

DIRECTION NO. 120

MIGRATION ACT 1958

DIRECTION UNDER SECTION 499

Order for considering and disposing of Class BX visa applications, and assessing exceptional and outstanding achievement

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

24. 7. 26

Dated



Minister for Home Affairs, Minister for Immigration and Citizenship

Part 1– Preliminary

1. Name of direction

This Direction is Direction 120 – Order for considering and disposing of Class BX visa applications, and assessing exceptional and outstanding achievement.

It may be cited as Direction 120.

2. Commencement

This Direction commences on the day after it is signed.

3. Revocation

Direction no. 112, given under section 499 of the Act and dated 6 December 2024, is revoked.

4. Application

(1) Subject to subsection (2), the order for considering and disposing of Class BX visa applications specified in subsection 7(1) and section 8 of this Direction applies:

(a) to all persons, having functions and powers under the Act, who consider and dispose of applications for a Class BX visa; and

(b) in relation to National Innovation visa applications:

- (i) made on or after the commencement of this Direction; and
 - (ii) made, but not finally determined, before the commencement of this Direction; and
 - (c) in relation to Global Talent visa applications and Distinguished Talent visa applications made, but not finally determined, before the commencement of this Direction.
- (2) Subsection 7(1) and section 8 of this Direction do not apply to:
- (a) applications that have been remitted by the AAT or ART for reconsideration;
 - (b) applications where the AAT or ART has set aside a decision and substituted a new decision;
 - (c) applications where 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; or
 - (e) the ART.
- (3) The considerations relating to the assessment of the exceptional and outstanding achievement criterion for a Subclass 858 visa set out in subsection 7(2) and section 9 of this Direction apply to:
- (a) delegates performing functions or exercising powers under section 65 of the Act; and
 - (b) members of the ART.

5. Preamble

- (1) Australia's skilled visa programs are designed to select people who will make a positive contribution to the Australian economy. Within this, the National Innovation visa is a small program focused on high-calibre talented migrants who can drive productivity growth in areas of national importance.
- (2) The order of priority for considering and disposing of applications is specified in this Direction to enable the Department of Home Affairs to give effect to the priority processing intentions of the Australian Government for the Class BX visa. This will support the responsive processing of applications made by high-calibre applicants.
- (3) In relation to the Class BX visa, this Direction directs persons to which it applies with respect to the performance of functions and exercise of powers (under sections 47 and 51 of the Act) to consider and dispose of visa applications in the specified order of priority.
- (4) This Direction does not change the legislative requirements for a Class BX visa. Applicants must meet the requirements set out in the Regulations in order to be granted a visa.
- (5) The exceptional and outstanding achievement criterion for a Subclass 858 visa requires the Minister to be satisfied that the applicant is significantly high-calibre within their field of engagement and has the ability to make outsized contributions to Australia.
- (6) This Direction provides guidance to decision makers on what factors to consider when assessing the exceptional and outstanding achievement criterion where the applicant seeks to satisfy the primary criteria for the grant of a Subclass 858 visa.
- (7) Decision makers must take a reasonable and balanced approach between the need to make an informed quality decision on a Class BX visa application and supporting the responsive processing of applications made by applicants who are identified as highly desirable by Government.

6. Interpretation

In this Direction:

Act means the *Migration Act 1958*.

AAT means the Administrative Appeals Tribunal.

ART means the Administrative Review Tribunal.

Class BX visa means a National Innovation visa, a Global Talent visa or a Distinguished Talent visa.

Distinguished Talent visa means a Distinguished Talent (Class BX) visa, as in force prior to the commencement of the *Migration Amendment (2021 Measures No. 1) Regulations 2021* on 27 February 2021.

exceptional and outstanding achievement criterion refers to clause 858.212(2)(a) of Schedule 2 to the Regulations, as in effect at the relevant time for a Class BX visa application.

Global Talent visa means a Global Talent (Class BX) visa, as in force prior to the commencement of the *Migration Amendment (National Innovation Visa) Regulations 2024* on 6 December 2024.

high income threshold has the same meaning as in section 12 of the *Fair Work Act 2009*.

National Innovation visa means a National Innovation (Class BX) visa.

Regulations means the *Migration Regulations 1994*.

Subclass 858 visa means a Subclass 858 (National Innovation) visa, or a Subclass 858 (Global Talent) visa as in force prior to the commencement of the *Migration Amendment (National Innovation Visa) Regulations 2024* on 6 December 2024, or a Subclass 858 (Distinguished Talent) visa as in force prior to the commencement of the *Migration Amendment (2021 Measures No. 1) Regulations 2021* on 27 February 2021.

Part 2 – Directions

7. Considering and disposing of applications

(1) In determining the order for considering and disposing of Class BX visa applications under section 51 of the Act, and in complying with the obligation to consider valid applications under section 47 of the Act, delegates are to follow the order set out in section 8, having due regard to the Government's policy intentions concerning the size and composition of the Migration Program.

(2) In assessing the exceptional and outstanding achievements of Class BX visa applicants, delegates are directed to have due regard to the guidance set out in section 9.

