



Migration Amendment (Subclass 485 (Temporary Graduate) Visa Replacement Stream and Other Measures) Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 23 June 2022

David Hurley
Governor-General

By His Excellency's Command

Andrew Giles
Minister for Immigration, Citizenship and Multicultural Affairs

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules	1
Schedule 1—Amendments		2
<i>Migration Regulations 1994</i>		2

1 Name

This instrument is the *Migration Amendment (Subclass 485 (Temporary Graduate) Visa Replacement Stream and Other Measures) Regulations 2022*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2022.	1 July 2022

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Migration Act 1958*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Migration Regulations 1994

1 Sub-subparagraph 1229(2)(a)(i)(A) of Schedule 1

Repeal the sub-subparagraph, substitute:

- (A) who is the holder of a Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream or in the Replacement stream and who is applying for a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream; or

2 At the end of paragraph 1229(3)(f) of Schedule 1

Add:

- ; (iii) an applicant who is applying for a Subclass 485 (Temporary Graduate) visa in the Replacement stream or a Subclass 485 visa as a member of the family unit of an applicant for a Subclass 485 (Temporary Graduate) visa in the Replacement stream.

3 Paragraph 1229(3)(la) of Schedule 1

Repeal the paragraph, substitute:

- (la) An applicant seeking to satisfy the primary criteria for the grant of a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream must:
 - (i) hold a Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream; or
 - (ii) hold a Subclass 485 (Temporary Graduate) visa in the Replacement stream and have held a Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream.

4 After paragraph 1229(3)(la) of Schedule 1

Insert:

- (lb) An applicant seeking to satisfy the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa in the Replacement stream must meet the requirements of subitem (5).

5 At the end of paragraph 1229(4)(a) of Schedule 1

Add:

- (vi) the applicant holds a Subclass 485 (Temporary Graduate) visa in the Replacement stream and is applying for a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream;
- (vii) the applicant holds a Subclass 485 (Temporary Graduate) visa that was granted on the basis of satisfying the primary criteria for that visa and is applying for a Subclass 485 (Temporary Graduate) visa in the Replacement stream;
- (viii) the applicant:
 - (A) held a Subclass 485 (Temporary Graduate) visa that was granted on the basis of satisfying the primary criteria for that visa; and

- (B) either holds a substantive visa or holds a Bridging A (Class WA) visa or Bridging B (Class WB) visa that was granted on the basis of a valid application for a visa; and
- (C) is applying for a Subclass 485 (Temporary Graduate) visa in the Replacement stream;

6 After subitem 1229(4) of Schedule 1

Insert:

- (5) The following requirements must be met by an applicant seeking to satisfy the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa in the Replacement stream:
 - (a) the applicant must make the application before 1 January 2027;
 - (b) the applicant must hold or have held a Subclass 485 (Temporary Graduate) visa (the *first visa*) that:
 - (i) was granted on the basis of satisfying the primary criteria for the first visa; and
 - (ii) was granted before 15 December 2021; and
 - (iii) was in effect on or after 1 February 2020;
 - (c) if the applicant was outside Australia when the first visa was granted:
 - (i) the applicant must have entered Australia on a day on which the first visa was in effect and that occurred before 15 December 2021; and
 - (ii) the applicant must have later departed Australia on a day on which the first visa was in effect and that occurred before 15 December 2021;
 - (d) if the applicant was in Australia when the first visa was granted—the applicant must have been outside Australia on a day on which the first visa was in effect and that occurred between 1 February 2020 and 14 December 2021;
 - (e) if any of the following visas held by the applicant have been cancelled:
 - (i) a Subclass 485 (Temporary Graduate) visa;
 - (ii) a visa granted after the applicant held a Subclass 485 (Temporary Graduate) visa;

then, either of the following must apply to each cancelled visa:

- (iii) the cancelled visa must have been cancelled on the ground specified in paragraph 2.43(1)(g);
- (iv) the decision to cancel the cancelled visa must have been set aside by the Tribunal.

7 Division 485.2 of Schedule 2 (note to the heading)

After:

If an applicant applies for a Subclass 485 visa in the Post-Study Work stream, the criteria in Subdivisions 485.21 and 485.23 are the primary criteria.

Insert:

If an applicant applies for a Subclass 485 visa in the Replacement stream, the criteria in Subdivision 485.21 are the primary criteria. There are no additional primary criteria for the Replacement stream.

8 Paragraphs 485.211(b) and (c) of Schedule 2

Repeal the paragraphs, substitute:

- (b) unless the applicant has nominated the Replacement stream in the application—has not previously held a Subclass 485 (Temporary Graduate) visa in the Graduate Work stream; and
- (c) unless the applicant has:
 - (i) nominated the Post-Study Work stream in the application and meets the requirements of clause 485.232, 485.233, 485.234 or 485.235; or
 - (ii) nominated the Replacement stream in the application; has not previously held a Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream; and

9 Subclause 485.212(2) of Schedule 2

Repeal the subclause, substitute:

- (2) Subclause (1) does not apply to an applicant who:
 - (a) meets the requirements of clause 485.232, 485.233, 485.234 or 485.235; or
 - (b) has nominated the Replacement stream in the application.

10 Subclause 485.213(2) of Schedule 2

Omit “or 485.233”, substitute “, 485.233, 485.234 or 485.235”.

11 Subclause 485.231(1A) of Schedule 2

Omit “or 485.233”, substitute “, 485.233, 485.234 or 485.235”.

12 Subclause 485.231(3) of Schedule 2

Omit “The applicant satisfied the Australian study requirement”, substitute “The applicant’s study for the qualification or qualifications satisfied the Australian study requirement”.

