

## **Direction No. 100**

### **Order of Consideration — Certain Skilled Visas**

<b>KEY DATES AND REFERENCES</b>	
Commenced	28/10/2022
Signed	27/10/2022
Status	<b>Current</b>
Revoked	Directions no. 96 and no. 97

## **DIRECTION NO. 100**

### **MIGRATION ACT 1958**

#### **DIRECTION UNDER SECTION 499**

### **Order of Consideration — Certain Skilled Visas**

I, Clare O’Neil, Minister for Home Affairs and Minister for Cyber Security, give this Direction under section 499 of the *Migration Act 1958* (the Act).

Dated

Minister for Home Affairs and Minister for Cyber Security

# Part 1 - Preliminary

## 1. Name of Direction

This Direction is Direction no. 100 Order of Consideration - Certain Skilled visas.  
It may be cited as Direction no. 100.

## 2. Commencement

This Direction commences on the day after it is signed.

## 3. Revocation

The following Directions given under section 499 of the Act are **revoked**:

- *Direction no. 96 Order of Consideration - Certain Skilled Migration visas*, dated 4 April 2022
- *Direction no. 97 - Order of Priority Allocation within the Subclass 482 (Temporary Skill Shortage) visa program and Subclass 457 (Temporary Work (Skilled)) visa program*, dated 4 April 2022

## 4. Application

(1) This Direction applies to all persons and bodies having powers under the Act, including the AAT, to consider and dispose of the applications for the visas mentioned in Schedule A and to review decisions pertaining to those applications.

(2) This Direction also applies to decision-makers, including the AAT, who consider nomination applications in relation to employer sponsored visas.

(3) Without intending to limit the scope of subsection 4(1), this Direction applies to decision-makers performing functions or exercising powers under sections 51 and 91 of the Act.

(4) This Direction **does not** apply to:

- (a) applications that have been remitted by the AAT for reconsideration;
- (b) applications where the AAT has set aside a decision and substituted a new decision;
- (c) applications where it is readily apparent that the criteria for grant of the visa would not be satisfied;
- (d) applications by visa applicants claiming to be a member of the family unit of a person who holds a visa granted on the basis of satisfying the primary criteria in Schedule 2 to the Regulations and **who did not make a combined application with that person**;
- (e) nomination applications **in relation to a change of employer**.

(5) Subject to subsection 4(4) above, this Direction applies to nomination applications and visa applications made both before, on or after the commencement of this Direction and which have not been finally determined.

## 5. Preamble

(1) Australia's skilled visa programs are designed to select people who will make a positive contribution to the Australian economy and labour market, and assist Australian businesses to access workers with skills that cannot be met from the local labour market.

(2) The order of priority for considering applications is specified in this Direction to ensure appropriate allocation of resources in considering and disposing of applications, and that certain cohorts of applications are given priority.

(3) In relation to the visas mentioned in Schedule A, this Direction directs persons and bodies to which it applies with respect to the performance of functions and exercise of powers (under sections 51 or 91 of the Act) to:

- consider and dispose of visa applications in the specified order of consideration; and
- to review decisions pertaining to those applications in the specified order of consideration.

(4) Persons and bodies to whom this Direction applies are to give due regard to the priority processing directions set out below in Part 2 of this Direction.

(5) This Direction does not change the composition of the skilled migration occupation lists. Applicants must meet the requirements set out in the Regulations in order to be granted a visa or have their nomination approved.

## 6. Interpretation

In this Direction:

*AAT* means the Administrative Appeals Tribunal.

*ANZSCO* has the same meaning as defined in regulation 1.03 of the Regulations.

*Approved sponsor with Accredited Status* means a **standard business sponsor** awarded Accredited Status by the Department of Home Affairs.

*Designated Regional Area* has the same meaning as in regulation 1.15M of the Regulations.

*Eligible passport*- means a **Hong Kong Special Administrative Region** of the People's Republic of China **passport** or a **British National (Overseas) passport**.

*Employer sponsored visa* - means a Subclass 186 (Employer Nomination Scheme) visa, a Subclass 187 (Regional Sponsored Migration Scheme) visa, a Subclass 457 (Temporary Work (Skilled)) visa, a Subclass 482 (Temporary Skill Shortage) visa, or a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa.

