Migration and Refugee Division Commentary

Bridging Visas

BRIDGING VISAS – OVERVIEW

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Introduction[1]

Section 37 of the *Migration Act 1958* (Cth) (the Act) states that there is to be a class of temporary visas, known as bridging visas, to be granted under Subdivision AF of the Act.[2] Subdivision AF should be read in conjunction with applicable provisions under the *Migration Regulations 1994* (Cth) (the Regulations).

The power to grant a bridging visa is found in s 73 of the Act, which provides that a bridging visa may be granted to an 'eligible non-citizen'[3] who satisfies prescribed criteria, permitting them to travel to, enter and remain in Australia for a specified period or until a specified event occurs.[4] The power to grant a bridging visa under s 73 is a discretionary power,[5] and includes the power to grant a bridging visa without application.[6] Where a valid application for a bridging visa has been made, a decision whether or not to grant the bridging visa would usually be a decision under s 65 of the Act.[7]

Bridging visas provide lawful status for certain non-citizens who would otherwise be unlawful, for example:

- applicants whose visas have ceased and are waiting for a decision on an application for a substantive visa, merits review application or judicial review application; or
- non-citizens making arrangements to leave Australia; or
- non-citizens who do not have a visa but who it is not necessary to keep in immigration detention.

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[1] Unless otherwise specified, all references to legislation are to the *Migration Act 1958* (Cth) (the Act) and *Migration Regulations 1994* (Cth) (the Regulations) currently in force, and all references and hyperlinks to commentaries are to materials prepared by Migration and Refugee Division (MRD) Legal Services.

[2] sub-div AF includes ss 72–76 of the Act.

[3] s 72(1) of the Act. An 'eligible non-citizen' means a non-citizen who has been immigration cleared, is in a prescribed class of persons (under reg 2.20 of the Regulations), or is determined by the Minister to be an eligible non-citizen.

[4] s 73 of the Act. For cases concerning bridging visa refusals that refer exclusively to s 73 (with no reference to s 65) of the Act, see *Harjanto v MIMA* [1998] FCA 1401, *Cabal v MIMA* (No 2) [1999] FCA 11, *Ghomrawi v MIMIA* [1999] FCA 1454 and on appeal *Ghomrawi v MIMA* [2000] FCA 724, *NABL v MIMA* [2002] FCA 102, *Dranichnikov v MIMIA* (No 2) [2002] FCA 1463, *Pannasara v MIMIA* [2004] FCA 1653, and *Lui v MIAC* [2007] FMCA 867.

[5] In *Ghomrawi v MIMIA* [1999] FCA 1454 at [75] (upheld on appeal in *Ghomrawi v MIMA* [2000] FCA 724 at [12]), it was held that the word 'may' in s 73 should not be construed as meaning 'must'. Although the power to grant the visa in s 73 to a person who meets the criteria is discretionary ('may' instead of 'must' – unlike the power to grant visas in s 65 of the Act), the Department's policy is to grant the visa to a person who meets the prescribed criteria: Policy - *Migration Regulations* - Schedules – Sch2 Bridging visas – Visa application and related procedures – Granting a bridging visa – Discretion to grant a bridging visa under s 73 of the Act (reissued31 October 2021).

[6] For circumstances in which bridging visas may be granted without application, see Grant of bridging visa without application. The power to grant a bridging visa in s 73 is in contrast to the power to grant or refuse to grant a visa under s 65, which requires that a valid visa application has been made.

[7] In *Wong v MIMIA* (No 2) [2004] FCA 422 at [23] and [36], the Court held that bridging visas fall into two categories: one comprising bridging visas created by s 31(1), reg 2.01 and items 1301–1306 in pt 3 of sch 1 to the Regulations (i.e. prescribed classes), and the other comprising bridging visas to be granted under sub-div AF which are 'provided for' in s 37 and created by s 31(2) of the Act (as distinct from s 31(1)). This might suggest that bridging visas by application are granted under s 65 of the Act, and not s 73 of the Act. However, the Court in *Wong* does not appear to have considered the Full Federal Court's judgment in *Ghomrawi v MIMA* [2000] FCA 724 in which the Court considered the power to grant bridging visas under s 73, although the question of whether s 65 applies to bridging visa applications did not arise in that case. Compare also with *Potier v MIMA* [2000] FCA 503 where the Court appears to have proceeded on the basis that bridging visa applications are dealt with under s 65, and *SZJOH v MIAC* [2008] FCA 274 where the Court referred to both ss 65 and 73 without clarifying the distinction or identifying any practical impact in terms of merits review.

Types of bridging visas

There are currently 7 classes of bridging visas, with the following subclasses:

Bridging visa class	Bridging visa subclass
Bridging A (Class WA)	Subclass 010 (Bridging A)
Bridging B (Class WB)	Subclass 020 (Bridging B)
Bridging C (Class WC)	Subclass 030 (Bridging C)
Bridging D (Class WD)	Subclass 040 (Bridging (Prospective Applicant)) Subclass 041 (Bridging (Non-applicant))
Bridging E (Class WE)	Subclass 050 (Bridging (General)) Subclass 051 (Bridging (Protection Visa Applicant))
Bridging F (Class WF)	Subclass 060 (Bridging F)
Bridging R (Class WR)	Subclass 070 (Bridging (Removal Pending))

Bridging A (BVA)

Bridging A (Class WA) contains one subclass (010) and is for persons who have made an application for a substantive visa in Australia while they held a substantive visa. It provides temporary lawful status while their substantive visa application is being processed, including merits review, and judicial review of the substantive visa application if the person held a BVA or BVB at the earlier stage of processing. Generally, a valid application for a substantive visa is also an application for a BVA.

Bridging B (BVB)

Bridging B (Class WB) contains one subclass (020) and is for BVA or BVB holders who have 'substantial reasons' for needing to travel out of Australia while their substantive visa application is being processed or while judicial proceedings are on foot. It is the only BV which permits a holder to re-enter Australia.

Bridging C (BVC)

Bridging C (Class WC) contains one subclass (030) and provides temporary lawful status to an unlawful non-citizen who voluntarily makes an application for a substantive visa *before* they have come to the attention of the Department of Home Affairs (the Department). It provides lawful status while the application for the substantive visa is being processed and is available to persons who are not in detention and have not held a BVE since last holding a substantive visa.

Bridging D (BVD)

Bridging D (Class WD) is essentially a provisional measure to cater for circumstances where administrative difficulties would result in a person becoming an unlawful non-citizen. This visa lasts no more than 5 working days after grant and gives temporary lawful status to a person who is unlawful, or is about to become unlawful in certain situations. There are two subclasses:

- *Subclass 040 - Prospective Applicant*: for a person who is unlawful, or will be unlawful within 3 working days of the application for a BV and who has attempted to make a valid application for a substantive visa, but the application is invalid
- *Subclass 041 - Non-applicant*: for a person who is unlawful, who is unable or does not wish to make a substantive visa application, and there is no departmental officer available to interview them in order to determine eligibility for a BVE.

Bridging E (BVE)

Bridging E (Class WE) is for persons who are detected as unlawful non-citizens and contains two subclasses:

- *Subclass 050 - General*: for unlawful non-citizens detected or detained by Compliance; or unlawful non-citizens in criminal detention; or persons who have made a substantive visa application and who hold or last held a BVE; or someone holding a BVD (Subclass 041)
- *Subclass 051 - Protection Visa Applicant*: for persons who have been refused immigration clearance, or have bypassed immigration clearance, and have applied for a protection visa.

Bridging F (BVF)

Bridging F (Class WF) contains one subclass (060) and is for persons whom the police have identified as a suspected victim of human trafficking.[8] An application for this visa is taken to have been validly made by accepting an invitation of the Minister, as an alternative to making an application for the visa.[9] There are no time of application criteria for the grant of this visa. At the time of decision, in addition to being satisfied that the applicant has been identified as a suspected victim of human trafficking,[10] the Minister must be satisfied that suitable arrangements have been made for the care, safety and welfare of the applicant for the proposed period of the visa[11] and that the applicant will abide by conditions imposed on the visa.[12] BVFs

[8] reg 2.20(14)(a)(ii)(E) was inserted into the Regulations by the *Migration Legislation Amendment Regulations 2009 (No 2)* (Cth) (SLI 2009 No 42).
[9] reg 2.20B; item 1306(1) of sch 1 to the Regulations.
[10] cl 060.221.
[11] cl 060.222.
[12] cl 060.223.

can be applied for, and granted, while an applicant is overseas;[13] however, the Tribunal does not have jurisdiction to review offshore BVF refusals.[14]

Bridging R (BVR)

The Bridging R (Class WR) visa contains one subclass (070 – Removal Pending). This visa enables the release from detention of persons who have been 'cooperating fully with efforts to remove them', but for whom removal from Australia is not reasonably practicable.[15] An application for this visa is validly made upon invitation of the Minister,[16] and the visa can also be granted without an application in accordance with reg 2.25AA. This visa is in effect until the Minister determines that removal is reasonably practicable or that a visa condition has been breached.[17]

Application for a bridging visa

Valid application requirements – Schedule 1

The requirements for making a valid application for a bridging visa are set out in Schedule 1 to the Regulations, as set out below:[18]

Bridging visa class	Schedule 1 item
Bridging A (Class WA)	Item 1301
Bridging B (Class WB)	Item 1302
Bridging C (Class WC)	Item 1303
Bridging D (Class WD)	Item 1304
Bridging E (Class WE)	Item 1305
Bridging F (Class WF)	Item 1306
Bridging R (Class WR)	Item 1307

Certain substantive visa applications taken to be application for a bridging visa: reg 2.07A

An application for a substantive visa made on a specified form is generally taken to be an application for a Bridging A, C or E visa.[19] However, an application for a substantive visa is not a valid application for a bridging visa if the applicant was not in Australia when the application

[13] reg 2.20(14)(a)(i).
[14] As the applicant is not onshore, sponsored and does not otherwise fit within another category under s 338.
[15] Explanatory Statement to *Migration Amendment Regulations 2005 (No 2)* (Cth) (SLI 2005 No 76).
[16] reg 2.20A(2).
[17] cl 070.511 of sch 2 to the Regulations.
[18] Note that there are also circumstances in which valid bridging visa applications are taken to be made, regardless of Schedule 1 requirements, such as under reg 2.20A for BVR, reg 2.20B for BVF, or under reg 2.07A.
[19] See items 1301(1), 1303(1), 1305(1) of sch 1 to the Regulations for BVA, BVC, BVE applications respectively.

for the substantive visa was made, or if the substantive visa is of a kind that can only be granted if the applicant is outside Australia.[20]

Prohibition on applying for visas due to visa refusal or cancellation on character grounds: s 501E, reg 2.12AA

With limited exception,[21] s 501E(1) of the Act provides that a person is not allowed to make an application for a visa (including a bridging visa), or have a visa application made on one's behalf, during a period throughout which the applicant is in the migration zone if the Minister has made a decision to refuse to grant a visa to the person or to cancel a visa of the person under ss 501, 501A, 501B or 501BA (refusal or cancellation on character grounds) and the Minister's decision has not been set aside or revoked.[22]

In the bridging visa context, s 501E(1) does not prevent a person from making an application for a protection visa or a visa specified in the Regulations for the purpose of s 501E(2).[23] To date, only a Bridging R (Removal Pending) visa has been specified under reg 2.12AA for the purposes of s 501E(2)(b), which allows an applicant to make a valid application for a Bridging R visa despite the operation of s 501E(1).

Invalid application for substantive visa taken to be application for Bridging D visa: reg 2.22

A non-citizen is taken to have applied for a Bridging D visa without an application form if the non-citizen is in Australia but is not in immigration or criminal detention, and makes an invalid application for a substantive visa of a class that may be granted in Australia.[24] The substantive visa application must be submitted in a way other than personal attendance at an office of Immigration,[25] and it must not be a purported oral application or a purported internet application.[26] Regulation 2.22 does not include situations where the application is invalid because it is barred by s 48 or s 48A (whether or not action has been taken to seek a determination by the Minister under s 48B(1) in relation to the application).[27]

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[20] reg 2.07A.
[21] s 501(2) and, in relation to a decision to refuse to grant a visa or to cancel a visa, or an application for a visa made on or after 11 December 2014, ss 501(3) and (4) (which relates, inter alia, where the Minister has, acting personally, granted a permanent visa to the person). See *Migration Amendment (Character and General Visa Cancellation) Act 2014* (Cth) (No 129 of 2014).
[22] If the person has left the migration zone and re-entered since the relevant decision under ss 501, 501A or 501B was made, the prohibition under s 501E will not apply.
[23] However under s 48A, a person who has previously made a valid application for a protection visa where the grant of the visa(s) has been validly refused, or held a protection visa that was cancelled may not, after 28 May 2014 make a further application for a protection visa while in the migration zone: ss 48A(1), (1B) and (1C) as inserted by *Migration Amendment Act 2014* (Cth) (No 30, 2014). If, however, the application for a further protection visa was made before 28 May 2014, the operation of s 48A is limited to the making of a further application which duplicates the same essential criterion for the grant of the visa as in the earlier unsuccessful application: *SZGIZ v MIAC* (2013) 212 FCR 235 at [38].
[24] regs 2.22(1)(a), (b), (c)(ii).
[25] reg 2.22(1)(c)(i).
[26] reg 2.22(2).
[27] reg 2.22(1)(d). Section 48 of the Act provides that non-citizens refused a visa or whose visa is cancelled may only apply for particular visas. Section 48A provides that a non-citizen who is refused a protection visa or has had such a visa cancelled may not make a further application for a protection visa while in the migration zone. Section 48B allows the Minister to lift the bar in s 48A if he or she considers it is in the public interest to do so.

Further application for a bridging visa by a person in immigration detention: s 74, reg 2.23

A non-citizen in immigration detention who is refused a bridging visa may not make a further application for a bridging visa earlier than 30 days after the refusal or final determination of the first application, unless the Minister is satisfied that, although the non-citizen has not made a further BVE application, the non-citizen now satisfies the criteria for grant of a BVE.[28]

Automatic grant of BVE or BVF to an eligible non-citizen in immigration detention: s 75, reg 2.24

Section 75 of the Act provides that if an eligible non-citizen who is in immigration detention makes an application for a Bridging E or Bridging F visa,[29] and the Minister does not make a decision within the prescribed period, the non-citizen is taken to have been granted a bridging visa at the end of that period. The prescribed period is 2 working days, 28 days or 90 days, depending on the circumstances of the application.[30] Section 75(2) of the Act enables the period to be extended in relation to a particular application by agreement between the applicant and the Minister.[31] For further discussion of these provisions in relation to BVE applications, see the Bridging E (Class WE) visa commentary.

Granting bridging visas without application

The Minister has powers to grant bridging visas in certain circumstances without an applicant having made a valid visa application.[32] These circumstances apply to Bridging A visas under regs 2.21A or 2.21B, Bridging C visas under reg 2.21B, Bridging E visas under regs 2.21B or 2.25, and Bridging R visas under reg 2.25AA.[33]

Bridging A visa without application: reg 2.21A

Regulation 2.21A provides that a Bridging A visa must be granted where the applicant is in Australia but not in immigration clearance, and:

[28] s 74(2); reg 2.23.
[29] These are the prescribed classes of bridging visas under reg 2.24(1) for s 75(1)(a).
[30] See regs 2.24(3), (4). Regulation 2.24 was amended by *Migration Legislation Amendment Regulations 2011 (No 1)* (Cth) (SLI 2011 No 105) from 1 July 2011. For bridging visa applications lodged prior to 1 July 2011, the prescribed period under reg 2.24(2) was 2 working days where the applicant had been immigration cleared or was an eligible non-citizen referred to in reg 2.20(6), or 28 days in any other case.
[31] In *Tan v MIAC* [2010] FMCA 652, the Court was satisfied on the material before it, that the prescribed period in s 75 of the Act was extended by a mutual agreement of the Applicant and the Minister, which was confirmed by the subsequent behaviour of the parties.
[32] The power of the Minister to grant a bridging visa without application is found in s 73 of the Act. This is in contrast to the power under s 65 of the Act, which requires that a valid visa application has been made. See *Wong v MIMIA* (No 2) [2004] FCA 422 at [19]–[20], [32].
[33] For circumstances in which a person is taken to have applied for a Bridging D visa under reg 2.22 (invalid application for substantive visa), see above for further discussion.

- their application for a specified permanent partner visa[34] was withdrawn or refused while in Australia, and immediately before this they were the holder of a specified temporary partner visa,[35] and were not already granted a visa under reg 2.21A in relation to the withdrawal or refusal;[36] or
- their application for a specified aged parent visa[37] was withdrawn while in Australia and at the same time they applied for another specified aged parent visa,[38] and immediately before this they were the holder of a Bridging A or B visa and did not hold a substantive visa, and had not already been granted a Bridging A visa under reg 2.21A in relation to these visa applications.[39]

Bridging A, C, and E visas without application: reg 2.21B

Regulation 2.21B provides that Bridging A, C and E visas may be granted without application where the applicant is in Australia but not in immigration clearance, has made a specified valid visa application that has not been finally determined, and the Minister is satisfied that the applicant meets the bridging visa criteria and circumstances applicable to grant.[40]

Bridging E visa without application: reg 2.25

Regulation 2.25 provides that a Bridging E visa may be granted without application in certain circumstances, where satisfied that the non-citizen meets the Schedule 2 criteria for the visa at the time of decision. It applies to a non-citizen in criminal detention, or a non-citizen who is unwilling or unable to make a valid application for a Bridging E visa and who is not barred from making a valid application by a provision in the Act or Regulations.[41] Regulation 2.25 is aimed at circumstances where it is not intended that a non-citizen be held in immigration detention. Examples of where a person would be considered 'unable to make a valid application' include where the non-citizen is: a minor, illiterate, physically or mentally disabled, unable to speak English and no interpreter is available, or in a remote location with no access to means of making an application.[42]

Bridging R visa without application: reg 2.25AA

The Minister has a general discretion under s 195A of the Act to grant a detainee a visa of a particular class, whether or not he or she had applied for that visa. In circumstances where that

[34] The specified permanent partner visa classes are Spouse (Migrant) (Class BC), Partner (Migrant) (Class BC), and Interdependency (Migrant) (Class BI).
[35] The specified temporary partner visa subclasses are Subclass 309 (Spouse (Provisional)), Subclass 309 (Partner (Provisional)), and Subclass 310 (Interdependency (Provisional)).
[36] reg 2.21A(1).
[37] The specified aged parent visa classes are Aged Parent (Residence) (Class BP) under reg 2.21A(2), and Contributory Aged Parent (Residence) (Class DG) visa and Contributory Aged Parent (Temporary) (Class UU) visa under reg 2.21A(3).
[38] The other specified aged parent visa classes are Contributory Aged Parent (Residence) (Class DG) visa and Contributory Aged Parent (Temporary) (Class UU) visa under reg 2.21A(2), and Aged Parent (Residence) (Class BP) under reg 2.21A(3).
[39] reg 2.21(2)–(3).
[40] reg 2.21B.
[41] For example, a non-citizen may be barred from making a valid application under ss 91E, 91K, 91P, 161, 164D or 501E of the Act.
[42] Policy — Migration Act – Compliance and Case Resolution – Program visas – Bridging E visas – Applying for a BVE – Grant of BVE without application – Reg 2.25 – Application of reg 2.25 (reissued 19/11/2016). See also Explanatory Statement to the *Migration Amendment Regulations 2002 (No 10)* (Cth) (SR 2002 No 348) at item [2111].

power is unavailable, and where the eligible non-citizen is an unlawful non-citizen and their removal from Australia is not reasonably practicable, the Minister may grant a Bridging R visa under reg 2.25AA where satisfied that the non-citizen meets cl 070.222 (i.e. will abide by conditions) at the time of decision.[43]

Bridging visa criteria – Schedule 2

The requirements to be granted a bridging visa are set out in Schedule 2 to the Regulations. All applicants must satisfy the primary criteria to be granted a bridging visa, with the exception of Subclass 060 (Bridging F) which allows an applicant to meet secondary criteria.

Subclass 010 (Bridging A) criteria

At the time of application, the applicant must meet one of the following criteria:

- the applicant held a substantive visa at the time of making an application for another substantive visa which has not been finally determined, and the applicant applied for a bridging visa in respect of that application or one could be granted under reg 2.21B;[44]
- the applicant held a substantive visa at the time of making an application for another substantive visa which was refused, and:
    - a relevant judicial review application has been made within time and those proceedings are not completed;[45] and
    - the applicant held a Bridging A or B visa at the time of the judicial review application;[46]
- the applicant holds a Bridging A or B visa with work restrictions which was granted as a result of a valid visa application made in Australia (while they held a substantive visa) for a substantive visa that could be granted in Australia, has not applied for a protection visa, and the Minister is satisfied the applicant has a compelling need to work (as defined in reg 1.08);[47]
- the applicant has applied for a bridging visa in respect of a valid application for a specified partner or aged parent visa which has not been finally determined, and holds or previously held a Bridging A visa granted without application under reg 2.21A in respect of the specified visa application;[48] or
- the applicant has made a valid application for a specified partner or aged parent visa which was refused, and:

[43] reg 2.25AA of the Regulations, inserted by *Migration Amendment Regulation 2013 (No 4)* (Cth) (SLI 2013 No 131), sch 1, Item 3, and applicable to visa applications on foot as at 18 June 2013 and any applications made from that date.
[44] cl 010.211(2).
[45] For discussion of what constitutes applying for judicial review within statutory time limits, and when judicial proceedings are completed, please see Judicial review proceedings below.
[46] cl 010.211(3). The Bridging A or B visa must have been held at the time the application for judicial review was made – *SZGVV v MIMA* [2007] FCA 127 at [20].
[47] cl 010.211(4).
[48] cl 010.211(5).

