

Direction no. 92 – Order of Consideration — Certain Skilled Migration Visas

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[Previous](#)[Next](#)

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KEY DATES AND REFERENCES	
Commenced	07/07/2021
Signed	06/07/2021
Status	Current
Revoked	Direction no. 87

DIRECTION NO. 92

MIGRATION ACT 1958

DIRECTION UNDER SECTION 499

Order of Consideration — Certain Skilled Migration Visas

I, Alex Hawke, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, give this Direction under section 499 of the *Migration Act 1958* (the Act).

Dated 6 July 2021

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Part 1 Preliminary

1. Name of Direction

This Direction is Direction no. 92 Order of Consideration - Certain Skilled Migration visas. It may be cited as Direction no. 92.

2. Commencement

This Direction commences on the day after it is signed.

3. Revocation

The Direction given under section 499 of the Act, titled *Direction no. 87 Order of Consideration – Certain Skilled Migration visas*, dated 31 August 2020, is revoked.

4. Application

1. This Direction applies to all persons and bodies having powers under the Act, including the AAT, to consider and dispose of the applications for the visas specified in Schedule A and to review decisions pertaining to those applications.

2. This Direction also applies to decision-makers, including the AAT, who consider nomination applications in relation to visas specified in Schedule A.

3. Without intending to limit the scope of (1), this Direction applies to decision-makers performing functions or exercising powers:

(a) under section 51 of the Act; and

(b) under section 91 of the Act.

4. This Direction does not apply to:

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

(b) applications where the AAT has set aside a decision and substituted a new decision;

(c) applications where it is readily apparent that 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;

e) applications for a [Subclass 489 \(Skilled - Regional \(Provisional\)\) visa](#) where the applicant seeks to satisfy the criteria in the Second Provisional Visa stream or claims to be a member of the family unit of such an applicant;

f) applications for a [Subclass 189 \(Skilled - Independent\) visa](#) where the applicant seeks to satisfy the criteria in the New Zealand stream.

5. Subject to (4) above, this Direction applies to nomination applications and visa applications made both before, on or after the commencement of this Direction.

5. Preamble

1. Australia's Skilled Migration Program is designed to select people who will make a positive contribution to the Australian economy and labour market, and assist Australian businesses to access workers with skills that cannot be met from the local labour market, including in emerging new technology and growth sectors. The Australian Government also remains committed to assisting employers and communities in regional Australia through dedicated regional skilled visa programs.

2. In relation to the specified visas in Schedule A, this Direction directs persons and bodies to which it applies with respect to the performance of functions and exercise of powers (under section 51 or section 91 of the Act) to:

- consider and dispose of visa applications in the appropriate order of consideration; and
- to review decisions pertaining to those applications in the appropriate order of consideration.

3. Persons and bodies to whom this Direction applies are to give due regard to the priority processing directions set out below in [Part 2](#) of this Direction.

6. Interpretation

1. In this Direction:

AAT means the Administrative Appeals Tribunal.

Act means the *Migration Act 1958* in effect and as amended from time to time.

Agriculture Sector Occupation means an occupation within an agriculture or food production sector that has been identified by the Department as being of critical importance during the COVID-19 pandemic and post-pandemic recovery.

Approved sponsor with Accredited Status means approved sponsors under the [Temporary Skill Shortage visa](#) program awarded Accredited Status by the Department of Home Affairs.

Critical Sector means an industry or part of an industry (however defined), that has been identified by the Department as being of critical importance during the COVID-19 pandemic and post-pandemic recovery. The Department of Home Affairs will provide information about the sectors on its website.

Designated Area Migration Agreement means an arrangement between the Commonwealth of Australia and another party known as a designated area representative.

Designated Regional Area has the same meaning as in regulation [1.15M](#) of the Regulations.

Eligible passport – means a Hong Kong Special Administrative Region of the People’s Republic of China passport or a British National (Overseas) passport.

Employer Sponsored visa means a [Subclass 186 \(Employer Nomination Scheme\) visa](#) .

Global Talent Employer Sponsored Agreement means a labour agreement made under the Global Talent Employer Sponsored program.

Global Talent program refers to the cohort of visa applicants that are covered by the priority processing arrangements set out paragraph 7(1)(a) under Part 2 of *Direction no. 89 – Order of Consideration – Subclass 858 and Subclass 124 visas*.

Labour agreement has the same meaning as in the Regulations.

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

Minister means the Minister who administers the Act.

Primary criteria means the visa criteria under Schedule 2 to the Regulations for a specified visa subclass that is to be satisfied by the primary applicant.

Priority Migration Skills Occupation List means the list of priority occupations, as amended from time to time, identified by the Department of Home Affairs and the National Skills Commission, entitled the *Priority Migration Skilled Occupation List*, and published on the Department of Home Affairs website.

Regional sponsored visa means a [Subclass 187 \(Regional Sponsored Migration Scheme\) visa](#) and a [Subclass 494 \(Skilled Employer Sponsored Regional \(Provisional\)\) visa](#) .

Regulations means the *Migration Regulations 1994* in effect and as amended from time to time.

Section 85 cap means the maximum number of visas of a specified class that may be granted in a particular financial year, as specified by the Minister in a legislative instrument made under section [85](#) of the Act.

Skilled regional points-tested visa means a [Subclass 489 \(Skilled Regional \(Provisional\)\) visa](#) and a [Subclass 491 \(Skilled Work Regional \(Provisional\)\) visa](#) .

Part 2 - Directions

7. Order for considering nominations

1. Within subparagraphs (a) to (f) at paragraph 2 below, processing priorities should be given to nominations that nominate applicants, or proposed applicants, for a visa who are the holders of eligible passports in the following order:

- (i) holders of eligible passports who are in Australia;
- (ii) holders of eligible passports who are outside Australia.

