



## Freedom of Information Request – FA 26/07/01121

- In Australian migration law, the concepts "onshore" and "offshore" are commonly used by practitioners, the Department, tribunals, and the courts to distinguish where a person is located. Information regarding Migration zones is available at: PART 1 — PRELIMINARY [s1 to s12] - s1 to s5. Generally, an applicant is:
  - in the migration zone (Australia) when applying for or being granted a visa ("onshore"); or
  - outside Australia when applying for or being granted a visa ("offshore").
- The concept of "time of application" derives from the Migration Act 1958 and the Migration Regulations 1994, governing the making of a valid visa application and is given substantive effect through the visa criteria prescribed in Schedule 2 to the Migration Regulations. This distinguishes between criteria required to be satisfied at the time of application to those required at the time of decision.
- Time of application refers to the date and time when a valid visa application is lodged with the Department of Home Affairs.
- Time of decision means the date and time at which the Department or delegate makes a formal decision to grant or refuse a visa application.
- For visas with location requirements, the applicant's physical location at that time may determine whether the visa can be granted.
- The phrase "the applicant's location at the time the visa application is lodged" means, where the visa applicant was physically present when they submitted their visa application (Division 2.2 - Applications [r2.06A to r2.12AA]). General guidance on Regulation 2.10, see PAM3: GenGuideA - Visa application procedures - Where the application must be made(lodged).
- The phrase "the applicant's location at the time the visa decision is made" means, where the applicant is physically located when the delegate makes the decision to grant or refuse the visa. Legislative basis includes:
  - s46(3) and 46(4) allow for the regulations to prescribe criteria that must be satisfied for an application to be valid, including where an applicant must be when an application is made; this location is then prescribed in Schedule 1 for each visa class.
  - Schedule 1—Classes of Visa will generally specify location (whereabouts) that is:
    - whether the applicant needs to be in or outside Australia at time of application and
    - where the application must be made.
  - Regulation 2.07(4) provides that for a visa application made using an approved form to be valid, the applicant must include their residential address - see Residential address. Furthermore, the applicant's location must be assessed at the time specified by the relevant legislative criterion.
- The phrase "a change in the applicant's location after lodgement" means the applicant moved to a different place or country after submitting (lodging) their visa application. A subsequent change in location after lodgement refers to any change in the applicant's physical presence

inside or outside Australia occurring after a valid visa application has been lodged and before a decision is made on that application. Refer to: <https://immi.homeaffairs.gov.au/help-support/applying-online-or-on-paper/online/after-you-apply>

- A subsequent change in location after lodgement, or the subsequent grant of a Bridging Visa, does not retrospectively affect satisfaction of a criterion that is required only at the time of application or alter the facts existing at the time the visa application was made. In migration decision-making, the applicant carries the burden of satisfying the delegate that the relevant criterion is met. The delegate assesses all available evidence and decides whether they are satisfied as to the applicant ordinarily resides at the claimed address.
- Changes in a migrant's situation must be notified as it may affect a migrant's visa condition or visa criteria. Changes include changes to a passport, contact details, birth of a baby, marital status, work or study. This includes residential or postal addresses, more information available here: <https://immi.homeaffairs.gov.au/change-in-situation> which includes changes after a migrant has applied.

**Notes:**

1. Source: Department of Home Affairs (internal documents)

**Caveats:**

- *This information is provided for the specific purpose of this request.*
- *It is the responsibility of the area providing the Department of Home Affairs information to external stakeholders to ensure that the disclosure is in accordance with the ABF Act, Australian Privacy Principles or other relevant legislation.*