- a relevant judicial review application has been made within time and those proceedings are not completed;[49] and
- the applicant holds or previously held a Bridging A visa granted without application under reg 2.21A in respect of the specified visa application.[50]

The applicant must continue to meet the time of application criteria at the time of decision.[51]

Subclass 020 (Bridging B) criteria

At the time of application, the applicant must meet the following criteria:

- the applicant must be the holder of a Bridging A or Bridging B visa;[52] and
- the applicant meets one of the following:
  - the applicant has made a valid application for a substantive visa in Australia which has not been finally determined, and the applicant wishes to leave and re-enter Australia during the processing of that application, and the Minister is satisfied that the applicant's reasons for wishing to do so are substantial;[53] or
  - the applicant has made a valid application for a substantive visa in Australia which has been refused, and:
    - a relevant judicial review application has been made within time and those proceedings are not completed;[54] and
    - the applicant wishes to leave and re-enter Australia during the judicial proceedings, and the Minister is satisfied that the applicant's reasons for wishing to do so are substantial;[55]
  - the applicant has made a valid application for a specified partner visa which has not been finally determined, and the applicant wishes to leave and re-enter Australia during the processing of that application, and the Minister is satisfied that the applicant's reasons for wishing to do so are substantial;[56] or
  - the applicant has made a valid application for a specified partner visa which was refused, and:
    - a relevant judicial review application has been made within time and those proceedings are not completed;[57] and

[49] For discussion of what constitutes applying for judicial review within statutory time limits, and when judicial proceedings are completed, please see Judicial review proceedings below.
[50] cl 010.211(6). Unlike cl 010.211(5)(c), there is no requirement that the applicant has applied for a bridging visa in cl 010.211(6).
[51] cl 010.221.
[52] cl 020.211.
[53] cl 020.212(2).
[54] For discussion of what constitutes applying for judicial review within statutory time limits, and when judicial proceedings are completed, please see Judicial review proceedings below.
[55] cl 020.212(3).
[56] cl 020.212(4).
[57] For discussion of what constitutes applying for judicial review within statutory time limits, and when judicial proceedings are completed, please see Judicial review proceedings below.

- the applicant wishes to leave and re-enter Australia during the judicial proceedings, and the Minister is satisfied that the applicant's reasons for wishing to do so are substantial.[58]

The applicant must continue to meet the above time of application criteria at the time of decision.[59]

The applicant must also satisfy the following criteria:

- at the time of application, the applicant's return to Australia must not be contrary to public interest;[60]
- at the time of decision, an applicant for a Class UQ Graduate – Skilled (Temporary) visa can only be granted a Bridging B visa where a close relative (as defined in reg 1.03) of the applicant is seriously ill or has recently died overseas, or where the applicant's Australian employer requires the applicant to travel overseas in the course of the applicant's employment;[61] and
- at the time of decision, the applicant satisfies public interest criterion 4021 (passport criterion).[62]

'Substantial reasons' under cl 020.212

'Substantial reasons' for wishing to leave and re-enter Australia (under cl 020.212) is not defined in the Regulations. Departmental policy states that a 'substantial reason' for wishing to travel could include travel associated with:[63]

- the person's employment, business or education (e.g. work or study conferences, business meetings, academic research)
- a family member, relative or close friend (e.g. serious illness, wedding, funeral)
- the person's substantive visa application (e.g. for treatment of a medical condition, getting documents to satisfy criteria, resolving custody issues, or personal reasons due to protracted processing of the application)

While the Tribunal may have regard to policy, the Tribunal should ensure it does not treat it as determinative and should bring its consideration back to the terms of the legislative provisions and the individual circumstances of the case.

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[58] cl 020.212(5).
[59] cl 020.221.
[60] cl 020.213.
[61] cl 020.222.
[62] cl 020.223. Reference to public interest criterion (PIC) 4021 was substituted by *Migration Legislation Amendment Regulation 2012 (No 5)* (Cth) SLI 2012 No 256, sch 2, item [1], and applies to visa applications made on or after 24 November 2012 (sch 7, item [1]). The inclusion of PIC 4021 accompanied the repeal of the equivalent provision of cl 020.223 which imposed passport requirements on visa applications made from 1 July 2005 to 23 November 2012.
[63] Policy —: Sch2 Visa 020 – Subclass 020(Bridging B) visa – Assessing the travel criteria – Substantial reasons to leave and re-enter Australia – Substantial reason for wishing to travel (reissued 01/01/2022).

Subclass 030 (Bridging C) criteria

At the time of application, the applicant must meet the following criteria:

- the applicant does not hold, and has not previously held, a Bridging E visa since last holding a substantive visa;[64]
- the applicant meets one of the following subclauses of cl 030.212:
    - the applicant does not hold a substantive visa; has a valid application on foot for a substantive visa that can be granted in Australia; and that application was made on the same form as the bridging visa application, or the bridging visa can be granted under reg 2.21B without a separate application:[65]
    - the applicant does not hold a substantive visa; has a valid application on foot for a substantive visa that can be granted in Australia; and has previously been granted a Bridging C visa in respect of that application:[66]
    - the applicant holds a Bridging C visa subject to condition 8101 (no work) which was granted following a valid substantive visa application made in Australia; and the applicant has a compelling need to work (as defined in reg 1.08):[67] or
    - the applicant made a valid application for a substantive visa that can be granted in Australia, while holding a Bridging C visa, which was refused; and a relevant judicial review application has been made within time and those proceedings are not completed[68]

The applicant must continue to meet the time of application criteria at the time of decision.[69]

Subclass 040 (Bridging (Prospective Applicant)) criteria

At the time of application, the applicant must meet the following criteria:

- the applicant is an unlawful non-citizen, or is the holder of a visa that will cease within the next 3 working days after the day of application;[70]
- the Minister is satisfied that the applicant:
    - has attempted to make, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia and is unable to do so; and

[64] cl 030.211.
[65] cl 030.212(2)
[66] cl 030.212(2A)
[67] cl 030.212(3). For Bridging C applications made prior to 1 July 2009, cl 030.212(3)(b) required, where the applicant applied for a Protection (Class AZ) visa between 1 July 1997 to the end of 19 October 1999, or for a Protection (Class XA) visa on or after 20 October 1999, the applicant to have been in Australia for a period of less than 45 days or for periods totalling less than 45 days in the 12 months immediately prior to the date of the application, or the applicant was within a class of persons specified by the Minister in the Gazette. Clause 030.212(3)(b) was omitted by *Migration Amendment Regulations 2009 (No 6)* (Cth) (SLI 2009, 143) with effect from 1 July 2009. See the '030-PVapplicants' tab of the Register of Instruments – Bridging Visas.
[68] cl 030.212(5). For discussion of what constitutes applying for judicial review within statutory time limits, and when judicial proceedings are completed, please see Judicial review proceedings below.
[69] cl 030.221.
[70] cl 040.211.

  - within 5 working days, will be able to make, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia;[71] and
- the applicant has not previously been granted 2 bridging visas of Subclass 040 since he or she last held a substantive visa.[72]

The applicant must continue to satisfy the time of application criteria at the time of decision.[73]

Subclass 041 (Bridging (Non-Applicant)) criteria

At the time of application, the applicant must meet the following criteria:

- the applicant is an unlawful non-citizen;[74]
- the applicant is unable, or does not want, to apply for a substantive visa;[75] and
- an authorised officer for the purposes of cl 050.222 (i.e. a Departmental officer who is authorised by the Secretary) is not available to interview the applicant to determine their eligibility for a Bridging E visa.[76]

The applicant must continue to satisfy the time of application criteria at the time of decision.[77]

Subclass 050 (Bridging (General)) and Subclass 051 (Bridging (Protection Visa Applicant)) criteria

For detailed discussion of the Schedule 2 criteria for Subclass 050 and Subclass 051 visas, see the Bridging E (Class WE) visa commentary.

Subclass 060 (Bridging F) criteria

There are no time of application criteria for a Subclass 060 visa. At the time of decision, the applicant must meet the following criteria:

- the Minister is satisfied that the applicant has been identified as a suspected victim of human trafficking;[78]
- the Minister is satisfied that suitable arrangements have been made for the care, safety and welfare of the applicant in Australia for the proposed period of the visa;[79] and
- the Minister is satisfied that, if the bridging visa is granted, the applicant will abide by the conditions imposed on it.[80]

[71] cl 040.213.
[72] cl 040.214.
[73] cl 040.221.
[74] cl 041.211.
[75] cl 041.212.
[76] cl 041.213.
[77] cl 041.221.
[78] cl 060.221.
[79] cl 060.222.
[80] cl 060.223.

Unlike other bridging visas, applicants can meet secondary criteria to be granted a Subclass 060 visa. Applicants seeking to satisfy the secondary criteria must meet the following criteria at the time of decision:

- the applicant is a member of the immediate family of, and made a combined application with, a person in relation to whom the primary criteria are satisfied;[81]
- the Minister is satisfied that the applicant continues to be a member of the immediate family of a person that has been identified as a suspected victim of human trafficking;[82]
- the Minister is satisfied that suitable arrangements have been made for the care, safety and welfare of the applicant in Australia for the proposed period of the visa;[83] and
- the Minister is satisfied that, if the bridging visa is granted, the applicant will abide by the conditions imposed on it.[84]

Subclass 070 (Bridging (Removal Pending)) criteria

At the time of application, the applicant must meet the following criteria:

- the applicant must be an eligible non-citizen referred to in reg 2.20(12), which requires that:[85]
    - the applicant is in immigration detention;
    - the Minister is satisfied that the applicant's removal from Australia is not reasonably practicable at that time;
    - the Minister is satisfied that the applicant will do everything possible to facilitate their removal from Australia; and
    - any visa applications made by the applicant, other than an application made following the exercise of the Minister's power under s 48B of the Act, have been finally determined;[86] and
- the applicant must be taken to have made an application for a Bridging R visa in accordance with reg 2.20A(2).[87]

At the time of decision, the applicant must meet the following criteria:

- the applicant continues to satisfy the time of application criteria;[88]
- the Minister is satisfied that the applicant will abide by the visa conditions to which the visa is subject;[89] and

[81] cl 060.321.
[82] cl 060.322.
[83] cl 060.323.
[84] cl 060.324.
[85] cl 070.211; reg 2.20(12).
[86] reg 2.20(12).
[87] cl 070.211. Under reg 2.20A(2), an application for a BVR is taken to have been validly made if: the applicant has been given a written invitation to apply for the visa by the Minister, by one of the methods in s 494B of the Act; and the applicant accepts the invitation in writing not later than seven days after they are taken to have received that invitation.
[88] cl 070.221.

- the applicant satisfies public interest criteria 4001 (character test) and 4002 (not assessed as a risk to national security).[90]

Circumstances for grant

Bridging visas are generally granted to applicants who are in Australia, but not in immigration clearance.[91] However, a Bridging F visa may be granted in certain circumstances where the applicant is outside Australia or is in Australia but has not been immigration cleared;[92] and a Bridging R visa can only be granted where the applicant is in immigration detention at the time of grant.[93]

All bridging visa applicants must be 'eligible non-citizens' at the time of grant.[94]

When visa is in effect

A bridging visa permits the holder to remain in Australia during a specified period or until a specified event happens.[95] The type of event varies depending on its holder's circumstances. For example, a bridging visa granted on the basis that the applicant has applied for a substantive visa onshore may permit an applicant to remain in Australia during the period of the processing of the visa application and will then cease 28 days after notification of a refusal decision by the Department or of a decision by the Tribunal or after completion of a judicial review application.[96] The period of effect for each bridging visa subclass is set out in the Schedule 2 subclauses titled 'When visa is in effect'.

When the visa commences

When a bridging visa commences will depend on the type of bridging visa and the circumstances in which it was granted. In the case of a bridging visa granted to a person on the basis of them applying for a substantive visa, the bridging visa will only come into effect when their existing visa ceases.[97] Where an applicant does not hold a substantive visa, the bridging visa will come into effect as soon as it is granted.[98]

When the visa ceases

Bridging visas will cease after a specified period or after a specified event has occurred,[99] depending on the circumstances in which it was granted. The relevant cessation period and the

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[89] cl 070.222.
[90] cl 070.223.
[91] See Sch 2 criteria for BVA, BVB, BVC, BVD, BVE under 'Circumstances applicable to grant' – for example, cl 010.411 for BVA.
[92] cl 060.411.
[93] cl 070.411.
[94] Bridging visas may be granted under s 73 of the Act to eligible non-citizens as defined in s 72 and prescribed in reg 2.20: ss 31(3), 37, 72, 73.
[95] s 73 of the Act.
[96] A decision of the Tribunal includes a 'no jurisdiction' type decision on a purported application – this was clarified by the amendments to Schedule 2 made by the *Migration Amendment Regulation 2012 (No 8)* (Cth) (SLI 2012, No 301).
[97] See Schedule 2 criteria for the relevant bridging visa – for example, cl 010.511(a)(ii) for BVA.
[98] See Schedule 2 criteria for the relevant bridging visa – for example, cl 050.511(a) for BVE.
[99] ss 82(7) and (7A) of the Act. For events requiring notification, see further below under Notification of a decision.

trigger for the cessation period will depend on when the visa was granted. An example of a bridging visa ceasing at the end of a specified period is where an applicant has been granted a BVE on the basis of an outstanding judicial review of a decision to refuse them a substantive visa, in which case the bridging visa will cease 28 days after the judicial review proceedings (including any proceedings on appeal) are completed.[100] In certain situations, for example where an applicant is making acceptable arrangements to depart on a BVE, the bridging visa will be granted for a specified period determined by the Minister.[101] Further, if the bridging visa holder leaves Australia, other than on a BVB,[102] their bridging visa will cease[103] and will not permit them to return.[104]

Amendments were made to various cessation provisions for bridging visas granted on or after 19 November 2016. For bridging visas granted before 19 November 2016, many of the provisions relating to cessation of bridging visas specify a period of 28 days from notification of a decision relating to a substantive visa.[105] For specified events involving notification, see further discussion below at Notification of a decision. For bridging visas granted on or after 19 November 2016, those provisions were amended to specify a period of 35 days from when the relevant decision is made.[106]

Reactivated bridging visas: ss 68(4), 82(3), reg 2.21

A bridging visa held by a non-citizen ceases to be in effect if another visa (other than a special purpose visa or a maritime crew visa) for the non-citizen comes into effect.[107] A bridging visa that has ceased to be in effect in this way (but in relation to which the specified period of effect has not expired or the specified event upon which it ceases has not occurred), is reactivated if its holder does not hold a substantive visa that is in effect, and the non-citizen either does not hold any other bridging visa or the reactivated bridging visa is determined to be the most beneficial of the bridging visas held.[108] Bridging visas are ranked from most beneficial to least beneficial in reg 2.21(2) in the following order: BVB, BVA, BVC, BVD, BVR, BVE, BVF. Only one bridging visa can be in effect at any time.

For example, a non-citizen who held a BVB in relation to an undetermined spouse visa application was granted a student visa for a one-month course. The effect of s 82(3) of the Act is that the BVB ceased during the month the student visa was in effect. After that visa ceased, the non-citizen applied for a tourist visa, and the applicant met the criteria for grant of a BVA. The effect of s 68(4) of the Act and reg 2.21(2) is that the BVB is reactivated because the specified event (i.e., the grant of visa or 28 days after notification of refusal, etc.) has not yet

[100] cl 050.512(b)(ii). Note there are other circumstances in which a BVE granted on this basis will cease – see cl 050.512(b)(i)–(iv).
[101] cl 050.517.
[102] cls 020.511(c), 020.512(c).
[103] s 82(8) of the Act.
[104] See Schedule 2 criteria for the relevant bridging visa – for example, cl 050.511(b) for BVE.
[105] See for example, cl 010.511(b)(ii), as in force immediately before 19 November 2016.
[106] See for example, cl 010.511(1)(b)(ii), as amended by *Migration Legislation Amendment (2016 Measures No 5) Regulation 2016* (Cth) (F2016L01745).
[107] s 82(3) of the Act.
[108] s 68(4) of the Act. See also *Akpata v MIAC* [2012] FCA 806, where the Court held at [119] that there was no room for the operation of s 68(4) so as to give rise to a reactivated bridging visa A in circumstances where the bridging visa A had ceased to be in effect when the applicant left Australia, i.e. the bridging visa A was not ceased under s 82(3).

occurred, and because the BVB is ranked according to reg 2.21(2) as more beneficial than the BVA.

Bridging A, B and C visas (Subclass 010, 020, 030)

Bridging A, B and C visas come into effect on grant, or when the substantive visa (if any) held by the holder ceases.[109] The visa permits the holder to remain in Australia until a specified event occurs or until the end of a period as follows:

Where granted to a person who has applied for a substantive visa

- the grant of the substantive visa,[110] or another bridging visa in respect of the same substantive visa application[111]
- the cancellation of any substantive visa held by the holder[112]

If visa granted before 19 November 2016[113]

- 28 days after notification of a refusal of the substantive visa[114]
- 28 days after notification of a merits review decision relating to the substantive visa application, unless the Tribunal decides to remit the application[115]
- 28 days after withdrawal of the substantive visa application or application for review[116]
- 28 days after notification that the substantive visa application was invalid[117]

If visa granted on or after 19 November 2016[118]

- 35 days after the Minister's decision to refuse the substantive visa[119]
- 35 days after the Tribunal decides an application for merits review of the substantive visa refusal was not made according to law (invalid application)[120]
- 35 days after the Tribunal makes a decision on review of the substantive visa refusal, other than to remit to the Minister[121]

[109] cls 010.511(a), 010.513(a), 010.514(a) for BVA; cls 020.511(a), 020.512(a), 020.513(a) for BVB; cls 030.511(a), 030.512(a), 030.513(a) for BVC, as in force immediately before 19 November 2016. These provisions were re-numbered, for example, cl 010.511(1)(a) by F2016L01745.
[110] cl 010.511(b)(i) for BVA, cl 020.511(b)(i) for BVB, cl 030.511(b)(i) for BVC. The Bridging A visa ceases at the time of the grant of a substantive visa, and not the notification of the grant: *Hossain v MIMIA* [2007] FMCA 35. Although this case concerned a Bridging A visa, its conclusion appears equally applicable to Bridging B and C visas.
[111] cl 010.511(b)(iv) for BVA, cl 020.511(b)(v) for BVB, cl 030.511(b)(iv) for BVC.
[112] cl 010.511(b)(vi) for BVA, cl 020.511(b)(vi) for BVB, cl 030.511(b)(viii) for BVC.
[113] Footnote references are to Schedule 2 provisions as in force immediately before 19 November 2016, applying to bridging visas granted before that time.
[114] cl 010.511(b)(ii) for BVA, cl 020.511(b)(ii) for BVB, cl 030.511(b)(ii) for BVC.
[115] cls 010.511(b)(iii), (viii) for BVA, cls 020.511(b)(iii), (viii) for BVB, cls 030.511(b)(iii), (vii) for BVC.
[116] cl 010.511(b)(v) for BVA, cl 020.511(b)(iv) for BVB, cl 030.511(b)(v) for BVC.
[117] cl 010.511(b)(vii) for BVA, cl 020.511(b)(vii) for BVB, cl 030.511(b)(vi) for BVC.
[118] Footnote references are to Schedule 2 criteria applying to visas granted on or after 19 November 2016, following amendments made by F2016L01745. The 35 day periods generally begin to run despite any failure to comply with the requirements in the Act or Regulations and irrespective of the validity of the decision: cl 020.511(2) for BVA, cl 020.511(2) for BVB, cl 030.511(2) for BVC.
[119] cl 010.511(1)(b)(ii) for BVA, cl 020.511(1)(b)(ii) for BVB, cl 030.511(b)(ii) for BVC.
[120] cl 010.511(1)(b)(iia) for BVA, cl 020.511(1)(b)(iia) for BVB, cl 030.511(b)(iia) for BVC.

- 35 days after the applicant withdraws the application for a visa or for review[122]
- 35 days after the Minister decides the substantive visa application is invalid[123]

Where granted on the basis of judicial review of a decision

- 28 days after the judicial review proceedings (including proceedings on appeal) are completed, unless the court remits the matter to the Tribunal or to the Minister[124]
- the grant of another bridging visa in respect of the same judicial review application[125]
- 28 days after withdrawal of the judicial review application[126]
- the cancellation of any substantive visa held by the holder[127]

Where granted to a member of the family unit of a party to judicial review proceedings

- the expiry of the bridging visa held by the party to the judicial review proceedings[128]

Bridging B visa (Subclass 020) – permission to travel to and enter Australia

A Bridging B visa also permits the holder to travel to and enter Australia until the expiry of the bridging visa (where granted to a person who has applied for a substantive visa application, or on the basis of judicial review),[129] unless the Minister has specified an earlier time for this purpose.[130]

Bridging D visa (Subclass 040 and 041)

A Subclass 040 visa comes into effect on grant, or when the substantive visa (if any) held by the holder ceases. The visa remains in effect for 5 working days after grant.[131]

A Subclass 041 visa comes into effect on grant. The visa remains in effect until the end of the fifth working day after the date of grant, or the date of grant of a Bridging E (Subclass 050) visa if granted before the end of that day.[132]

Bridging E visa (Subclass 050 and 051)

For detailed discussion of when the visa is in effect for Subclass 050 and Subclass 051 visas, see the Bridging E (Class WE) visa commentary.

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[121] cl 010.511(1)(b)(iii) for BVA, cl 020.511(1)(b)(iii) for BVB, cl 030.511(1)(b)(iii) for BVC.
[122] cl 010.511(1)(b)(v) for BVA, cl 020.511(1)(b)(iv) for BVB, cl 030.511(1)(b)(v) for BVC.
[123] cl 010.511(1)(b)(vii) for BVA, cl 020.511(1)(b)(vii) for BVB, cl 030.511(1)(b)(vi) for BVC.
[124] cls 010.513(b)(i), (c) for BVA; cls 020.512(b)(i), 020.513(ba) for BVB; cls 030.512(b)(i), (c) for BVC. For discussion on when judicial proceedings are 'completed', see below.
[125] cl 010.513(b)(ii) for BVA, cl 020.512(b)(iii) for BVB, cl 030.512(b)(iii) for BVC.
[126] cl 010.513(b)(iii) for BVA, cl 020.512(b)(ii) for BVB, cl 030.512(b)(ii) for BVC.
[127] cl 010.513(b)(iv) for BVA, cl 020.512(b)(iv) for BVB, cl 030.512(b)(iv) for BVC.
[128] cl 010.514 for BVA, cl 020.513(b) for BVB, cl 030.513(b) for BVC.
[129] In accordance with cls 020.511(b), 020.512(b).
[130] cls 020.511(c), 020.512(c).
[131] cl 040.511.
[132] cl 041.511.

