



Migration Amendment (Transitioning TPV/SHEV Holders to Resolution of Status Visas) Regulations 2023

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 9 February 2023

David Hurley
Governor-General

By His Excellency's Command

Andrew Giles
Minister for Immigration, Citizenship and Multicultural Affairs

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules	1
Schedule 1—Amendments		2
Part 1—Amendments		2
<i>Migration Regulations 1994</i>		2
Part 2—Application of amendments		9
<i>Migration Regulations 1994</i>		9

1 Name

This instrument is the *Migration Amendment (Transitioning TPV/SHEV Holders to Resolution of Status Visas) Regulations 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	14 February 2023

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Part 1—Amendments

Migration Regulations 1994

1 Regulation 1.03

Insert:

TPV/SHEV transition day means the day Schedule 1 to the *Migration Amendment (Transitioning TPV/SHEV Holders to Resolution of Status Visas) Regulations 2023* commences.

2 After regulation 2.08F

Insert:

2.08G Certain applications for Subclass 785 (Temporary Protection) visas and Subclass 790 (Safe Haven Enterprise) visas taken to be applications for Resolution of Status (Class CD) visas

- (1) For the purposes of section 45AA of the Act, despite anything else in the Act but subject to subregulations (3) and (4) of this regulation, a valid application (a ***pre-conversion application***) for a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa made before the TPV/SHEV transition day by an applicant described in column 1 of an item of the following table is, immediately after this regulation starts to apply in relation to the application under column 2 of the item:
- (a) taken not to be, and never to have been, a valid application for a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa, except for the purposes of section 197C of the Act; and
 - (b) taken to be, and always to have been, a valid application for a Resolution of Status (Class CD) visa, made by the applicant.

Note 1: As a result, the Minister is required to make a decision on the pre-conversion application as if it were a valid application for a Resolution of Status (Class CD) visa.

Note 2: ***TPV/SHEV transition day*** is defined in regulation 1.03.

Conversion of visa applications		
	Column 1	Column 2
Item	Applicants	When this regulation starts to apply
1	An applicant in relation to whom both of the following apply: (a) on the TPV/SHEV transition day, the applicant held a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa; (b) before the TPV/SHEV transition day, the Minister had not made a decision in relation to the pre-conversion application under section 65 of the Act	On the TPV/SHEV transition day

Conversion of visa applications		
	Column 1	Column 2
Item	Applicants	When this regulation starts to apply
2	An applicant in relation to whom both of the following apply: (a) on the TPV/SHEV transition day, the applicant held a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa; (b) before the TPV/SHEV transition day, the Minister had made a decision in relation to the pre-conversion application to refuse to grant the visa under section 65 of the Act	Immediately after the occurrence of whichever of the following events is applicable to the application, if the event occurs on or after the TPV/SHEV transition day: (a) the Immigration Assessment Authority remits a decision in relation to the pre-conversion application in accordance with subsection 473CC(2) of the Act; (b) the Administrative Appeals Tribunal remits a matter in relation to the pre-conversion application in accordance with paragraph 415(2)(c) of the Act; (c) the Administrative Appeals Tribunal remits a matter in relation to the pre-conversion application in accordance with paragraph 43(1)(c) of the <i>Administrative Appeals Tribunal Act 1975</i>; (d) a court orders the Minister to reconsider the pre-conversion application in accordance with the law; (e) a court declares or concludes (with or without formal declaration) that a decision of the Minister in relation to the pre-conversion application is invalid, void or of no effect; (f) a court quashes a decision of the Minister in relation to the pre-conversion application
3	An applicant in relation to whom all of the following apply: (a) the applicant does not hold, and has not ever held, a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa; (b) before the pre-conversion application was made, the applicant had not previously made a valid application for a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa; (c) before the TPV/SHEV transition day, the Minister had not made a decision in relation to the pre-conversion application under section 65 of the Act	When the Minister makes a record, on or after the TPV/SHEV transition day, that the Minister is satisfied: (a) if the pre-conversion application is for a Subclass 785 (Temporary Protection) visa—that the applicant satisfies the criteria for the grant of the Subclass 785 (Temporary Protection) visa; or (b) if the pre-conversion application is for a Subclass 790 (Safe Haven Enterprise) visa—that the applicant satisfies the criteria for the grant of the Subclass 790 (Safe Haven Enterprise) visa

