



Migration Amendment (Resolution of Status Visa) 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 16 October 2023

David Hurley
Governor-General

By His Excellency's Command

Andrew Giles
Minister for Immigration, Citizenship and Multicultural Affairs

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1 Name

This instrument is the *Migration Amendment (Resolution of Status Visa) 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.	19 October 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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 relating to certain visa applications

Migration Regulations 1994

1 Regulation 2.06A (heading)

Repeal the heading, substitute:

2.06A Definitions

2 Regulation 2.06A

Insert:

review/court event occurs: see subregulation 2.08G(1A).

3 Subregulation 2.08G(1) (table items 1 and 2, column 1, paragraph (a))

Repeal the paragraph, substitute:

- (a) the applicant held a Subclass 785 (Temporary Protection) visa, or a Subclass 790 (Safe Haven Enterprise) visa, on or before the TPV/SHEV transition day;

4 Subregulation 2.08G(1) (cell at table item 2, column 2)

Repeal the cell substitute:

Immediately after a review/court event occurs in relation to the pre-conversion application if that event occurs on or after the TPV/SHEV transition day

5 Subregulation 2.08G(1) (table item 3, column 1)

Omit “to whom all”, substitute “to whom both”.

6 Subregulation 2.08G(1) (table item 3, column 1, paragraph (b))

Repeal the paragraph.

7 Subregulation 2.08G(1) (after table item 3)

Insert:

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|----|---|--|
| 3A | An applicant in relation to whom both 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 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) that the applicant is a member of the same family unit as another person; and
(b) that the other person satisfies the criterion mentioned in paragraph 36(2)(a) or (aa) of the Act; and
(c) that:
(i) if the pre-conversion application is for a Subclass |
|----|---|--|

785 (Temporary Protection) visa—the applicant would satisfy the criteria for the grant of the Subclass 785 (Temporary Protection) visa if it were assumed that the other person held a visa of that kind; or

- (ii) if the pre-conversion application is for a Subclass 790 (Safe Haven Enterprise) visa—the applicant would satisfy the criteria for the grant of the Subclass 790 (Safe Haven Enterprise) visa if it were assumed that the other person held a visa of that kind

8 Subregulation 2.08G(1) (table item 4, column 1, paragraph (b))

Repeal the paragraph.

9 Subregulation 2.08G(1) (table item 4, column 1, paragraph (d))

Repeal the paragraph, substitute:

- (d) on or after the TPV/SHEV transition day, a review/court event occurs in relation to the pre-conversion application

10 Subregulation 2.08G(1) (at the end of the table)

Add:

- | | | |
|---|--|--|
| 5 | <p>An applicant in relation to whom all of the following apply:</p> <p>(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;</p> <p>(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;</p> <p>(c) on or after the TPV/SHEV transition day, a review/court event occurs in relation to the pre-conversion application</p> | <p>When the Minister makes a record, after the review/court event occurs in relation to the pre-conversion application, that the Minister is satisfied:</p> <p>(a) that the applicant is a member of the same family unit as another person; and</p> <p>(b) that the other person satisfies the criterion mentioned in paragraph 36(2)(a) or (aa) of the Act; and</p> <p>(c) that:</p> <p>(i) if the pre-conversion application is for a Subclass 785 (Temporary Protection) visa—the applicant would satisfy the criteria for the grant of the Subclass 785 (Temporary Protection) visa if it were assumed that the other person held a visa of that kind; or</p> <p>(ii) if the pre-conversion</p> |
|---|--|--|

application is for a Subclass 790 (Safe Haven Enterprise) visa—the applicant would satisfy the criteria for the grant of the Subclass 790 (Safe Haven Enterprise) visa if it were assumed that the other person held a visa of that kind

11 Subregulation 2.08G(1) (note after the table)

Omit “items 3 and 4”, substitute “items 3 to 5”.

12 After subregulation 2.08G(1)

Insert:

- (1A) For the purposes of items 2, 4 and 5 of the table in subregulation (1), a *review/court event occurs* in relation to a pre-conversion application if one of the following occurs:
- (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 *Administrative Appeals Tribunal Act 1975*;
 - (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.

13 Subitem 1127AA(3) of Schedule 1 (after table item 4)

Insert:

- | | | | |
|----|---|---|-----|
| 4A | All of the following apply: | 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 |
| | (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) on or after that day, that visa ceased to be in effect (other than because the visa was cancelled); | | |
| | (c) since the applicant was granted that visa, 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

14 Subitem 1127AA(3) of Schedule 1 (table item 6, column headed “Criterion 1”, paragraph (a))

Omit “item 4 or 5”, substitute “item 4, 4A or 5”.