Bridging F visa (Subclass 060)

A Bridging F visa comes into effect on grant.[133] The visa permits certain holders to travel to and enter Australia, and/or to remain in Australia, as follows:

Where granted to suspected victims of human trafficking:

For certain non-citizens outside Australia who have been identified as suspected victims of human trafficking (and certain members of their immediate family), and who have accepted an invitation to apply for the visa,[134] the visa permits the holder to:

- travel to and enter Australia on 1 occasion until a date specified by the Minister;[135] and
- remain in Australia until a date specified by the Minister.[136]

Where granted to criminal justice visitors:

For certain non-citizens in Australia who are the subject of a valid criminal justice stay certificate and need to travel outside Australia for compelling and compassionate reasons (and certain members of their immediate family), and who have accepted an invitation to apply for the visa,[137] the visa permits the holder to:

- travel to and enter Australia on 1 occasion until a date specified by the Minister;[138] and
- remain in Australia until a date specified by the Minister, or when a new criminal justice stay visa is granted, or when a criminal justice certificate issued to the holder is cancelled, whichever is earliest.[139]

All other cases:

For all other cases, the visa does not permit the applicant to travel to and enter Australia.[140] The visa permits the holder to remain in Australia until the earliest of the following:

- a date specified by the Minister;[141]
- the end of 45 days after the date of grant;[142]
- when the Minister gives written notice that the holder (or the person in respect of whom the holder is a member of the immediate family) is no longer identified as a suspected victim of human trafficking, in certain circumstances.[143]

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[133] cls 060.511(1)(a), (2)(a), (3)(a).
[134] cl 060.511(1); regs 2.20(14), 2.20B(2).
[135] cl 060.511(1)(b).
[136] cl 060.511(1)(c).
[137] cl 060.511(2), regs 2.20(15), 2.20B(2).
[138] cl 060.511(2)(b).
[139] cl 060.511(2)(c).
[140] cl 060.511(3).
[141] cl 060.511(3)(b)(i).
[142] cl 060.511(3)(b)(ii).
[143] cls 060.511(3)(b)(iii), (iv).

Bridging R visa (Subclass 070)

A Bridging R visa comes into effect on grant. The visa permits the holder to remain in Australia and ceases when the Minister gives a notice in writing to the holder, by one of the methods specified in s 494B of the Act, stating that:

- the Minister is satisfied that the holder's removal from Australia is reasonably practicable;[144] or
- the holder has breached a condition of the visa.[145]

Visa conditions

Visa conditions are provided for in s 41 of the Act, which provides that visas may be subject to specified conditions, and the Minister may impose certain conditions on a visa.[146] Visa conditions are set out in Schedule 8 to the Regulations. Various conditions may be attached to bridging visas, for example, a prohibition on work, or a requirement to report to the Department at specified times. The Schedule 2 requirements for the particular bridging visa subclass prescribe the circumstances in which different conditions will attach to the grant of the visa.

A separate application for a bridging visa may be made by a person seeking to change the conditions on their current bridging visa. For example, a BVC or BVE granted in specified circumstances have a mandatory no work condition (condition 8101), but the visa holder may apply for the same visa subclass with permission to work, which requires the Minister to be satisfied that the applicant has a 'compelling need to work'.

A number of amendments have been made to the conditions over time, so it is important to check the version of the Regulations applicable at the relevant time.[147]

Bridging A visa conditions

A Bridging A visa generally has the same visa conditions as those attached to the substantive visa or Bridging A or B visa held by the holder at the time of application.[148] The conditions which apply depend on the circumstances as follows:

- **nil** conditions, if any of the following applies:
    - the holder satisfies cl 010.211(4) (compelling need to work)[149]

[144] cl 070.511(c)(i). The question whether the Minister's decision must follow a particular process, including being subject to the application of natural justice principles and the provisions of the *Administrative Decision (Judicial Review) Act 1977* (Cth), was raised but not determined in the context of granting an interlocutory application: *Kumar v MIMA* [2006] FMCA 1276 at [30].
[145] cl 070.511(c)(ii).
[146] The Full Federal Court in *Krummrey v MIMIA* (2005) 147 FCR 557 at [28]–[29] has interpreted the language of a condition which 'must be imposed' in Schedule 2 as being a condition to which the visa is subject. There is no further action of 'imposing' the condition.
[147] F2017L01425 made changes to the conditions applicable to all bridging visa subclasses. This regulation came into effect from 18 November 2017 and was disallowed at 17:56 on 5 December 2017. This regulation imposed 8304 (must use same name in all official Australian identity documents) for bridging visas that were applied for and granted during this period. The disallowance effectively repealed these provisions and the amendments by F2017L01425 are not applicable to visa applications that were made on or after 18 November 2017, but not finally determined as at the time of disallowance.
[148] cl 010.611(4).

- the holder is an applicant for a Protection visa who either does not fall within cl 010.211(3) (judicial review in relation to substantive visa)[150] or who satisfies cl 010.211(2) (substantive visa application not finally determined)[151]
- the holder is in a class of persons specified by the Minister by an instrument in writing[152]
- BVA is granted without application under reg 2.21A to a person mentioned in reg 2.21A(1) (for certain partner visa applicants)[153]
- BVA is granted on the basis of meeting cl 010.211(2) or (3) in relation to a valid application for a specified class of business or skilled visa[154]

- **8101** (no work), if the following applies:
  - the holder is an applicant for a Protection visa who satisfies cl 010.211(3) (judicial review in relation to substantive visa), if condition 8101 applied to the last held visa[155]
- **8104** (only 40 hours work a fortnight) if the following applies:
  - BVA is granted to a person who meets cl 010.211(2) or (3) on the basis of making a valid application for a Subclass 103 (Parent) or a Subclass 143 (Contributory Parent) visa and who is seeking to meet the requirements of cl 103.214(2), cl 103.313(2), cl 143.214(2) or cl 143.313(2), if the most recent substantive visa was also subject to condition 8104[156]
- **8107** (not cease or change work), if any of the following applies:
  - BVA is granted to a person who meets cl 010.211(2) or (3) on the basis of making a valid application for a Subclass 457 visa[157] and holding a Subclass 457 visa (the first visa) at the time of making that application, if the first visa was also subject to condition 8107[158]

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[149] cl 010.611(1)(a).
[150] cl 010.611(1)(b)(i), cf. a person described in cl 010.611(2).
[151] cl 010.611(1)(b), inserted by SLI 2009, No 143, sch 1, item [1].
[152] cl 010.611(1)(c), as substituted by SLI 2009, No 143, sch 1, item [1]. See the '010-NilCond' tab of the Register of Instruments - Bridging Visas.
[153] cl 010.611(3).
[154] cl 010.611(3B). The specified classes of business and skilled visas in cl 010.611(3B) have been amended over time. See *Migration Amendment Regulation 2012* (*No 2)* (Cth) (SLI 2012 No 82), sch 2, item [24] (for BVA applications made from 1 July 2013); sch 1, item [79] (for BVA applications made from 1 July 2012); *Migration Amendment Regulations 2008 (No 2)* (Cth) (SLI 2008 No 56), reg 3 and of sch 1, pt 3, item [16] (for BVA applications made from 26 April 2008).
[155] cl 010.611(2), as substituted by item 2 of sch 1 to the *Migration Amendment Regulations 2009 (No 6)* (Cth) (SLI 2009 No 143).
[156] cl 010.611(3E) inserted by *Migration Amendment (Pathway to Permanent Residence for Retirees) Regulations 2018* (Cth) (F2018L01472), sch 1, item 10, and applies to visa applications made on or after 17 November 2018.
[157] cl 010.611(3C)(a). This paragraph was amended by *Migration Legislation Amendment Regulation 2012 (No 4)* (Cth) (SLI 2012 No 238) to update the reference from Subclass 457 (Business (Long Stay)) visa to Subclass 457 (Temporary Work (Skilled)) visa with effect from 24 November 2012.
[158] cl 010.611(3C),inserted by (SLI 2011, No 105). This applies to all BVA applications made but not finally determined before 1 July 2011, and all applications made from 1 July 2011. The *Migration Legislation Amendment Regulations 2011* (*No 2)* (Cth) (SLI 2011, No 250) amended conditions 8107(3) and 8107(3B) to extend their application to circumstances where the last substantive visa held by the holder was a Subclass 457 visa. The Explanatory Statement stated the purpose of these amendments was to ensure that non-citizens who hold a BVA while transitioning from one Subclass 457 visa to another are subject to the same work limitations that they are subject to while they hold a Subclass 457 visa.

- BVA is granted to a person who meets cl 010.211(2) or (3) on the basis of making a valid application for a Subclass 482 visa and holding a Subclass 457 visa or a Subclass 482 visa (the first visa) at the time of making that application, if the first visa was also subject to condition 8107[159]

- **8303** (no involvement in disruptive activities or violence), if the following applies:
  - BVA is granted to a person who meets cl 010.211(2) or (3) on the basis of making a valid application for a Subclass 103 or a Subclass 143 and who is seeking to meet the requirements of cl 103.214(2), 103.313(2), 143.214(2) or 143.313(2), if the most recent substantive visa was also subject to condition 8303[160]

- **8501** (adequate arrangements for health insurance), if any of the following applies:
  - BVA is granted on the basis of meeting cl 010.211(2) or (3) in relation to a valid application for a Skilled (Provisional) (Class VC) visa made in certain circumstances[161]
  - BVA is granted to a person who meets cl 010.211(2) or (3) on the basis of making a valid application for a Subclass 457 visa[162] and holding a Subclass 457 visa (the first visa) at the time of making that application, if the first visa was also subject to condition 8501[163]
  - BVA is granted to a person who meets cl 010.211(2) or (3) on the basis of making a valid application for a Subclass 482 visa and holding a Subclass 457 visa or a Subclass 482 visa (the first visa) at the time of making that application, if the first visa was also subject to condition 8501[164]
  - BVA is granted to a person who meets cl 010.211(2) or (3) on the basis of making a valid application for a Subclass 103 or a Subclass 143 and who is seeking to meet the requirements of cl 103.214(2), 103.313(2), 143.214(2) or 143.313(2)[165]

[159] cl 010.611(3D) inserted by *Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018* (Cth) (F2018L00262), sch 1 pt 1, item 137, and applies to all live applications as there are no transitionals.
[160] cl 010.611(3E) inserted by (F2018L01472), sch 1, item 10, and applies to visa applications made on or after 17 November 2018.
[161] cl 010.611(3A). The circumstances are that the applicant met item 1229(4) of sch 1 to the Regulations. Historically other classes were included: the *Migration Legislation Amendment (2016 Measures No 1) Regulation 2016* (Cth) (F2016L00523) removed Graduate-Skilled (Temporary) (Class UQ) for visa applications made on or after 1 July 2016, and the *Migration Legislation Amendment (2017 Measures No 1) Regulation 2017* (Cth) (F2017L00437) removed Skilled – Independent Regional (Provisional) (Class UX) from 18 April 2017 (no transitionals).
[162] cl 010.611(3C)(a). This paragraph was amended by SLI 2012 No 238 to update the reference from Subclass 457 (Business (Long Stay)) visa to Subclass 457 (Temporary Work (Skilled)) visa with effect from 24 November 2012.
[163] cl 010.611(3C), inserted by SLI 2011, No 105. This applies to all BVA applications made but not finally determined before 1 July 2011, and all applications made from 1 July 2011.
[164] cl 010.611(3D) inserted by (F2018L00262), sch 1 pt 1, item 137, and applies to all live applications as there are no transitionals.
[165] cl 010.611(3E) inserted (F2018L01472), sch 1, item 10, and applies to visa applications made on or after 17 November 2018.

- **8607** (not cease or change work and work only in occupation in relation to which the visa was granted), if the following applies:
    - BVA is granted to a person who meets cl 010.211(2) or (3) on the basis of making a valid application for a Subclass 482 visa and holding a Subclass 457 visa or a Subclass 482 visa (the first visa) at the time of making that application, if the first visa was also subject to condition 8607[166]
- in any other case (where a BVA is granted except under the above circumstances) – whichever of **8101, 8102, 8103, 8104, 8105, 8107, 8108, 8111, 8114, 8115, 8539, 8547, 8549 and 8607** (work conditions) if those conditions applied to the last held visa as follows:[167]
    - the visa held at the time of application[168]
    - the visa held at time of grant, if the applicant was granted a BVA without application[169]
    - the last held BVA or BVB, if the substantive visa held at time of application has ceased or if no visa was held at time of grant.[170]

Bridging B visa conditions

A Bridging B visa generally has the same visa conditions as those attached to the bridging visa held by the applicant at the time of application.[171] The conditions which apply depend on the circumstances as follows:

- **nil** conditions, if any of the following applies:
    - the holder is an applicant for a Protection visa, who is not a person described in cl 020.611(2)[172] or (2A),[173] or who satisfies cl 020.212(2) (substantive visa application not finally determined)[174]
    - the holder is in a class of persons specified by the Minister by an instrument in writing[175]

[166] cl 010.611(3D) inserted by (F2018L00262), sch 1 pt 1, item 137, and applies to all live applications as there are no transitionals.
[167] cl 010.611(4). Note that slightly different conditions may be applied depending on the date of application. Condition 8115 was inserted into cl 010.611(4) by *Migration Amendment Regulation 2013 (No 1)* (Cth) (SLI 2013, No 32), sch 6, item [72], and applies to visa applications made from 23 March 2013. Condition 8607 was inserted into cl 010.611(4) by (F2018L00262), sch 1 pt 1, item 138, and applies to all live applications as there are no transitionals.
[168] cl 010.611(4)(a)(i).
[169] cl 010.611(4)(a)(ii).
[170] cl 010.611(4)(b).
[171] cl 020.611(5).
[172] cl 020.611(2) refers to a Protection visa applicant who satisfies the criterion in cl 020.212(3) (judicial review in relation to substantive visa).
[173] cl 020.611(2A) refers to an applicant for a Subclass 462 (Work and Holiday) visa and was repealed for BVB visa applications made on or after 19 November 2016 by *Migration Legislation Amendment (2016 Measures No 4) Regulation 2016* (Cth) (F2016L01696).
[174] cl 020.611(1)(a), as substituted by SLI 2009, No 143, sch 1, item [3].
[175] cl 020.611(1)(b), as substituted by SLI 2009, No 143, sch 1, item [3]. This applies only for BVB applications made from 1 July 2009. See the '020-NilCond' tab of the Register of Instruments - Bridging Visas.

- BVB is granted on the basis of meeting cl 020.212(2) or (3) in relation to a valid application for a specified class of business or skilled visa[176]

- **8101** (no work), if the following applies:
  - the holder is an applicant for a Protection visa who satisfies the criterion in cl 020.212(3) (judicial review in relation to substantive visa), if condition 8101 applied to the last held visa[177]
- **8104** (only 40 hours work a fortnight) if the following applies:
  - BVB is granted to a person who meets cl 020.212(2) or (3) on the basis of making a valid application for a Subclass 103 or a Subclass 143 and who is seeking to meet the requirements of cl 103.214(2), 103.313(2), 143.214(2) or 143.313(2), if the most recent substantive visa was also subject to condition 8104[178]
- **8107** (not cease or change work), if any of the following applies:
  - BVB is granted on the basis of making a valid application for a Subclass 457 visa[179] and holding a Subclass 457 visa (the first visa) at the time of making that application, if the first visa was also subject to condition 8107[180]
  - BVA is granted on the basis of making a valid application for a Subclass 482 visa and holding a Subclass 457 visa or a Subclass 482 visa (the first visa) at the time of making that application, if the first visa was also subject to condition 8107[181]
- **8303** (no involvement in disruptive activities or violence), if the following applies:
  - BVA is granted to a person who meets cl 020.212(2) or (3) on the basis of making a valid application for a Subclass 103 or a Subclass 143 and who is seeking to meet the requirements of cl 103.214(2), 103.313(2), 143.214(2) or 143.313(2), if the most recent substantive visa was also subject to condition 8303[182]
- **8501** (adequate arrangements for health insurance), if any of the following applies:

[176] cl 020.611(4). The specified classes of business and skilled visas in cl 020.611(4) have been amended over time. See SLI 2012, No 82, sch 2, item [25] (for BVB applications made from 1 July 2013); SLI 2012, No 82, sch 1, item [80] (for BVB applications made from 1 July 2012); SLI 2008 No 56, reg 3 and of sch 1, pt 3, item [18] (for BVB applications made from 26 April 2008).
[177] cl 020.611(2), as substituted by SLI 2009, No 143, sch 1, item [3].
[178] cl 020.611(4C) inserted by (F2018L01472), sch 1, item 11, and applies to visa applications made on or after 17 November 2018.
[179] cl 020.611(4A)(a). This paragraph was amended by SLI 2012 No 238 to update the reference from Subclass 457 (Business (Long Stay)) visa to Subclass 457 (Temporary Work (Skilled)) visa with effect from 24 November 2012.
[180] cl 020.611(4A), inserted by SLI 2011, No 105. This applies to all BVB applications made but not finally determined before 1 July 2011, and all applications made from 1 July 2011. The SLI 2011, No 250 amended conditions 8107(3) and 8107(3B) to extend their application to circumstances where the last substantive visa held by the holder was a Subclass 457 visa. The Explanatory Memoranda stated the purpose of these amendments was to ensure that non-citizens who hold a BVB while transitioning from one Subclass 457 visa to another are subject to the same work limitations that they are subject to while they hold a Subclass 457 visa.
[181] cl 020.611(4B) inserted by (F2018L00262), sch 1 pt 1, item 139, and applies to all live applications as there are no transitionals.
[182] cl 010.611(4C) inserted by (F2018L01472), sch 1, item 11, and applies to visa applications made on or after 17 November 2018.

- BVB is granted on the basis of meeting cl 020.212(2) or (3) in relation to a valid application for a Skilled (Provisional)(Class VC) visa made in certain circumstances[183]
- BVB is granted on the basis of making a valid application for a Subclass 457 visa[184] and holding a Subclass 457 visa (the first visa) at the time of making that application, if the first visa was also subject to condition 8501[185]
- BVA is granted on the basis of making a valid application for a Subclass 482 visa and holding a Subclass 457 visa or a Subclass 482 visa (the first visa) at the time of making that application, if the first visa was also subject to condition 8501[186]
- BVA is granted to a person who meets cl 020.212(2) or (3) on the basis of making a valid application for a Subclass 103 or a Subclass 143 and who is seeking to meet the requirements of cl 103.214(2), 103.313(2), 143.214(2) or 143.313(2)[187]

- *For visa applications made before 19 November 2016,* **8540** (not entitled to be granted a substantive visa while remaining in Australia, other than a protection visa or Subclass 462 visa), if the following applies:
  - BVB is granted to an applicant for a Subclass 462 (Work and Holiday) visa[188]
- **8607** (not cease or change work and work only in occupation in relation to which the visa was granted), if the following applies:
  - BVA is granted on the basis of making a valid application for a Subclass 482 visa and holding a Subclass 457 visa or a Subclass 482 visa (the first visa) at the time of making that application, if the first visa was also subject to condition 8607[189]
- in any other case (where a BVB is granted except under the above circumstances) – whichever of **8101, 8102, 8103, 8104, 8105, 8107, 8108, 8111, 8112, 8114, 8115, 8539, 8547, 8549 and 8607** (work conditions) if those conditions applied to the bridging visa held at the time of application[190]

[183] cl 020.611(3). The circumstances are that the applicant met item 1229(4) of sch 1 to the Regulations. Historically other classes were included: (F2016L00523) removed Graduate-Skilled (Temporary) (Class UQ) for visa applications made on or after 1 July 2016, and (F2017L00437) removed Skilled – Independent Regional (Provisional) (Class UX) from 18 April 2017 (no transitionals).
[184] cl 020.611(4A)(a). This paragraph was amended by SLI 2012 No 238 to update the reference from Subclass 457 (Business (Long Stay)) visa to Subclass 457 (Temporary Work (Skilled)) visa with effect from 24 November 2012.
[185] cl 020.611(4A), inserted by SLI 2011, No 105. This applies to all BVB applications made but not finally determined before 1 July 2011, and all applications made from 1 July 2011.
[186] cl 020.611(4B) inserted by F2018L00262, sch 1 pt 1, item 139, and applies to all live applications as there are no transitionals.
[187] cl 020.611(4C) inserted by F2018L01472, sch 1, item 11, and applies to visa applications made on or after 17 November 2018.
[188] cl 020.611(2A).
[189] cl 020.611(4B) inserted by F2018L00262, sch 1 pt 1, item 139, and applies to all live applications as there are no transitionals.
[190] cl 020.611(5). Note that slightly different conditions may be applied depending on the date of application. See SLI 2008, No 56, sch 1, item [19]; *Migration Amendment Regulations 2008 (No 6)* (Cth), sch 3, item 12; and SLI 2013, No 32, sch 6, item [73]. Condition 8607 was inserted into cl 020.611(5) by F2018L00262, sch 1 pt 1, item 140, and applies to all live applications as there are no transitionals.

Bridging C visa conditions

A Bridging C visa is generally subject to condition **8101** (no work).[191] The conditions which apply depend on the circumstances as follows:

- **nil** conditions, if any of the following applies:
    - BVC is granted to an applicant who meets cl 030.212(3) (compelling need to work)[192]
    - BVC is granted on the basis of a valid application for a specified class of business or skilled visa[193]
- **8101** (no work), if any of the following applies:
    - the holder is an applicant for a Protection visa who meets the requirements of cl 030.212(5) (judicial review in relation to substantive visa), if condition 8101 applied to the last held visa[194]
    - BVC is granted to a person on the basis of making a valid application for a Subclass 103 or a Subclass 143 and who is seeking to meet the requirements of cl 103.214(2), 103.313(2), 143.214(2) or 143.313(2)[195]
    - In any other case (where a BVC is granted except under the above circumstances)[196]
- **8303** (no involvement in disruptive activities or violence), if any of the following applies:
    - BVC is granted to an applicant who meets cl 030.212(3) (compelling need to work), if condition 8303 applies to BVC visa held by applicant[197]
    - BVC is granted to a person on the basis of making a valid application for a Subclass 103 or a Subclass 143 and who is seeking to meet the requirements of cls 103.214(2), 103.313(2), 143.214(2) or 143.313(2), if the most recent substantive visa was also subject to condition 8303[198]
- **8501** (adequate arrangements for health insurance), if any of the following applies:
    - BVC is granted to an applicant who meets cl 030.212(3) (compelling need to work), if condition 8501 applies to BVC visa held by applicant[199]

[191] cl 030.614.
[192] cl 030.611 as substituted by F2018L01472, sch 1, item 12, and applies to visa applications made on or after 17 November 2018. cl 030.212(3), as substituted by SLI 2009, No 143, sch 1, item [4], is met if the applicant holds a BVC that was granted on the basis of a valid application for a substantive visa in Australia and that was subject to condition 8101, and who has a compelling need to work.
[193] cl 030.613, as substituted by SLI 2012, No 82, sch 1, item [81]. This applies only for BVC applications made from 1 July 2012.
[194] cl 030.612, as substituted by SLI 2009, No 143, sch 1, item [5].
[195] cl 030.613(2) inserted by F2018L01472, sch 1, item 14, and applies to visa applications made on or after 17 November 2018.
[196] cl 030.614.
[197] cl 030.611 inserted by F2018L01472, sch 1, item 12, and applies to visa applications made on or after 17 November 2018.
[198] cl 030.613(2) inserted by F2018L01472, sch 1, item 14, and applies to visa applications made on or after 17 November 2018.
[199] cl 030.611 inserted by F2018L01472, sch 1, item 12, and applies to visa applications made on or after 17 November 2018.

