

s. 22(1)(a)(ii)

From: Family Programme Management s. 22(1)(a)(ii)

Sent: Monday, 8 February 2021 10:46 PM

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Subject: Network message Granting family visas when applicant is onshore [SEC=OFFICIAL:Sensitive]

Importance: High

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FOR ATTENTION OF:

- All overseas SMO/PMOs,
- All overseas Counsellors/CMOs,
- All Regional Directors,
- Director Onshore Partner network,
- Director Parent Child and Other Family

IMPORTANCE: High

SUBJECT: Granting certain offshore family visas when applicant is onshore

ATTACHMENTS: NIL

AUTHORISED BY: s. 22(1)(a)(ii) Assistant Secretary, Skilled and Family Visa Program Branch

Purpose

To provide advice on upcoming changes to allow visa grant while certain Family visa applicants are in Australia.

Summary

Under current regulations, applicants for many visa subclasses are required to be outside of Australia at time of visa grant to satisfy the Schedule 2 grant criteria. To address the impact of the COVID-19 pandemic on visa applicants, the Government has introduced a temporary concession to allow certain Family visas to be granted while the visa applicant is in Australia.

This temporary concession will be allowed for the following visa subclasses:

- Partner (subclass 309) visa

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- Prospective Marriage (subclass 300) visa
- Child (subclass 101) visa
- Adoption (subclass 102) visa
- Dependent Child (subclass 445) visa*

Amendments to Schedule 2 regulations and to ICSE are being made to facilitate visa grant to applicants for these subclasses who are in Australia (subject to them meeting criteria for grant) provided that:

- they lodge their visa application at any time before the concession period ends. The end date is yet to be determined by the Minister;
- are in Australia at any time between 27 February 2021 (the expected start date of the regulatory changes) and the date on which the concession period ends; and
- the decision is made on or after the day the regulation amendments commence (27 February 2021).

This means that applicants can still be granted a visa while they are in Australia after the concession period ends, if they lodged their application before the end of the concession period and were in Australia during the concession period. The above mentioned visas can also continue to be granted while the applicant is outside Australia. The regulation amendments do not take away that option.

* Currently, this visa can be granted while the applicant is in Australia if the applicant was in Australia when they lodged the application. Amendments are being made to allow visa grant while the onshore applicant is either in or outside Australia.

ICSE and IRIS

From 27 February 2021, the restriction that currently enforces offshore grants for the abovementioned five visa subclasses will be removed from ICSE. For the listed subclasses, ICSE will allow an onshore visa grant where:

- the application was lodged on or before the date on which the concession period ends
- the applicant is in Australia at time of visa decision.

From 27 February 2021, ICSE will also allow the grant of a subclass 445 visa to an applicant who was onshore at time of application and is either onshore or offshore at time of decision.

IRIS business rules that restrict visa grant to an onshore applicant location, were removed through the NOV20 release. Officers need to add the ON info code on the Visa/Evidence screen prior to grant.

Merits review

The regulation amendments do not affect or prescribe applicant location at time of decision if the application is refused. However, as a result of the regulation amendments, merits review rights change:

- Merits review right will remain with the sponsor for the temporary visa subclasses 309, 300 and 445 applicants who made the application outside Australia (section 338(9) of the Act applies);
- Merits review rights for the permanent visa subclasses 101 and 102 will move from the sponsor to the visa applicant themselves (section 338(7A) of the Act applies).

ECS correspondence has been amended to reflect these changes.

Bridging visa

In limited circumstances, applicants are eligible for a Bridging A (subclass 010) visa in association with their application if they apply for the BVA separately using Form 1005. The circumstances are:

- applicants who held a substantive visa (such as a Visitor visa) when they lodged their visa application; and

- lodged the application online or sent to the relevant Australia processing office (Adoption and Child visa applications are sent to the Perth processing office, except for subclass 445 visa applications that are lodged at an overseas Post); and
- are subsequently physically in Australia; and
- the application for the substantive visa (any of visas listed above) is not finally determined by 27 February 2021.

Action

Onshore and offshore visa processing offices with onhand caseloads of the affected visa cohorts should prioritise and progress these applications for visa grant from 27 February 2021. Relevant visa applications will be able to be recognised for priority processing by the Department’s work management system. In addition, an Excel spreadsheet listing affected Partner (subclass 309/100) visa applicants will be separately sent to relevant post managers shortly.

A reminder that during this COVID period no applicant should be requested to travel offshore in order to facilitate visa grant, however, where a request has been inadvertently sent already, you should provide further advice that extension of time for the departure requirement is available until they can travel safely or until they can be granted their visa onshore.

Further Information

Details on how to process a visa grant in ICSE following these changes can be found on the intranet’s [FEB21 Info Hub](#). A schedule of teleconferences is available on the FEB21 Info Hub page. Family Program Management will attend the 18 February 2021 teleconferences to provide further clarification on these changes.

Information about the Government’s announcement is available on the Department’s covid website: <https://covid19.homeaffairs.gov.au/covid-19-visa-concessions>

Kind regards,

Family Migration Program Management Section
Skilled and Family Visa Program Branch
Immigration Programs Division
Immigration and Settlement Services Group
Department of Home Affairs

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