DETERMINATION UNDER SECTION 91L OF THE MIGRATION ACT 1958 THAT SECTION 91K DOES NOT APPLY TO AN APPLICATION FOR A VISA

Pursuant to subsection 91L(1) of the Migration Act 1958 (the Act), and thinking that it is in the public interest to do so, I determine that section 91K of the Act does not apply to an application for a visa made by a non-citizen if, and only if, the non-citizen:

a) is listed in schedule 1 of this determination, or is a child of a person listed in schedule 1 of this determination, and is not an unauthorised maritime arrival within the meaning of section 5AA of the Act; and

b) before the date of this determination, was given notice of a determination made under subsection 46A(2) of the Act (‘section 46A determination’), and the notice indicated that section 46A(1) did not apply to an application by the non-citizen for a visa of a class specified in the section 46A determination; and

c) in reliance on the section 46A determination, purported to apply for a protection visa prior to the revocation of the section 46A determination, and that application was not a valid application due to the operation of section 91K of the Act; and

d) does not hold, and has never held, a Temporary Protection (subclass 785) visa or a Safe Haven Enterprise (subclass 790) visa; and

e) has not previously been refused, or purportedly refused, the grant of a protection visa, or had a decision to refuse to grant a protection visa set aside by a court or a tribunal.

Note 1: This determination does not apply to a non-citizen who has made a valid application for a protection visa and that application has not been withdrawn and a decision (or purported decision) has not been made in relation to that application.

THE HON DAVID COLEMAN MP
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

8/11/2019
Schedule 1

NON-CITIZENS IN AUSTRALIA WHO ARE NOT UNAUTHORISED MARITIME ARRIVALS WITHIN THE MEANING OF SECTION 5AA OF THE MIGRATION ACT 1958 DUE TO ASHMORE LITIGATION MATTERS
DETERMINATION UNDER SECTIONS 48B AND 91L OF THE MIGRATION ACT 1958 THAT SECTIONS 48A AND 91K DO NOT APPLY TO AN APPLICATION FOR A VISA

Pursuant to subsections 48B(1) and 91L(1) of the Migration Act 1958 (the Act), and thinking that it is in the public interest to do so, I determine that:

(1) section 48A of the Act does not apply to prevent an application for a protection visa made by a non-citizen if, and only if, the non-citizen:
   a) is listed in schedule 1 of this determination, or is a child of a person listed in schedule 1 of this determination, and is not an unauthorised maritime arrival within the meaning of section 5AA of the Act; and
   b) entered Australia on, or after, 13 August 2012 and prior to 1 June 2013; and
   c) has been previously refused, or purportedly refused, the grant of a protection visa pursuant to section 65 of the Act, other than a decision relying on subsections 5H(2), 36(1B), or (1C) or paragraphs 36(2C)(a) or (b) of the Act, where the application for the visa was not a valid application due to the operation of section 91K of the Act; and
   d) does not hold, and has never held, a Temporary Protection (subclass 785) visa or a Safe Haven Enterprise (subclass 790) visa.

(2) section 91K of the Act does not apply to an application for a visa made by a non-citizen if, and only if, the non-citizen:
   a) is listed in schedule 1 of this determination, or is a child of a person listed in schedule 1 of this determination, and is not an unauthorised maritime arrival within the meaning of section 5AA of the Act; and
   b) entered Australia on, or after, 13 August 2012 and prior to 1 June 2013; and
   c) has been previously refused, or purportedly refused, the grant of a protection visa pursuant to section 65 of the Act, other than a decision relying on subsections 5H(2), 36(1B), or (1C) or paragraphs 36(2C)(a) or (b) of the Act; and
   d) does not hold, and has never held, a Temporary Protection (subclass 785) visa or a Safe Haven Enterprise (subclass 790) visa.

Note 1: This determination does not apply to a non-citizen who has made a valid application for a protection visa and that application has not been withdrawn and a decision (or purported decision) has not been made in relation to that application.

THE HON DAVID COLEMAN MP
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

8/1/2019
Schedule 1

NON-CITIZENS IN AUSTRALIA WHO ARE NOT UNAUTHORISED MARITIME
ARRIVALS WITHIN THE MEANING OF SECTION 5AA OF THE MIGRATION ACT 1958
DUE TO ASHMORE LITIGATION MATTERS
DETERMINATION UNDER SUBSECTION 91L(1) ALLOWING THE MAKING OF VALID APPLICATION FOR A VISA

Pursuant to subsection 91L(1) of the Migration Act 1958 (the Act), and thinking that it is in the public interest to do so, I hereby determine that section 91K of the Act does not apply to an application for a visa made by a person, if and only if:

(1)
   a) the person held a Temporary Protection (Class XD) or Safe Haven Enterprise (Class XE) visa that was in effect when they attempted to make an application for a protection visa in accordance with the requirements in Schedule 1 to the Migration Regulations 1994; and
   b) the person has not previously made a valid application for a visa as a result of this particular determination.

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THE HON DAVID COLEMAN MP
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

[Signature]

[Date: 22/11/2019]