- BVC is granted to a person on the basis of making a valid application for a Subclass 103 or a Subclass 143 and who is seeking to meet the requirements of cls 103.214(2), 103.313(2), 143.214(2) or 143.313(2)[200]

Bridging D visa conditions

A Subclass 040 (Prospective Applicant) visa is subject to condition **8101** (no work).[201]

A Subclass 041 (Non-Applicant) visa is subject to conditions **8101** (no work) and **8401** (report at specified time and place).[202]

Bridging E visa conditions

For detailed discussion of visa conditions for Subclass 050 and Subclass 051 visas, see the Bridging E (Class WE) visa commentary. See also the MRD Legal Services Commentary reference table Applicable visa conditions for Bridging visa E (General).

Bridging F visa conditions

In the case of a Bridging F visa taken to have been granted under s 75 of the Act, conditions **8101** (no work) and **8402** (report to an office of Immigration).

In any other case, any one or more of the following conditions *may* be imposed:[203]

- **8101** – no work
- **8401** – report at specified time and place
- **8505** – continue to live at address
- **8506** – notify at least 2 days before change of address

In addition to the above, in the case of a Bridging F visa granted to a person who made the visa application under reg 2.20B(2), and which was granted on the basis of satisfying the secondary criteria for the visa, condition **8502** (must not enter Australia before specified person) *must* be imposed.[204]

Bridging R visa conditions

The following conditions *must* be imposed on all Bridging R visas:[205]

- **8303** – no involvement in activities disruptive to, or violence threatening harm to, the Australian community, or a group therein
- **8401** – report at specified time and place

[200] cl 030.613(2) inserted by F2018L01472, sch 1, item 14, and applies to visa applications made on or after 17 November 2018.
[201] cl 040.611.
[202] cl 041.611.
[203] cl 060.612.
[204] cl 060.613.
[205] cl 070.611. Condition 8506 was omitted from cl 070.611 by item 3, sch 1 to *Migration Amendment (Bridging Visa Conditions) Regulations 2021* (Cth) (F2021L00444) for visas granted on or after 16 April 2021.

- **8513** – notify of residential address within 5 days of visa grant
- **8514** – no material change in circumstances of the basis on which the visa was granted
- **8541** – must do everything to facilitate and not obstruct removal from Australia
- **8542** – must make her/himself available for removal
- **8543** – must attend at specified place, date and time to facilitate and effect removal.

In addition to the conditions above, where the Bridging R visa is granted without application, the following conditions *must* be imposed (where granted under reg 2.25AA) or *may* be imposed (where granted under s 195A of the Act).[206] The conditions require the holder to:

- **8505** – continue to live at address[207]
- **8550** – notify Minister of change to personal details at least 2 days before the change
- **8551** – obtain Minister's approval before employment in aviation or maritime industries or occupations/facilities involving security-sensitive chemicals or biological agents
- **8552** – notify Minister of any change to employment details at least 2 days before the change
- **8553** – not become involved in activities prejudicial to security
- **8554** – not acquire weapons, explosives or related instructional material on their use
- **8555** – obtain Minister's approval before undertaking flight training or flying aircraft
- **8556** – not communicate or associate with listed entities or prescribed organisations
- **8560** – obtain Minister's approval before acquiring chemicals of security concern
- **8561** – comply with Minister's directions to attend an interview related to their visa
- **8562** – not take employment in occupations involving use or access to weapons or explosives
- **8563** – not use, access, train in, or possess instructional material relating to weapons or explosives
- **8564** – not engage in criminal conduct
- **8578** – notify Immigration of change to any of the following within 14 days: residential address, email address, phone number, passport details, employer's address, address of employment location

In addition to any other condition imposed by another provision in Part 070, condition **8506** (notify at least 2 days before change of address) *may* be imposed,[208] and if the person granted

[206] cl 070.612 and amendments to Schedule 8, inserted by SLI 2013 No 131, sch 1, Items 6–7, applicable to visa applications on foot as at 18 June 2013 and any applications made from that date, and cl 070.612(2) as amended by F2021L00444 for visas granted on or after 16 April 2021; cl 070.613 and condition 8566 of Schedule 8 as amended by F2021L00444 for visas granted on or after 16 April 2021 and cl 070.614 as amended by F2021L00444 for visas granted on or after 16 April 2021.
[207] cl 070.612(2) as amended by F2021L00444, for visas granted under s 195A on or after 16 April 2021
[208] cl 070.614, inserted by F2021L00444 for visas granted on or after 16 April 2021.

the Bridging R visa has signed a code of behaviour that is in effect, condition **8566** (not breach code of behaviour) may be imposed.[209]

Legal issues

Judicial review proceedings

For Bridging A, B, C and E visas, there are certain time of application criteria which include requirements that the applicant or the Minister has applied within statutory time limits for judicial review of a decision in relation to a substantive visa application, and the judicial review proceedings (including on appeal) are not completed.[210]

Judicial review application

The first issue is whether an applicant has applied for judicial review. An application for an extension of time to file and serve a notice of appeal against a judicial decision is not by itself an application for judicial review.[211] However, a pending application in a court seeking substantive administrative relief constitutes an application for judicial review even though an extension of time may be required – an application for judicial review is characterised in terms of the relief sought in the documents filed, and the decision-maker's opinion of whether or not the court might extend time to make a competent application is irrelevant.[212] Furthermore, An application for judicial review of a decision made in relation to a request for the Minister to intervene under s 417 or s 351 of the Act has been held not to be an application for judicial review of a decision in relation to a substantive visa.[213]

Lodged within statutory time limits

The second issue is whether the judicial review application was lodged within statutory time limits. The Act provides time limits for seeking judicial review of Tribunal decisions. For the Federal Circuit and Family Court of Australia (Division 2), the Federal Court of Australia and the High Court of Australia, the application must be made to the relevant court within 35 days of the date of the migration decision.[214] However, that period may be extended where necessary in the

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[209] cl 070.613, inserted by F2021L00444 for visas granted on or after 16 April 2021. Condition 8566 in Schedule 8 was also amended by F2021L00444 for visas granted on or after 16 April 2021.
[210] cls 010.211(3), (6) for BVA; cls 020.212(3), (5) for BVB; cl 030.212(5) for BVC; cl 050.212(9) for BVE.
[211] See e.g. *Bizuneh v MIMIA* [2000] FCA 6 at [10]. This case considered a Bridging E visa criterion which omitted reference to 'statutory time limits'. However, in *Khandakar v MIAC* [2010] FMCA 611, the Court expressed doubt as to the correctness of this conclusion (at [35], [47]).
[212] *Khandakar v MIAC* [2010] FMCA 611 at [35]–[43]. The Court held that whether an application filed in a court was for judicial review depended upon an assessment of the terms of the relief sought, and included, at least, proceedings for relief by way of Constitutional writs and any other substantive administrative law remedy. The Court in that case considered the expression 'applied for judicial review' in cl 050.212(4)(a), which omits the expression 'within statutory time limits'. This judgment was upheld on appeal in *MIAC v Khandakar* (2011) 191 FCR 510, where the Court held that cl 050.212(4)(a) makes no reference to the *bona fides* of the proceeding for judicial review or to the merits or prospects of success of such a proceeding, and it should not be given an overly technical construction that involves reading it as though it requires a *competent* application.
[213] *SZMCE v MIAC* [2011] FMCA 383 at [26]. Although the Court considered cl 050.212(4)(a), the reasoning would apply to similarly-worded requirements in other bridging visa criteria.
[214] ss 477(1), 477A(1), 486A(1). Note that for the purpose of judicial review applications, if prior to 1 July 2015 a particular date was the date of the migration decision, that date continues to be the relevant date on or after 1 July 2015: see sch 9, item 15BO of *Tribunals Amalgamation Act 2015* (No 60 of 2015) (Cth).

interests of the administration of justice.[215] Unless an extension of time to lodge the application has been granted, an application for judicial review made outside of the applicable time limits would not meet this requirement. For example, in *Sayed v MIMA,* the Court upheld a decision of the Tribunal that the applicant was not entitled to a further Bridging A visa because the application for special leave to appeal to the High Court from a judgment of the Full Federal Court in relation to the decision on the substantive visa was not lodged within statutory time limits.[216]

When judicial proceedings are completed

A third issue is whether the proceedings, including proceedings on appeal, are completed. An application for an extension of time to file and serve a notice of appeal against a judicial decision is not by itself a 'proceeding on appeal' for judicial review.[217] In this context, 'completed' has not been the subject of judicial consideration. Rules of Court generally provide that the date of effect of a judgment or court order is the date on which it is given or made, unless the particular orders specify a different date of effect.[218] These Rules are likely to be preferred for determining the date of effect of any judgment or orders to determine when any judicial proceedings have been completed, rather than on whether a party had been notified of the outcome of those proceedings.

Notification of a decision

For Bridging A, B, C and E visas granted before 19 November 2016, an applicant is permitted to remain in Australia until 28 days after the applicant is notified of a decision to refuse to grant a visa or the decision of the Tribunal.[219] In *SZCCZ v MIMA*,[220] the Court held that notification includes actual notification.[221] However, for visas granted on or after 19 November 2016, these visas cease 35 days after the relevant decision on the substantive visa has been made (regardless of when or how the decision is notified).

Merits review

Decisions to refuse to grant or to cancel a bridging visa (other than decisions to refuse an offshore Bridging F visa application) are generally reviewable by the Tribunal, including where the non-citizen is in immigration detention because of the bridging visa refusal or cancellation.

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[215] ss 477(2), 477A(2), 486A(2).
[216] *Sayed v MIMA* [2006] FMCA 936. The Court applied cl 010.211(3)(b)(i) in circumstances where the High Court registry officer erroneously refused to accept the application and the applicant was willing and able to lodge within the statutory time limits.
[217] *Bizuneh v MIMIA* [2000] FCA 6 at [9]. This case considered a Bridging E visa criterion which omitted reference to 'statutory time limits'.
[218] *Federal Circuit and Family Court of Australia (Division 2)(General Federal Law) Rules 2021*(Cth), reg 17.02, *Federal Court Rules 2011* (Cth), reg 39.01, and *High Court Rules 2004* (Cth), reg 8.02.
[219] See cl 010.511(b)(ii)–(iii) for BVA, cl 020.511(b)(ii)–(iii), cl 030.511(b)(ii)–(iii) for BVC, cl 050.511(b)(ii)–(iii) for BVE.
[220] *SZCCZ v MIMA* [2006] FMCA 506.
[221] *SZCCZ v MIMA* [2006] FMCA 506 at [88]. Barnes FM reasoned that, although notification under the Migration Act and Regulations includes deemed notification, this did not mean that notification of the decision excludes actual notification. While this case considered notification under cl 010.511(b)(iii), its conclusion appears equally applicable to other similarly-worded bridging visa criteria. The decision was upheld on appeal: *SZCCZ v MIAC* [2007] FCA 1089.

The majority of applications for review of bridging visa decisions received by the Tribunal relate to the Bridging E visa category.

Bridging visa refusals and cancellations not resulting in immigration detention

A decision to refuse to grant a bridging visa onshore (which has not resulted in the visa applicant being placed in immigration detention) is reviewable under s 338(2) of the Act provided the decision is not one made in immigration clearance or where the applicant has been refused immigration clearance and has not subsequently been immigration cleared. The prescribed period for applying for review is 21 days after the date of notification of the decision.[222]

A decision to cancel a bridging visa while the holder was onshore (which has not resulted in the holder being placed in immigration detention, and which was not made under s 501 of the Act or in immigration clearance) is reviewable under s 338(3) of the Act, and the prescribed period for applying for review is 7 working days after the date of notification of the decision.[223]

Bridging visa refusals and cancellations resulting in immigration detention

If the applicant for review is in immigration detention because of the decision to refuse or cancel the bridging visa, the decision is reviewable under s 338(4), and the relevant prescribed period for the visa applicant or former visa holder to apply for review is 2 working days after the date of notification of the decision.[224]

In these detention cases, the Tribunal has 7 working days after the day on which the review application is received in which to make a decision (or longer with the applicant's consent).[225] However, if the Tribunal fails to make a decision within the prescribed time, no sanction is imposed and the applicant is not entitled to an automatic grant of the bridging visa.[226]

Bridging R visas

As a Bridging R visa is only available by invitation, there is no likely circumstance giving rise to a refusal to grant the visa. A decision to cancel a Bridging R visa would be a Part 5 reviewable decision under s 338(4)(b) of the Act if the former visa holder was taken into immigration detention because of that cancellation.

While Bridging R visas are liable to cancellation, one of the provisions relating to when the visa is in effect states that the visa will cease upon the Minister providing a written notice stating that the visa holder has breached a condition of the visa.[227] Therefore, it would be open to the Minister to utilise this process, rather than the cancellation process under the Act. As this

[222] reg 4.10(1)(a).
[223] reg 4.10(1)(b).
[224] reg 4.10(2)(a).
[225] s 367; reg 4.27.
[226] *Singh v MIMA* [1999] FCA 1356.
[227] cl 070.511(c)(ii).

process does not constitute 'cancellation', the decision of the Minister to issue such a written statement would not be reviewable by the Tribunal, although it may be reviewable by a Court.

Security decisions

A decision that relates to requiring a security *and* relates to a decision to refuse to grant a visa which has a criterion that a condition for which lodgement of a security was required has been met and the security lodged (i.e. the requirement for a security was imposed and not met, resulting in the visa being refused) is also a Part 5 reviewable decision.[228]

Relevant case law

Judgment	Judgment summary
Akpata v MIAC [2012] FCA 806	
Bizuneh v MIMIA [2000] FCA 6	
Cabal v MIMA (No 2) [1999] FCA 11; (1999) FCR 314	
Dranichnikov v MIMIA (No 2) [2002] FCA 1463	
Ghomrawi v MIMIA [1999] FCA 1454	
Ghomrawi v MIMA [2000] FCA 724	Summary
Harjanto v MIMA [1998] FCA 1401; (1998) 88 FCR 411	Summary
Hossain v MIMIA [2007] FMCA 35	
Khandakar v MIAC [2010] FMCA 611	Summary
MIAC v Khandakar (2011) 191 FCR 510	Summary
Kumar v MIMA [2006] FMCA 1276	
Lui v MIAC [2007] FMCA 867	
NABL v MIMA [2002] FCA 102	Summary
Pannasara v MIMIA [2004] FCA 1653	
Sayed v MIMA [2006] FMCA 936	
Singh v MIMA [1999] FCA 1356	
SZCCZ v MIMA [2006] FMCA 506	Summary
SZCCZ v MIMA [2007] FCA 1089	
SZGVV v MIMA [2007] FCA 127	Summary
SZJOH v MIAC [2008] FCA 274	Summary
SZMCE v MIAC [2011] FMCA 383	Summary
Potier v MIMIA [2000] FCA 252	Summary
Tan v MIAC [2010] FMCA 652	
Wong v MIMIA (No 2) [2004] FCA 422	Summary

[228] s 338(9); reg 4.02(4)(f).

Relevant legislative amendments

Title	Reference number
Migration Amendment Regulations 2002 (No 10) (Cth)	SR 2002 No 348
Migration Amendment Regulations 2008 (No 2) (Cth)	SLI 2008 No 56
Migration Amendment Regulations 2009 (No 6) (Cth)	SLI 2009 No 143
Migration Legislation Amendment Regulations 2011 (No 1) (Cth)	SLI 2011 No 105
Migration Legislation Amendment Regulations 2011 (No 2) (Cth)	SLI 2011 No 250
Migration Legislation Amendment Regulation 2012 (No 4) (Cth)	SLI 2012 No 238
Migration Legislation Amendment Regulation 2012 (No 5) (Cth)	SLI 2012 No 256
Migration Amendment Regulation 2012 (No 2) (Cth)	SLI 2012 No 82
Migration Amendment Regulation 2012 (No 8) (Cth)	SLI 2012 No 301
Migration Amendment Regulation 2013 (No 1) (Cth)	SLI 2013 No 32
Migration Amendment Regulation 2013 (No 4) (Cth)	SLI 2013 No 131
Migration Amendment (Bridging Visas - Code of Behaviour) Regulation 2013 (Cth)	SLI 2013 No 269
Migration Amendment Act 2014 (Cth)	No 30 of 2014
Migration Amendment (Redundant & Other Provisions) Regulation 2014 (Cth)	SLI 2014 No 30
Migration Amendment (Character and General Visa Cancellation) Act 2014 (Cth)	No 129 of 2014
Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 (Cth)	SLI 2014 No 135
Migration Legislation Amendment (2015 Measures No 2) Regulation 2015 (Cth)	SLI 2015 No 103
Tribunals Amalgamation Act 2015 (Cth)	No 60 of 2015
Migration Legislation Amendment (2016 Measures No 1) Regulation 2016 (Cth)	F2016L00523
Migration Legislation Amendment (2016 Measures No 4) Regulation 2016 (Cth)	F2016L01696
Migration Legislation Amendment (2016 Measures No 5) Regulation 2016 (Cth)	F2016L01745
Migration Legislation Amendment (2017 Measures No 4) Regulations 2017 (Cth) – *Disallowed on 5 December 2017*	F2017L01425
Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018 (Cth)	F2018L00262
Migration Amendment (Pathway to Permanent Residence for Retirees) Regulations 2018 (Cth)	F2018L01472

Migration Amendment (Bridging Visa Conditions) Regulations 2021 (Cth)	F2021L00444

Available decision precedents

- Subclass 050 - General –for use in review of a decision to refuse a Subclass 050 Bridging E visa for visa applications made on or after 1 July 2009.

There are additional standard paragraphs that can be inserted into Subclass 050 BVE visa decisions if required. The optional paragraph document currently contains a list of the most common conditions that may be imposed on a Subclass 050 visa.

Last updated/reviewed: 22 August 2022

BRIDGING E (CLASS WE) VISA

Contents

Overview[1]

The Bridging E (Class WE) visa (BVE) is a temporary visa granted to non-citizens who would otherwise be unlawful. There are two subclasses:

- *Subclass 050 Bridging (General)* is mainly for unlawful non-citizens detected or detained by the Department's compliance program; unlawful non-citizens in criminal detention; or persons who made a substantive visa application and hold or last held a BVE; or someone holding a Bridging D visa (Subclass 041).

- *Subclass 051 Bridging (Protection Visa Applicant)* is for persons who have been refused immigration clearance, or have bypassed immigration clearance, and have applied for a protection visa.[2]

Valid application requirements

The requirements for making a valid BVE application are set out in item 1305 of Schedule 1 to the *Migration Regulations 1994* (Cth) (the Regulations).[3] An application is validly made if:

- it is made on the prescribed form;[4]

- it is made at the prescribed place and in the prescribed manner;[5]

- it is made by an eligible non-citizen within the meaning of s 72 of the *Migration Act 1958* (Cth) (the Act);[6]

- if the applicant is in immigration detention a detention review officer has been informed;[7]

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[1] Unless otherwise specified, all references to legislation are to the *Migration Act 1958* (Cth) (the Act) and *Migration Regulations 1994* (Cth) (the Regulations) currently in force, and all references and hyperlinks to commentaries are to materials prepared by Migration and Refugee Division (MRD) Legal Services.
[2] In respect of eligible non-citizens in immigration detention, *Migration Legislation Amendment Regulations 2011* (Cth) (No 1) (SLI 2011, No 105), amended reg 2.24(2) to clarify that, from 1 July 2011, a person who bypassed immigration clearance and applied for a protection visa is only eligible for a subclass 051 visa. In all other cases, a subclass 050 visa should be granted.
[3] Note that as a result of *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth) (No 135 of 2014) an application for a bridging visa will be invalid if there are no specific visa application requirements and no specific criteria prescribed for the grant of the visa. Where both the Act and regulations specify requirements that must be met for the making of a visa application of that class, then both must be met. See s 46AA inserted by Div 1, Pt 1 of Sch 3 to No 135 of 2014.
[4] Item 1305(1). A Bridging E visa is taken to have been applied for when an application is made for certain temporary or permanent visas using a variety of forms – for example, Student Visa applications using Form 157A. For applications made on or after 18 April 2015, the approved form is that specified in an instrument under reg 2.07(5): *Migration Amendment (2015 Measures No 1) Regulation 2015* (Cth) (SLI 2015, No 34). For applications made before that date, the approved form was specified in Item 1305(1) itself.
[5] Item 1305(3)(a) and (b). For applications made before 18 April 2015, the application must be made in Australia but not in immigration clearance by an applicant who is in Australia but not in immigration clearance: Item 1305(3) and (b). For applications made on or after this date, the application must be made as specified in a legislative instrument for Item 1305(3)(a) under reg 2.07(5): SLI 2015, No 34.
[6] Item 1305(3)(ba). Regulation 2.20 prescribes the classes of persons who are eligible non-citizens for the purposes s 72(1)(b). Regulation 2.20(11A) was inserted by *Migration Legislation Amendment (2016 Measures No 3) Regulation 2016* (Cth) (F2016L01390), to include non-citizens born in Australia to unauthorised maritime arrival parents where at least one of the child's parents is or has been an eligible non-citizen. The amendment applies to non-citizens born before, on or after 10 September 2016.
[7] Item 1305(3)(c). Detention review officers are appointed under reg 2.10A(2) for the State or Territory in which an applicant is detained.