Schedule 1 Amendments

Part 1 Amendments

Conversion of visa applications		
	Column 1	Column 2
Item	Applicants	When this regulation starts to apply
4	An applicant in relation to whom all of the following apply: (a) the applicant does not hold, and has not ever held, a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa; (b) before the pre-conversion application was made, the applicant had not previously made a valid application for a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa; (c) before the TPV/SHEV transition day, the Minister had made a decision in relation to the pre-conversion application to refuse to grant the visa under section 65 of the Act; (d) on or after the TPV/SHEV transition day, one of the following events occurs in relation to the pre-conversion application: (i) the Immigration Assessment Authority remits a decision in relation to the pre-conversion application in accordance with subsection 473CC(2) of the Act; (ii) the Administrative Appeals Tribunal remits a matter in relation to the pre-conversion application in accordance with paragraph 415(2)(c) of the Act; (iii) the Administrative Appeals Tribunal remits a matter in relation to the pre-conversion application in accordance with paragraph 43(1)(c) of the <i>Administrative Appeals Tribunal Act 1975</i>; (iv) a court orders the Minister to reconsider the pre-conversion application in accordance with the law; (v) a court declares or concludes (with or without formal declaration) that a decision of the Minister in relation to the pre-conversion application is invalid, void or of no effect; (vi) a court quashes a decision of the Minister in relation to the pre-conversion application	When the Minister makes a record, after the occurrence of the event mentioned in paragraph (d) of column 1, that the Minister is satisfied: (a) if the pre-conversion application is for a Subclass 785 (Temporary Protection) visa—that the applicant satisfies the criteria for the grant of the Subclass 785 (Temporary Protection) visa; or (b) if the pre-conversion application is for a Subclass 790 (Safe Haven Enterprise) visa—that the applicant satisfies the criteria for the grant of the Subclass 790 (Safe Haven Enterprise) visa
	Note: For column 2 of items 3 and 4, if the Minister is not satisfied that the applicant satisfies the criteria for the grant of the visa, this regulation never starts to apply.	
	(2) To avoid doubt, for the purposes of subregulation (1), the Minister is taken not to have made a decision in relation to a pre-conversion visa application under section 65 of the Act if, before the TPV/SHEV transition day:	

- (a) the Minister had made a decision in relation to the pre-conversion application under section 65 of the Act; and
 - (b) one of the following events occurred after the Minister made that decision:
 - (i) the Immigration Assessment Authority remitted a decision in relation to the pre-conversion application in accordance with subsection 473CC(2) of the Act;
 - (ii) the Administrative Appeals Tribunal remitted a matter in relation to the pre-conversion application in accordance with paragraph 415(2)(c) of the Act;
 - (iii) the Administrative Appeals Tribunal remitted a matter in relation to the pre-conversion application in accordance with paragraph 43(1)(c) of the *Administrative Appeals Tribunal Act 1975*;
 - (iv) a court ordered the Minister to reconsider the pre-conversion application in accordance with the law;
 - (v) a court declared or concluded (with or without formal declaration) that a decision of the Minister in relation to the pre-conversion application was invalid, void or of no effect;
 - (vi) a court quashed a decision of the Minister in relation to the pre-conversion application; and
 - (c) after the occurrence of the event mentioned in paragraph (b), the Minister had not made another decision in relation to the pre-conversion application.
- (3) This regulation does not apply to a pre-conversion application if there are proceedings, in relation to the application, in which:
- (a) judgment is reserved by a court as at immediately before the TPV/SHEV transition day; or
 - (b) judgment has been delivered by a court before the TPV/SHEV transition day.
- (4) This regulation does not affect rights or liabilities arising between parties to proceedings, in relation to the application, in which:
- (a) judgment is reserved by a court as at immediately before the TPV/SHEV transition day; or
 - (b) judgment has been delivered by a court before the TPV/SHEV transition day.

3 Subitem 1127AA(3) of Schedule 1 (at the end of the table)

Add:

4	Both of the following apply: (a) the applicant holds a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa; (b) the applicant first entered Australia before the TPV/SHEV transition day	At the time the application for a Resolution of Status (Class CD) visa is made, the applicant has not made a valid application for a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa that has not been finally determined	Nil
5	All of the following apply: (a) on the TPV/SHEV transition day, the applicant did not hold a Subclass 785	At the time the application for a Resolution of Status (Class CD) visa is made, the applicant has	Nil

Schedule 1 Amendments

Part 1 Amendments

	(Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa; (b) at any time before the TPV/SHEV transition day, the applicant held a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa; (c) the Subclass 785 (Temporary Protection) visa or Subclass 790 (Safe Haven Enterprise) visa most recently held by the applicant was not cancelled; (d) since the applicant was granted the visa mentioned in paragraph (c), the applicant has not had a valid application for a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa refused and finally determined	not made a valid application for a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa that has not been finally determined
6	Applicant who: (a) is the child of a person who meets, or has met, the requirements mentioned in item 4 or 5; and (b) was born in Australia	At the time the application for a Resolution of Status (Class CD) visa is made, the applicant has not made a valid application for a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa that has not been finally determined
7	Applicant who: (a) is the child of a holder of a Resolution of Status (Class CD) visa, granted on the basis of an application taken to have been made under regulation 2.08G; and (b) was born in Australia	At the time the application for a Resolution of Status (Class CD) visa is made, the applicant has not made a valid application for a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa that has not been finally determined

4 Subitem 1127AA(3) of Schedule 1 (at the end of the note)

Add “For *TPV/SHEV transition day*, see regulation 1.03.”.

