

s 22(1)(a)(ii)

From: s 22(1)(a)(ii) HOMEAFFAIRS.GOV.AU>
Sent: Wednesday, 1 November 2023 11:23 AM
To: Helpdesk-OIA
Cc: s 47E(d) s 22(1)(a)(ii)
Subject: Preliminary Assessment form: Migration Amendment (Aged-Out Secondary Visa Cohort) Regulations [SEC=OFFICIAL]
Attachments: PAF - Aged-out MoFU amendments.docx
Categories: Tracked To Dynamics 365

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Good morning s 22(1)(a)(ii) and OIA colleagues,

Please see attached the Preliminary Assessment form: *Migration Amendment (Aged-Out Secondary Visa Cohort) Regulations*.

Key items to note:

- **Description of the problem:** A cohort of secondary applicants for Partner (Provisional) subclass 309) visas are no longer eligible for the grant of a visa under the Migration Regulations 1994 (the Regulations), due to the interaction of former Ministerial Direction 80 (MD80), and earlier Ministerial Directions 72 and 62 with the same effect, with the definition of 'member of the family unit' (MoFU) in Regulation 1.12.
- **The objective of government action** is to enable the grant of visas to secondary applicants who no longer meet the definition of MOFU because their applications took a long time to process due to the impact of MD80 (or earlier Ministerial Directions with the same effect, MD72 and MD62) which deprioritised these applications.
- **The Government has the option to:**
Option 1 (preferred): Targeted regulatory amendment—Amend the criteria for the temporary and permanent Partner (subclasses 309 and 100) visas in the Migration Regulations 1994, to allow secondary applicants older than 23 years at the time of decision who are still dependent on their parent and, who were impacted by MD80 (i.e. sponsored by a permanent visa holder who arrived in Australia as an UMA) and who lodged their application before 9 February 2023, to be eligible for the grant of a Partner visa.
Option 2: Broader regulatory amendment.
Option 3: No regulatory amendment.

Please reach out if you require any additional information.

Kind Regards,

s 22(1)(a)(ii)

Evaluation, Planning and Reporting
 Performance, Governance and Inquiries Branch | Executive Group
 Department of Home Affairs

E: s 22(1)(a)(ii) @homeaffairs.gov.au

W: s 22(1)(a)(ii)

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Australian Government Impact Analysis Preliminary Assessment Form

July 2023

Overview

Name of department/agency:

Department of Home Affairs

Name of proposal:

Migration Amendment (Aged-Out Secondary Visa Cohort) Regulations

Type of proposal:

- ☐ Budget or MYEFO Proposal
- ☐ Treaties/Conventions
- ☒ Legislation/Regulation Amendment or Proposal
- ☐ Sunsetting Instruments
- ☐ Standards
- ☐ Industry Codes
- ☐ Grant Funding
- ☐ Funding (non-grant)
- ☐ Other (Specify) _____

Is this an election commitment? ☐ Yes (include link to commitment) ☒ No

Key dates and timeline:

The measure is a ministerial priority and the Department is aiming for changes to be in effect by early 2024..

Who will the decision maker be?

- ☒ Minister/~~Secretary~~/CEO
- ☐ Cabinet
- ☐ Ministerial Forum/ Standard Setting Body (If yes, will the changes be implemented by States and Territories)
- ☐ Other

Description of the problem:

A cohort of secondary applicants for Partner (Provisional) subclass 309) visas are no longer eligible for the grant of a visa under the *Migration Regulations 1994* (the Regulations), due to the interaction of former Ministerial Direction 80 (MD80), and earlier Ministerial Directions 72 and 62 with the same effect, with the definition of 'member of the family unit' (MoFU) in Regulation 1.12.

Overview

- MOFU provisions for subclass 309 visa require that a child of the primary applicant must be under 18 or under 23 and dependent on the family head, both at the time of applying for the visa and at the time when the decision on the visa is made.
- MD80 (and earlier directions with the same effect) gave 'lowest processing priority' to Family visa applications where the sponsor was a permanent visa holder who arrived in Australia as an unauthorised maritime arrival (UMA). This Direction caused extended processing times for these applications.
- As a result of these delays, some secondary applicants no longer meet the MoFU definition.