- an application by a person claiming to be a member of the family unit of a person who is an applicant for a BVE *may* be made at the same time and place as, and combined with, the application by that person;[8]

- if the applicant has applied at the same time and on the same form for a substantive visa, the substantive visa application is valid;[9]

- the applicant has not previously held a BVE that was cancelled for failing to comply with condition 8564 (criminal conduct) or 8566 (code of behaviour);[10] and has not previously held a visa that was cancelled under reg 2.43(1)(p) or (q) (relating to s 116(1)(g) visa cancellations due to criminal convictions, charges and certain investigations).[11]

Amendments to the requirements for a valid BVE application were made to prevent valid visa applications for persons whose temporary visas had been cancelled for breach of new character-related conditions or on the basis of s 116(1)(e).[12] The amendments were subsequently disallowed with the result that only BVE applications made in the period 18 November 2017 to 5 December 2017 were subject to these validity requirements.[13]

There are no visa application charges payable for a BVE.[14]

A person may be prohibited from applying for a BVE under s 501E and reg 2.12AA where there has been a previous visa refused or cancelled on character grounds which has not been set aside or revoked (see discussion below).[15]

A BVE may be granted without an application under reg 2.25 to a non-citizen in criminal detention or a person who is unwilling or unable to make a valid BVE application, and is not otherwise barred from doing so by the Act or Regulations.[16] The Minister also has a power to grant a visa such as a BVE to a person in immigration detention under s 195A if the Minister thinks it is in the public interest to do so, whether or not the person has applied for the visa.

Section 74 of the Act also provides that further bridging visa applications may be made but no earlier than 30 days after a prior application was refused or finally determined (where a review application was made) unless there are prescribed circumstances (see 'Further bridging visa applications' below).

[8] Item 1305(3)(d).
[9] Item 1305(3)(e).
[10] Item 1305(3)(f) as inserted by *Migration Amendment (Bridging Visas – Code of Behaviour) Regulation 2013* (Cth) (SLI2013, No 269), applies to visa applications made on or after 14 December 2013.
[11] Item 1305(3)(g) as inserted by SLI2013, No 269 for visa applications made on or after 14 December 2013.
[12] Items 1305(3)(fa), (g) and (h) as inserted by *Migration Legislation Amendment (2017 Measures No 4) Regulations 2017* (Cth) (F2017L01425) for visa applications made on or after 18 November 2017.
[13] Disallowed by the Senate at 5:56pm on 5 December 2017: Senate Hansard, 5 December 2017 at pp.96–97.
[14] Item 1305(2).
[15] For s 501E(2)(b) only a Bridging R (Class WR) visa is specified.
[16] Other than by a provision in Item 1305 of Sch 1.

Subclass 050 (Bridging (General))

Visa criteria

There are both time of application, and time of decision criteria that must be met. All applicants must satisfy the primary criteria set out below.

Time of application criteria

At the time of application the applicant:

- must be an unlawful non-citizen (see below), or hold either a Bridging E visa or a Bridging D Subclass 041 (Bridging (Non-applicant)) visa;[17] **and**
- must not be an eligible non-citizen[18] of the kind set out in regs 2.20(7)–(11) or (17);[19] **and**
- must meet **one** of the following criteria in cl 050.212:[20]
  - Acceptable arrangements to depart Australia – cl 050.212(2)

The applicant is making or the subject of acceptable arrangements to depart Australia (see below).[21]

  - Valid substantive visa application – cl 050.212(3)

Either the applicant:[22]

  - has made a valid substantive visa application that can be granted if the applicant is in Australia and that application has not been 'finally determined'[23]

OR

[17] cl 050.211(1).
[18] An eligible non-citizen is a non-citizen who has been immigration cleared, is in a prescribed class of persons; or the Minister has determined to be such: s 72 of the Act. Regulation 2.20 prescribes the classes of persons who are eligible non-citizens for the purposes s 72(1)(b). Regulation 2.20(11A) was inserted by F2016L01390, to include non-citizens born in Australia to unauthorised maritime arrival parents where at least one of the child's parents is or has been an eligible non-citizen. The amendment applies to non-citizens born before, on or after 10 September 2016.
[19] cl 050.211(2). Applicants of the kind set out in regs 2.20(7)–(11) may be eligible for a Subclass 051 Bridging E visa (see below). Applicants of the kind set out in reg 2.20(17) may be eligible for a Bridging R visa once they are in immigration detention. Regulation 2.20(17) applies to visa applications on foot as at 18 June 2013 and applications made from that date: inserted by *Migration Amendment Regulation 2013* (Cth) (No 4) (SLI 2013, No 131).
[20] cl 050.212(1).
[21] cl 050.212(2).
[22] cl 050.212(3).
[23] An application is 'finally determined' when it is no longer subject to merits review under Parts 5, 7 or 7AA of the Act, or any prescribed period within which a merits review application must be made has passed without any application being made or a fast track review decision has been made: s 5(9). In addition, where a tribunal or IAA decision is made on or after 28 May 2014, s 5(9A) provides that an application, other than on the basis of ss 349(2)(c) or 415(2)(c) or 473CC(2)(b), is finally determined when a decision is taken to have been made under ss 368(2) and 430(2) (written decisions); ss 368D(1) and 430D(1) (oral decisions); or s 473EA(2) (IAA): ss 5(9A)(a)–(e) and (9B), inserted by *Migration Amendment Act 2014* (Cth) (No 30, 2014) with effect from 28 May 2014 and amended by No 60, 2015 from 1 July 2015 and by No 135, 2014 from 18 April 2015.

- will, within a period allowed by the Minister, make a substantive visa application that can be granted if the applicant is in Australia (see Legal Issues below).

– Judicial review application – cl 050.212(3A), (4)(a), (aa) and (d), (4AA) and (4A)

The applicant or the Minister has made a judicial review application in certain circumstances. These circumstances are where:

- the visa application was valid, and the grant of the substantive visa was refused and either the applicant or the Minister applied for judicial review and those proceedings (including appeals) have not been completed;[24] *or*
- the applicant has applied for judicial review of a decision in relation to a substantive visa, or the Minister has applied for judicial review in relation to the applicant's substantive visa application, other than a decision to refuse to grant a visa;[25] *or*
- the applicant applied for judicial review of the validity of a law affecting their eligibility to apply for a substantive visa or their entitlement to be granted or continue to hold a substantive visa;[26] *or*
- the applicant is a member of the family unit of a person whose substantive visa application is the subject of judicial review proceedings.[27]

This includes circumstances where the applicant is a group member of representative proceedings under the *Federal Court of Australia Act 1976* (Cth) or sues under the *High Court Rules*[28] but does not include an application for judicial review of a decision made in relation to a request for Ministerial intervention.[29] See Legal Issues below.

– Merits review of cancellation decision – cl 050.212(4)(b)

The applicant has applied or will apply for merits review of a decision to cancel a visa.[30]

– Application for revocation of a cancellation decision or merits review of a decision not to revoke a cancellation - cl 050.212(4)(ba) and (bb)

The applicant has made or will make such an application.[31]

– Visa cancelled under s 140 (consequential cancellation) – cl 050.212(5) and (5A)

Section 140 provides that, where a person's visa has been cancelled (under ss 109, 116, 128, 133A, 133C, or 137J), a visa held by another person because they are a member of the

[24] cl 050.212(3A).
[25] cl 050.212(4)(a) and (aa).
[26] cl 050.212(4)(d).
[27] cl 050.212(4AA).
[28] cl 050.212(4A).
[29] A decision on a s 417 [s 351 Part 5] request has an insufficient nexus with a substantive visa to be a 'decision in relation to a substantive visa': *SZMCE v MIAC* [2011] FMCA 383 (Cameron FM, 26 May 2011).
[30] cl 050.212(4)(b)–(c).
[31] cl 050.212(4)(ba),(bb), (c).

family unit of the other person is also cancelled. A person whose visa is cancelled under s 140 will satisfy cl 050.212(5) if the other person whose visa was cancelled has applied or will apply for review of the cancellation decision.[32]

- Application for a declaration from a court – cl 050.212(4AAA), (4AB)

The applicant has applied either for a declaration from a court that the Act does not apply to them, or judicial or merits review of a decision made in relation to them under the *Australian Citizenship Act 2007* (Cth), and the proceedings for the declaration or review have not been completed.[33]

A member of the immediate family[34] of a person who meets this requirement, or a brother or sister who has not turned 18 of a person who meets this requirement and is also under 18 would meet cl 050.212.[35]

- Subject of (possible) Ministerial intervention – cl 050.212(5B), (6), (6AA) and (6B)

The applicant is the subject of a decision being assessed for possible Ministerial intervention, or has been the subject of Ministerial intervention.[36] Specifically:

- the applicant requested that the s 48A bar on further onshore protection visa applications not apply and had not previously sought the removal of the bar or Ministerial intervention;[37] *or*
- the applicant is the subject of a visa application decision or a visa cancellation for which the Minister has the power to intervene, the applicant has made a request to the Minister to substitute a more favourable decision, and the applicant has not previously requested Ministerial intervention or been subject to a s 48B determination;[38] *or*
- the applicant holds/held a BVE granted before 1 July 2009 on certain grounds and before that date requested Ministerial intervention which is yet to be determined[39] (see further discussion in Legal Issues below), or

[32] cl 050.212(5) and (5A). See Legal Service's Commentary on Consequential Cancellations (s 140). Section 140 was amended by *Migration Amendment (Character and General Visa Cancellation) Act 2014* (SLI 2014, No 129) to include reference to consequential cancellation that results from the exercise of the Minister's new cancellation powers under ss 133A and 133C. These amendments apply to a visa *held* on or after 11 December 2014; although under those new provisions the Minister cannot set aside a decision that was made prior to that date.
[33] cl 050.212(4AAA). Clause 050.212(4AAA) was inserted by *Migration Amendment Regulations 2005* (Cth) (No 7) (SLI 2005, No 172), commenced on 26 July 2005 and is intended to permit the grant of a BVE to certain unlawful non-citizens undertaking court proceedings concerning their citizenship status and held in immigration detention. An applicant is taken to have applied for judicial review if the applicant is a group member of representative proceedings under the *Federal Court of Australia Act 1976* (Cth) or sues under the High *Court Rules*: cl 050.212(4A). Note: reference in the subclause to the *Australian Citizenship Act 1948* (Cth) was omitted by *Migration Amendment (Redundant and Other Provisions) Regulation 2014* (Cth) (SLI 2014, No 30) with effect from 22 March 2014.
[34] A 'member of the immediate family' includes a spouse, dependent child and a parent of a person under the age of 18: reg 1.12AA(1).
[35] cl 050.212(4AB).
[36] cl 050.212(5B), (6), (6AA), (6B).
[37] cl 050.212(5B).
[38] cl 050.212(6) as amended by *Migration Amendment Regulations 2009* (Cth) (No 6) (SLI 2009 No 143) for visa applications made on or after 1 July 2009.
[39] cl 050.212(6B), inserted by SLI 2009, No 143 reg 3 and Sch.1 item [10]. For visa applications made from 1 July 2009 to 13 September 2009, the previous bridging visa must have been granted for satisfying cl 050.212(6A). For visa applications made

- the Minister has decided to substitute a more favourable decision for the decision of the Tribunal but the applicant cannot be granted a substantive visa because of a determination under s 85. [40]

– Holder of BVE – compelling need to work - cl 050.212(6A) and (8)[41]

The applicant holds a BVE granted on certain grounds and the Minister considers s/he has a compelling need to work. Specifically (for visa applications made from 1 July 2009):

- the applicant holds a BVE which was granted on the basis of meeting cl 050.212(6AA) and the Minister has decided under ss 345, 351 or 417 to substitute a more favourable decision, but the applicant could not be granted the substantive visa because of s 85, and there is a 'compelling need to work';[42] *or*

- the applicant holds a BVE to which condition 8101 is attached, there is a 'compelling need to work', and:

  - if the applicant was a protection visa applicant on or after 1 July 1997, there are acceptable reasons for the delay in making the protection visa application; or

  - the applicant is in a class of persons specified by the Minister by an instrument in writing.[43]

Work restrictions and 'compelling need to work' are discussed below in Legal Issues.

– Criminal detention – cl 050.212(7)

The applicant is in 'criminal detention' and no criminal justice stay certificate or warrant about the non-citizen is in force.[44]

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on or after 14 September 2009, the previous bridging visa must have been granted on the basis that the applicant satisfied cl 050.212(6) or (6A): *Migration Amendment Regulations 2009* (Cth) (No 8) (SLI 2009 No 201).

[40] cl 050.212(6AA). Section 85 confers power on the Minister to determine, by legislative instrument, the maximum number of visas of a specified class or subclass for a financial year.

[41] As amended by *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth) (No 135 of 2014).

[42] cl 050.212(6A), amended by *Migration Legislation Amendment (2015 Measures No 2) Regulation 2015* (Cth) SLI 2015, No 103. For applications made before 1 July 2015, cl 050.212(6A) referred to Ministerial intervention under ss 345, 351, 391, 417 or 454. However as a result of the MRT's and RRT's amalgamation with the Administrative Appeals Tribunal from 1 July 2015 reference to substitution for decisions of the AAT in relation to MRT-reviewable decisions under ss 391 and 454 have been removed. The earlier requirement in cl 050.212(6A) that the applicant holds a BVE for meeting cl 050.212(6) or (6AA) [pending consideration for Ministerial intervention], the Minister is personally considering intervention, or has done so but the applicant could not be granted the substantive visa because of a s 85 visa cap, and there is a compelling need to work was removed by SLI 2009, No 143 for visa applications made on or after 1 July 2009.

[43] cl 050.212(8), amended by SLI 2009, No 143 for visa applications made on or after 1 July 2009. The amendments do not apply for a bridging visa application made before 1 July 2009. The last instrument specifying a class for this provision (F2009L02551) was repealed by sunsetting on 1 October 2019. For visa applications made before 1 July 2009, cl 050.212(8) requires that the applicant holds a BVE granted on the basis of a valid onshore substantive visa application that is subject to condition 8101 [no work] and the Minister is satisfied the applicant has a compelling need to work and if the applicant is an applicant for a protection visa certain conditions are met. If the applicant is an applicant for a protection visa made on or after 1 July 1997, then the protection visa application must have been made within 45 days of arrival or the applicant must be in class of persons specified by the Minister.

[44] cl 050.212(7). For applications made prior to 23 November 2014, the provision additionally required that if the applicant had been sentenced to imprisonment or periodic detention, he or she had actually served a period of imprisonment. This requirement was repealed by *Migration Amendment (Subclass 050 Visas) Regulation 2014* (Cth) (SLI 2014, No 162) for applications made on or after 23 November 2014.

Criminal detention is defined in reg 1.09 to include serving of imprisonment, including periodic detention.[45] Certain warrants and certificates stay removal or deportation of a non-citizen: see ss 147, 151.

- Valid application for a partner visa – cl 050.212(9)

The applicant:

- has made a valid application for a Partner (Migrant) (Class BC) visa[46] or was a member of the family unit and made a combined substantive visa application for such a visa; and
- the application was refused; and
- either the applicant or the Minister applied within statutory time limits for judicial review of the decision; and
- the applicant(s) do not satisfy cl 010.211(6)(c) for a Bridging Visa A; and
- the judicial review proceedings are not completed.[47]

Time of decision criteria

At the time of decision, cl 050.221 requires that the applicant must continue to meet cl 050.211 and one of the subclauses of cl 050.212, as discussed above.[48] The applicant must also meet the following criteria:

- Interview Requirement – cl 050.222(1)

The applicant must have been interviewed by an officer authorised by the Secretary for the purposes of cl 050.222(1) unless:[49]

- the applicant is not in immigration detention; has made a valid substantive visa application and holds a BVE; and is not seeking to be granted a further BVE subject to conditions other than those applicable to the bridging visa that the applicant currently holds; *or*
- an authorised officer was unavailable;[50] the applicant is not in immigration detention; the applicant has made a substantive visa application; and the applicant has previously held, but does not currently hold, a BVE; *or*

[45] 'Periodic detention' is defined in reg 1.03 to mean a system of restriction of liberty by which periods at liberty alternate with periods in prison.
[46] Note, reference in the subclause to 'a Spouse (Migrant) (Class BC) visa, an Interdependency (Migrant) (Class BI) visa' was omitted by SLI 2014, No 30 with effect from 22 March 2014.
[47] cl 050.212(9).
[48] cl 050.221. Clause 050.221 does not necessarily require that an applicant satisfy the same subclause of cl 050.212 at the time of decision that was met at the time of application but only that the applicant met one of the subclauses at each relevant time. In most cases there will not be any more than one subclause in issue.
[49] cl 050.222(2)–(5).
[50] The Officer was unavailable at the time of application or, if the bridging visa could be granted under reg 2.21B, at the time of decision: cl 050.222(3)(a)(i) and (ii).

- the applicant is a person to whom cl 050.212(4AAA) applies (court declaration); *or*

- the applicant is a person to whom cl 050.212(4AB) (court declaration – family member) continues to apply; or

- an officer who is authorised by the Secretary for the purposes of cl 050.222(5) has decided that it is not necessary to interview the applicant.[51]

See Legal Issues below.

- Abide by Visa Conditions – cl 050.223

The Minister must be satisfied that, if a bridging visa is granted, the applicant will abide by the conditions (if any) imposed on it.[52] See Legal Issues below.

- Requirement for Security – cl 050.224

If an authorised officer has required a security for compliance with any conditions that will be imposed if the visa is granted, the security must have been lodged.[53] See discussion in Legal Issues below.

- Public interest criterion (PIC) 4022 – cl 050.225

Applicants 18 or over at the time of application, who hold (or previously held) a BVE granted under s 195A (Minister's personal power to grant a detainee a visa with or without an application), must satisfy PIC 4022.[54] PIC 4022 provides that an applicant must have signed a code of behaviour which is approved and in effect unless not required to do so.[55]

Visa conditions

Section 41 of the Act provides that visas may be issued subject to conditions. Schedule 2 to the Regulations sets out the conditions that may and/or must apply to a particular visa. Details of each condition are set out in Schedule 8. Whilst some of the conditions are mandatory (mandatory conditions), others may be applied as a matter of discretion (discretionary conditions).[56] The applicable conditions for this visa depend upon the basis on which the visa is granted, in accordance with Division 050.6 of Schedule 2 to the Regulations.

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[51] cl 050.222(5) was inserted by *Home Affairs Legislation Amendment (2021 Measures No 1) Regulations 2021* (Cth) (F2021L00852) for visa applications made on or after 1 July 2021.
[52] cl 050.223. These conditions are specified in cl 050.6.
[53] cl 050.224. Only officers authorised under s 269 may require lodgement of a security. See also MRD Legal Services Commentary on Securities.
[54] cl 050.225, as inserted by SLI 2013, No 269 for visa applications made but not finally determined before 14 December 2013 and visa applications made on or after this date.
[55] PIC 4022 as inserted by SLI 2013, No 269. The intention is to hold those individuals to a higher level of accountability. The Minister can flexibly address situations where it may not be practical or possible for an applicant to sign the code and so not require it: Explanatory Statement to SLI 2013, No 269, Attachment C, p.4. The Minister must approve a written instrument that provides for codes of behaviour for specified subclasses: cl 4.1, Pt 4, Sch 4 to the Regulations, as inserted by SLI 2013, No 269. The only visa subclass currently specified is Subclass 050 Bridging (General) visa: see 'Code Of Behaviour' tab in Register of Instruments – Bridging Visas.
[56] For example, in cl 050.613A(1) condition 8101 is specified as applying in particular circumstances (i.e. the visa is subject to 8101 in those circumstances) and cl 050.613A(2) specifies other conditions which 'may be imposed'.

Those conditions which may apply are identified in the MRD Legal Services register 'Applicable visa conditions for Bridging visa E (General)'. If no other specific clause of Division 050.6 applies, then any one or more of the conditions specified in cl 050.617 may be imposed.[57] In addition to any other condition imposed by another provision of Division 050.6, any one or more of the conditions specified in cls 050.618, 050.619 or 050.620[58] may be imposed.

The circumstances of a case may fall within more than one specific clause in 050.6. For example, a BVE applicant who meets cl 050.212(3A) on the basis of seeking judicial review of a protection visa refusal may fall within the terms of both cl 050.613A and cl 050.614, but the wording of cl 050.613A indicates that it would apply '*whether or not the applicant is an applicant to which any other clause in this Division applies (except for cl 050.613 or cl 050.616A)*', which appears to give it a kind of precedence.[59]

There have been some amendments to conditions in Schedule 8 over time. Information about these can be found below in Appendix B.

Subclass 051 (Bridging (Protection Visa Applicant))

This bridging visa is for people refused immigration clearance or who have bypassed immigration clearance (e.g. unauthorised boat arrivals, unauthorised airport arrivals and stowaways) and who applied for a protection visa. An application for a protection visa is also taken to be an application for a Bridging E (Class WE) visa.

Visa criteria

There are both time of application and time of decision criteria that must be met. Each applicant must satisfy the primary criteria.

Time of application criteria

The applicant must meet the following:

- Eligible non-citizen – cl 051.211

The applicant must be an 'eligible non-citizen' per regs 2.20(7), (8), (9), (10) or (11).[60]

[57] For visa applications made before 1 July 2009, cl 050.614. This 'in any other case' clause was renumbered by SLI 2009, No 143.
[58] cl 050.620, as inserted by *Migration Amendment (Pathway to Permanent Residence for Retirees) Regulations 2018* (Cth) (F2018L01472) for Subclass 103 (Parent) or Subclass 143 (Contributory Parent) visa applications made on or after 17 November 2018.
[59] cl 050.613A was first inserted by *Migration Regulations (Amendment)* SR 1997, No 109. The stated purpose of the provision being 'to ensure that applicants who apply for a protection visa on or after 1 July 1997 and who, at the date of their application have been in Australia for 14 days-or more in the preceding year, are ineligible for a bridging visa with permission to work': Explanatory Statement to SR 1997, No 109 and had been amended on multiple occasions. For visa applications made before 1 July 2009, cl 050.613A required that an applicant must have been in Australia for 45 or more days in the 12 months immediately preceding the date of the protection visa application. It was amended to remove the '45 day rule' by *Migration Amendment Regulations 2009* (Cth) (No 6) (SLI 2009, No 143). The exception for cl 050.613 was added for applications made on or after 1 July 2011 by SLI 2011, No 105. Clause 050.613A(1) was further amended by *Migration Legislation Amendment Regulations 2011* (Cth) (No 2) (SLI 2011, No 250) to make clear that cl 050.613A(1)(a) and (b) should operate cumulatively. The amendments apply to applications for bridging visas made but not finally determined before 1 January 2012. The exception for cl 050.616A was added for applications made on or 23 November 2014 by SLI 2014, No 162.
[60] cl 051.211. An eligible non-citizen is a non-citizen who has been immigration cleared, is in a prescribed class of persons; or the Minister has determined to be such: s 72.

