

DIRECTION NO. 36

MIGRATION ACT 1958

DIRECTION UNDER SECTION 499

Visitor Applications

PREAMBLE:

Australia's Visitor visa program is designed to provide streamlined visa processes for persons to enter Australia temporarily :

- for tourism;
- to visit family and friends;
- to undergo pre-arranged medical treatment, or
- for business related purposes.

Genuine visitors should be granted visas with the least delay. At the same time, this must be balanced against the need to ensure Visitor visas are not granted to those persons whose true intentions, at the time of applying for a Visitor visa, are:

- to remain in Australia illegally;
- to make refugee claims onshore;
- to apply for migration or long term temporary residence onshore;
- to use one or more Visitor visas to maintain ongoing residence in Australia;
- to work illegally in Australia; or
- to not abide by the conditions of a Visitor visa.

Decision-makers must take a balanced approach between the need to make a quick decision and the need to identify those applicants who, if approved, would lead to ongoing costs to the Australia taxpayer, or would bypass established migration channels.

INTRODUCTION

In order to be granted a Visitor visa, applicants must satisfy the decision-maker that, amongst other things:

- a **genuine visit** is intended; and
- they have their own, or access to, **adequate funds** to support themselves during the period of stay sought.

Additionally,

- Applicants affected by Public Interest Criterion 4011 (the risk factor criterion) are required by law to provide a higher level of proof to satisfy the decision-maker that a genuine visit is intended. This “higher level of proof” is discussed in the section on the ‘Risk Factor Criterion’.
- In respect of applicants who have applied for a Sponsored (Visitor) visa (Class UL), decision-makers must have regard to the circumstances of the sponsor as well as the circumstances of the applicant.

The purpose of this direction is to provide assistance to decision-makers in assessing the above legislative requirements. This direction does not apply to applications for “Visitor” Electronic Travel Authorities (ETAs).

THEREFORE

I, the Minister for Citizenship and Multicultural Affairs, hereby give the following Direction under section 499 of the Migration Act to any person or body having functions or powers under the Act.

1. In this Direction:

- "The Act" means the *Migration Act, 1958*,
- "The Regulations" mean regulations made under the Act,
- “Visitor applications” means applications for visa in one of the following visa classes in Regulation Schedule 1:
 - **Class TR - Tourist** i.e. for applicants seeking to visit Australia for tourism and/or visit relatives/ friends, where the total period of intended stay in Australia is 12 months or less (or for a period of more than 12 months only where exceptional circumstances exist),
 - **Class UL- Sponsored (Visitor)** i.e. for applicants who are formally sponsored for a visit to Australia to either visit relatives or for business purposes. This visa class includes subclass 459 “Sponsored Business Visitor (Short Stay)” and subclass 679 “Sponsored Family Visitor”,
 - **Class UB - Medical Treatment (Visitor)**. This visa class includes subclass 675 “Medical Treatment (Short Stay)” and subclass 685 “Medical Treatment (Long Stay)”. This class of visa is for applicants seeking to visit Australia to undergo pre-arranged medical treatment. The Short Stay visa is for applicants whose intended period of stay is 3 months or less and the Long Stay visas is for applicants whose total period of stay is more than 3 months, and

