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General residence requirement and permanent resident status

Standard Operating Procedure

Document ID (PPN)	VM-6653
TRIM Record Number	ADD2022/5940182
BCS Function	Visa and Migration Management
Document Owner	Director, Citizenship Operations Section
Approval Date	29/11/2023
Document Contact	Citizenship Operations Section, s. 22(1)(a)(ii) [REDACTED]@homeaffairs.gov.au

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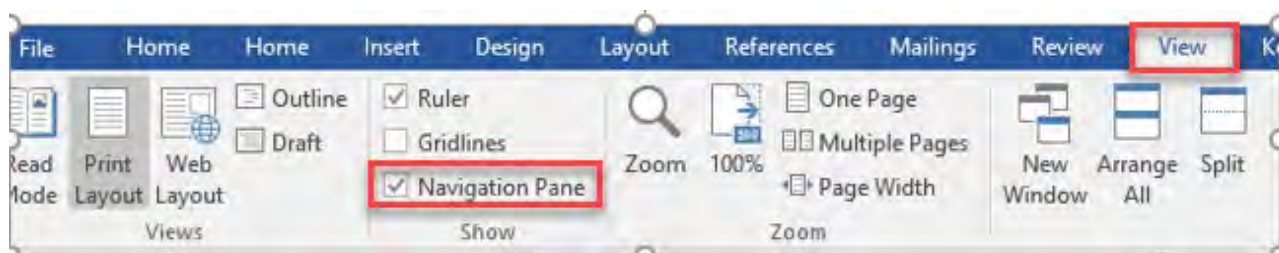
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1. Purpose

The purpose of this Standard Operating Procedure (SOP) is to set out the procedures to be followed when calculating the General residence requirement under the *Australian Citizenship Act 2007* (the Act) for applicants for Australian citizenship by conferral under subsections 21(2), 21(3) and (4) of the Act. The information in this SOP is also relevant when determining a citizenship applicant's permanent residence status. Being a Permanent resident is part of the residence requirements. It is also a requirement to be a Permanent resident at time of application and time of decision for conferral subsections 21(2), 21(3), 21(4) and 21(5) of the Act.

2. Scope

The SOP applies to citizenship delegates who are responsible for assessing citizenship by conferral applications.

For further guidance, delegates should refer to:

- Citizenship Procedural Instruction (CPI) 8 – Residence Requirements and Discretions – PI (VM-5285);
- CPI 9 – Who is a Permanent resident under the Citizenship Act – PI (VM-5286);
- CPI 20 – New Zealand citizens: residence status and eligibility for Australian citizenship – PI (VM-6619);
- Conferral applicants residing overseas – SOP (VM-6619);
- Processing applications for assessment under the Special residence requirements at 22A and 22B of the Australian Citizenship Act 2007 – SOP (VM-6869).

All CPIs referred to in this document are available on LEGEND. Internal Departmental documents, such as SOPs and SMs referred to in this document are available on the [Policy and Procedures Register \(PPCR\)](#) and the [Citizenship Division SharePoint](#) site.

3. General residence requirement

Subsection 22 of the Act provides the general residence requirement.

An applicant meets the general residence requirement if the applicant:

- was present in Australia for four years immediately before the applicant applied for conferral of Australian citizenship (paragraph 22(1)(a) of the Act); and

- was not present in Australia as an unlawful non-citizen at any time during that four year period (paragraph 22(1)(b) of the Act); and
- was present in Australia as a Permanent resident for the period of 12 months immediately before making an application (paragraph 22(1)(c) of the Act); and
- was not absent from Australia for more than an accumulated period of 12 months during that four year period, including no more than 90 days in the 12 months immediately before making an application (subsections 22(1A) and 22(1B) of the Act).

Where an applicant does not meet the general residence requirement, delegates should consider whether the applicant would meet the requirement with the assistance of a ministerial discretion. Eligibility for a ministerial discretion will depend on to the applicant's particular circumstances and the information provided at the time of application. However, delegates should be aware there is no discretion that allows time spent outside Australia without a visa to be considered Permanent resident in order to meet the General residence requirement.

3.1 Unlawful non-citizen

A person's presence in Australia is determined to be lawful in accordance with the *Migration Act 1958* (the Migration Act). A person is lawful if they hold a visa that is in effect.

An unlawful non-citizen is a person who is not an Australian citizen and is present in Australia without a valid visa.

Under paragraph 22(1)(b) of the Act, a citizenship applicant cannot meet the general residence requirement if they have been an unlawful non-citizen at any time during the four year period immediately before applying for citizenship. This means they will need to have spent four years in Australia since last ceasing to be an unlawful non-citizen before meeting the general residence requirement, unless they became unlawful because of an administrative error. Where an applicant became unlawful due to an administrative error, the delegate can consider applying the ministerial discretion - administrative error that is available under subsection 22(4A) of the Act.

