program.

14 Subclause 201.211(1) of Schedule 2

Omit “The applicant:”, substitute “If the application does not include a proposal by an approved proposing organisation, the applicant:”.

15 After clause 201.211 of Schedule 2

Insert:

201.212

If the application includes a proposal by an approved proposing organisation:

(a) the applicant is subject to persecution in the applicant’s home country and is living in the applicant’s home country; and

(b) the proposal is not made on behalf of another person who is mentioned in subregulation 2.07AM(5); and

(c) the applicant is still proposed by the approved proposing organisation.

16 Clause 201.221 of Schedule 2

Repeal the clause, substitute:

201.221

(1) If the criteria in clause 201.211 apply to the applicant, the applicant continues to satisfy the criteria.

(2) If the criteria in clause 201.212 apply to the applicant, the applicant continues to satisfy the criteria.

17 Clause 201.222 of Schedule 2

Omit “The Minister is satisfied”, substitute “(1) If the application does not include a proposal by an approved proposing organisation, the Minister is satisfied”.

18 At the end of clause 201.222 of Schedule 2

Add:

(2) If the application includes a proposal by an approved proposing organisation, the Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a permanent visa, having regard to:

(a) the degree of persecution to which the applicant is subject in the applicant’s home country; and

(b) the extent of the applicant’s connection with Australia; and

(c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant’s settlement and protection from persecution; and

(d) the capacity of the approved proposing organisation to provide for the permanent settlement of the applicant in Australia.

19 Paragraph 201.311(a) of Schedule 2

Repeal the paragraph, substitute:

(a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of:

(i) paragraphs 201.211(1)(a) or (aa); or

(ii) paragraph 201.212(a); or

20 Paragraph 201.321(a) of Schedule 2

Repeal the paragraph, substitute:

(a) continues to be a member of the family unit of a person who, having satisfied the primary criteria and, in particular, having met the requirements of:

(i) paragraph 201.211(1)(a); or

(ii) paragraph 201.211(1)(aa); or

(iii) paragraph 201.212(a);

is the holder of a Subclass 201 visa; or

21 At the end of clause 201.411 of Schedule 2

Add:

Note: If the application includes a proposal by an approved proposing organisation, the second instalment of the visa application charge must be paid before the visa can be granted.

22 Clause 202.111 of Schedule 2

Insert:

***approved proposing organisation*** means an organisation in relation to which the following requirements are met:

(a) the organisation has entered into a deed with the Department relating to:

(i) the proposal of applicants for a Refugee and Humanitarian (Class XB) visa; and

(ii) the provision and management of resettlement services to an applicant that it has proposed;

(b) the deed:

(i) is in effect; and

(ii) is not suspended under the terms of the deed.

Note: When this definition commenced on 1 June 2013, these requirements were part of the Department’s Community Proposal Pilot program.

23 Subclause 202.211(1) of Schedule 2

Omit “The applicant:”, substitute “If the application does not include a proposal by an approved proposing organisation, the applicant:”.

24 After clause 202.211 of Schedule 2

Insert:

202.212

If the application includes a proposal by an approved proposing organisation:

(a) the applicant is subject to substantial discrimination, amounting to gross violation of human rights, in the applicant’s home country and is living in a country other than the applicant’s home country; and

(b) the proposal is not made on behalf of another person who is mentioned in subregulation 2.07AM(5); and

(c) the applicant is still proposed by the approved proposing organisation.

25 Clause 202.221 of Schedule 2

Repeal the clause, substitute:

202.221

(1) If the criteria in clause 202.211 apply to the applicant, the applicant continues to satisfy the criteria.

(2) If the criteria in clause 202.212 apply to the applicant, the applicant continues to satisfy the criteria.

26 Subclause 202.222(2) of Schedule 2

Repeal the subclause, substitute:

(2) If subclause (1) does not apply, and the application does not include a proposal by an approved proposing organisation, the Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a permanent visa, having regard to:

(a) the degree of discrimination to which the applicant is subject in the applicant’s home country; and

(b) the extent of the applicant’s connection with Australia; and

(c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant’s settlement and protection from discrimination; and

(d) the capacity of the Australian community to provide for the permanent settlement of the applicant in Australia.

(3) If the application includes a proposal by an approved proposing organisation, the Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a permanent visa, having regard to:

(a) the degree of discrimination to which the applicant is subject in the applicant’s home country; and

(b) the extent of the applicant’s connection with Australia; and

(c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant’s settlement and protection from discrimination; and

(d) the capacity of the approved proposing organisation to provide for the permanent settlement of the applicant in Australia.

27 Paragraph 202.311(a) of Schedule 2

Repeal the paragraph, substitute:

(a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 202.211(1)(a) or 202.212(a); or

28 Paragraph 202.321(a) of Schedule 2

Repeal the paragraph, substitute:

(a) continues to be a member of the family unit of a person who, having satisfied the primary criteria and, in particular, having met the requirements of paragraph 202.211(1)(a) or 202.212(a), is the holder of a Subclass 202 visa; or

29 At the end of clause 202.411 of Schedule 2

Add:

Note: If the application includes a proposal by an approved proposing organisation, the second instalment of the visa application charge must be paid before the visa can be granted.

30 Clause 203.111 of Schedule 2

Insert:

***approved proposing organisation*** means an organisation in relation to which the following requirements are met:

(a) the organisation has entered into a deed with the Department relating to:

(i) the proposal of applicants for a Refugee and Humanitarian (Class XB) visa; and

(ii) the provision and management of resettlement services to an applicant that it has proposed;

(b) the deed:

(i) is in effect; and

(ii) is not suspended under the terms of the deed.