- **Class UC – Temporary Business Entry, subclass 456**
“Business (Short Stay)” only. The subclass 456 visa is for applicants who intend to enter Australia for business purposes and their intended period of stay in Australia is 3 months or less.
 - “the Department” means the Department of Immigration and Multicultural and Indigenous Affairs”.
 - “officer” means a delegate of the Minister under s65 of the Act.
2. This Direction may be cited as Direction No 36 of 2005.
 3. This Direction supersedes Direction 33 of 21 August 2003 that is hereby revoked.
 4. The criteria prescribed in the Regulations for the grant of a visitor visa are that the applicant intends to make a genuine visit to Australia; that the applicant, with limited exceptions, has adequate funds, or access to adequate funds, for their personal support during the period of the visit; and that the applicant (with the exception of those visitors entering Australia for medical treatment) meet public interest criterion 4011.
 5. In respect of Business visitors (ie subclass 456 and 459 visa applicants), the applicant must also satisfy the decision-maker that they are entering Australia temporarily for business purposes; that they have personal attributes and a business background relevant to, and consistent with, the nature of their proposed business in Australia; that there is a need for the applicant to be in Australia for business purposes; and that they will not remain in Australia for more than 3 months on any single occasion.
 6. This Direction addresses those criteria as well as providing guidelines in respect of sponsors under Class UL (Sponsored (Visitor) visa), the risk factor criterion (PIC 4011) and the 8503 – “No Further Stay” visa condition.

Genuine visit

7. A decision maker deciding whether to grant a visitor visa must be satisfied that the intention of an applicant only to visit Australia is genuine as required by the Regulations, that is, that they:
 - will not work beyond what is permitted by the visa;
 - will not study beyond what is permitted by the visa (ie no more than 3 months during their total stay in Australia), and
 - intend to depart Australia within the period of stay authorised by the Visitor visa granted to them, ie they have not obtained the Visitor visa with the intention of circumventing established migration procedures overseas.

8. Relevant considerations in deciding whether the applicant intends a genuine visit can include, but are not limited to, the following:
- (a) personal circumstances that may encourage the applicant to return to his or her home country, including:
 - on-going employment;
 - the presence of immediate family members in their home country; and
 - property or other significant assets owned in their home country.

 - (b) personal circumstances or other conditions in the applicant's home country, that may encourage the applicant to remain in Australia, including:
 - the applicant's economic situation - including unemployment or employment that, based on knowledge of local employment conditions, such as salary rates, would not constitute a strong incentive for the applicant to leave Australia;
 - the applicant's personal ties to Australia, that is, does the applicant have more close family members living in Australia than in their home country;
 - military service commitments;
 - civil disruption, including war, lawlessness or political upheaval in the applicant's home country; and
 - economic disruption, including shortages, famine, or high levels of unemployment, or natural disasters in the applicant's home country.

 - (c) the applicant's immigration history, including but not limited to:
 - Previous travels overseas. Has the applicant travelled outside his or her own country or geographic region? If "yes", where did they travel, how often, and did they comply with the immigration laws of the other country? Travel to, and compliance with, the immigration laws of countries that have significant incentives for the applicant to remain in that country(ies), either for economic or personal reasons, should be given more weight when assessing this factor; and

- Previous visa applications for Australia. If the applicant has travelled to Australia previously, did they comply with the conditions of their visa? Did they work without permission, apply to remain in Australia or fail to depart Australia within the period of stay authorised by their visa? If an applicant previously failed to comply with the conditions of their visa, it is reasonable, in the absence of any new information, to suspect that they may not comply again and this may be grounds to consider refusing to grant the visa.
- (d) the credibility of the applicant in terms of character and conduct, that is, whether there is any evidence that false or misleading information and/or documentation has been presented in relation to this or any other visa application. If false or misleading information is presented in relation to the visa application, it may be grounds to refuse to grant the visa.
- (e) whether the purpose of the applicant's visit, the duration of stay proposed and any other plans the applicant has made in respect of their visit are reasonable, that is, are the activities proposed consistent with business, tourism and/or visiting friends and relatives and is the period of stay consistent with the period of their approved leave (if applicable).
- (f) the immigration activities in Australia of other nationals from the applicant's home country. Departmental reports are produced that provide statistical information on the immigration activities of non-Australian citizens. These reports include amongst other things, statistics on unlawful non citizens; persons who have had their visa cancelled after being located breaching the conditions of their visas; persons refused entry to Australia as non-genuine entrants; and persons who have lodged applications for Protection visas.
- (g) decision-makers should also give regard to intelligence and analysis reports on illegal immigration and malpractice locally developed at overseas posts. These reports provide specific data and profiles on persons involved in people smuggling activities, visa non-compliance onshore and document fraud within the region. Such profiles assist assessing officers in determining whether closer examination of an application is required to ensure the integrity of visa programs.