8. Order for considering and disposing of applications

(1) Subsection (2) sets out the order of priority for considering and disposing of Class BX visa applications, with paragraph (2)(a) being the highest priority and paragraph (2)(e) being the lowest priority.

(2) The order of priority is as follows:

- (a) visa applications made by exceptional applicants who are global experts and recipients of top of field international level awards;

- (b) visa applications where the applicant is nominated by an expert Australian Government agency or State or Territory Government agency on the approved Form 1000;
- (c) visa applications made by applicants with exceptional and outstanding achievements in the tier 1 priority sectors mentioned in subsection (4) below;
- (d) visa applications made by applicants with exceptional and outstanding achievements in the tier 2 priority sectors mentioned in subsection (5) below;
- (e) all other visa applications.

(3) For paragraph (2)(a), top of field international level awards may include but are not limited to the awards listed in Schedule A.

(4) For paragraph (2)(c), the tier 1 priority sectors are the following:

- (a) critical technologies;
- (b) renewables and low emission technologies;
- (c) health industries.

(5) For paragraph (2)(d) the tier 2 priority sectors are the following:

- (a) Agri-food and Ag-tech;
- (b) defence capabilities and space;
- (c) education;
- (d) financial services and FinTech;
- (e) infrastructure and transport;
- (f) resources.

9. Assessing the exceptional and outstanding achievement criterion

(1) Decision makers should not use the factors specified in this Direction as a checklist. The listed factors are intended to guide decision makers when considering how to assess high calibre talent. These factors are indicators of exceptional talent in various fields, however the applicant's circumstances as a whole need to be considered in reaching a finding about whether they meet the exceptional and outstanding criterion in clause 858.212(2)(a) of Schedule 2 to the Regulations.

(2) Decision makers should assess whether, on balance, the exceptional and outstanding achievement criterion is satisfied, by:

- (a) considering the applicant against all factors specified in this Direction; and
- (b) considering any other relevant information provided by the applicant (or information otherwise available to the decision maker).

(3) In considering the applicant's recognised exceptional and outstanding achievements, decision makers should have regard to a demonstration of multiple achievements, which may include but are not limited to:

- (a) receipt of a national research grant in Australia or overseas indicating that the individual is 'top of their field' level talent, including from:

- (i) the Australian Research Council; Department of Education Accelerator grants; or other similar level grants;
 - (ii) equivalent level grants from other countries, such as the United Kingdom research and Innovation Grants program; funding from the EU Commission; funding from the US National Science Foundation.
- (b) holding a PhD with high-levels of academic influence or thought leadership in their field, including:
- (i) recent publications in top ranked journals, such as *Nature*, *Lancet* or *Acta Numerica*
 - (ii) a high h-index for their stage of career, for example an early career researcher with an h-index of 14
 - (iii) research-based degree from a top global university, for example ranked in top 100 *World University Rankings* by Times Higher Education
- (c) recent keynote appearance at a high-profile international conference, for example *Web Summit*, *International Congress of Mathematicians*, *American Association for Cancer Research (AACR) Annual Meeting* or *International Geoscience and Remote Sensing Symposium*.
- (d) having recognised intellectual property attributed to them, such as holding relevant international patents.
- (e) earning at or above the high income threshold (employment offer or current salary) where
- (i) there is written communication from an Australian employer offering employment in Australia with an annual salary equivalent to or higher than the high income threshold; or
 - (ii) the primary applicant's current earnings is an amount equal or greater than the high income threshold

(4) In considering exceptional and outstanding achievements for applications covered by paragraph 8(2)(b) of this Direction, decision makers should have regard to a broader range of achievements, which may include but are not limited to:

- (a) achievements listed in subsection (3);
- (b) top of field level sports and arts awards
- (c) evidence of innovative business activities, such as Significant 'Angel' Investors with established track record of supporting successful innovative ventures, or having led internationally reputed companies to their Initial Public Offering;
- (d) evidence of promising entrepreneurial activities that will lead to the commercialisation of a product or service in Australia or the development of a business or enterprise in Australia, particularly where linked to State or Territory based start-up incubators;
- (e) actions by individuals that provide exceptional service to the Australian community, including outstanding work in establishing organisations that improve community cohesion or wellbeing of Australians;
- (f) other exceptional achievements in the context of the supporting agency's strategic priorities.

(5) Decision makers must also have regard to any other relevant information provided by the applicant (or information otherwise available to the decision maker) when assessing the applicant's exceptional and

outstanding achievements. This includes information that may be either beneficial or unfavourable to the applicant.

Schedule A

For subsection 8(2)(a), top of field international level awards may include but are not limited to:

- (a) Nobel Prizes;
- (b) Breakthrough Prizes;
- (c) Rousseeuw Prize;
- (d) Eni Award;
- (e) Institution of Electrical Engineers Medal of Honor;
- (f) Fields Medal;
- (g) Chern Medal;
- (h) Abel Prize;
- (i) L'Oreal-UNESCO Award for Women in Science;
- (j) Turing Award;
- (k) ACM Prize in Computing;
- (l) Pulitzer Prize;
- (m) International Booker Prize;
- (n) International Tchaikovsky Competition Gold Medal;
- (o) Olympic Gold Medal;
- (p) Laureus World Sportsman or Sportswoman of the year.