



LIN 24/092

Migration (Arrangements for Employer Nomination and Regional Employer Nomination Skilled Visas) Instrument 2024

I, Julian Hill, Assistant Minister for Citizenship and Multicultural Affairs, make the following instrument.

Dated 6 December 2024

Julian Hill
Assistant Minister for Citizenship and Multicultural Affairs

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Part 1—Preliminary

1 Name

This instrument is the *Migration (Arrangements for Employer Nomination and Regional Employer Nomination Skilled Visas) Instrument 2024*.

2 Commencement

This instrument commences on 7 December 2024.

3 Authority

This instrument is made under subregulation 2.07(5) and regulation 5.19 of the *Migration Regulations 1994*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act or the Regulations, including the following:

- (a) **Internet application**;
- (b) **officer**.

In this instrument:

Act means the *Migration Act 1958*.

Department means the Department of Home Affairs.

nomination application means an application for approval of the nomination of a position.

Regulations means the *Migration Regulations 1994*.

subclass 186 visa means the Subclass 186 (Employer Nomination Scheme) visa.

5 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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Part 2—Nominations for subclass 186 and 187 visas

6 Approved form for nominations for subclass 186 and 187 visas

- (1) Subject to subsection (2), for the purposes of paragraph 5.19(2)(a) of the Regulations, approved form 1395 (Internet) is specified.
- (2) For the purposes of paragraph 5.19(2AA)(b) of the Regulations, approved form 1395 is specified as the form for a nomination application in relation to an application, or proposed application, for a subclass 186 visa made in the way specified in subsection 7(2).

7 **Different way of making a nomination** application for subclass 186 visa

- (1) For the purposes of paragraph 5.19(2AA)(a) of the Regulations, this section specifies:
 - (a) a different way of making a nomination application in relation to an application, or proposed application, for a subclass 186 visa; and
 - (b) the circumstances in which such an application may be made in that way.
- (2) For a nomination application in relation to an application, or proposed application, for a subclass 186 visa, if the circumstances specified in subsection (3) or (4) apply, and if:
 - (a) an officer has sent an authorisation for a person to make an application in accordance with this subsection; and
 - (b) the authorisation in paragraph (a) is sent by an email from e186.Manual.Lodgement@homeaffairs.gov.au;then:
 - (c) it is specified that the person may instead make an application by:
 - (i) using the form specified in subsection 6(2), as provided with the authorising email; and
 - (ii) emailing the completed application form to e186.Manual.Lodgement@homeaffairs.gov.au by the end of the day on which the authorisation was given (AEST or AEDST as applicable to the date on which the authorisation was given); and
 - (iii) including in the email a copy of the authorising email sent by the Department that includes the name and position number of the officer who sent the authorising email.
- (3) This subsection specifies the following circumstances:
 - (a) the Department has identified a problem with its Internet application systems; and
 - (b) as a result of the problem referred to in paragraph (a), the applicant is unable to make an Internet application; and
 - (c) electronic lodgement of the application is not prevented by the Act or the Regulations; and

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- (d) it is more likely than not that the problem will not be rectified by the end of the business day on which the problem is identified by the Department, or if the problem is identified on a day that is not a business day—by the end of the next business day following the day on which the problem is identified; and
 - (e) any of the following applies:
 - (i) a person who applies, or proposes to apply, for a visa in relation to the nomination application (an *affected visa applicant*) will become an unlawful non-citizen on, or before, the next business day after the day identified in paragraph (d);
 - (ii) an affected visa applicant will no longer hold a visa mentioned in paragraph 5.19(5)(a) of the Regulations on or before the next business day after the day identified in paragraph (d);
 - (iii) an affected visa applicant will turn 45 on or before the next business day after the day identified in paragraph (d).
- (4) This subsection specifies the following circumstances:
- (a) a problem is identified by the Department with the Department's systems and the applicant is unable to make an Internet application as a result of that problem; and
 - (b) the problem referred to in paragraph (a) is unable to be rectified by the Department; and
 - (c) electronic lodgement of the application is not prevented by the Act or the Regulations.