13 At the end of Subdivision 485.23 of Schedule 2

Add:

485.234

- (1) This clause applies to an applicant for a visa (the ***third visa***) who:
 - (a) held a Subclass 485 (Temporary Graduate) visa (the ***first visa***) in the Post-Study Work stream that was granted on the basis of study undertaken in a regional centre or other regional area at an educational institution located in the regional centre or other regional area; and
 - (b) held a Subclass 485 (Temporary Graduate) visa (the ***second visa***) in the Replacement stream when the application for the third visa was made; and
 - (c) declared in the application for the third visa that the applicant, and any member (the ***family member***) of the applicant’s family unit who made a combined application with the applicant, intend:
 - (i) to live only in a regional centre or other regional area; and
 - (ii) if the applicant or the family member also intends to work or study—to work or study only in a regional centre or other regional area.
- (2) The applicant must have:
 - (a) lived only in a regional centre or other regional area while undertaking the study mentioned in paragraph (1)(a); and

- (b) lived only in a regional centre or other regional area for a period of at least 2 years immediately before applying for the third visa; and
- (c) if the applicant also worked or studied—worked or studied only in a regional centre or other regional area for a period of at least 2 years immediately before applying for the third visa.

(3) At the time of the decision on the application for the third visa:

- (a) the applicant lives only in a regional centre or other regional area; and
- (b) if the applicant also works or studies at that time—the applicant works or studies only in a regional centre or other regional area.

485.235

- (1) This clause applies to an applicant for a visa (the *third visa*):
 - (a) who held a Subclass 485 (Temporary Graduate) visa (the *first visa*) in the Post-Study Work stream that was granted on the basis of study undertaken in a designated regional area at an educational institution located in the designated regional area; and
 - (b) who held a Subclass 485 (Temporary Graduate) visa (the *second visa*) in the Replacement stream when the application for the third visa was made; and
 - (c) to whom clause 485.234 does not apply.
- (2) The applicant must have:
 - (a) lived only in a designated regional area while undertaking the study mentioned in paragraph (1)(a); and
 - (b) lived only in a designated regional area for a period of at least 2 years immediately before applying for the third visa; and
 - (c) if the applicant also worked or studied—worked or studied only in a designated regional area for a period of at least 2 years immediately before applying for the third visa.
- (3) At the time of the decision on the application for the third visa:
 - (a) the applicant lives only in a designated regional area; and
 - (b) if the applicant also works or studies at that time—the applicant works or studies only in a designated regional area.
- (4) The applicant declared in the application for the third visa that the applicant, and any member (the *family member*) of the applicant's family unit who made a combined application with the applicant, intend:
 - (a) to live only in a designated regional area; and
 - (b) if the applicant or the family member also works or studies (or proposes to work or study)—to work or study only in a designated regional area.

14 Paragraph 485.411(1)(a) of Schedule 2

Omit “or (c)”, substitute “, (c) or (d)”.

15 At the end of subclause 485.411(1) of Schedule 2

Add:

- ; or (d) if the visa is granted in the Replacement stream—may be in or outside Australia when the visa is granted, but not in immigration clearance.

16 Subclause 485.411(3) of Schedule 2

After “outside Australia”, insert “, but not in immigration clearance.”.

17 After clause 485.512 of Schedule 2

Insert:

485.512A

If the applicant is granted a third Subclass 485 (Temporary Graduate) visa (the *third visa*) on the basis of meeting the requirements in clause 485.234, temporary visa permitting the holder to travel to, enter and remain in Australia until the later of:

- (a) the end of 2 years from the date of grant of the third visa; and
- (b) the end of 2 years from the date the Subclass 485 (Temporary Graduate) visa in the Replacement stream held by the applicant (as mentioned in paragraph 485.234(1)(b)) would have otherwise ceased to be in effect.

485.512B

If the applicant is granted a third Subclass 485 (Temporary Graduate) visa (the *third visa*) on the basis of meeting the requirements in clause 485.235, temporary visa permitting the holder to travel to, enter and remain in Australia until the later of:

- (a) the end of one year from the date of grant of the third visa; and
- (b) the end of one year from the date the Subclass 485 (Temporary Graduate) visa in the Replacement stream held by the applicant (as mentioned in paragraph 485.235(1)(b)) would have otherwise ceased to be in effect.

18 Clause 485.513 of Schedule 2

Omit “clause 485.511 or 485.512 does not apply”, substitute “clauses 485.511, 485.512, 485.512A and 485.512B do not apply”.

19 Subclause 485.613(1) of Schedule 2

Omit “or clause 485.233”, substitute “, 485.233, 485.234 or 485.235”.

20 Subclause 8610(1) of Schedule 8

After “clause 485.232”, insert “or 485.234”.

21 Subclause 8610(3) of Schedule 8

After “clause 485.233”, insert “or 485.235”.

22 In the appropriate position in Schedule 13

Insert:

Part 111—Amendments made by the Migration Amendment (Subclass 485 (Temporary Graduate) Visa Replacement Stream and Other Measures) Regulations 2022

11101 Operation of amendments

The amendments of these Regulations made by the *Migration Amendment (Subclass 485 (Temporary Graduate) Visa Replacement Stream and Other Measures) Regulations 2022* apply in relation to an application for a Subclass 485 (Temporary Graduate) visa made on or after 1 July 2022.

Unless otherwise indicated in this document, it is Copyright of the Commonwealth of Australia and the following applies:

Copyright Commonwealth of Australia.

This material does not purport to be the official or authorised version. Reproduction and use of this material is subject to a [Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Australia License](#).

You should make independent inquiries and obtain appropriate advice before relying on the information in any important matter.

This document has been distributed by LexisNexis Australia. All queries regarding the content should be directed to the author of this document.