5 After paragraph 1403(3)(b) of Schedule 1

Insert:

(ba) Either:

- (i) the applicant first entered Australia on or after the TPV/SHEV transition day; or
- (ii) the applicant has not made a valid application for a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa that, as at the TPV/SHEV transition day:
 - (A) had not been finally determined; or

- (B) was the subject of judicial review proceedings that had not been completed.

6 At the end of subitem 1403(3) of Schedule 1

Add:

Note: *TPV/SHEV transition day* is defined in regulation 1.03.

7 After paragraph 1404(3)(b) of Schedule 1

Insert:

(ba) Either:

- (i) the applicant first entered Australia on or after the TPV/SHEV transition day; or
- (ii) the applicant has not made a valid application for a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa that, as at the TPV/SHEV transition day:
 - (A) had not been finally determined; or
 - (B) was the subject of judicial review proceedings that had not been completed.

8 At the end of subitem 1404(3) of Schedule 1

Add:

Note 3: *TPV/SHEV transition day* is defined in regulation 1.03.

9 Paragraphs 785.221(3)(b) and 785.228(2)(b) of Schedule 2

After “Subclass 785 (Temporary Protection) visa”, insert “or a Resolution of Status (Class CD) visa”.

10 After paragraph 785.511(a) of Schedule 2

Insert:

- (aa) in a case where the holder of the first visa makes a valid application for a Resolution of Status (Class CD) visa on the basis of meeting the requirements of item 4, 5, 6 or 7 of the table in subitem 1127AA(3) of Schedule 1, or is taken to have made a valid application for a Resolution of Status (Class CD) visa under regulation 2.08G:
 - (i) if the application is withdrawn—the later of:
 - (A) the day the application is withdrawn; or
 - (B) the end of 3 years from the date of the grant of the first visa, or the end of any shorter period specified by the Minister, whichever occurs earlier; and
 - (ii) if the application is not withdrawn—35 days after the day the application is finally determined; and

11 Paragraphs 790.221(3)(b) and 790.228(2)(b) of Schedule 2

After “Subclass 790 (Safe Haven Enterprise) visa”, insert “or a Resolution of Status (Class CD) visa”.

12 After paragraph 790.511(a) of Schedule 2

Insert:

- (aa) in a case where the holder of the first visa makes a valid application for a Resolution of Status (Class CD) visa on the basis of meeting the requirements of item 4, 5, 6 or 7 of the table in subitem 1127AA(3) of Schedule 1, or is taken to have made a valid application for a Resolution of Status (Class CD) visa under regulation 2.08G:
 - (i) if the application is withdrawn—the later of the day the application is withdrawn, and the end of 5 years from the date of the grant of the first visa; and
 - (ii) if the application is not withdrawn—35 days after the day the application is finally determined; or

13 Clause 851.221 of Schedule 2

Omit “The applicant”, substitute “(1) Unless subclause (2) of this clause applies to the applicant, the applicant”.

14 At the end of clause 851.221 of Schedule 2

Add:

- (2) This subclause applies to an applicant if the Minister is satisfied that it would be unreasonable to require the applicant to undergo the medical examination mentioned in subclause (1).

15 Clause 851.222 of Schedule 2

Omit “The applicant”, substitute “(1) The applicant”.

16 After paragraph 851.222(a) of Schedule 2

Insert:

- (aa) is a person to whom subclause (2) applies; or

17 At the end of clause 851.222 of Schedule 2

Add:

- (2) This subclause applies to a person if the Minister is satisfied that it would be unreasonable to require the person to undergo the chest x-ray examination mentioned in paragraph (1)(a).

Part 2—Application of amendments

Migration Regulations 1994

18 In the appropriate position in Schedule 13

Insert:

Part 115—Amendments made by the Migration Amendment (Transitioning TPV/SHEV Holders to Resolution of Status Visas) Regulations 2023

11501 Operation of amendments

- (1) The amendments made by items 5 to 8 and 13 to 17 of Part 1 of Schedule 1 to the *Migration Amendment (Transitioning TPV/SHEV Holders to Resolution of Status Visas) Regulations 2023* apply in relation to an application for a visa made, or taken to have been made, on or after the commencement of those items.
- (2) The amendments made by items 9 and 11 of Part 1 of Schedule 1 to the *Migration Amendment (Transitioning TPV/SHEV Holders to Resolution of Status Visas) Regulations 2023* apply in relation to an application for a visa made, or taken to have been made, before, on or after the commencement of those items.
- (3) The amendments made by items 10 and 12 of Part 1 of Schedule 1 to the *Migration Amendment (Transitioning TPV/SHEV Holders to Resolution of Status Visas) Regulations 2023* apply in relation to a visa granted before, on or after the commencement of those items.