Part 3—Approved forms and manner for application for Class EN or RN visa

8 Approved forms for the Class EN visa

- (1) Subject to subsection (2), for the purposes of subitem 1114B(1) of Schedule 1 to the Regulations, form 1408 (Internet) is specified as the approved form.
- (2) For the purposes of subitem 1114B(1) of Schedule 1 to the Regulations, approved form 1408 is specified for an application made in accordance with subsection 9(3).

9 Manner in which application for Class EN visa must be made

- (1) For the purposes of paragraph 1114B(3)(a) of Schedule 1 to the Regulations, subsections (2) and (3) specify the manner in which an application must be made.
- (2) Subject to subsection (3), an application must be made as an Internet application.
- (3) If subsection (4) or (5) applies, and if:
 - (a) an officer has sent an authorisation for a person (*the applicant*) to make an application in accordance with this subsection; and
 - (b) the authorisation in paragraph (a) is sent by an email from e186.Manual.Lodgement@homeaffairs.gov.au, then it is specified that the applicant may instead make an application by:
 - (i) using the form specified in subsection 8(2), as provided with the authorising email; and
 - (ii) emailing the completed application to e186.Manual.Lodgement@homeaffairs.gov.au by the end of the day on which the authorisation was given (AEST or AEDST as applicable to the date on which the authorisation was given); and
 - (iii) including in the email a copy of the authorising email sent by the Department that includes the name and position number of the officer who sent the authorising email;the application must be made in the manner specified in paragraph (b).
- (4) This subsection applies if:
 - (a) the Department has identified a problem with its Internet application systems; and
 - (b) as a result of the problem referred to in paragraph (a), the applicant is unable to make an Internet application; and
 - (c) electronic lodgement of the application is not prevented by the Act or the Regulations; and

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- (d) it is more likely than not that the problem will not be rectified by the end of the business day on which the problem is identified by the Department, or if the problem is identified on a day that is not a business day – by the end of the next business day following the day the problem is identified; and
 - (e) either:
 - (i) the applicant will become an unlawful non-citizen on, or before, the next business day after the day identified in paragraph (d); or
 - (ii) the applicant will turn 45 on, or before, the next business day after the day identified in paragraph (d).
- (5) This subsection applies if:
- (a) a problem is identified by the Department with the Department’s systems and the applicant is unable to make an Internet application as a result of that problem; and
 - (b) the problem referred to in paragraph (a) is unable to be rectified by the Department; and
 - (c) electronic lodgement of the application is not prevented by the Act or the Regulations.

10 Making an application for the Class RN visa

- (1) For the purposes of subitem 1114C(1) of the Regulations, form 1408 (Internet) is specified as the approved form.
- (2) For the purposes of paragraph 1114C(3)(a) of the Regulations, it is specified that an application must be made as an Internet application.

Schedule 1—Repeals

Migration Regulations 1994 - Specification of Arrangements for Employer Nomination and Regional Employer Nomination Skilled Visas 2015 (items 1114B and 1114C) (IMMI 15/032)

1 The whole of the instrument

Repeal the instrument.

EXPLANATORY STATEMENT

Issued by the Assistant Minister for Citizenship and Multicultural Affairs

Migration (Arrangements for Employer Nomination and Regional Employer Nomination Skilled Visas) Instrument 2024

The instrument *Migration (Arrangements for Employer Nomination and Regional Employer Nomination Skilled Visas) Instrument 2024* (departmental reference LIN 24/092) is made under subregulation 2.07(5) and regulation 5.19 of the *Migration Regulations 1994* (Migration Regulations).

The purpose of this instrument is to specify the following:

- approved forms for nominations for the Subclass 186 (Employer Nomination Scheme) visa (subclass 186 visa) and the Subclass 187 (Regional Sponsored Migration Scheme) visa;
- a different way of making a nomination application for subclass 186 visa;
- approved forms for the Employer Nomination (Permanent) (Class EN) visa (Class EN visa);
- the manner in which an application for Class EN visa must be made;
- the form for, and manner of making, an application for the Regional Employer Nomination (Permanent) (Class RN) visa.

In accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (Acts Interpretation Act), the instrument also repeals *Migration Regulations 1994 - Specification of Arrangements for Employer Nomination and Regional Employer Nomination Skilled Visas 2015* (IMMI 15/032; F2015L00549 on the Federal Register of Legislation). Subsection 33(3) of the Acts Interpretation Act provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The instrument is exempt from disallowance under section 42 of the *Legislation Act 2003* (the Legislation Act). This is because instruments made under Parts 2 and 5 of the Migration Regulations are prescribed as being exempt from disallowance under paragraph (b) of item 20 of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. A statement of compatibility with human rights is therefore not required.

The Office of Impact Analysis (OIA) has been consulted in relation to the amendments, advising that no Impact Analysis is required. The OIA consultation reference number is OIA24/07439.

The Department of Home Affairs has not consulted externally in relation to the matters specified in this instrument. The changes are minor and machinery in nature, in order to facilitate application lodgement when departmental systems are not available, and where the applicant would no longer meet certain objective eligibility requirements if lodgement was

delayed. These changes are modelled on existing arrangements for the Subclass 482 visa. The Department is not aware of any adverse feedback in relation to the manual lodgement process for the Subclass 482 visa, noting that it is beneficial in nature, providing an alternative lodgement method in certain circumstances when departmental systems are unavailable.

The instrument commences on 7 December 2024.

Further details of the instrument are set out in Attachment A.

The Migration Regulations specify no conditions that need to be satisfied before the power to make the instrument may be exercised.

The instrument is a legislative instrument for the purposes of the Legislation Act.

Details of the Migration (Arrangements for Employer Nomination and Regional Employer Nomination Skilled Visas) Instrument 2024 (LIN 24/092)

Part 1—Preliminary

Section 1 – Name of instrument

This section provides that the title of the instrument is the *Migration (Arrangements for Employer Nomination and Regional Employer Nomination Skilled Visas) Instrument 2024 (LIN 24/092)*.

Section 2 – Commencement

This section provides the instrument commences on 7 December 2024.

Section 3 – Authority

This section provides that the instrument is made under subregulation 2.07(5) and regulation 5.19 of the *Migration Regulations 1994* (the Migration Regulations).

Section 4 – Definitions

This section sets out definitions for certain terms used in the instrument.

Section 5 – Schedules

This section provides that 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.

Part 2—Nominations for subclass 186 and 187 visas

Section 6 – Approved form for nominations for the subclass 186 and 187 visas

Subsection 6(1) specifies approved form 1395 (Internet) as the form for the purposes of paragraph 5.19(2)(a) of the Migration Regulations. Subject to subsection 6(2), this is intended to be the approved form for the purposes of 5.19(2)(a) of the Migration Regulations for nominations in relation to both the Subclass 186 (Employer Nomination Scheme) visa (subclass 186 visa) and the Subclass 187 (Regional Sponsored Migration Scheme) visa (subclass 187 visa).

New paragraph 5.19(2)(a) of the Migration Regulations was implemented by the Amendment Regulations. It provides that, subject to subregulation 5.19(2AA), a nomination application must be made using the form specified by the Minister in a legislative instrument made for the purposes of paragraph 5.19(2)(a).

Subsection 6(2) specifies that, for the purposes of paragraph 5.19(2AA)(b) of the Regulations, approved form 1395 is specified as the form for a nomination application in relation to an application, or proposed application, for a subclass 186 visa made in the way specified in subsection 7(2).

New paragraph 5.19(2AA)(b) of the Migration Regulations was implemented by the Amendment Regulations. It applies where the Minister has specified a different way of making a nomination application, and the circumstances in which such an application may be made, for the purposes of paragraph 5.19(2AA)(a). Paragraph 5.19(2AA)(b) provides that if the Minister specifies in the legislative instrument a form for the different way of making the application, the application must be made using that form.

Section 7 – Different way of making a nomination application for subclass 186 visa

Subsection 7(1) provides that section 7 specifies, for the purposes of paragraph 5.19(2AA)(a) of the Migration Regulations:

- a different way of making a nomination application in relation to an application, or proposed application, for a subclass 186 visa; and
- the circumstances in which such an application may be made in that way.

