



Australian Government
Department of Immigration and Border Protection

Decision Record

Request Details

FOI Request: FA 13/10/01142

File Number: ADF2013/38588

Scope of Request

'I wish to access all DIAC documents and the documents between DIAC and Minister (Hon. Chris Evans Senator and Hon. Chris Bowen MP), between 14 June 2010 and 31 May 2011, about the non-contributory parent places in FY 2010-2011 and FY 2011-2012.

I am particularly interested at:

(a) the feedback from community and client on the places of non-contributory parents in FY 2010-2011, and the response from the Minister and DIAC, and

(b) the reasons or facts that are related to or have led to the 100% increase of non-contributory parent places in FY 2011-2012.'

Documents in scope

1. Departmental Submission CB2011/01494 – containing 9 folios.

Decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

My decision is to release, in full, the document which falls within the scope of your request and to delete those parts that are reasonably regarded as being irrelevant to the request. A statement of reasons for my decision is below.

Please find attached the document as identified above.

Information considered

In reaching my decision I have considered the following:

- the *Freedom of Information Act 1982*;
- the *FOI guidelines* issued by the Australian Information Commissioner;
- departmental document (identified above); and
- consultation with relevant business area.

people our business

Reasons for decision

I have considered the document within the scope of your request and applied deletions to those parts of the document considered reasonably irrelevant to your request.

FREEDOM OF INFORMATION ACT 1982 (FOI Act)

SECT 22 Deletion of exempt matter or irrelevant material

- (1) *This section applies if:*
- (a) *an agency or Minister decides:*
 - (i) *to refuse to give access to an exempt document; or*
 - (ii) *that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and*
 - (b) *it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:*
 - (i) *access to the edited copy would be required to be given under section 11A (access to documents on request); and*
 - (ii) *the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and*
 - (c) *it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:*
 - (i) *the nature and extent of the modification; and*
 - (ii) *the resources available to modify the document; and*
 - (d) *it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.*

The information deleted under section 22(1) of the FOI Act is considered irrelevant to your request. While the FOI Act extends a legally enforceable right of any person to seek access to documents held by an agency, section 22(1) allows an authorised FOI officer to remove information that is reasonably regarded as irrelevant to the request.

In your request you were specifically seeking access to information about *non-contributory parent places*, for this reason information that does not relate to the non-contributory parent places has been deleted from the documents as this information is reasonably considered to be irrelevant to your request as it falls outside the scope of your request. For your information I have retained the full heading of the submission to provide you with sufficient information to allow you to identify what the deleted material is in relation to.

In accordance with section 22 I have prepared an edited copy of the documents for release.



Janelle Raineri
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Authorised FOI Decision Maker
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2 January 2014



Australian Government
Department of Immigration
and Citizenship

Submission

In-Confidence
For decision

RECEIVED BY THE
MINISTER FOR
IMMIGRATION
AND CITIZENSHIP

ExecCorro Reg. Number CB2011/014914

To Minister

Subject **Capping the Parent, Contributory Parent and Other Family categories for the 2010-11 Migration Program.**

- 4 APR 2011

Timing *Please action by 25 April 2011. Your early consideration will assist in addressing an area of current uncertainty for clients and their representatives.*

Recommendations

That you,

1. agree, under Section 85 of the *Migration Act 1958* (the Act), to cap the following visa categories for the 2010-11 Migration Program year at:

agreed / not agreed

- 1005 visa places for the Parent visa category;
- 8400 visa places for the Contributory Parent visa category;

s. 22(1)(a)(ii)

2. sign the legislative Instrument at Attachment A revoking the previous Instrument IMMI 10/067 and implementing the cap on the above visa categories.

signed / not signed

Minister

Signature.....

Date: 24/05/2011

Key Issues

1. The Department seeks your approval to formally limit the number of Parent and Contributory Parent category visas that can be granted in the 2010-11 Migration Program year by capping these visa categories under Section 85 of the *Migration Act 1958* (the Act). Currently, the number of these visas that are granted is managed administratively through Agreed Indicative Planning Levels (AIPLs).

IN-CONFIDENCE

2. However, the Department believes a formal cap is necessary because:

- Parent category visa grants are currently above AIPL pro rata rates, meaning there is a risk that the number of grants will exceed planning levels in this program year; and
- a Section 85 cap will provide certainty about queuing arrangements for Parent and Contributory Parent category visa applicants by clarifying that the provisions of Ministerial Direction 49 apply to these categories (see Attachment C).