Outline of the objectives of government action:

The objective of government action is to enable the grant of visas to secondary applicants who no longer meet the definition of MOFU because their applications took a long time to process due to the impact of MD80 (or earlier Ministerial Directions with the same effect, MD72 and MD62) which deprioritised these applications. This objective of the change is to align with the Government's decision to revoke MD80, and prevent further separation of families.

On the 9th February 2023 the Government revoked *Ministerial Direction 80 - Order for considering and disposing of Family visa applications*. All options (below) will provide a pathway for families impacted by visa processing de-prioritisation under MD80 (and earlier directions) to reunite in Australia.

Outline of the options available:

Option 1: Targeted regulatory amendment *preferred option*

Amend the criteria for the temporary and permanent Partner (subclasses 309 and 100) visas in the *Migration Regulations 1994*, to allow secondary applicants older than 23 years at the time of decision who are still dependent on their parent and, who were impacted by MD80 (i.e. sponsored by a permanent visa holder who arrived in Australia as an UMA) and who lodged their application before 9 February 2023, to be eligible for the grant of a Partner visa.

Option 2: Broader regulatory amendment

Amend the criteria for all non-humanitarian visa subclasses across the *Migration Regulations 1994* to allow secondary applicants to be older than 23 years at time of decision. This would maintain consistency in secondary criteria across visa subclasses, but would go beyond the MD80-affected cohort and have significant effects on other visa subclasses and negative fiscal impact on the Budget.

Option 3: No regulatory amendment

If no amendments are made to the current regulations to exempt secondary applicants whose applications were deprioritised as a result of MD 80 from meeting the definition of MOFU, families of Australians who have been waiting for a long time to reunite in Australia will be further separated, with some dependent children refused a visa while their parent and other siblings migrate to Australia. In some circumstances, some impacted applicants may seek Ministerial Intervention to be granted a visa, however, this is a protracted process which will not be available to every impacted individual.

Likely impact on people, businesses and community organisations (Further information on impacts can be found in our [What to include in the Impact Analysis Preliminary Assessment Form](#))

What are the likely impacts of your proposal?

The preferred option would only affect around 170 secondary applicants for Partner visas whose applications were impacted by the previous MD 80 and had been de-prioritised until February 2023. These individuals would become eligible for the grant of temporary and permanent Partner visas. This would contribute to the wellbeing of these applicants and their family members, including their Australian sponsors.

The preferred option may benefit community organisations supporting these applicants, as their cases would become significantly less complex under the proposed amendments.

What is your assessment of the significance of the likely impacts of the proposal? Why?

The impacts of the proposal will be highly significant to the individuals who benefit. These applicants have in some cases been waiting many years for a decision on their visa application. The proposal would allow them to be granted temporary and permanent Partner visas, which is not possible under the status quo. The proposal will have no impacts on people outside the targeted cohort and will not disadvantage any other visa applicants.

How many people, businesses or community organisations will be affected?

The Department is aware of approximately 170 secondary applicants in the target cohort who have 'aged out' and would benefit from the proposal. It is likely that a small additional number of applicants not yet identified would also benefit.

Have you consulted with stakeholders? If not, what are their likely views?

This issue has been raised with the Minister and the Department on numerous occasions by impacted sponsors, stakeholders and Members of Parliament. Specific amendments have not been consulted on, but there is support for an amendment to avoid further disadvantage to this cohort.

Contact information (Please enter your contact information below)

Names: s 22(1)(a)(ii)

Email and Phone s 22(1)(a)(ii) [@homeaffairs.gov.au](mailto:s 22(1)(a)(ii)@homeaffairs.gov.au) s 22(1)(a)(ii)

Date xx October 2023

Please forward the completed form to OIA at Helpdesk-OIA@pmc.gov.au or call (02) 6271 6270 to discuss your proposal with an OIA officer.

Small Business, Trade, Gender, Regional Australia, and First Nations Impacts

You may wish to contact the Australian Small Business and Family Enterprise Ombudsman's (ASBFEO) office to discuss small business impacts (contact: s 47E(d) [@asbfeo.gov.au](mailto:s 47E(d)@asbfeo.gov.au))

You may wish to contact the Trade and Investment Law Branch at the Department of Foreign Affairs & Trade s 47E(d) [@dfat.gov.au](mailto:s 47E(d)@dfat.gov.au)) or the Office of International Law within the Attorney-General's Department

Small Business, Trade, Gender, Regional Australia, and First Nations Impacts

s 47E(d) @ag.gov.au) to understand how your proposed policy may interact with Australia's trade and investment law obligations.