Subsection 7(2) specifies, for the purposes of paragraph 5.19(2AA)(a) of the Migration Regulations, a different way of making a nomination application for a subclass 186 visa. This provides for lodgement of a nomination application using an approved form 1395 when a person is authorised to do so in writing by an officer of the Department. This method is only available if the circumstances specified in subsection 7(3) or (4) apply.

Subsection 7(3) specifies, for the purposes of paragraph 5.19(2AA)(a) of the Migration Regulations, the circumstances in which the application may be made in the way specified in subsection 7(2). In summary, these circumstances relate to where there is a problem with the Department's Internet application systems that is preventing the making of a nomination application using the standard internet application, and the Department is unable to resolve the problem in the time specified in subsection 7(3).

The circumstances in subsection 7(3) only apply if the affected visa applicant will, as a result of the problem, on or before the end of the relevant business day:

- become an unlawful non-citizen;
- no longer hold a relevant visa; or
- turn 45 years of age.

Subsection 7(4) specifies, for the purposes of paragraph 5.19(2AA)(a) of the Migration Regulations, the circumstances in which the application may be made in the way specified in subsection 7(2). In summary, these circumstances relate to where there is a problem with the Department's systems generally that is preventing the making of a nomination application using the standard internet application, and the Department is unable to resolve the problem.

Part 3—Approved Forms and Manner for application for Class EN or RN visa

Section 8 – Approved forms for the Class EN visa

Subsection 8(1) specifies the approved form for an application for the Employer Nomination (Permanent) (Class EN) visa (Class EN visa) for the purposes of subitem 1114B(1) of Schedule 1 to the Migration Regulations. Subsection 8(1) provides that, subject to subsection (2), form 1408 (Internet) is specified as the approved form.

Subsection 8(2) provides that, for the purposes of subitem 1114B(1) of Schedule 1 to the Regulations, approved form 1408 is specified for an application made in accordance with subsection 9(3).

Section 9 – Manner in which application for Class EN visa must be made

Subsection 9(1) provides that subsections 9(2) and (3) specify the manner in which an application for a Class EN visa must be made for the purposes of paragraph 1114B(3)(a) of Schedule 1 to the Migration Regulations.

Subsection 9(2) provides that, subject to subsection (3), an application must be made as an Internet application.

Subsection 9(3) provides for lodgement of an application using an approved form 1408 when a person is authorised to do so in writing by an officer of the Department. This method is only available if the circumstances specified in subsections 9(4) or (5) apply.

Subsection 9(4) specifies a circumstance in which the method for making an application referred to in subsection 9(3) may be used. In summary, these circumstances relate to where there is a problem with the Department's Internet application systems that is preventing the making of an application using the standard internet application, and the Department is unable to resolve the problem in the time specified in subsection 9(4).

The circumstances in subsection 9(4) only apply if the affected visa applicant will, as a result of the problem, before the end of the relevant business day:

- become an unlawful non-citizen; or
- turn 45 years of age.

Subsection 9(5) specifies further circumstances in which the method for making an application referred to in subsection 9(3) may be used. In summary, these circumstances relate to where there is a problem with the Department's systems generally that is preventing the making of an application using the standard internet application, and the Department is unable to resolve the problem.

Section 10 – Making an application for the Class RN visa

Subsection 10(1) specifies the form to be used for making an application for the Regional Employer Nomination (Permanent) (Class RN) visa (Class RN visa). Subsection 10(1)

specifies that, for the purposes of subitem 1114C(1) of the Migration Regulations, form 1408 (Internet) is specified as the approved form.

Subsection 10(2) specifies that, for the purposes of paragraph 1114C(3)(a) of the Migration Regulations, an application for a Class RN visa must be made as an Internet application.

Schedule 1—Repeals

Item [1] – The whole of the instrument

Item 1 of Schedule 1 repeals the whole of the instrument *Migration Regulations 1994 - Specification of Arrangements for Employer Nomination and Regional Employer Nomination Skilled Visas 2015* (IMMI 15/032; F2015L00549 on the Federal Register of Legislation).