

DIRECTION NO. 114

MIGRATION ACT 1958

DIRECTION UNDER SECTION 499

Order of consideration for Subclass 188 and Subclass 132 visas

I, Tony Burke, Minister for Home Affairs, Minister for Immigration and Multicultural Affairs, give this Direction under section 499 of the *Migration Act 1958* (the Act).

11. 2. 25

Dated



Tony Burke

Minister for Home Affairs, Minister for Immigration and Multicultural Affairs

Part 1– Preliminary

1. Name of direction

This Direction is Direction no. 114 – Order of consideration for Subclass 188 and Subclass 132 visas.

It may be cited as Direction 114.

2. Commencement

This Direction commences on the day after the date of signature.

3. Application

(1) Subject to subsection 3(3), this Direction applies to all persons having functions and powers under the Act who consider and dispose of applications for a Subclass 188 visa or a Subclass 132 visa; and

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

(3) This Direction does not apply to:

(a) applications that have been remitted by the AAT or ART for reconsideration;

(b) applications where it is readily apparent that the criteria for grant of the visa would not be satisfied;

(c) 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 of the Regulations and who did not make a combined application with that person;

- (d) applications by visa applicants who hold, or held at the time of application, a Subclass 188 visa in the Business Innovation stream or Significant Investor stream and who have applied for a Subclass 188 visa in the Business Innovation Extension or Significant Investor Extension stream;
- (e) applications that are combined with an application made by a person seeking to satisfy the primary criteria for grant of a Subclass 188 visa in the Business Innovation Extension or Significant Investor Extension stream;
- (f) the ART.

4. Preamble

- (1) Australia's skilled visa programs are designed to select people who will make a positive contribution to the Australian economy. The Business Innovation and Investment Program (BIIP) targeted migrants with a demonstrated history of success in business, innovation or investment who were able to make a significant contribution to national innovation.
- (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 so that certain cohorts of applications are given priority.
- (3) Direction on the order of priority applied to skilled visa programs is provided in a separate ministerial direction - Ministerial Direction no. 105 *Order of consideration – Certain Skilled Visas* (MD 105). This direction only concerns the order of consideration for Subclass 188 and Subclass 132 visa applications after all other relevant directions have been considered. The two directions are intended to be complementary with this direction being subordinate to MD 105.
- (4) To ensure that current government priorities are met, it is necessary to carefully consider the order of visa application processing so that the appropriate streams within the Subclass 188 and Subclass 132 visas are given priority. Prioritising certain visa streams for those applying for Subclass 188 and Subclass 132 visas ensures the BIIP is focussed on applications from migrants who will help create jobs and drive innovation. In support of the positive experience of Subclass 188 Entrepreneurs sponsored through States and Territory Governments, visa applications made by members of this cohort will be considered ahead of others in the BIIP, followed by visa applications made by individuals with successful business histories that plan to establish operations in Australia that will bring clear economic benefits – including jobs for Australians. Noting Australia's ease in attracting foreign investment for profitable activities, venture capitalist and investor streams will be processed behind other streams.
- (5) Persons 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. Interpretation

In this Direction:

Act means the *Migration Act 1958*.

AAT means the Administrative Appeals Tribunal.

ART means the Administrative Review Tribunal.

member of the family unit has the same meaning as in regulation [1.12](#) of the Regulations.

primary criteria means the prescribed criteria for the grant to a person of a visa of a particular class which are set out in a relevant Part of [Schedule 2](#) to the Regulations.

Regulations means the *Migration Regulations 1994*.

Subclass 188 visa means a Subclass 188 (Business Innovation and Investment (Provisional)) visa as prescribed by the Regulations.

Subclass 132 visa means a Subclass 132 (Business Talent) visa as prescribed by the Regulations prior to 1 July 2021.

Part 2 – Directions

6. Order for considering applications

(1) Paragraphs 6(1)(a) to (e) set out the order of priority for allocating applications for assessment by a person covered by subsection 3(1) of this Direction as follows, with paragraph (a) being the highest priority and paragraph (e) being the lowest priority:

- (a) visa applications made by applicants for the Subclass 188 visa in the Entrepreneur stream;
- (b) visa applications made by applicants for the Subclass 188 visa in the Business Innovation stream or the Subclass 132 visa in the Significant Business History stream;
- (c) visa applications made by applicants for the Subclass 188 visa in the Investor stream;
- (d) visa applications made by applicants for the Subclass 132 visa in the Venture Capital Entrepreneur stream; and
- (e) visa applications made by applicants for the Subclass 188 visa in the Significant Investor stream.

(2) Within all paragraphs at paragraph 6(1) above, priority should be given to visa applications where the primary applicant was in Australia at the time they made their Subclass 188 or 132 visa application, and they hold a bridging visa that is associated with that visa application.

(3) Applications that are combined with an application made by a person seeking to satisfy the primary criteria for grant of a Subclass 188 or Subclass 132 visa will be considered in the priority order of the associated Subclass 188 or Subclass 132 visa stream as listed in paragraphs 6(1)(a) to (e).

(4) Subsequent applications by visa applicants claiming to be a member of the family unit of a person seeking to satisfy the primary criteria for grant of a Subclass 188 or Subclass 132 visa, but where the associated primary visa application has not yet been decided, will be considered in the priority order of the associated Subclass 188 or Subclass 132 visa stream as listed in paragraphs 6(1)(a) to (e).