The objective reports should be used by decision-makers to develop visa non-compliance profiles. When assessing Visitor applications lodged by persons matching the profile, the decision-maker should be aware that statistically there is a higher probability that the person may not comply with the terms of their visa. **Matching the characteristics of the profile would not be grounds to refuse to grant a visa.** It should however be an alert that closer scrutiny of the applicant's circumstances is required.

9. Generally, offers of support or guarantees given by family and friends in Australia are not sufficient evidence of a genuine visit. The onus is on the applicant to satisfy the decision-maker that their intention to only visit Australia is genuine. Notwithstanding this, when such offers have been investigated and confirmed by the relevant State or Territory Office, decision-makers should pay **high regard** to that advice in assessing the application.

Adequate funds

10. In respect of the “adequate funds” criterion an applicant must satisfy the decision-maker that they have funds of their own, or access to adequate funds, to cover the period of stay sought and the activities proposed.
11. If an applicant indicates they will be meeting their own expenses during the proposed visit and the decision-maker has doubts about the applicant’s ability to do this, then evidence should be sought. This evidence may include, but is not limited to, bank passbooks and/or statements. Generally, cash and travellers cheques are not acceptable evidence of funds unless it can be proven that the applicant owns the funds.
12. Those applicants who indicate that they will be relying on the assistance of another party(ies) during the proposed visit should indicate the level of assistance being offered. Generally, the person offering support should confirm their offer in writing and this should accompany the visa application. In some cases, the other party(ies) may also be required to supply evidence that they have the ability to provide the level of support offered. Failure to supply such evidence, if requested, will be taken into consideration by the decision-maker when deciding whether the “adequate funds” criterion has been satisfied.
13. If the relevant State or Territory Office confirms that offers of financial, and other support submitted by the visa applicant’s family in Australia has been investigated and found to be satisfactory for the period and purpose of the proposed visit, decision-makers can regard this criterion as satisfied.

Visitors over 70 years of age and the “adequate funds” criterion

14. In recognition of the higher potential public health costs in respect of offshore visitor visa applicants aged 70 years of age or older, it is policy that such applicants are expected to provide evidence of private health insurance covering their proposed period of stay in Australia. This additional requirement is necessary for such applicants to satisfy the “adequate funds” criterion.

15. This is also the case if such visitors seek further stay in Australia after their arrival. Officers onshore should ensure that applicants over 70 years of age have health insurance to cover the period of further stay sought.
16. In respect of this criterion, under policy, the following forms of private health insurance are acceptable:
 - (1) private health insurance in the form of a reciprocal health care agreement between Australia and another country;
 - (2) travel insurance, to the equivalent of Medicare cover to cover the cost of any medical or hospital expenses in Australia including any further period of stay sought;
 - (3) medical/hospital cover (to the equivalent of Medicare) with a health insurance fund in Australia for the full period of stay sought; or
 - (4) Sufficient personal funds to cover any possible medical/hospital costs for the period sought eg. where the period of stay sought is relatively short (ie, less than one month); and the amount of funds available to the applicant is adequate.
17. Australia has reciprocal health care agreements with New Zealand, the UK, Ireland, Italy, Malta, the Netherlands, Sweden and Finland. If the applicant is a national of one of these agreement countries, in the absence of any information to the contrary, this criterion can be regarded as satisfied.
18. Decision-makers should note the qualification that the agreements with Italy and Malta cover stays up to **6 months only**. An applicant who claims to be covered on the basis of being a non-citizen resident of an agreement country should be asked to provide evidence of coverage. Decision-makers should also note that reciprocal health care arrangements do not cover pre-arranged treatment or elective treatment.