3. The Immigration Advice and Rights Centre Inc. in Sydney has recently questioned the Department's queuing arrangements for parent visa applications in the absence of an instrument under Section 85. Arguably the Department has the ability to administratively manage the number of visa grants in line with Migration Program planning levels as it currently does for partner and child visas. Nevertheless, where a legal limit under Section 85 is possible it will provide both legal certainty and clarity for clients about visa numbers and the queuing process. Using your legal power appears particularly appropriate for the parent category given there are currently 27 422 applications onhand with 1000 places available in the 2010-11 Migration Program.

4. Although it is highly unlikely that Contributory Parent visa grants will exceed the planning level, imposition of a Section 85 cap is desirable both for consistency of program management between the two Parent visa categories and to provide clarity around queuing arrangements which still apply to some applicants given previous high levels of demand for this visa.

s. 22(1)(a)(ii)

6. All visas that are granted within the specified financial year period count towards the Section 85 cap. However, the following grants are not counted in the Migration Program:

- permanent visa grants to New Zealand citizens; and
- permanent visa grants to certain temporary visa holders undertaking a two-stage process.

7. Under current arrangements, Partner and some Contributory Parent visa applicants go through a two-stage process by first applying for a temporary visa and then for a permanent visa. They are only counted once in the Migration Program at the first stage when they are granted a temporary visa.

s. 22(1)(a)(ii)

9. The Department therefore seeks your approval to revoke the current Instrument and raise the cap on Other Family category visa grants to 785 grants. The proposed new instrument also specifies a limit on the number of Parent and Contributory Parent visas which can be granted in 2010-11 as set out below.

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Visa Category	Migration Program planning levels	Proposed Section 85 cap	Comments
Parent	1000	1005	Four Parent category visas are expected to be granted to New Zealand citizens.
Contributory Parent	7500	8400	Allowing an additional 900 visa grants to include grants to New Zealand citizens and permanent visa grants to temporary Contributory Parent visa holders.

s. 22(1)(a)(ii)

10. The Section 85 cap reflects the maximum number of visas that can be granted in a financial year but the Department is not compelled to grant this number of visas.

11. If there are additional visa places available through the cap, above the Migration Program, there is a risk that an applicant could seek to compel the Department to grant them a visa in that financial year. For example they could seek a writ of mandamus from an Australian court specifying that the Department finalise their application. However, the Department believes this risk is minimal and could be managed through existing administrative arrangements. This risk has also been managed by estimating as closely as possible the number of visas which are likely to be granted that would not be counted in the Migration Program.

Background

s. 22(1)(a)(ii)

Client service implications

14. There are no expected client service implications for Parent and Contributory Parent visa program. All public information and correspondence refers to the 2010-11 Migration Program and the number of visas allocated to Parent and Contributory Parent visa categories.

15. A Section 85 Instrument for Parent and Contributory Parent visas will provide clarity about visa numbers and queuing arrangements for these categories. Recent correspondence has indicated that there is currently some uncertainty about this amongst clients and migration agents.

Consultation – internal/external

17. The Department has undertaken consultation with internal stakeholders. This includes the Migration Program Management and Stakeholders Section, the Parent Visa Centre in Perth and the relevant client service areas.

18. The proposed limits reflect Migration Program planning levels which are determined by the Government following a formal consultation process.

Financial/systems/legislation implications

19. There are no proposed changes to processing arrangements and no expected financial or system implications.

Attachments

Attachment A Legislative Instrument

Attachment B Explanatory Statement

Attachment C Queuing arrangements for Parent and Contributory Parent visas

Authorising Officer

Matt Kennedy
AS Family and Health Policy

30/3/2011

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Through

chr 1/4/2011
Greg Phillipson, A/g AS Legal Framework
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EDH 30/3/2011

CC

Secretary
Deputy Secretaries
Global Manager, Skilled and Family Visas
A/g FAS, Visa and Offshore Services

Minister Comments

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Commonwealth of Australia

Migration Act 1958

**GRANTING OF PARENT, CONTRIBUTORY PARENT AND OTHER FAMILY
VISAS IN 2010/2011 FINANCIAL YEAR
(SECTION 85)**

I, *CHRIS BOWEN*, Minister for Immigration and Citizenship, acting under section 85 of the *Migration Act 1958*:

1. REVOKE Instrument number IMMI 10/067 signed on 18 January 2011, determining the maximum number of Other Family visas that may be granted in the 2010-2011 financial year for the purposes of Section 85 of the Act.
2. DETERMINE that the maximum number of:
 - Aged Parent (Class BP) (Subclass 804) visas; and
 - Parent (Class AX) (subclass 103) visasthat may be granted in the financial year 1 July 2010 to 30 June 2011 is **1005**.
3. DETERMINE that the maximum number of:
 - Contributory Parent (Class UT) (Subclass 173) visas;
 - Contributory Parent (Class CA) (Subclass 143) visas;
 - Contributory Aged Parent (Class DG) (Subclass 864); and
 - Contributory Aged Parent (Class UU) (Subclass 884)that may be granted in the financial year 1 July 2010 to 30 June 2011 is **8400**.
4. DETERMINE that the maximum number of:
 - Other Family (Class BO) (Migrant) visas; and
 - Other Family (Class BU) (Residence) visasthat may be granted in the financial year 1 July 2010 to 30 June 2011 is **785**.