You may wish to contact the Office for Women to discuss gender impacts (contact: s 47E(d) @pmc.gov.au)

You may wish to contact the Department of Infrastructure, Transport, Regional Development and the Arts to discuss regional Australia impacts s 47E(d) @infrastructure.gov.au)

You may wish to contact the National Indigenous Australians Agency to discuss First Nations impacts s 47E(d) @niaa.gov.au)

s 22(1)(a)(ii)

From: Helpdesk-OIA
Sent: Wednesday, 1 November 2023 1:20 PM
To: s 22(1)(a)(ii)
Cc: s 47E(d) home affairs; s 22(1)(a)(ii)
Subject: Creation of new OIA case OIA23-05968 - Migration Amendment (Aged-Out Secondary Visa Cohort) Regulations [SEC=OFFICIAL]

Hi s 22(1)(a)(ii)

Thank you for your email to the Office of Impact Analysis (OIA) help desk. Please take this reply as acknowledgement we have received your enquiry.

Your reference number for this request is OIA23-05968, which has been allocated to an OIA officer who will respond as soon as possible.

The OIA aims to respond to your query within five business days. If your enquiry is urgent or for further information, please email helpdesk-oia@pmc.gov.au - including your reference number in the subject line - or call (02) 6271 6270.

Best wishes,

s 22(1)(a)(ii)

OIA Helpdesk

Office of Impact Analysis

Department of the Prime Minister and Cabinet

p. (02) 6271 6270 | e. helpdesk-OIA@pmc.gov.au

Nggunawal Country, One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600

w. www.pmc.gov.au | w. oia.pmc.gov.au



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

s 22(1)(a)(ii)

From: Helpdesk-OIA
Sent: Thursday, 2 November 2023 5:13 PM
To: s 22(1)(a)(ii)
Cc: s 47E(d) home affairs; s 22(1)(a)(ii)
Subject: OIA23-05968 - Migration Amendment (Aged-Out Secondary Visa Cohort) Regulations

Hi s 22(1)(a)(ii) Home Affairs colleagues

Regarding: OIA23-05968 - Migration Amendment (Aged-Out Secondary Visa Cohort) Regulations

Thank you for submitting your proposal to the Office of Impact Analysis (OIA) for our consideration and advice. Based on the information provided, the OIA considers the proposal is unlikely to have a more than minor impact. As such, the preparation of an Impact Analysis (IA) is not required.

If any of the above is inconsistent with your proposal, or should your proposal change significantly from the details provided, please contact us again to ensure our advice remains current. Please quote your reference number (OIA23-05968) to ensure we can assist you promptly.

Regards,

s 22(1)(a)(ii)

Adviser
 ysis (OIA), Economic Division

Department of the Prime Minister and Cabinet

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

Ngunnawal Country, One National Circuit Barton ACT 2600 | PO Box
 6500 CANBERRA ACT 2600

e s 22(1)(a)(ii) (for meeting invites and other matters)

e. helpdesk-oia@pmc.gov.au (for OIA and impact analysis related matters)

w. <https://oia.pmc.gov.au> | <https://www.pmc.gov.au/>



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

----- Original Message -----

From: s 22(1)(a)(ii) <s 22(1)(a)(ii)@homeaffairs.gov.au>;

Received: Wed Nov 01 2023 11:23:47 GMT+1100 (Australian Eastern Daylight Time)

To: OIA Help Desk helpdesk-oia <helpdesk-oia@pmc.gov.au>; OBPR Mailbox <helpdesk-oia@pmc.gov.au>;

Cc: deregulation s 47E(d) s 22(1)(a)(ii) s 22(1)(a)(ii)

Subject: Preliminary Assessment form: Migration Amendment (Aged-Out Secondary Visa Cohort) Regulations [SEC=OFFICIAL]

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Evaluation, Planning and Reporting

Performance, Governance and Inquiries Branch | Executive Group

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