Note: When this definition commenced on 1 June 2013, these requirements were part of the Department’s Community Proposal Pilot program.

31 Subclause 203.211(1) of Schedule 2

Omit “The applicant:”, substitute “If the application does not include a proposal by an approved proposing organisation, the applicant:”.

32 After clause 203.211 of Schedule 2

Insert:

203.212

If the application includes a proposal by an approved proposing organisation:

(a) the applicant is subject to persecution in the applicant’s home country, whether the applicant is living in the applicant’s home country or in another country; and

(b) the proposal is not made on behalf of another person who is mentioned in subregulation 2.07AM(5); and

(c) the applicant is still proposed by the approved proposing organisation.

33 Clause 203.221 of Schedule 2

Repeal the clause, substitute:

203.221

(1) If the criteria in clause 203.211 apply to the applicant, the applicant continues to satisfy the criteria.

(2) If the criteria in clause 203.212 apply to the applicant, the applicant continues to satisfy the criteria.

34 Clause 203.222 of Schedule 2

Omit “The Minister is satisfied”, substitute “(1) If the application does not include a proposal by an approved proposing organisation, the Minister is satisfied”.

35 At the end of clause 203.222 of Schedule 2

Add:

(2) If the application includes a proposal by an approved proposing organisation, the Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a permanent visa, having regard to:

(a) the degree of persecution to which the applicant is subject in the applicant’s home country; and

(b) the extent of the applicant’s connection with Australia; and

(c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant’s settlement and protection from persecution; and

(d) the capacity of the approved proposing organisation to provide for the permanent settlement of the applicant in Australia.

36 Paragraph 203.311(a) of Schedule 2

Repeal the paragraph, substitute:

(a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 203.211(1)(a) or 203.212(a); or

37 Paragraph 203.321(a) of Schedule 2

Repeal the paragraph, substitute:

(a) continues to be a member of the family unit of a person who, having satisfied the primary criteria and, in particular, having met the requirements of paragraph 203.211(1)(a) or 203.212(a), is the holder of a Subclass 203 visa; or

38 At the end of clause 203.411 of Schedule 2

Add:

Note: If the application includes a proposal by an approved proposing organisation, the second instalment of the visa application charge must be paid before the visa can be granted.

39 Clause 204.111 of Schedule 2

Insert:

***approved proposing organisation*** means an organisation in relation to which the following requirements are met:

(a) the organisation has entered into a deed with the Department relating to:

(i) the proposal of applicants for a Refugee and Humanitarian (Class XB) visa; and

(ii) the provision and management of resettlement services to an applicant that it has proposed;

(b) the deed:

(i) is in effect; and

(ii) is not suspended under the terms of the deed.

Note: When this definition commenced on 1 June 2013, these requirements were part of the Department’s Community Proposal Pilot program.

40 Subclause 204.211(1) of Schedule 2

Omit “The applicant:”, substitute “If the application does not include a proposal by an approved proposing organisation, the applicant:”.

41 After clause 204.211 of Schedule 2

Insert:

204.211A

If the application includes a proposal by an approved proposing organisation:

(a) the applicant is a female person who is subject to persecution, or registered as being of concern to the United Nations High Commissioner for Refugees, and is living in a country other than the applicant’s home country; and

(b) the proposal is not made on behalf of another person who is mentioned in subregulation 2.07AM(5); and

(c) the applicant is still proposed by the approved proposing organisation.

42 Clause 204.221 of Schedule 2

Repeal the clause, substitute:

204.221

(1) If the criteria in clause 204.211 apply to the applicant, the applicant continues to satisfy the criteria.

(2) If the criteria in clause 204.211A apply to the applicant, the applicant continues to satisfy the criteria.

43 Clause 204.224 of Schedule 2

Omit “The Minister is satisfied”, substitute “(1) If the application does not include a proposal by an approved proposing organisation, the Minister is satisfied”.

44 At the end of clause 204.224 of Schedule 2

Add:

(2) If the application includes a proposal by an approved proposing organisation, the Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a permanent visa, having regard to:

(a) the degree of persecution to which the applicant is subject in the applicant’s home country; and

(b) the extent of the applicant’s connection with Australia; and

(c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant’s settlement and protection from persecution; and

(d) the capacity of the approved proposing organisation to provide for the permanent settlement of the applicant in Australia.

45 Paragraph 204.311(a) of Schedule 2

Repeal the paragraph, substitute:

(a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 204.211(1)(a) or 204.211A(a); or

46 Paragraph 204.321(a) of Schedule 2

Repeal the paragraph, substitute:

(a) continues to be a member of the family unit of a person who, having satisfied the primary criteria and, in particular, having met the requirements of paragraph 204.211(1)(a) or 204.211A(a), is the holder of a Subclass 204 visa; or

47 At the end of clause 204.411 of Schedule 2

Add:

Note: If the application includes a proposal by an approved proposing organisation, the second instalment of the visa application charge must be paid before the visa can be granted.

48 After Part 13 of Schedule 13

Insert:

Part 14—Amendments made by Migration Amendment Regulation 2013 (No. 2)

1401 Operation of Schedule 1

The amendments of these Regulations made by Schedule 1 to the *Migration Amendment Regulation 2013 (No. 2)* apply in relation to an application for a visa made on or after 1 June 2013.