IMMI 11/024

This instrument, IMMI 11/024, commences on the day after registration on the Federal Register of Legislative Instruments.

Dated 24 May 2011



Minister for Immigration and Citizenship

[NOTE 1: Section 85 of the *Migration Act 1958* provides that the Minister may, by notice in the *Gazette*, determine the maximum number of the visas of a specified class, or the maximum number of the visas of specified classes, that may be granted in a specified financial year.

NOTE 2: Section 86 of the Act provides that if there is a determination of the maximum number of visas of a class or classes that may be granted in a financial year; and the number of visas of the class or classes granted in the year reaches that maximum number; no more visas of the class or classes may be granted in the year.]

EXPLANATORY STATEMENT

Migration Act 1958

**GRANTING OF PARENT, CONTRIBUTORY PARENT AND OTHER FAMILY
VISAS IN 2010/2011 FINANCIAL YEAR
(SECTION 85)**

1. This Instrument is made under section 85 of the *Migration Act 1958* ('the Act').
2. Section 85 of the Act provides that the Minister may determine by instrument in writing the maximum number of the visas of a specified class or the visas of specified classes that may be granted in a specified financial year.
3. The purpose of this Legislative Instrument is to determine the maximum number of visas that may be granted in the financial year 1 July 2010 to 30 June 2011 for:
 - Aged Parent (Class BP) and Parent (Class AX);
 - Contributory Parent (Class UT), Contributory Parent (Class CA), Contributory Aged Parent (Class DG) and Contributory Aged Parent (Class UU); and
 - Other Family (Migrant)(Class BO) and Other Family (Residence)(Class BU).
4. Section 86 of the Act provides that if there is a determination of the maximum number of visas of a class or classes that may be granted in a financial year; and the number of visas of the class or classes granted in the year reaches that maximum number; no more visas of the class or classes may be granted in the year.
5. Section 87 and section 87A of the Act provide for the circumstances where the limit made under section 85 does not prevent the grant of a visa.
6. This Instrument applies to all applicants who have applied for a Parent, Contributory Parent and Other Family category visa. This includes applicants who have applied before the implementation of this cap.
7. The Office of Best Practice Regulation has been consulted and has advised that a Regulatory Impact Statement is not required (OBPR reference 12399).
8. Consultation about the size and composition of the Migration Program is undertaken each year by the Department of Immigration and Citizenship. The limits established by this legislative Instrument are consistent with the Migration Planning levels for 2010-11.
9. The Instrument, IMMI 11/024, commences on the day after registration on the Federal Register of Legislative Instruments.

Relevance of a Section 85 cap to queuing arrangements for Parent and Contributory Parent visas

There are currently two Ministerial Directions that relate to the processing of Family stream visa applications. The purpose of these directions is both to guide Departmental decision makers and to provide transparency for applicants and their representatives about the way applications are handled.

Ministerial Direction 43: Order for considering and disposing of Family stream visa applications specifies the order in which applications will be processed. Meanwhile, *Ministerial Direction 49: Order for considering and disposing of visa applications under Section 91 of the Migration Act*, outlines the requirements for applicants to be allocated a queue date. This latter direction also specifies that applications will be finalised in queue date order when a place becomes available in a Migration Program year.

Parent visas are currently managed through a queue given that demand has significantly exceeded the number of visas available in this category for several years. Although demand for the Contributory Parent visa category has declined, applicants who are currently being considered for grant still have a queue date as a result of previous high demand and queuing arrangements for this category.

Ministerial Direction 49 relates specifically to Section 91 of the Act which gives you the authority to determine the order for dealing with applications for visa classes that have been capped under Section 85 of the Act. Given that the Parent and Contributory Parent visa categories are not currently capped, there is a question as to whether Ministerial Direction 49 applies.

As a result, there is some uncertainty for clients and their representatives about the way in which applications for these visas are being handled. This uncertainty has been highlighted by recent correspondence from the Immigration Advice and Rights Centre in Sydney.

Applying a Section 85 cap to both Parent and Contributory Parent visas will remove this uncertainty by confirming that the queuing arrangements specified in Ministerial Direction 49 will continue to be applied to these caseloads.