The risk factor criterion – Public interest criterion 4011

19. The following discussion only refers to public interest criterion (PIC) 4011. Whilst there are other “risk factors” (4013 and 4014) prescribed in the Regulations for Visitor visas, these relate to exclusion periods and are not covered in this Direction. (Note: “Exclusion period” is the prescribed period a visa applicant may not re-enter Australia due to their conduct when previously in Australia.)

20. In addition to the requirement that each applicant satisfy the criteria relating to “genuineness” and “adequate funds”, certain applicants are also subject to public interest criterion 4011 of the Regulations (known as “the risk factor”). This criterion requires that persons who have certain characteristics in common with people identified as presenting a relatively high risk of visa non-compliance, must satisfy the decision-maker that there is very little likelihood that they will not abide by the conditions of the visa granted to them.
21. Applicants who are subject to criterion 4011 are identified by objective criteria. These criteria are:
- persons who, during the period of 5 years immediately preceding the application, have applied for a visa or entry permit for the purpose of permanent residence in Australia; or
 - persons who have all the characteristics of a class of person specified by the Minister by Gazette Notice (commonly known as the “Risk Factor List”) for the purposes of this criterion.
22. A characteristic may include any of the following:
- nationality;
 - marital status;
 - age;
 - sex;
 - occupation;
 - the class of visa currently applied for;
 - where the visa application was lodged or posted from .
23. Under law, decision-makers must use the Risk Factor List in effect at the time the visa application is decided.
24. **Applicants must not be refused solely on the basis that they match the risk factor characteristics.** The Regulations merely provide that the decision-maker is obliged to carefully consider applications lodged by applicants subject to the risk factor. Applicants affected by the Risk Factor are required to satisfy a “higher level of proof” (as discussed in para 25) in relation to the “genuine visit” criterion than are other applicants.
25. An applicant will generally satisfy the “higher level of proof “ only if:
- (a) they have been employed for a period of at least 12 months prior to the application being lodged; **AND** have approved leave for the period of stay sought; **AND** they produce evidence that they will continue to be employed on their return from Australia; **OR**
 - (b) they have owned their own business for a period of at least 12 months;
OR

- (c) in the case of a retired person and/or non-working person, they can demonstrate that they have sufficient financial commitments and/or family ties that would provide sufficient inducement for them to return to their home country at the end of their visit;

AND if a person described in (a), (b), or (c) above:

- they can produce evidence of their own funds, or their access to funds, to cover the period of stay sought and the activities proposed. Evidence of funds may include, but is not limited to, bank passbooks and/or bank statements. (*Note: Recently deposited funds may raise doubts as to whether the funds are personally owned.*) Cash and travellers cheques are not acceptable unless it can be proven that these are personally owned. If the applicant's expenses are to be met by another person(s), evidence must be presented to confirm that the supporter is in a financial position to provide the level of support offered. This evidence may include recent tax documentation, employment letters and/or bank statements; **AND**
 - there is no evidence of immigration malpractice, such as making false statements and presenting fraudulent documents, in respect of this, or any other visa application for Australia.
26. A balanced judgement must be made by decision-makers, taking into account the applicant's personal circumstances in their home country, and weighed against the identified non-return risk. If the decision-maker is satisfied that there is very little likelihood that the applicant will remain after the expiry of any period during which the applicant might be authorised to remain after entry, and the applicant meets all other statutory requirements, the visa is to be granted.

Sponsored (Visitor) Visas

27. When considering whether or not the expressed intention of an applicant for a Sponsored (Visitor) (Class UL) visa only to visit Australia is genuine, decision-makers should consider the circumstances of the proposed sponsor but only if those circumstances are directly relevant to the applicant's intention. Factors might include: Has the sponsor previously sponsored an applicant and did that applicant (once granted a visa) abide by the conditions of that visa? In this respect, the intentions, assurances and history of a proposed sponsor might be relevant in the process of forming a view of the intentions of the applicant although it is ultimately the intentions of the applicant that must be ascertained.
28. Another feature of the Sponsored (Visitor) class is that an authorised officer may request a security bond if an application has been lodged. If requested, the security bond is to be set at a level sufficiently meaningful to encourage the visa holder to comply with the conditions of their visa and thereby satisfy the authorised officer that they intend a "genuine visit". To achieve this objective, bonds set between \$5,000 to \$15,000 per applicant would ordinarily be reasonable.