The applicant must have been refused or bypassed immigration clearance[61] and must have applied for a protection visa that has not been finally determined or the applicant or Minister has applied for judicial review of a decision to refuse a protection visa.[62] The applicant must also:

- be under 18 years old, certain child welfare authorities certified that release from detention is in the applicant's best interests and the Minister is satisfied that arrangements are made for his or her care and welfare;[63] *or*

- have turned 75, and the Minister is satisfied of adequate arrangements for community support of the applicant;[64] *or*

- have a special need (based on health or previous experience of torture or trauma) that cannot properly be cared for in detention and the Minister is satisfied of adequate arrangements for community support of the applicant;[65] *or*

- be the spouse or de facto partner of an Australian citizen, permanent resident or eligible New Zealand citizen; and the Minister is satisfied that the relationship is genuine and continuing; and the applicant is nominated by that person.[66] Members of the family unit of such a person will also meet this criterion.[67]

- Acceptable undertaking - cl 051.212

The applicant (or a person acting on their behalf) has signed an undertaking acceptable to the Minister.[68] The undertaking must provide that:

- if the applicant withdraws the protection visa application, he/she will depart Australia, or present him/herself to immigration for removal, within 28 days after the withdrawal; and

- if the protection visa application is finally determined and refused, the applicant will depart Australia, or present him/herself to immigration for removal, within 28 days of the latest of:

    - notification of the decision;

    - withdrawal of the judicial review application;

    - completion of the judicial review application that maintained the visa refusal;

[61] regs 2.20(7)(a), (8)(a), (9)(a) and (10)(a). A person to whom reg 2.20(11) applies does not have to have been refused or bypassed immigration clearance, but must be a member of the family unit of a person who has.
[62] regs 2.20(7)(b),(8)(b),(9)(b) and (10)(b).
[63] regs 2.20(7)(c)–(e).
[64] regs 2.20(8)(c) and (d).
[65] reg 2.20(9)(c) and (d).
[66] reg 2.20(10)(c)–(e).
[67] reg 2.20(11).
[68] cl 051.212.

- the withdrawal of an appeal against the outcome of judicial review of the visa decision; or
- an appeal against the judicial review outcome is completed and the visa decision is maintained.

- Health and public interest criteria - cl 051.213

The Minister is satisfied that the applicant satisfies the public interest criteria 4001, 4002 and 4003, and specific health criteria for Subclass 866 protection visas.[69]

Time of decision criteria

At the time of decision, cl 051.221 requires that the applicant must continue to meet the time of application criteria in cl 051.211, 051.212 and 051.213.[70]

Visa conditions

Section 41 of the Act provides that visas may be issued subject to conditions. Schedule 2 to the Regulations sets out the conditions that may and/or must apply, and details of the requirements of these conditions are provided for in Schedule 8. Whilst some of the conditions are mandatory (mandatory conditions), others may be applied as a matter of discretion (discretionary conditions).[71] The applicable conditions for this visa depend upon the basis on which the visa is granted, in accordance with Division 051.6 of Schedule 2 to the Regulations.

Condition 8403 was effectively omitted from 24 November 2012.[72]

Visa grant and cessation – Subclass 050 and Subclass 051

Circumstances for grant

For both Subclass 050 and Subclass 051, the applicant must be in Australia but not immigration clearance.[73]

When visa is in effect and when visa ceases

The length and date of effect of the visa depends on the circumstances under which the visa is granted. In all cases a Subclass 050 or Subclass 051 visa granted to a non-citizen comes

[69] cl 051.213. The health criteria to be met are as set out in cl 866.223 (medical examination by relevant medical officer), cl 866.224 (chest x-ray), 866.224A (medical officer who is not a Medical Officer of the Commonwealth (MOC) referred relevant results regarding a disease or condition considered to be a threat to public health to a MOC) and cl 866.224B (MOC to place applicant under the professional supervision of a health authority if the applicant's disease or condition is a threat to public health).
[70] cl 051.221.
[71] E.g. in cl 050.613A(1) condition 8101 is specified as applying in particular circumstances (i.e. 8101 is mandatory in those circumstances) and cl 050.613A(2) specifies other conditions which 'may be imposed'.
[72] Condition 8403 omitted by SLI 2012 No 256 and applicable to a request to be given a prescribed form of evidence of a visa made on or after 24 November 2012. The transitional provisions omit condition 8403 upon the visa holder making a request to be given evidence of the visa: Sch 13 item 701(5).
[73] cl 050.411, cl 051.411.

into effect upon grant.[74] When a BVE ceases depends upon the circumstances of the grant. For a breakdown of these circumstances, refer to the table at Appendix A. The cessation of Subclass 051 visas operates in a similar way.

Legal issues

Acceptable arrangements to depart Australia

Whether an applicant is making acceptable arrangements to depart Australia is a question of fact for the decision maker, with an element of discretion or judgment lying at the heart of it.[75] It is appropriate to consider what the person has done to date.[76]

Matters such as the absence of a valid travel document or ticket, failing to secure those documents over a long time and other indications of disregard for immigration law can support a conclusion that the applicant has not made acceptable arrangements to depart Australia.[77] The Tribunal is also entitled to consider whether an applicant's intentions are genuine.[78]

Departmental guidelines indicate that an applicant will satisfy cl 050.212(2) if they provide acceptable evidence of a valid ticket and a reservation to leave Australia within an acceptable timeframe, or if they indicate an intention to arrange departure and will make the necessary arrangements within an acceptable timeframe.

The guidelines go on to provide specific guidance for Departmental officers in the following circumstances:

- where the applicant is medically unfit for travel and has provided certification by a doctor for that purpose; and

- where the applicant is willing to leave Australia but has no funds and no means of obtaining funds to purchase a ticket.[79]

The guidelines also suggest a range of examples that *may not* amount to acceptable arrangements to leave Australia. In general, these are where the applicant has not made a booking/reservation to leave Australia within a reasonable or acceptable time frame; has given evidence of arrangement but only for a destination country they are not permitted to enter; has not attempted to obtain valid travel documents; has not engaged with, or agreed

[74] For Subclass 050: cl 050.511(1)(a), cl 050.511A(a), cl 050.511B(a), cl 050.511C(1)(a), cl 050.511D(1)(a), cl 050.511E(a), cl 050.512(a), cl 050.513, cl 050.513A(a), cl 050.513B, cl 050.514, cl 050.514AA(a), cl 050.514AB, cl 050.514A(a), cl 050.515(1), cl 050.516 and cl 050.517. For Subclass 051: cls 051.511(1), 050.512 or 050.513. Some sub-clauses as re-numbered by *Migration Legislation Amendment (2016 Measures No 5) Regulation 2016* (Cth) (F2016L01745).
[75] *Chen v MIMIA* [2001] FCA 285 at [21]; *Lin v MIMIA* [2001] FCA 283 at [21].
[76] The making of arrangements can be seen as a continuing process and it would make no sense to assess whether at a particular time the person was making acceptable arrangements, without considering what, if any, arrangements had already been made and what further arrangements remained to be made: *Chen v MIMIA* [2001] FCA 285 at [11]; *Lin v MIMIA* [2001] FCA 283 at [11].
[77] *Chen v MIMIA* [2001] FCA 285 at [22]; *Lin v MIMIA* [2001] FCA 283 at [22].
[78] *Lin v MIMIA* [2001] FCA 283 at [30].
[79] Policy - Compliance and Case Resolution - Program Visas – Bridging E Visas – BVE 050 - Grounds for seeking a BVE – Making acceptable arrangements to leave Australia (re-issued 19/11/16).

to engage with, consular assistance or the Status Resolution Service; or is unwilling to provide evidence from a doctor that they are too ill to travel.[80]

As in all cases however, these remain questions of fact for the decision maker and the examples in the guidelines should not be regarded as binding or applied inflexibly.

Judicial review applications

There are certain time of application criteria which include requirements that the applicant or the Minister has applied within statutory time limits for judicial review of a decision in relation to a substantive visa application, and judicial review proceedings (including on appeal) are not completed.[81] These criteria may raise questions about what constitutes an application for judicial review, what is meant by 'within statutory time limits', and when such proceedings are completed. There are similar criteria in relation to a number of bridging visa subclasses, and these issues are discussed in detail in the 'Legal issues' section of the Bridging Visas – Overview commentary.

A number of judicial review criteria include representative proceedings:[82] where members of a family unit make a combined visa application and then seek judicial review of a decision to refuse the application, provided one member of the family unit is named in the court proceedings the rest of the family members are also taken to have applied for judicial review.[83] The Departmental guidelines express this view with respect to 'group' or 'class' actions.[84] However, this appears to be contrary to cl 050.212(4AA)(b) which specifically requires the person whose substantive visa application is the subject of judicial review proceedings not to be a party to a representative action. It is also contrary to the intent of cl 050.212(4AA).[85]

Substantive visa applications and time limits on applications by detainees

It is a time of visa application criterion that the applicant either has made a valid application for a particular kind of substantive visa, or that the Tribunal is satisfied that they will.

Clause 050.212(3)(a) provides that the applicant has made a valid application for a certain type of substantive visa that has not been finally determined. Whether an application for a substantive visa was made before the time of application for the bridging E visa, whether it was for a visa that can be granted if the applicant is in Australia and whether the application is still pending are all questions of fact for Tribunal decision makers to determine. Information in electronic Departmental databases, such as ICSE, may assist in determining these issues.

Alternatively, cl 050.212(3)(b) requires the Minister to be satisfied that the applicant will apply in Australia, within a period allowed by the Minister for the purpose, for a substantive

[80] Policy - Compliance and Case Resolution - Program Visas – Bridging E Visas – BVE 050 - Grounds for seeking a BVE – Making acceptable arrangements to leave Australia (re-issued 19/11/16).
[81] cls 050.212(3A), (4)–(4AA), (9).
[82] cl 050.212(4A).
[83] cl 050.212(4AA).
[84] Policy - Compliance and Case Resolution - Program visas - Bridging E visas – BVE 050 - Grounds for seeking a BVE – Members of a family unit - Judicial review (re-issued 19/11/16). Note further that this refers to cl 050.212(4A), which is not in relation to family members but is about an applicant who is part of a representative action in the Federal or High Court.
[85] See Explanatory Statement to *Migration Amendment Regulations 2000* (Cth) (No 2) (SR 2000, No 62) at item [33034].

visa of a kind that can be granted if the applicant is in Australia.[86] In contrast to cl 050.212(3)(a), which is concerned with a valid application for a substantive visa already made, the implication for cl 050.212(3)(b) is that the applicant can and will validly apply for the visa within that period. There are several restrictions on making valid visa applications. For example, an onshore applicant whose last held visa was subject to condition 8503 may be precluded from making a valid visa application unless it is a protection visa application or condition 8503 has been waived.[87] With limited exceptions, s 501E provides that a person is not entitled to apply for a visa if at an earlier time a decision was made under ss 501, 501A and 501B to refuse to grant or to cancel a visa and the decision was neither set aside nor revoked before the application time.[88] Non-citizens who have been refused a visa or whose visa was cancelled may only apply for particular visas while remaining in the migration zone (the ss 48 and 48A bars).

Section 195 also limits the ability of a detainee to apply for a visa. This section provides that detainees may apply for a visa within 2 working days (following compliance with s 194 – see below) or 5 working days after those 2 working days if an officer is informed in writing of their intention to apply.[89] However, a detainee who does not apply within these time periods may not apply for a visa, other than a bridging or protection visa, after that time.[90]

The interaction between cl 050.212(3)(b) and these provisions was considered in *obiter* comments in *Liu v MIAC,* accepting submissions by the Minister that the Tribunal had erred in accepting cl 050.212(3)(b) was met.[91] The Court considered that for cl 050.212(3)(b) to be engaged the Minister must have allowed for an application for a substantive visa to be made, noting that the use of the past tense of the verb allow means that an applicant must demonstrate they are within time to apply for a particular visa if released from detention, without any further time to be allowed for that purpose.[92]

The Court also accepted the Minister's submission that the expression 'of a kind that can be granted if the applicant is in Australia' in cl 050.212(3)(b) requires that a substantive visa

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[86] As a result of amendments made by *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth) (SLI 2014, No 135) certain Protection (Class XA) visa applications made before 16 December 2014, by certain prescribed applicants (pre-conversion applications), are, from that date, taken not to be, and never to have been, valid applications for a Protection (Class XA) visa; and instead are taken to be, and always to have been, valid applications for a Temporary Protection (Class XD) visa: reg 2.08F and s 45AA. The conversion of these visa applications also impacts certain bridging visa grants and applications. Under ss 45AA(6)–(7), if a person held a bridging visa because the pre-conversion application had not been finally determined, then, at and after the conversion time, the bridging visa has effect as if it had been granted because of the converted application. Similarly, if, immediately before the conversion time for a pre-conversion application, a person had made an application for a bridging visa because of the pre-conversion application, but the bridging visa application had not been finally determined, then, at and after the conversion time: the bridging visa application is taken to have been applied for because of the converted application; and the bridging visa (if granted) has effect as if it were granted because of the converted application. Thus, in considering whether an applicant satisfies cl 050.212(3)(b) or continues to meet the requirement at the time of decision under cl 050.221 on the basis of a protection visa application, the decision maker should consider whether that application (and the associated bridging visa application) have been affected by these amendments.

[87] ss 41, 46(1A) and (2) and Sch 8, condition 8503.

[88] s 501E(1). In addition, under s 501E(1B) a reference to a refusal to grant a visa, or to the cancellation of a visa, includes a reference to such a refusal or cancellation in relation to a visa for which an application is taken to have been made by the operation of this Act or Regulations. The exceptions are contained in ss 501E(2), (3) and (4), which do not prevent a person, at the application time, from making an application for: a protection visa; a visa if the Minister had, acting personally, granted a permanent visa to the person; or applying for a visa where the person was granted a visa of a kind referred to in subsection 501E(2) or (3) and the person would, but for the operation of those subsections, have been prevented from applying for that visa. Sections 501E(3)–(4) were inserted by SLI 2014, No 129 and apply to a decision to refuse to grant, or to cancel visa, or an application for a visa on or after 11 December 2014.

[89] s 195(1).

[90] s 195(2). Note, however, for these time limits to apply it is critical that the detaining officer complies with the obligation in s 194. See below.

[91] *Liu v MIAC* [2008] FMCA 725. The Tribunal decision was upheld on the basis that there was no error in its decision on cl 050.223.

[92] *Liu v MIAC* [2008] FMCA 725 at [53].

could be granted to the applicant at the time of their bridging visa application. There must be evidence of an intention by the applicant to make a further visa application and to demonstrate that, if released from detention, they would be within time to apply for a visa without any further time being allowed.[93] It appears that the applicant's own circumstances should be taken into account when determining whether the visa is of a type that falls within this provision.

Clause 050.212(3)(b) allows an applicant for a substantive visa, who is entitled to apply for such a visa, more time in which to do so by the grant of a bridging visa. However, in *Liu v MIAC* the Court was of the view that the grant of a bridging visa under s 195(2) should not be used to circumvent the plain legislative intent of s 195(1) so as to enable an applicant to be released from detention.[94] In other words, if the BVE application is lodged after the s 195 bar takes effect, then the applicant cannot satisfy cl 050.212(3)(b) unless the substantive visa application is for a protection visa.

The *obiter* views in *Liu v MIAC* reflect one interpretation of cl 050.212(3)(b), but another interpretation also appears open. This second interpretation involves cl 050.212(3)(b) permitting a bridging visa to be granted to enable the applicant to apply for a substantive visa other than a protection or bridging visa, where the applicant would not be able to do so in detention because of s 195. It relies on reading the phrase 'within a period allowed by the Minister for the purpose' as forward looking in manner, indicating that the Minister may stipulate a period within which an applicant must apply for the substantive visa, either through the length of the visa granted, or by conditions attached to it.[95]

On this view, the requirement that the decision-maker be satisfied that the applicant will apply 'for a substantive visa of a kind that can be granted if the applicant is in Australia' can be interpreted as defining the category of visa that comes into question, i.e. whether the visa requirements are such that, if the application is made in Australia, the visa can be granted if the applicant is in Australia. These words do not expressly require that, at the time of making the bridging visa application (and seeking to meet cl 050.212(3)(b)), the detainee must be entitled to make the substantive visa application.[96]

Departmental policy appears consistent with the second interpretation. It identifies factors to consider in determining whether an applicant can make a valid application, including any statutory limitations, previous visa conditions and access to funds for fees, but does not mention s 195 as a bar to satisfying cl 050.212(3)(b).[97] In the absence of further judicial consideration, either interpretation appears open.

[93] *Liu v MIAC* [2008] FMCA 725 at [52]–[54].
[94] *Liu v MIAC* [2008] FMCA 725 at [55].
[95] For example, condition 8508 in Schedule 8 to the Regulations provides that 'the holder must make a valid application for a visa of a class that can be granted in Australia, within the time specified…for the purpose'.
[96] See, for example, 2120028 (Migration) [2022] AATA 384 (19 January 2022) at [36] – [38] where this second interpretation was preferred by the Tribunal and used to conclude that cl 050.212(3)(b) could be met by a detainee subject to s 195 who intended to apply to for a substantive visa (ie a medical treatment visa), even if they could only act on that intention after they ceased to be a detainee subject to s 195.
[97] Policy - Compliance and Case Resolution - Program Visas –Bridging E Visas – BVE 050 - Grounds for seeking a BVE – Will make an application (050.212(3)(b)) (reissued 19/11/2016). In relation to detainees, it refers to considering whether there is sufficient evidence to assess that the applicant can be relied upon to abide by condition 8508.

The obligation in s 194 to advise a detainee of time limits to lodge visa applications under s 195

For the time limits on visa applications in s 195 to apply, there must first be compliance with s 194 of the Act. This provision requires that as soon as reasonably practicable after an officer detains a person, the officer must ensure the detainee is made aware of the provisions of ss 195 and 196 of the Act.[98] More specifically, this means advising the detainee of the time limits on applying for visas in s 195 and the consequences of not applying within those timeframes (i.e. that they may only apply for a bridging visa or protection visa after that time). The detainee must also be advised of the duration of detention under s 196 and, where the applicant's student visa was automatically cancelled, of the ability to apply for revocation of that cancellation.

It is not free from doubt whether the obligation imposed by s 194 to inform the detainee of certain matters needs to be discharged by the same officer who first detained the non-citizen. The most recent judicial consideration indicates another officer can discharge this obligation. Initially, in *Yap v MIBP,*[99] the Federal Circuit Court held the obligation under s 194 falls on the officer who takes the applicant into detention and cannot be discharged by another officer.[100] However, subsequently the Federal Circuit Court indicated this is not the case. In *Covatu v MIBP*[101] Judge Smith found the decision in *Yap v MIBP* to be clearly wrong. While the issue of compliance with s 194 was never in issue before the Tribunal as the arresting officer was the same as the officer who discharged the s 194 obligation, the Court held that simply because a detaining officer does not personally explain the provisions of ss 195 and 196 to a detainee does not mean that he or she has not complied with an obligation under s 194. Thus, where the time limits in s 195 arise as an issue – as they may do in the context of an assessment of an applicant's ability to make a substantive visa application for cl 050.212(3) – the Tribunal should satisfy itself that the obligation in s 194 has been discharged, and that the applicant had been 'made aware' of the relevant matters.

If the obligation in s 194 is not discharged, the s 195 time limits on the applicant's ability to apply for a substantive visa do not apply.

Ministerial intervention

Whether the applicant has requested Ministerial intervention is a question of fact for the Tribunal to determine. The Tribunal may make inquiries from the relevant office of the Minister or Departmental unit.

[98] s 194(a). Section 194(b) refers to s 137K, which relates to revocation of the automatic cancellation of a student visa. The ability to automatically cancel a student visa and apply for revocation under 137K was effectively removed from 13 April 2013 by *Migration Legislation Amendment (Student Visas) Act 2012* (Cth). However where a visa was cancelled under s 137J prior to these amendments taking effect, the obligation in s 194(b) would remain.
[99] *Yap v MIBP* [2014] FCCA 2476.
[100] *Yap v MIBP* [2014] FCCA 2476 at [38].
[101] *Covatu v MIBP* [2015] FCCA 746.

Decisions for which the Minister has power to intervene

To be eligible for the exercise of the Minister's power to intervene under ss 345, 351 or 417,[102] a non-citizen must be the subject of a decision of the Tribunal.[103]

The powers of the Minister to intervene under ss 351 and 417 require a Part 5 or Part 7 reviewable decision and accordingly the Minister cannot do so where the Tribunal's decision is that the review application was invalid or that it does not have jurisdiction.

Requests for the Minister to intervene

For BVE applications made after 1 July 2009,[104] cases must be assessed against the Minister's Guidelines when a case officer receives notification of the Tribunal's decision or when a request is initiated by the person who is the subject of the request, their authorised representative or the Department.[105] Where the Tribunal considers that a case falls within the Guidelines, the case may be referred to the Department and may be referred by the Department to the Minister if the case meets the guidelines for referral.[106]

An applicant cannot satisfy cl 050.212(6) if they have *previously* sought or been the subject of a request by another person for Ministerial intervention or a request for a determination under s 48B.[107] The preferable view is that this applies for *any* previous requests, including where multiple requests were made but for different visa applications, and not repeat requests for the same visa application.[108]

The Department's policy instructions on the 'Ministerial Intervention' grounds in cls 050.212(5B) and 050.212(6) state that if a previous request for intervention or determination under ss 48B, 345, 351 or 417 was withdrawn by the applicant it is not considered to be a previous request, but a request that has been assessed as not meeting the Minister's guidelines is considered to be finalised and is a 'previous request' for the purposes of cls 050.212(5B) and 050.212(6).[109]

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[102] The Minister's powers in this regard arise under s 345 (substituting a more favourable decision than a review officer under s 341 (omitted by *Migration Legislation Amendment Act (No 1) 1998* (Cth) (No 113 of 1998)), s 351 and s 417 (substituting a more favourable decision than the Tribunal) and, prior to the MRT's and RRT's amalgamation with the Administrative Appeals Tribunal on 1 July 2015, ss 391 and 454 (substituting a more favourable decision than the tribunal concerning an MRT or RRT-reviewable decision: SLI 2015, No 103).