Refer to CPI 8 - Residence Requirements and Discretions – PI (VM-5285) for further guidance.

3.2 Permanent resident for 12 months immediately prior to application

If the applicant did not hold a permanent visa at any time while outside Australia during the 12 months immediately before making an application for conferral of citizenship, the applicant will not be able to meet the general residence requirement. Applicants are required to hold a permanent visa at all times during that 12 month period (see subsection 22(1B) of the Act).

3.3 Overseas absences

Subsection 22(1A) of the Act allows for absences from Australia of up to 12 months within the four years immediately before applying for citizenship. A period of time cannot be counted as an absence from Australia unless the person has already been present in Australia. This means that an applicant does not meet the general residence requirement if they have three years continuous presence in Australia (with the last 12 months as a permanent resident), unless they were previously present in Australia.

Scenario

Mr Barnaby first entered Australia on 1 January 2016 and became a permanent resident on 1 January 2019.

Mr Barnaby departed Australia on 7 September 2017 and arrived in Australia on 30 June 2018, amounting to 296 days spent outside of Australia.

Mr Barnaby departed Australia again on 23 March 2019 and arrived back in Australia on 29 May 2019, amounting to a further 67 days outside of Australia.

These two absences accumulate to a total of days spent outside Australia is 363 days outside of Australia.

Mr Barnaby made an application for citizenship by conferral on 1 January 2020. Mr Barnaby meets the four year residence period as he has not exceeded the 365 days (12 months) of allowable absences.

Subsection 22(1B) of the Act allows an applicant to be absent for up to 90 days within the 12 months permanent residence immediately before applying. Paragraph 22(1B)(c) of the Act requires the applicant to have remained a permanent resident during those overseas absences. Therefore, if an applicant has a gap in their permanent residence status in the 12 months prior to lodging their conferral application, they will not meet the general residence requirement.

Refer to section 4 - Permanent residence status, for further guidance.

Delegates are not required to manually calculate absences from Australia for the general residence requirement. The Citizenship Interval Calculator in the Integrated Client Services Environment (ICSE) will do the calculation. Days where the applicant arrived from outside Australia or departed Australia are counted by ICSE as days in Australia for the general residence calculation. Absent from Australia on the day four years immediately before applying

If an applicant's first arrival in Australia is less than four years before they apply for citizenship, they cannot meet the general residence requirement, even if they spend three years continuously in Australia.

The start date of the four year residence period is usually the date four years immediately before an applicant makes their application. However, if the applicant has not made their first entry into Australia, they need to wait at least four years after their first entry to meet this requirement.

Where an applicant was outside Australia on the day four years immediately before applying, but had previously been in Australia, in certain circumstances they may use the day four years immediately before applying as a start date (for the purposes of being eligible to satisfy the four year residence requirement). An applicant's four year residence period can start while they are overseas provided they had been present in Australia at any time prior to the four year residence period. Their visa status while outside Australia four years prior to lodgement is not a consideration towards meeting the requirement. Further, there is no limitation on the amount of time that has passed since the applicant was last present in Australia, and the lodgement of their citizenship application.

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Scenario

Mr Smith entered Australia on 1 June 2016 on a temporary Tourist subclass 600 visa. Mr Smith remained in Australia for three months and departed on 1 September 2016. Mr Smith's Tourist visa ceased while he was outside Australia on 1 June 2017.

On 30 May 2020, Mr Smith was granted a permanent Partner subclass 100 visa and he entered Australia on that visa on 30 June 2020.

Mr Smith lodged an application for Australian citizenship by conferral on 1 July 2023. Mr Smith can be taken to meet the four year requirement because even though he was offshore without a visa on 1 July 2019 because he had previously been resident in Australia as a Tourist visa holder in 2016.

The Citizenship Interval Calculator will check if an applicant departed Australia as a lawful non-citizen at any time prior to the four year residence period and will run the general residence requirement calculation accordingly. Movement records in ICSE will show movements from approximately July 1990. Where the applicant claims to have previous residence in Australia prior to July 1990, the delegate will need to check older movement records to determine if the applicant meets the four year requirement. Older movement records can be located in the Client Search Portal (CSP) or Mainframe.

The above considerations also apply to New Zealand citizens who were previously resident in Australia on temporary Subclass 444 (Special Category) visas (SCV). For further information on applications made by New Zealand citizens, refer to sections [6.3 Calculating the general residence requirement on or after 1 July 2023](#) and [6.4. The Citizenship Interval Calculator for NZ citizen applicants up to and including 30 June 2023](#).

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