

**Direction No. 103 - Order for considering and disposing of visa applications
under section 91 of the Migration Act 1958**

I, ANDREW GILES, Minister for Immigration, Citizenship and Multicultural Affairs, give this Direction under section [499](#) of the *Migration Act 1958*.

Dated:

9/2/2023

ANDREW GILES

Minister for Immigration, Citizenship and Multicultural Affairs

Part 1 Preliminary

1. Name of Direction

This Direction is the *Direction 103 order for considering and disposing of visa applications under section 91 of the Migration Act* and may be cited as *Direction 103*.

2. Commencement

This Direction has effect from the date of signature.

3. Revocation

Direction 83, given under section [499](#) of the Act and dated 21 December 2018, is revoked.

4. Application

(1) This Direction applies to delegates of the Minister performing functions or exercising powers under section [91](#) of the Act.

(2) This Direction does not apply to the Administrative Appeals Tribunal.

5. Preamble

(1) High levels of demand in visa classes for which places are limited by the imposition of annual limits on visa grant under section 85 of the Act have created a need to manage the grant of visas in these classes in an orderly and equitable fashion.

(2) Each year the Government sets planning levels for the Migration Program. A section [85](#) determination is used to set limits for a financial year to ensure that planning levels are not exceeded and that the Program is delivered in line with the overall size and composition set by Government.

(3) This Direction directs delegates with respect to the performance of functions and exercise of powers under section [91](#) of the Act to determine the order for considering

and disposing of visa applications that are, or have been, subject to annual limits imposed by section [85](#) of the Act.

(4) A separate Direction under section [499](#) of the Act, for the purpose of section 51 of the Act, deals with the overall priorities for the processing of applications for Family visas (see [Direction 102](#) (or its succeeding Directions) - *order for considering and disposing of Family visa applications*). This Direction deals with the prioritisation of all visa applications (including Family visa applications) that are, or have been, subject to a limit on visa grants in a specified financial year. The two Directions are intended to work together. To the extent that there is any conflict between the Directions, this Direction will take precedence over Direction 102 (or its succeeding Directions).

Notes:

Subsection [85](#)(1) provides that, subject to subsection [85](#)(2), the Minister may, by legislative instrument, determine the maximum number of: (a) the visas (including protection visas) of a specified class; or (b) the visas (including protection visas) of specified classes; that may be granted in a specified financial year. Subsection [85](#)(2) provides that subsection [85](#)(1) does not apply to temporary protection visas or safe haven enterprise visas.

Section [86](#) of the Act provides that once the maximum number of visas of the class or classes is reached, no more visas of the class or classes may be granted in the financial year.

Section [87](#) of the Act provides that section [86](#) does not prevent the grant of a visa to a person who applied for it on the ground that he or she is the spouse, de facto partner or dependent child of an Australian citizen or permanent resident or a person who is usually resident in Australia and whose continued presence in Australia is not subject to a limitation as to time imposed by law.

Section [87A](#) of the Act provides that section [86](#) does not prevent the grant of a visa to a person where:

- the person has been affected by section [86](#) in a previous financial year; and
- the person has subsequently been requested to meet health or character requirements; and
- the person has met those requirements but not before section 86 has again taken effect; and
- the Minister is satisfied that the person was unable to satisfy the health or character requirements before the operation of section 86 for a second time because of circumstances beyond the person's control.

Section [88](#) of the Act provides that where section [86](#) prevents a visa grant, this does not prevent any other action related to the application for the visa.

Section [91](#) of the Act empowers the Minister to consider and dispose of outstanding and further applications for these visas in such order as he or she considers appropriate.

Subsection [499](#)(1) of the Act empowers the Minister to give to a person or body having functions or powers under the Act written directions not inconsistent with the Act or the Regulations, in accordance with which the person or body shall perform those functions and exercise those powers. The person or body must comply with the direction.

6. Interpretation

(1) Unless otherwise specified, terms used in this Direction have the same meaning as in the Act - see section 46 of the [Acts Interpretation Act 1901](#).

(2) In this Direction:

Act means the [Migration Act 1958](#).

[assurance of support](#) has the same meaning as in the Regulations.

eligible retiree means a person who:

- on 8 May 2018, held an Investor Retirement ([subclass 405](#)) visa or a Retirement ([subclass 410](#)) visa granted on or before 8 May 2018, or who did not hold a substantive visa on that date and the last substantive visa held was one of those visas; and
- who did not hold any substantive visa other than an Investor Retirement (subclass 405) visa or a Retirement (subclass 410) visa between 8 May 2018 and the date of lodgement of a Pathway visa application.

Family Visas means classes of visa provided for by the Regulations, including repealed classes that cater for primary applicants in any of the following categories: spouses, de facto partners, prospective spouses, dependent children, parents, aged parents, aged dependent relatives, carers, orphan relatives, and remaining relatives.

Minister means the Minister who administers the Act.

Other Family visas specifically refers to Other Family (Migrant) ([Class BO](#)), Other Family (Residence) ([Class BU](#)) and the repealed Preferential Relative (Migrant) (Class AY) and Family (Residence) (Class AO) visa classes under the Family Visa stream.