29. Consideration should be given to requesting a higher bond in those cases where the applicant has strong compelling reasons for wanting to come to Australia, such as to attend a substantial family event, but the assessment of the applicant remains high risk.

International Events Coordination Network

30. The International Event Coordinator Network (IECN) is a designated group of experienced Immigration employees who provide visa information and advice to event organisers and act as a conduit for information between event organisers and the relevant overseas posts. There are International Events Coordinators (IECs) at DIMIA Business Centres in each Australian State/Territory.
31. IECs collect and pass information to overseas posts about upcoming events and prospective overseas visitors at the earliest possible time. Where possible, they will seek to obtain name lists of expected attendees and liaise with event organisers in relation to questions or further information relating to individual visa applications.
32. While confirmation of an event taking place and of an applicant having registered for the event provides some level of proof for the decision maker, normal bona fides assessment in relation to individual applications is still required. IECs can assist with providing further information from events organisers in Australia where appropriate and on the question of what weight can be given to the lists of names provided by event organisers in terms of visitor bona fides.

8503 – “No Further Stay” Visa Condition

33. Condition 8503 is a visa condition that prevents the holder of a visa with the condition attached from making a valid application for another substantive visa, other than for a protection visa, while they remain in Australia.
34. The 8503 condition is generally a discretionary condition that may be included on visitor or business visitor visas. It is used when the decision-maker has some residual concerns about the visa application, but these are insufficient to warrant visa refusal.
35. Imposition of the condition is mandatory (ie applies by law) for the Sponsored (Visitor) visa and for applicants granted Tourist visas under the Approved Destination Status scheme operating out of the People’s Republic of China.
36. All Visitors are given information on the effect of imposing the condition in writing, as part of their visa application form. In some cases additional counselling may be provided, though this is not required for the condition to be imposed lawfully.

37. Prior to imposing the 8503 condition, officers should ensure that applicants have signed the acknowledgment section of their application form that includes information on the effect of imposing the condition. This satisfies the Department's obligation to counsel applicants about the condition prior to its imposition. Failure to sign the application form does not make the application invalid nor the imposition of the condition unlawful. The onus is on the applicant to ensure that they understand all of the information contained in the application form prior to signing it.
38. Officers minded to use their discretion to impose the 8503 condition on a visa should grant the maximum period of stay permitted by the visa applied for, unless the applicant's circumstances are such that a lesser period should be granted.

Visa Stay Period

39. When considering visa applications that are the subject of this Direction (that is, Visitor visa applications) there is discretion under migration law in the period of stay that can be granted. Officers should be guided by the period of stay sought, the purpose of the visit, whether the purpose of the visit is consistent with a genuine visit, and whether all other applicable visa criteria are satisfied.
40. Where an application is made for a Tourist visa and the applicant intends only a short stay of less than 3 months, the officer is expected to grant only 3 months stay. Similarly, for applicants requesting more than 3 months but less than 6 months stay, the officer should only grant a stay period 6 months and for applicants seeking more than 6 months, officers should grant a period of stay of 12 months.
41. In respect of applicants for a Class UL - Sponsored (Visitor) visa who are seeking to visit family and seek a period of stay longer than 3 months, officers should also consider the applicant's and sponsor's circumstances and be aware in exercising their discretion that the maximum period of stay should be granted only in exceptional circumstances.
42. This Direction is to take effect from the date of signature.

Dated this: 22nd day of June 2005

PETER McGAURAN

Minister for Citizenship and Multicultural Affairs