*Healthcare or teaching occupation* means an occupation in any of the following (where each occupation is of equal priority):

- a. ANZSCO Sub-major Group 25 - Health Professionals
- b. ANZSCO Minor Group 241 - School Teachers
- c. ANZSCO Minor Group 411 - Health and Welfare Support Workers
- d. ANZSCO Unit Group 1341 - Child Care Centre Managers
- e. NZSCO Unit Group 2346 - Medical Scientists
- f. ANZSCO Unit Group 2721 - Counsellors
- g. ANZSCO Unit Group 2723 - Psychologists
- h. ANZSCO Unit Group 2725 - Social Workers
- i. ANZSCO Unit Group 3112 - Medical Technicians
- j. ANZSCO occupations:
  - i. 134311 - School Principal
  - ii. 421111 - Child Care Worker
  - iii. 423111 - Aged or Disabled Carer.
  - iv. 423312 - Nursing Support Worker
  - v. 423313 - Personal Care Assistant

*Member of the family unit* has the same meaning as in regulation 1.12 of the Regulations.

*Nomination application* means a nomination application in relation to an employer sponsored visa under regulations 2.73, 2.73B or 5.19 of the Regulations.

**Primary criteria** means the visa criteria under Schedule 2 to the Regulations for a particular visa subclass that are to be satisfied by the primary applicant.

*Regulations* means the *Migration Regulations 1994*.

*Section 85 cap* means the maximum number of visas of a specified class that may be granted in a particular financial year, as specified by the Minister in a legislative instrument made under section 85 of the Act.

## Part 2 – Directions

### 7. Order for considering nomination applications for **employer sponsored visas**

(1) Paragraphs 7(1)(a) to (d), set out the order of priority for considering nomination applications, with paragraph (a) being the highest priority and paragraph (d) being the lowest priority.

- (a) Nomination applications in relation to a healthcare or teaching occupation.
- (b) Nomination applications lodged by an Approved sponsor with Accredited Status.
- (c) Nomination applications in relation to an occupation to be carried out **in a designated regional area**.
- (d) All other nomination applications.

(2) Within all subparagraphs at paragraph 1 above, for nomination applications in relation to a provisional or permanent visa, **priority should be given to nominations that nominate applicants, or proposed applicants, for a visa who are located outside Australia** at the time the nomination application is made.

(3) Within all subparagraphs at paragraph 1 above, priority should be given to nomination applications that nominate applicants, or proposed applicants, for a visa who are **the holders of eligible passports**.

## 8. Order for considering visa applications for visa subclasses mentioned in Schedule A

(1) Paragraphs 8(1)(a) to (e), set out the order of priority for considering visa applications, with paragraph (a) being the highest priority and paragraph (e) being the lowest priority.

- (a) Visa applications in relation to a healthcare or teaching occupation.
- (b) For employer sponsored visas, visa applications where the applicant is nominated by an Approved sponsor with Accredited Status.
- (c) Visa applications in relation to an occupation to be carried out in a **designated regional area**;
- (d) For permanent and provisional visa subclasses, visa applications that count towards the migration program, **excluding** the Subclass 188 (Business Innovation and Investment (Provisional)) visa.
- (e) All other visa applications.

(2) Within all subparagraphs at paragraph 1 above, for provisional and permanent skilled visa applications, **priority should be given to visa applications where the primary applicant is located outside Australia** at the time the visa application is made.

(3) Within all subparagraphs at paragraph 1 above, priority should be given to visa applications by **the holders of eligible passports**.

## 9. If a section 85 cap applies

(1) Applications for a visa may be affected by a section 85 cap that allows processing to be conducted but **prevents the grant of visas beyond a specified number** in a specified time period.

(2) In deciding the order for considering and disposing of **visa applications** (or reviewing decisions pertaining to such applications) **when affected by a section 85 cap**, the applications to which this Direction specifically applies **should be given priority in the order** as provided for above.

## Schedule A

This Direction applies to the following visa subclasses:

- (a) *Subclass 124 (Distinguished Talent) visa;*
- (b) Subclass 186 (Employer Nomination Scheme) visa;
- (c) Subclass 187 (Regional Sponsored Migration Scheme) visa;
- (d) Subclass 188 (Business Innovation and Investment (Provisional)) visa;
- (e) Subclass 189 (Skilled - Independent) (**Points-tested stream**) visa;
- (f) Subclass 190 (Skilled - Nominated) visa;
- (g) Subclass 191 (Permanent Residence (Skilled Regional)) visa;
- (h) *Subclass 457 (Temporary Work (Skilled)) visa;*
- (i) Subclass 482 (Temporary Skill Shortage) visa;
- (j) Subclass 489 (Skilled - Regional (Provisional)) visa;
- (k) Subclass 491 (Skilled Work Regional (Provisional)) visa;
- (l) Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa;
- (m) Subclass 858 (Global Talent) visa;
- (n) Subclass 887 (Skilled — Regional) visa;
- (o) Subclass 888 (Business Innovation and Investment (Permanent) visa.