Pathway visa application means an application, made on or after 17 November 2018, for a Parent (subclass [103](#)) visa or a Contributory Parent ([subclass 143](#)) visa by an eligible retiree.

queue date means the date on which the applicant is assessed by a delegate as meeting all of the prescribed criteria for the visa, other than the following:

(a) for Offshore Other Family visas, the applicant's health and character requirements, assurance of support requirements and payment of the second instalment of the visa application charge;

(b) for Onshore Other Family visas, the applicant's assurance of support requirements and payment of the second instalment of the visa application charge;

(c) for Onshore Parent visas (Subclass [804](#)) and Contributory Parent visas (Subclass [864](#) and [884](#)), the applicant's payment of the second instalment of the visa application charge and, where applicable, assurance of support requirements;

(d) for Parent visas (Subclass [103](#)) and Contributory Parent visas (Subclass [143](#) and [173](#)), the applicant's health and character requirements, payment of the second instalment of the visa application charge and, where applicable, assurance of support requirements.

Regulations means the Migration Regulations 1994.

Part 2 Directions

7. Considering and disposing of applications

(1) Except as otherwise instructed by this Direction and [Direction 102](#) (or its succeeding Directions) – [order for considering and disposing of Family visa applications](#), delegates should process applications for Family visas in the order in which they are received by the Department.

(2) To ensure fairness and equity in the processing of parent visa applications, the principle of processing applications for Family visas in the order in which they are received by the Department is to be departed from in the following circumstances:

(a) if before lodging a Contributory Parent (classes [CA](#) and Class [UT](#)) or Contributory Aged Parent (classes [DG](#) and [UU](#)) visa application the applicant had an unfinalised Parent (Class [AX](#)) or Aged Parent (Class [BP](#)) visa application, then the date of lodgement of the Contributory Parent or Contributory Aged Parent visa application should be deemed to be the date of lodgement of the unfinalised Parent or Aged Parent visa application.

(b) if the applicant is a holder of a Contributory Parent (Temporary) (class [UT](#)) visa or a Contributory Aged Parent (Temporary) (class [UU](#)) visa, then the lodgement date for the permanent Contributory Parent (class [CA](#)) or permanent Contributory Aged Parent (class [DG](#)) visa application should be deemed to be the date of lodgement of the application of the temporary visa.

(c) Pathway visa applications are to be treated separately from other applications for the Parent (subclass [103](#)) visa and Contributory Parent (subclass [143](#)) visa. In addition, there is to be a queue of pathway visa applications that relate to Subclass [103](#) and a separate queue of pathway visa applications that relate to Subclass [143](#). These queues are to be processed independently of one another in accordance with the directions in section 10, taking into consideration the number of places allocated to eligible retirees within the annual parent program.

8. General order of precedence

(1) Except for Other Family visa applications and Pathway visa applications the order of precedence for Family visa applications is:

(a) those applications where the Minister has exercised powers of intervention under sections [351](#) or [417](#) of the Act in the order that those powers have been exercised; then

(b) all other applications in queue date order, commencing with the application with the earliest queue date, to the extent that it is reasonably practicable to assess applications in that order.

(2) Those applications that have been remitted to the Department following review by a merits review tribunal or a court, will be assigned a queue date according to departmental policy and considered in queue date order under section 8(1)(b).

9. Order of precedence for Other Family visa applications

The order of precedence for Other Family visa applications is:

- (a) those applications where the Minister has exercised powers of intervention under sections [351](#) or [417](#) of the Act in the order that those powers have been exercised; then
- (b) all other applications in queue date order, commencing with the application with the earliest queue date, to the extent that it is reasonably practicable to assess those applications in that order.

10. Order of precedence for Pathway visa applications

(1) The order of precedence for Pathway visa applications is:

- (a) those applications where the Minister has exercised powers of intervention under sections [351](#) or [417](#) of the Act in the order that those powers have been exercised; then
- (b) all other applications, with priority being allocated, as far as is reasonably practicable, on the basis of the total length of time that the person has been present in Australia subsequent to the first grant of an Investor Retirement (subclass [405](#)) visa or a Retirement (subclass 410) visa. Applicants who have spent the most time in Australia at time of decision to grant the visa should get the highest priority.

(2) Those applications that have been remitted to the Department following review by a merits review tribunal or a court will be assigned priority based the length of time the applicant has spent in Australia as outlined in section 10(1)(b).

11. Queue date

(1) Delegates are to have regard to any unreasonable delay in finalising a visa application arising from processing delays or review proceedings and may backdate the queue date to mitigate the unreasonable delay. However, the queue date is intended to provide a fair and objective standard for prioritising finalisations, and backdating needs to be clearly justified.

12. Notification to applicants of effect of not meeting outstanding requirements

(1) Orderly management of the Migration Program requires that the reaching of a cap (that is, the number of visa grants specified in a section 85 determination) should not be unduly deferred due to individual applicants being unable to meet outstanding requirements such as:

- (a) obtaining health or character clearances;
- (b) meeting other requirements (for example sponsorship renewal) in some cases; or
- (c) having an assurance of support.

(2) Where a new section [85](#) determination has been or is likely to be made, delegates should consider the appropriateness of visa applicants who have not met outstanding requirements being informed of matters such as:

(a) an appropriate time frame within which the outstanding requirements should be fulfilled by the applicant, having regard to the likelihood that a section 85 cap will come into effect within a certain broad time frame; and

(b) the possible consequences of the applicant's inability to meet the outstanding requirements within that time frame, including that the application may again be affected by section 86 of the Act.