[103] This includes the MRT and RRT as well as the AAT prior to 1 July 2015: reg 1.03, cls 050.111 and 051.111.

[104] BVE applications made before 1 July 2009, cl 050.212(6) contemplated a 'two stage' process where the Minister could be 'personally considering' an intervention request: see ex-MSI 388: Bridging E visa (subclass 050) – Legislative framework and further guidelines – 3. Deciding Bridging Visa E Application, replaced on 26 April 2008 by Department of Immigration, Sch2Visa 050 – Bridging E (General) and which was itself re-issued on 1 July 2009. For Ministerial intervention requests made before 5 December 2008, the Minister may be personally considering an applicant's request following initial assessment by an officer. Whether a particular case is under the Minister's personal consideration is a question of fact. For requests made after 5 December 2008 but before 1 July 2009, personal consideration was contemplated by cl 050.212(6) but not described within the Ministerial Guidelines. Clause 050.212(6)(b) was ultimately substituted by SLI 2009, No 143, item [7].

[105] Department of Immigration, Policy – *Migration Act* – Ministerial powers instructions – Minister's guidelines on ministerial powers (s351, s417 and s501J) –Requesting Ministerial intervention at [8] and [10] (re-issued 29/3/16).

[106] Department of Immigration, Policy – *Migration Act* – Ministerial powers instructions – Minister's guidelines on ministerial powers (s 351, s 417 and s 501J) – Requesting Ministerial intervention at [8] (re-issued 29/3/16).

[107] 050.212(6)(c).

[108] This interpretation appears to be supported by the Explanatory Statement to SLI 2009, No 143, which states that the amendments are intended to ensure that a person can only meet the criteria if they have not previously sought or been the subject of the exercise of the Minister's powers. A person who has done so must meet cl 050.212(2) (acceptable arrangements to depart Australia).

[109] Department of Immigration, Policy – Migration Act – Compliance and Case Resolution – Program visas – Bridging E visas – Ministerial intervention (MI) - Overview (re-issued 19/11/16).

However, another interpretation of the provision appears open on the terms of the provision. The wording of cl 050.212(6) is similar to, and connected to that in, cl 050.212(5B). Clause 050.212(5B) provides that an applicant meets the subclause requirements, if the applicant is a person to whom s 48A applies and has made a request to the Minister under s 48B that s 48A does not apply to prevent an application for a protection visa application, and the applicant has not previously sought, or been the subject of a request by another person for: (i) a determination under s 48B; or (ii) the exercise of the Minister's power under s 345, 351 or 417.

Both of these provisions refer to a request in the past tense - 'has made' - and say nothing about the outcome of the request, whether withdrawn, finalised or otherwise. The amendments of 1 July 2009[110] introducing these provisions amended cl 050.212(6), which had referred to such requests being at one of two stages of consideration. That is, the legislative history reflects the wording that indicated that the request needed to be under consideration and not finalised was removed. Subparagraphs 050.212(5B)(c) and 050.212(6)(c) refer to not having 'previously sought, or been the subject of a request'. When read as a whole, it may be interpreted that the mischief being addressed by cls 050.212(5B) and 050.212(6) is multiple requests in respect of any of the discretionary powers in ss 48B, 345, 351 and 417. On this construction, an applicant who has only ever made a single request to the Minister under one of these sections would appear to satisfy the criterion in perpetuity.[111]

Abide by visa conditions and related security decisions

Decision makers must be satisfied at the time of decision that, if a bridging visa is granted, the applicant will abide by the conditions imposed on it.[112] See discussion above for visa conditions applicable to Subclass 050. A preliminary consideration is the identification of the conditions that will be 'imposed'. There are different interpretations as to which visa conditions are capable of being 'imposed' upon BVEs and which are not.

On one view, the fact that a bridging visa is already *subject* to a condition suggests that that condition is not capable of being 'imposed' on it. This is because the language in s 41(1) and reg 2.05(1) leads to certain conditions applying by operation of law, whereas the language in s 41(3) and reg 2.05(2) confers a discretionary power on the decision maker as to which condition(s) (if any), they chose to impose. If the act of imposing a condition requires choice by the decision maker for a particular condition to be applied, where the ability for the decision maker to exercise that choice does not exist because the condition applies by operation of law then that condition cannot be said to have been imposed. This only leaves the decision maker to identify which visa condition(s) (if any), as an exercise of their discretionary power, *they will impose* on the visa, and then consider whether those, and only

[110] SLI 2009, No 143.
[111] This interpretation, based on the plain words of the criterion, was applied by the Tribunal in 2213125 (Migration) [2022] AATA 3769 (15 September 2022). The Tribunal found that the applicant satisfied cl 050.212(5B) on the basis that he had only ever made one request for determination under s 48B, which the Tribunal found had been finalised at the time of its decision. It did not accept arguments that the Ministerial request was still ongoing because it was the subject of judicial review proceedings, but concluded that, on this interpretation, whether the request was open, closed, or any other outcome, was irrelevant: at [29]-[32].
[112] cl 050.223.

those, discretionary conditions will be complied with by the applicant.[113] Even on this view, however, mandatory conditions retain some relevance to the question of whether or not the applicant will abide by the (other) conditions imposed. Evidence, for instance, of an applicant's past non-compliance with a mandatory condition (e.g. Condition 8101 'no work') would still be a relevant consideration when assessing an applicant's likely compliance with the discretionary conditions to be imposed.

The alternative view, and that preferred by the Department, is that the mandatory conditions and discretionary conditions are both capable of being 'imposed' on the visa, just by different means. Whilst discretionary conditions are 'imposed' pursuant to an exercise of a decision maker's discretionary power, mandatory conditions are also 'imposed' by operation of the Regulations. Accordingly, the task for the decision maker under this approach is to identify all the visa conditions imposed (both mandatory and discretionary), and then consider whether, in their totality, the applicant will abide by those conditions in the circumstances of that case.[114]

Ultimately, on either of the two views above, decision makers are required to identify the relevant condition(s) (if any) that are to be imposed on the visa and then assess the applicant's capacity to abide by them.

Where the Tribunal imposes conditions pursuant to an exercise of discretionary power, reasons for imposing the conditions should be included in the decision statement.[115] If the applicant has raised any issues challenging the imposition of any of the conditions, the Tribunal's reasons for imposing the conditions should reflect consideration of those issues.

In assessing the applicant's likely compliance with the conditions imposed, the Tribunal must form an opinion about the likely conduct of the applicant.[116] Relevant matters when determining whether the applicant would abide by the conditions imposed include their past immigration history, the significance of any migration laws they have previously breached, the wilfulness of any breaches, any mitigating circumstances justifying past breaches and whether they have demonstrated any contrition for unlawful conduct.[117] It is not necessary for the Tribunal to make a decision on the specific terms of any of the conditions if imposed before considering the question of whether the applicant would abide by them.[118] For example, if imposing condition 8401, it is not necessary to specify the time(s) and place(s)

[113] There is some support for this view in *Krummrey v MIMIA* (2005) 147 FCR 557. Whilst that matter concerned the cancellation of an applicant's sub-class 956 (Electronic Travel Authority) visa, the Court held at [28]–[29] that a visa is either subject to specified conditions (s 41(1) and reg 2.05(1)) or the Minister may impose certain visa conditions (s 41(3) and reg 2.05(2)). The language of a condition which "must be imposed" in Schedule 2 means that the visa is subject to that condition: there is no further action of 'imposing' the condition.

[114] There is some support for this view from the fact that the Court in *Krummrey v MIMIA* did not expressly find that a mandatory condition is not also 'imposed', only that the mandatory conditions would take effect without any additional act of imposition and the words 'must take effect' were 'mere surplusage': (at [29]). Further, if the purpose of cl 050.223 is to ensure that bridging visas are only granted to those persons likely to comply with the conditions attached to it, there is support for this view in achieving that purpose as it would avoid visas being granted in situations where decision makers were not satisfied that all the applicable conditions would be complied with.

[115] *Nguyen v MICMSMA* [2022] FCA 483 at [123]; *Nguyen v MICMSMA* [2022] FedCFamC2G 272 at [42]. Although these comments were *obiter* and not binding authority, the views in both judgments, including one at appellate level, would likely be considered persuasive in the event of future judicial consideration.

[116] The Tribunal is not required to compare breaches of migration laws committed by other bridging visa applicants to ascertain whether an applicant will comply with conditions because the circumstances of other cases will inevitably be different: *Applicant VAAN of 2001 v MIMA* [2002] FCA 197 at [16].

[117] *Applicant VAAN of 2001 v MIMA* [2002] FCA 197 at [15].

[118] *Nguyen v MICMSMA* [2022] FCA 483 at [112]. The Court rejected a claim that the lack of specification of: a date for leaving Australia for condition 8512; time(s), place(s) and manner of reporting for condition 8401; and time for showing an officer a current passport for condition 8510, reflected misapplication or failure to consider the applicable legislation.

and manner in which the applicant must report, before considering whether the applicant would abide by the condition.

Is there an associated security decision?

In assessing cl 050.223, the issue of a security may be a relevant consideration. The issue of whether a security is required may arise in two contexts:

- where the delegate has made a decision under s 269 of the Act to require a security for compliance with any visa conditions; or
- where no such security decision was made but imposing a security is nonetheless a relevant consideration in determining whether the applicant will abide by conditions attached to the visa.

The Tribunal's approach to the review will differ depending on which of the contexts is applicable.

Whether an applicant will abide by the conditions imposed on a bridging visa may require the Tribunal to review a separate decision made at the primary level under s 269 of the Act to 'require…security for compliance with…any conditions imposed'.

Where the primary decision-maker refused to grant the visa because the applicant did not meet one of the subclauses in cl 050.212 but did not proceed to make a decision in relation to cl 050.223 and cl 050.224, then there is no decision in relation to requiring a security which the Tribunal can review (see below for discussion of this scenario).[119] However, where the delegate decided that the applicant will not abide by conditions whether a security is required or not, it does not necessarily follow that there is no related security decision. Whether a separate related security decision was made is a finding of fact for the decision-maker based on the circumstances.

In practice, the primary decision maker will usually make their decision on whether to impose a security on the same 'Record and Notice of Decision' form used in making the bridging visa decision. If this question is answered by the delegate to impose a security or not, there will be an associated security decision.

Where there is an associated security decision under review

In reviewing a decision to require a security, the Tribunal exercises all of the powers and discretions that are conferred upon the delegate. A decision as to whether an applicant satisfies cl 050.223 involves exercising some of the powers under s 65 of the Act (decision to grant or to refuse visa) and a security decision involves some of the powers under s 269 (securities). Although separate and distinct, these decisions are intertwined in determining whether an applicant will abide by conditions and whether a security should be required (and its amount).

[119] *Applicant VAAN of 2001 v MIMA* [2002] FCA 197 at [10].

The steps involved in reaching a decision about security are as follows:[120]

1. The decision-maker must decide what conditions (if any) ought to be imposed on the grant of a visa.

2. If conditions are to be imposed, the decision maker must ask whether they will be complied without security being taken.

If the answer is yes, no security should be imposed. If the answer is no, the decision maker must then consider:

3. Will the conditions be complied with if security is taken?

If the answer is no, the visa ought not to be granted because the criterion set out in cl 050.223 will not be met. If the answer is yes, security should be required and the decision maker must assess the appropriate amount and type of security to be imposed.

The amount of security to request should be designed to secure compliance with the relevant condition(s) and no more. The amount should be fixed as a reasonable assurance that there will be compliance. Regard should be given to the nature of the condition and the particular circumstances of the person, notably their financial position.[121] Departmental guidelines state that the decision maker is to take into account all factors relevant to the applicant's ability to satisfy them that they will comply with visa conditions, including consideration of the financial and personal circumstances of the applicant or guarantor. The amount of security should be sufficiently high to encourage compliance with any conditions imposed on the visa but not so high as to be beyond the applicant or guarantor's capacity to pay.[122]

If the requested security is provided by a third person (e.g. family member or friend) it should not be assumed that the applicant's conduct will not be influenced by that fact. An applicant might be very reluctant to place that person's assets at risk, or that person might endeavour to see the conditions complied with like a person who acts as a surety.[123]

If the Tribunal, upon review of a decision that relates to requiring a security and refusal to grant a visa of the kind described in reg 4.02(4)(f)(ii), concludes that the applicant would abide by any condition(s) imposed on the visa if a security of a particular amount were required, then the Tribunal may remit the matter with a direction in accordance with reg 4.15(3).

On the Tribunal's powers and required approach, see Merits Review below.

[120] *Tennakoon v MIMIA* [2001] FCA 615; *Applicant VAAN of 2001 v MIMA* [2002] FCA 197 at [22]. These steps involve an exercise of the power when deciding whether an applicant satisfies cl 050.223, and under s 269 to require security as prescribed in reg 4.02(f). Note that reg 4.15(3) constrains the power available to the Tribunal, in particular to *require* a security, and the Tribunal does not have the power to *take* a security.
[121] *Applicant VAAN of 2001 v MIMA* [2002] FCA 197 at [27].
[122] PAM 3 Compliance and Case Resolution – Program visas – PAM – Bridging E visas – BVE 050 securities – Authorised officer requires a security (re-issued 19/11/16).
[123] *Applicant VAAN of 2001 v MIMA* [2002] FCA 197 at [20].

Where there is no associated security decision under review

If, for the purposes of cl 050.223, the Tribunal finds that the applicant will comply with conditions without security being required, it may remit with a direction that the applicant meets cl 050.223. However, it may not remit with a direction that a security of nil be required.

If the Tribunal finds that the applicant will comply with conditions, but only if security is required of a particular amount, a factual finding may be made to that effect. It can then remit with a direction that an applicant meets cl 050.223. Such a decision does not involve an exercise of the power to take a security under s 269 of the Act, but merely factual findings relevant to the criteria in cl 050.223.

If the Tribunal finds that an applicant will not comply with conditions regardless of any security that may be imposed, it must find that cl 050.223 is not satisfied and affirm the decision.

Has the applicant lodged the required security?

If an authorised officer has required a security for compliance with any conditions that will be imposed on the visa (under cl 050.233 and s 269), the decision maker must consider whether that security has been lodged.[124] This is a simple factual question. If a security is required but has not been lodged, the visa application must be refused as cl 050.224 is not satisfied. If the required security has been lodged, then provided all other relevant criteria have been met, the visa must be granted.[125]

For further discussion of these issues, see the MRD Legal Services Commentary on Securities.

Interview requirement

Clause 050.222 is a time of decision criterion that requires an applicant to have been interviewed by an officer authorised by the Secretary for the purposes of cl 050.222, subject to certain exceptions. There is no requirement to give a visa applicant an invitation to attend an interview at a particular date, time or place for the purposes of cl 050.222(1).[126]

In the vast majority of cases cl 050.222 will not be in issue. Either the interview will have taken place or, for visa applications made on or after 1 July 2021, an authorised officer will have decided it is not necessary to interview the applicant.[127] In the event that the interview has not taken place, the Tribunal's capacity to consider this criterion will be limited as no person within the Tribunal has the authorisation to undertake an interview for the purposes of cl 050.222(1), or to decide it is not necessary to interview the applicant for the purposes of

[124] cl 050.224.
[125] *Applicant VAAN of 2001 v MIMA* [2002] FCA 197 and *Tennakoon v MIMA* [2001] FCA 615 were followed in *Liu v MIAC & Anor* [2008] FMCA 725. Wilson FM noted (at [31]–[37]) that cl 050.223 needed to be considered separately from cl 050.224 because one needs to determine what conditions ought to be imposed to then consider whether the applicant would abide by such conditions. Where no security has been required, the Tribunal does not need to consider cl 050.224. It is only if the Tribunal is satisfied that a particular bridging visa applicant would abide by the conditions with a financial incentive to do so that it is necessary to consider the security decision (i.e. the decision required by cl 050.223 as to the requirement for and amount of security).
[126] *Singh v MIBP* [2017] FCCA 1934 at [11].
[127] cl 050.222(5) as inserted by F2021L00852, applies to visa applications made on or after 1 July 2021.

cl 050.222(5). In such a case, it would also not be possible for the Tribunal to remit the application for reconsideration with a direction that an interview be undertaken by an authorised officer within the Department or that an authorised officer is to make a decision that an interview is not necessary.[128]

While it appears to be possible for the Tribunal to request the Department to arrange an interview to be undertaken by an authorised officer, the Department has indicated that it will not do so where the visa application is not 'on foot' before the Department.[129] In any event, where the Tribunal is considering cl 050.222(1) (for example because this was the sole basis for the bridging visa refusal) it would be open to find the applicant does not satisfy the criterion if the applicant did not, in fact, attend an interview and the exceptions in cl 050.222(2), (3), (4) and (5) do not apply.[130]

Further bridging visa applications

An eligible non-citizen in immigration detention may in certain circumstances make a further bridging visa application where the Minister refused to grant a bridging visa.[131] Unless the further bridging visa application is made in prescribed circumstances, the further application may not be made earlier than 30 days after the refusal (if the eligible non-citizen did not apply for review of the refusal decision), or 30 days after the application is finally determined (if there was an application for review).[132]

The prescribed circumstances that permit a further bridging visa application being made before the end of the 30 day period are where the Minister is satisfied that, although the non-citizen has not made a further BVE application after being refused a visa of that class, he or she now satisfies the criteria for the grant of a visa of that class.[133] This might occur, for example, where an initial visa was refused because the applicant failed to satisfy the criteria but subsequently took action to satisfy it and the applicant is invited to make a further application.[134]

A decision by a delegate that a bridging visa application is not valid is not reviewable.

However, if a delegate decides to refuse to grant a bridging visa to an applicant in detention, in circumstances where he or she may be subject to the time restriction above, and the applicant seeks review of that decision, then the Tribunal will have jurisdiction to review it.[135] If the Tribunal finds that s 74 prevents an applicant from making a further bridging visa application then it should set aside the refusal and substitute a decision that no valid visa application was made.

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[128] The only (relevant) permissible direction is that the applicant must be taken to have satisfied a specified criterion for the visa or entry permit: reg 4.15(1)(b)
[129] 2107540 (Migration) [2021] AATA 3288 (18 August 2021) at [13].
[130] In *Singh v MIBP* [2017] FCCA 1934, the Court found no jurisdictional error in the Tribunal's decision that the applicant did not satisfy cl 050.222(1) in circumstances where cls 050.222(2), (3) and (4) did not apply to the applicant and the applicant had not, in fact, attended an interview with an authorised officer (at [12]). This case was considering cl 050.222 prior to the addition of cl 050.222(5).
[131] s 74(1).
[132] s 74(2). See ss 5(9)–(9B) for the meaning of 'finally determined'.
[133] s 74(2); reg 2.23.
[134] For example, if an applicant has now purchased a departure ticket, or they can provide the relevant documents for lodging a judicial review application or they can now provide the required security: PAM 3 Compliance and Case Resolution – Program visas – PAM - Bridging E visas – Applying for a BVE – Further BVE applications if in detention – Effect of s 74 (re-issued 19/11/16).
[135] s 338(4).

Deemed grant of the visa – s 75 of the Act

Section 75 of the Act, in conjunction with reg 2.24, operates to deem a BVE to be granted if an application is made by an eligible non-citizen in immigration detention and the Minister does not make a decision within a specified period. For applications made from 1 July 2011, the following periods are prescribed:[136]

Immigration status of non-citizen applicant	**Declaration by detention review officer that applicant may not pass the character test under s 501(6)[137]**	**Number of days after application is made**
Immigration cleared	No declaration made	2 working days [138]
	Declaration signed within 2 working days after application made	90 days [139]
Eligible non-citizen under reg 2.20(6)	No declaration made	2 working days [140]
	Declaration signed within 2 working days after application made	90 days [141]
Not described as above	No declaration made	28 days [142]
	Declaration signed within 28 working days after application made	90 days [143]

The prescribed period runs from when the application was 'made', which includes a requirement that, for an applicant in immigration detention, a detention review officer was informed of the application.[144] It has been held that this requirement cannot be met by lodging the application at an office of Immigration.[145] The person lodging the BVE application (whether the applicant or another) must give written notice of the application to an officer appointed to be a detention review officer and it is not sufficient if that officer is only orally informed of the application.[146]

[136] reg 2.24, amended by SLI 2011, No 105 with respect to the prescribed periods in which the Minister must make a decision on a Bridging E Visa application. For a BVE application lodged before 1 July 2011, where the applicant was immigration cleared, the visa is deemed to have been granted if the Minister does not make a decision within 2 working days.
[137] A 'detention review officer' is an officer appointed under reg 2.10A(2) as a detention review officer for the State or Territory in which the applicant is detained. A person does not pass the character test under s 501(6) if they have a substantial criminal record; have been convicted of an offence committed in, during or after escape from immigration detention; have been convicted of an offence against s 197A (escape from immigration detention); are a member of a group or organisation or have or had an association within a person, group or organisation whom the Minister reasonably suspects has been or is involved in criminal conduct; are not of good character having regard to past and present criminal and general conduct; pose a significant risk of engaging in certain types of behaviour identified in s 501(6)(d); have been indicted of offences against international law; have been assessed by ASIO to be a risk to security; or are subject of an Interpol notice from which it is reasonable to infer that they would be a risk to the Australian community.
[138] reg 2.24(3), item 2
[139] reg 2.24(3), item 1
[140] reg 2.24(3), item 4
[141] reg 2.24(3), item 3
[142] reg 2.24(3), item 6
[143] reg 2.24(3), item 5
[144] regs 2.10, 2.10A, and item 1305 of Sch 1.
[145] *Cabal v MIMIA (No 2)* (1999) FCR 314 at [31] and [33].
[146] reg 2.10A, inserted by SR 2004, No 362, with effect from 1 January 2004.