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

Omit “or a Resolution of Status (Class CD) visa”.

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

Omit “or a Resolution of Status (Class CD) visa”.

Schedule 2—Amendments relating to the identity of certain visa applicants

Migration Regulations 1994

1 At the end of Subdivision 851.22 of Schedule 2

Add:

851.228

- (1) This clause applies in relation to the following applications:
 - (a) an application made on the basis of meeting the requirements of item 4, 4A or 5 of the table in subitem 1127AA(3) of Schedule 1;
 - (b) an application that is taken to be a valid application for a Resolution of Status (Class CD) visa under regulation 2.08G.
- (2) If, in considering the application, the Minister invited the applicant under section 56 of the Act to give information for the purposes of establishing or confirming the applicant's identity, the applicant has given that information, or has caused that information to be given, in accordance with the invitation.
- (3) Subclause (2) does not apply if:
 - (a) the Minister is satisfied that:
 - (i) the applicant has a reasonable explanation for refusing or failing to give the information in accordance with the invitation; and
 - (ii) the applicant has taken reasonable steps to give the information, or to cause the information to be given, in accordance with the invitation; or
 - (b) the application is an application mentioned in paragraph (1)(b) and the invitation under section 56 of the Act was given before regulation 2.08G started to apply in relation to the application.
- (4) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister for the purposes of the application:
 - (a) a bogus document in relation to the applicant's identity; or
 - (b) information that, at the time it was given, was false or misleading in a material particular in relation to the applicant's identity.

Note: For the definition of *bogus document*, see subsection 5(1) of the Act.

- (5) Subclause (4) applies whether or not the Minister becomes aware of a document or information of a kind referred to in that subclause because of information given by the applicant.
- (6) Subclause (4) does not apply if the Minister is satisfied that the applicant has a reasonable explanation for giving a document or information of a kind referred to in that subclause.

851.229

- (1) This clause applies if:

- (a) the applicant satisfies the criterion in subclause 851.228(2) or is not required to satisfy that criterion because of paragraph 851.228(3)(a); and
 - (b) the Minister is satisfied that there are substantial identity-related concerns in relation to a relevant matter.
- (2) A **relevant matter** is any of the following:
- (a) if a protection finding (within the meaning of section 197C of the Act) was previously made for the applicant—that finding;
 - (b) if the applicant was previously granted a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa on the basis that the applicant satisfied the criterion mentioned in paragraph 36(2)(b) or 36(2)(c) of the Act—that grant;
 - (c) if the applicant is taken to have made a valid application for a Resolution of Status (Class CD) visa under regulation 2.08G and the applicant is an applicant described in column 1 of item 3A of the table in subregulation 2.08G(1)—the record made by the Minister in relation to the applicant, as mentioned in column 2 of that item;
 - (d) if the applicant is taken to have made a valid application for a Resolution of Status (Class CD) visa under regulation 2.08G and the applicant is an applicant described in column 1 of item 5 of the table in subregulation 2.08G(1)—the record made by the Minister in relation to the applicant, as mentioned in column 2 of that item.
- (3) One of the following applies in relation to the applicant:
- (a) if the applicant had made a valid application for a protection visa at the same time as the applicant made the application for the Subclass 851 (Resolution of Status) visa, the applicant would have satisfied the criteria for the grant of the protection visa;
 - (b) there is a compelling or compassionate reason to grant the visa to the applicant;
 - (c) the applicant is a member of the same family unit as a person who holds a Subclass 851 (Resolution of Status) visa.

2 In the appropriate position in Schedule 13

Insert:

Part 121—Amendments made by the Migration Amendment (Resolution of Status Visa) Regulations 2023

12101 Definitions

In this Part:

amending regulations means the *Migration Amendment (Resolution of Status Visa) Regulations 2023*.

identity information criterion means subclause 851.228(2) of Schedule 2, as inserted by Schedule 2 to the amending regulations.

12102 Operation of amendments

- (1) The amendments made by Schedule 2 to the amending regulations apply in relation to an application for a visa:
 - (a) made, but not finally determined, before the commencement of that Schedule; or
 - (b) made on or after that commencement.
- (2) For an application made on the basis of meeting the requirements of item 4, 4A or 5 of the table in subitem 1127AA(3) of Schedule 1, the identity information criterion applies in relation to an invitation under section 56 of the Act whether given before, on or after the commencement of that criterion.
- (3) For an application taken to be a valid application for a Resolution of Status (Class CD) visa under regulation 2.08G, the identity information criterion applies in relation to an invitation under section 56 of the Act whether given before, on or after the commencement of that criterion, provided that the invitation was given after regulation 2.08G started to apply in relation to the application.