2. The following processing priorities (with highest priority listed first) should be given due regard to in relation to nominations:

(a) Nominations lodged in relation to an occupation specified in the Priority Migration Skilled Occupation List, and separately nominations lodged in relation to a Global Talent Employer Sponsored Agreement, and separately nominations lodged in relation to a [Subclass 188 visa](#) in the Significant Investor stream and separately nominations lodged in relation to an Agriculture Sector Occupation;

(b) Nominations lodged in relation to an occupation within a Critical Sector, other than those mentioned in (a) above;

(c) Nominations lodged in relation to an Employer Sponsored visa or a Regional Sponsored visa by an employer who is a party to a labour agreement under a Designated Area Migration Agreement;

(d) Nominations lodged in relation to a [Subclass 494 \(Employer Sponsored Regional \(Provisional\)\) visa](#) . Within this priority, nominations lodged by approved sponsors with Accredited Status and nominations lodged by a party to a labour agreement not mentioned in paragraph (a) or (b) are to have precedence;

(e) All other nominations lodged in relation to an Employer Sponsored visa. Within this priority, nominations by approved sponsors with Accredited Status, or nominations lodged by a party to a labour agreement not mentioned in paragraph (a) or (b) are to have precedence;

(f) Nominations lodged in relation to a [Subclass 187 \(Regional Sponsored Migration Scheme\) visa](#) . Within this priority, nominations lodged by approved sponsors with Accredited Status are to have precedence.

(g) All other nominations.

3. Within subparagraphs (c) to (g) above, priority will be given to nominations lodged in respect of applicants who are in Australia ahead of nominations lodged in respect of applicants who are outside Australia.

8. Order for considering visa applications

1. Within subparagraphs (a) to (f) at paragraph 2 below, processing priorities will be given to visa applications by the holders of eligible passports in the following order:

- (i) holders of eligible passports who are in Australia;
- (ii) holders of eligible passports who are outside Australia.

2. The following processing priorities (with highest priority listed first) should be given due regard to in relation to applications for visas that are specified in Schedule A:

(a) Visa applications for an Employer Sponsored visa or Regional Sponsored visa in relation to an occupation specified in the Priority Migration Skilled Occupation List, and separately visa applications lodged in relation to an approved nomination for an Agriculture Sector Occupation; and separately visa applications where the applicant is nominated by an employer who is a party to a Global Talent Employer Sponsored Agreement, all

applications identified through the Global Talent Program and separately visa applications for the [Subclass 188 visa](#) in the following order:

a. [Subclass 188 visa](#) applications in the Significant Investor stream

b. All other [Subclass 188 visa](#) applications.

(b) Visa applications in relation to an approved nomination for an occupation within a Critical Sector other than those mentioned in (a) above.

(c) Visa applications lodged in relation to an Employer Sponsored visa or a Regional Sponsored visa by an employer who is a party to a labour agreement under a Designated Area Migration Agreement;

(d) Visa applications for a [Subclass 494 \(Employer Sponsored Regional \(Provisional\)\) visa](#) . Within this priority, visa applications where the applicant is nominated by an approved sponsor with Accredited Status or nominated by a party to a labour agreement not mentioned in paragraph (a) are to have precedence;

(e) Visa applications for a [Subclass 491 \(Skilled Work Regional \(Provisional\)\) visa](#) ;

(f) Visa applications for an Employer sponsored visa. Within this priority, visa applications where the applicant is nominated by an approved sponsor with Accredited Status, or nominated by a party to a labour agreement not mentioned in paragraphs (a) and (b) have precedence;

(g) Visa applications for a [Subclass 187 \(Regional Sponsored Migration Scheme\) visa](#) . Within this priority, visa applications where the applicant is nominated by an approved sponsor with Accredited Status are to have precedence;

(h) Visa applications for a [Subclass 489 \(Skilled - Regional \(Provisional\)\) visa](#) ;

(i) Visa applications for a [Subclass 190 \(Skilled - Nominated\) visa](#) ;

(j) Visa applications for a [Subclass 189 \(Skilled - Independent\) visa](#) in the Points-tested stream;

(k) All other visa applications.

3. Within subparagraphs (c) to (g) above, priority will be given to applications made by applicants who are in Australia ahead of applications made by applicants who are outside Australia.

9. If a section 85 cap applies

1. Applications for a visa may be affected by a section 85 cap that allows processing to be conducted but prevents the grant of visas beyond a specified number in a specified time period.

2. In deciding the order for considering and disposing of visa applications (or reviewing decisions pertaining to such applications) when affected by a section 85 cap, the applications to which this Direction specifically applies should be given priority in the order as provided for above.

3. This Direction prevails over any other directions under section 499 of the Act that outline the order of consideration for visa applications not described in this Direction.

10. Schedule A

1. The following visas are specified:

(a) Subclass 124 Distinguished Talent;

(b) [Subclass 186 \(Employer Nomination Scheme\)](#) ;

- (c) Subclass 187 (Regional Sponsored Migration Scheme) ;
- (d) Subclass 188 (Business Innovation and Investment) ;
- (e) Subclass 189 (Skilled - Independent) (Points-tested Stream) ;
- (f) Subclass 190 (Skilled - Nominated) ;
- (g) Subclass 489 (Skilled - Regional (Provisional)) ;
- (h) Subclass 491 (Skilled Work Regional (Provisional)) ;
- (i) Subclass 494 (Employer Sponsored Regional (Provisional)) ;
- (j) Subclass 858 Global Talent .