Section 75(2) of the Act enables the period to be extended in relation to a particular application by agreement between the applicant and the Minister.[147]

Unlawful non-citizens and cl 050.211

Clause 050.211 has two elements, both of which relate to the applicant's immigration status at time of application. Clause 050.211(1) requires that the applicant is an unlawful non-citizen, or holds either a Bridging E or Bridging D visa. Clause 050.211(2) requires that the applicant must *not* be an eligible non-citizen[148] of the kind set out in regs 2.20(7)–(11) or (17).[149]

Clause 050.211(1)

The time of application criterion in cl 050.211(1) can be met where the applicant is an unlawful non-citizen (which is essentially a non-citizen with no visa).[150] A person may be in immigration detention and still hold a visa – that is, they are not an unlawful non-citizen – in limited circumstances, for example:

- Deportation: a person may be taken into immigration detention pending deportation and still hold a current visa.[151] In such cases the non-citizen will not be an unlawful non-citizen as defined and will be unable to apply for a BVE. [152]

- Invalid notification: the person is taken into detention without the Department identifying that the person holds a valid Bridging visa that remains in effect. For example, a person may not have been validly notified of a decision by the Department (or Tribunal) in relation to a decision to refuse a substantive visa.[153] The relevant question in these instances is whether, and when, the applicant was *actually* notified of the decision. Any bridging visa granted prior to 19 November 2016 in association with the substantive visa application is in effect for 28 days from that time.[154] If the 28 days had not passed as at the time of application for the BVE, the applicant will not be an unlawful non-citizen.

[147] See also *Tan v MIAC* [2010] FMCA 652 where the agreement to extend the prescribed period was confirmed by the parties' subsequent behaviour.
[148] An eligible non-citizen is a non-citizen who has been immigration cleared, is in a prescribed class of persons; or the Minister determined to be such: s 72 of the Act. Regulation 2.20 prescribes the classes of persons who are eligible non-citizens for the purposes s 72(1)(b).
[149] cl 050.211(2). Applicants of the kind set out in regs 2.20(7)–(11) may be eligible for a Subclass 051 Bridging E visa as cl 051.211 requires an applicant *is* an eligible non-citizen within one of those sub-clauses.
[150] An 'unlawful non-citizen' is a 'non-citizen in the migration zone who is not a lawful non-citizen': s 14(1). A 'lawful non-citizen' is a 'non-citizen in the migration zone who holds a visa that is in effect': s 13(1).
[151] ss 200–206.
[152] The non-citizen can generally access merits review of the deportation decision before the Administrative Appeals Tribunal: see ss 500 and 502.
[153] The timeframe in cl 010.511(b)(iii)(A) [relevantly identical to cl 050.511(b)(iii)] was unaffected by jurisdictional error by the tribunal where a court declined to grant relief or no person sought to have it set aside*: SZKUO v MIAC (No 2)* [2009] FMCA 498. The scheme of the provisions makes clear that a reference to notification of the decision is a reference to a decision by a tribunal, whether or not the decision is later found to be affected by jurisdictional error [at [65]]. Upheld on appeal: *SZKUO v MIAC* (2009) 180 FCR 438.
[154] *SZCCZ v MIAC* [2007] FCA 1089 at [27]. This judgment was considering provisions as in force prior to 19 November 2016. The cessation provisions for bridging visas, including cl 010.511(b)(iii), were amended by *Migration Legislation Amendment (2016 Measures No 5) Regulation 2016* (Cth) (F2016L01745) to provide for cessation of the bridging visa 35 days after the relevant decision on the substantive visa application was made: cl 010.511(1)(b)(ii) and (iii).

Clause 050.211(2) and 'eligible non-citizen'

Clause 050.211(2) requires that the applicant *not* be an eligible non-citizen of the kind in regs 2.20(7)–(11) or (17). Except for reg 2.20(17), the kinds of eligible non-citizen specified are non-citizens who, among other things, were refused, or bypassed, immigration clearance. Regulation 2.20(17) applies to a non-citizen:

- who is an unlawful non-citizen;
- for whom grant of a visa under s 195A is not available (i.e. not in immigration detention); and
- the Minister (delegate or Tribunal on review) is satisfied that the non-citizen's removal from Australia is not reasonably practicable at that time.

In considering whether removal is not reasonably practicable, the decision-maker is not restricted to the practical reality or feasibility of physically removing the applicant to another country once taken into detention.[155] Matters that have been accepted as relevant to a finding that removal was not reasonably practicable include that the applicant had not requested removal, the applicant was not in immigration detention and the applicant had an application for judicial review of a protection visa refusal pending in the Federal Court.[156]

Restrictions on work and seeking a further BVE

Condition 8101 ('no work') is a condition commonly attached to a BVE. However, where an applicant demonstrates a 'compelling need to work', they may be granted a further BVE without condition 8101 being attached.

A non-citizen has a 'compelling need to work' if he or she is in financial hardship.[157] Financial hardship is not defined in the Act. Departmental policy states that a person can be taken to be in financial hardship if the cost of reasonable living expenses exceeds their ability to pay for them. Department policy instructions also identify other matters that may be relevant in determining financial hardship:[158]

- whether the applicant's claimed expenses are reasonable;
- how the applicant has supported himself/herself to date and whether that support will continue;
- whether there are other possible means of support (e.g. from sponsor or nominator);
- whether the applicant will otherwise become an unreasonable charge on public funds or charitable institutions; and
- when the application for a substantive visa is likely to be decided.

[155] *BMH20 v MICMA* [2022] FedCFamC2G 652. The Court rejected the argument that 'reasonably practicable' in reg 2.20(17) should be interpreted consistently with the term as it appears in s198
[156] *BMH20 v MICMA* [2022] FedCFamC2G 652 at [52]-[53], where the delegate relied upon these three matters in being satisfied that removal was not reasonably practicable at the time the applicant applied for the BVE.
[157] regs 1.03 and 1.08 of the Regulations.
[158] Policy – Sch2 Bridging visas – Visa application and related procedures – Assessing a valid bridging visa application – Compelling need to work – Assessing 'financial hardship' (re-issued 19/11/16).

Applicants for whom permission to work may be granted

Applicants with an existing BVE – work permission

Applicants holding a BVE may re-apply for the same visa class with permission to work. This requires a new BVE application and the applicant having a compelling need to work. Situations where a Bridging E visa may be granted with permission to work for a BVE application made after 1 July 2009 include where:[159]

- the applicant holds a BVE granted on the basis of cl 050.212(6AA) where the Minister has substituted a more favourable decision under ss 345, 351 or 417 of the Act but s 85 does not permit the substantive visa being granted for the time being, and the applicant has a compelling need to work;[160] *or*

- the applicant holds a BVE that was subject to condition 8101 and the applicant has a compelling need to work.[161]

Protection visa applicants – work permission

For a bridging visa application made from 1 July 2009, where the applicant applied for a protection visa on or after 1 July 1997, the reasons for the delay in making that application must be acceptable, or the applicant must be in a class of persons specified by the Minister by an instrument in writing.[162] This additional requirement replaces the '45 day rule' for the Bridging E visa (General), but not for the Bridging E visa (Protection Visa applicant).[163]

Whether the reasons given for the delay in making the application are acceptable is a finding of fact for the decision maker.

The Department's practice is to either grant a further BVE with the permission to work or to grant another BVE without it. The grant of another Bridging visa with the same condition attached cannot be classed as a refusal to grant a visa and would not be a Part 5 reviewable decision.

[159] For a pre-1 July 2009 BVE application, the Minister must be personally considering whether to substitute a more favourable decision and is satisfied that the applicant has a compelling need to work: cl 050.212(6A)(b)(i) as then in force, substituted by SLI 2009, No 143.
[160] cl 050.212(6A).
[161] cl 050.212(8).
[162] cl 050.212(8), amended by SLI 2009, No 143, which commenced on 1 July 2009. The amendments do not apply to bridging visa applications made before 1 July 2009. Clause 050.212(8)(c) was further amended to omit reference to omit 'Protection (Class AZ) visa in the period from 1 July 1997 to the end of 19 October 1999, or for a Protection (Class XA) visa on or after 20 October 1999', substitute 'Protection (Class XA) visa' by SLI 2014, No 30 with effect from 22 March 2014. Clause 050.212(8)(c) was further amended to omit reference to 'Protection (Class XA), substituting 'protection' by SLI 2014 No 135, with effect 16 December 2014. 'Protection visa' has the meaning given in s 35A of the Act. See '050-PVapplicants' tab in the Register of Instruments – Bridging Visas.
[163] See the Explanatory Statement to SLI 2009 No 143. A different situation applies to BVE applications made before 1 July 2009. For an applicant who applied for a protection visa from 1 July 1997, they must have been in Australia for no more than 45 days in the previous year. Where they spent a longer period, s/he cannot be granted a BVE with permission to work. However, such a visa may be granted if the non-citizen also falls within a specified class of persons for cl 050.212(8)(b)(ii) purposes: see '050-PVapplicants (pre-1.7.09)' tab in Register of Instruments – Bridging Visas.

Merits review

Part 5 reviewable decisions

A decision to refuse to grant or cancel a bridging visa of a non-citizen who is in immigration detention because of that decision is a Part 5 reviewable decision under s 338(4) of the Act.[164]

Where the non-citizen is not in detention 'because of that refusal', that is, if they are not in immigration detention when they apply for review of a bridging visa refusal, then the visa refusal would generally be reviewable under s 338(2). However, if the decision was made when the non-citizen was in immigration clearance, or was refused immigration clearance and not subsequently immigration cleared, then the visa refusal is not reviewable under s 338(2).[165] If the non-citizen was refused immigration clearance and not subsequently immigration cleared, the Department's notification letter for the decision to refuse to grant the bridging visa should identify that the decision is not reviewable.[166]

Where the non-citizen is not in detention 'because of that cancellation', that is, they are not in immigration detention when they apply for review of a bridging visa cancellation, then the visa cancellation would be reviewable under s 338(3).

Review of security decisions

A decision that relates to requiring security and relates to the refusal to grant a visa under cl 050.224 is also a Part 5 reviewable decision.[167]

There are two Part 5 reviewable decisions where a non-citizen is refused a bridging visa and a decision was made either to require or not require the non-citizen to lodge a security for compliance with any conditions that were imposed on its grant. Applications for review of both the visa refusal decision and the security decision are taken to be combined at the Tribunal.[168]

Where the reviewable decision is one to refuse the bridging visa but there is no associated decision relating to requiring a security, the Tribunal does not have the power to consider or make a direction within the terms of reg 4.15(3) that a condition be imposed and that a security is required to ensure compliance with that condition.[169]

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[164] s 338(4).
[165] s 338(2)(c). 'Immigration cleared' is defined in s 172(1). 'Immigration clearance' is defined in s 172(2).
[166] See e.g. *BMH20 v MICMA* [2022] FedCFamC2G 652 at [9], where the delegate's decision was not a Part 5 reviewable decision and was the subject of an application for judicial review.
[167] s 338(9), reg 4.02(4)(f) i.e. a criterion to the effect that if an authorised officer has required a security for compliance with any conditions that the officer has indicated to the applicant will be imposed on the visa if it is granted, the security has been lodged. Clause 050.224 appears to be the only criterion in Schedule 2 of the Regulations expressed in these terms. A non-citizen may be required to lodge a security for compliance with any conditions that the decision maker has indicated to the non-citizen will be imposed on the visa if granted: cl 050.224.
[168] reg 4.12(5). See also the Explanatory Statement to *Migration Amendment Regulations 2000* (Cth) (No 7) SR 2000, No 335.
[169] The power to remit in regs 4.15(2) and (3), which refers to 'the requiring of a security that is mentioned in paragraph 4.02(4)(f)', does not arise in such instances because there would be no reviewable decision within the meaning of reg 4.02(4)(f) (i.e. there would be no security decision).

Time limits on applying for review

An application for review of a Part 5 reviewable decision must be in the approved form and be given to the Tribunal within the prescribed period:

- for a decision to refuse or cancel a bridging visa where the applicant is in detention because of that refusal/cancellation: the period starts when the detainee receives notice of the decision and ends at the end of 2 working days after the day on which the notice is received;[170]

- for a decision to refuse a BVE where the applicant is not in detention, the period starts when the applicant receives notice of the decision and ends at the end of 21 working days after the day on which the notice is received;[171]

- for a decision to cancel a bridging visa where the applicant is not in detention because of the cancellation: the period starts when the applicant receives notice of the decision and ends at the end of 7 working days after the day on which the notice is received.[172]

- for a decision that relates to requiring security and that relates to the refusal to grant a visa of the relevant kind where the applicant is in detention: the period starts when the detainee receives notice of the refusal and ends at the end of 2 working days.[173]

- Where an applicant, who is not in immigration detention, is notified of a decision to refuse or cancel a BVE and the notification letter states they have either 21 or 7 days to apply for review, but the applicant is then subsequently placed in immigration detention because of that refusal or cancellation (and before a review application has been made), the refusal or cancellation decision becomes a s 338(4) reviewable decision. Regulation 4.10(2)(a) provides that, in respect of s 338(4), the time period to apply for review starts when the detainee receives notice of the decision and ends at the end of 2 working days after the day on which the notice is received. An application for review lodged outside 2 working days of being placed into immigration detention will be out of time. However, where the notification letter is not valid, the time for review will not commence to run.

- The requirements for a visa refusal notification letter are in s 66 and include s 66(2)(d)(ii), the requirement to specify the time in which the review application may be made. This will not be met if the notification letter incorrectly states the applicant has 21 days to apply for review for a decision that is reviewable under s 338(4).

- The requirements for the content of a visa cancellation decision made under s 116 of the Act are set out in s 127 and include s 127(2)(c)(ii), the requirement to specify the time in which the review application may be made. This will not be met if the notification incorrectly states the applicant has 7 days to apply for review of a

[170] reg 4.10(2).
[171] reg 4.10(1)(a).
[172] reg 4.10(1)(b).
[173] reg 4.10(2)(aa).

decision that is reviewable under s 338(4).

Relevant legislative amendments

Title	Reference number
Migration Legislation Amendment Act (No 1) 1998 (Cth)	No 113 of 1998
Migration Amendment Regulations 2005 (Cth) (No 7)	SLI 2005, No 172
Migration Amendment Regulations 2006 (Cth) (No 2)	SLI 2006, No 123
Migration Amendment (Abolishing Detention Debt) Act 2009 (Cth)	No 85 of 2009
Migration Amendment Regulations 2009 (Cth) (No 6)	SLI 2009, No 143
Migration Amendment Regulations 2009 (Cth) (No 8)	SLI 2009, No 201
Migration Legislation Amendment Regulations 2011 (Cth) (No 2)	SLI 2011, No 250
Migration Legislation Amendment Regulations 2011 (Cth) (No 1)	SLI 2011, No 105
Migration Legislation Amendment Regulation 2012 (Cth) (No 1)	SLI 2012, No 35
Migration Legislation Amendment Regulation 2012 (Cth) (No 5)	SLI 2012, No 256
Migration Amendment (Subclass 050 and Subclass 051 Visas) Regulation 2013 (Cth)	SLI 2013, No 156
Migration Amendment Regulation 2013 (Cth) (No 4)	SLI 2013, No 131
Migration Amendment (Bridging Visas - Code of Behaviour) Regulation 2013 (Cth)	SLI 2013, No 269
Migration Amendment Act 2014 (Cth)	No 30, 2014
Migration Amendment (2014 Measures No 1) Regulation 2014 (Cth)	SLI 2014, No 32
Migration Amendment (Repeal of Certain Visa Classes) Regulation 2014 (Cth)	SLI 2014, No 65
Migration Amendment (Redundant & Other Provisions) Regulation 2014 (Cth)	SLI 2014, No 30
Migration Amendment (Bridging Visas) Regulation 2014 (Cth)	SLI 2014, No 144
Migration Amendment (Subclass 050 Visas) Regulation 2014 (Cth)	SLI 2014, No 162
Migration Amendment (Character and General Visa Cancellation) Act 2014 (Cth)	No 129 of 2014
Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 (Cth)	No 135 of 2015
Migration Amendment (2015 Measures No 1) Regulation 2015 (Cth)	SLI 2015, No 34
Migration Legislation Amendment (2015 Measures No 2) Regulation 2015 (Cth)	SLI 2015, No 103
Migration Legislation Amendment (2016 Measures No 3) Regulation 2016 (Cth)	F2016L01390
Migration Legislation Amendment (2016 Measures No 5) Regulation 2016 (Cth)	F2016L017445
Migration Legislation Amendment (2017 Measures No 4) Regulations 2017 (Cth) Disallowed on 5 December 2017	F2017L01425
Migration Amendment (Pathway to Permanent Residence for Retirees) Regulations 2018 (Cth)	F2018L01472
Migration Amendment (Bridging Visa Conditions) Regulations 2021 (Cth)	F2021L00444
Home Affairs Legislation Amendment (2021 Measures No. 1) Regulations 2021	F2021L00852

Relevant case law

Judgment	Judgment summary
2213125 (Migration) [2022] AATA 3769	
2120028 (Migration) [2022] AATA 384	
Applicant VAAN of 2001 v MIMA [2002] FCA 197	Summary
Bizuneh v MIMIA [2000] FCA 6	
BMH20 v MICMA [2022] FedCFamC2G 652	Summary
Cabal v MIMA (No 2) [1999] FCA 11; (1999) FCR 314	
Chen v MIMIA [2001] FCA 285	Summary
Covatu v MIBP [2015] FCCA 746	Summary
Khandakar v MIAC [2010] FMCA 611	Summary
MIAC v Khandakar [2011] FCAFC 22	Summary
Nguyen v MICMSMA [2022] FCA 483	Summary
Nguyen v MICMSMA [2022] FedCFamC2G 272	Summary
Krummrey v MIMIA [2005] FCAFC 258; (2005) 147 FCR 557	Summary
Lin v MIMIA [2001] FCA 283	
Liu v MIAC [2008] FMCA 725	Summary
Ogawa v MIMA [2006] FCA 1694	
Sayed v MIMA [2006] FMCA 936	
Singh v MIBP [2017] FCCA 1934	
SZCCZ v MIMA [2006] FMCA 506	Summary
SZCCZ v MIMA [2007] FCA 1089	
SZMCE v MIAC [2011] FMCA 383	Summary
SZKUO v MIAC (No 2) [2009] FMCA 498	Summary
SZKUO v MIAC [2009] FCAFC 167	Summary
Tan v MIAC [2010] FMCA 652	
Tennakoon v MIMIA [2001] FCA 615	Summary
VFAY v MIMIA [2004] FCA 14; (2004) 134 FCR 402	
Yap v MIBP [2014] FCCA 2476	Summary

Available decision precedents

There is one decision precedent suitable for Bridging E visa refusal reviews:

- **Subclass 050 - General** - for use in the review of a decision to refuse to grant a Subclass 050 visa for visa applications made on or after 1 July 2009.

This precedent is available in CaseMate if the 'Decision for Review' field entry on the Case Summary screen in CaseMate is either 'Bridging visa refusal' or 'Bridging visa refusal + security req'.

There are additional standard paragraphs that can be inserted into Subclass 050 visa decisions if required. The optional paragraph document addresses the most common conditions that may be imposed for cl 050.223.

Last updated/reviewed: 18 November 2022

Appendix A – When does visa cease to be in effect?

For a BVE, granted prior to 19 November 2016, cessation depends upon the circumstances of the grant as follows:

Circumstances of grant	Relevant provision	Ceases when…
Substantive visa application	cl 050.511(b)	• Grant of substantive visa; • 28 days after: – refusal notification; – decision notification on review application;[174] – decision notification on IAA referral;[175] – withdrawal of visa application; – withdrawal of review application; or – notification that visa application is invalid; • If the Tribunal or IAA remits the application for reconsideration – in accordance with the relevant provision for the decision upon reconsideration;[176] or • Grant of a further bridging visa.
Review of citizenship decision	cl 050.511C	• 28 days after: – judicial review proceedings are complete or withdrawn or struck out; or notification of decision on remittal.
	cl 050.511D	• 28 days after: – notification of merits review decision; – notification that merits review application is invalid; – notification of decision on remittal.

[174] A reference to notification of the decision is a reference to a decision by a Tribunal, whether or not subsequently found to be affected by jurisdictional error: *SZKUO v MIAC (No 2)* [2009] FMCA 498 [at [65]] (upheld on appeal: *SZKUO v MIAC* [2009] FCAFC 167). Similarly, "notification" of the decision for the purposes of cl 010.511(b)(ii)–(iii) includes actual notification, such that an invalid notification of a visa refusal by the Tribunal does not mean that an applicant's Bridging A visa continued in effect: *SZCCZ v MIMA* [2006] FMCA 506, upheld on appeal in *SZCCZ v MIAC* [2007] FCA 1089.
[175] cl 050.511(b)(iiia) as inserted by *Migration Amendment (Resolving the Asylum Legacy Caseload) Regulation 2015* (Cth) (SLI 2015, No 48) to coincide with the establishment of the Immigration Assessment Authority. This was subsequently amended by SLI 2015, No 103 to replace reference to review authorities with Tribunal.
[176] cl 050.511(b)(vii) as amended by SLI 2015, No 103.

		– withdrawal of merits review application.
Application for revocation of cancellation	cls 050.513A and 050.514AA	• 7 working days after: – notification of decision; or – withdrawal of application; or • Another BVE granted; or • If an application is made for merits review – in accordance with the relevant provision (see below).
Merits review of decision not to revoke cancellation	cls 050.513B and 050.514AB	For BVE granted for s 137L decision not to revoke cancellation: • 28 days after: – notification of review decision; or – withdrawal of review application; or – notification that review application is invalid; or • Another BVE granted.
Merits review of cancellation decision	cls 050.513 and 050.514	• 28 days after: – notification of review decision; or – withdrawal of review application; or – notification that review application is invalid; or • Another BVE granted.

For a BVE, granted on or after 19 November 2016, cessation depends upon the circumstances of the grant as follows:

Circumstances of grant	Relevant provision	Ceases when…
Substantive visa application	cl 050.511(1)(b)	• Grant of substantive visa; • 35 days after: – refusal decision; – Tribunal decides review application is invalid;[177] – Tribunal decision on review application other than remittal; – decision on IAA referral;[178] – withdrawal of visa application – withdrawal of review application; or – decision that visa application is invalid; • If the Tribunal or IAA remits the visa application for reconsideration – in accordance with the relevant provision for the reconsidered decision;[179] or • Grant of a further bridging visa.
Review of citizenship decision	cl 050.511C(1)	• 28 days after judicial review proceedings are completed or withdrawn or struck out;[180] or • remitted from Court for reconsideration – 35 days after the day the Tribunal/Minister makes decision on reconsideration.[181]
	cl 050.511D(1)	• 35 days after: – Tribunal decides review application is invalid; – Tribunal decision on review application other than remittal; – decision on application remitted by Tribunal for reconsideration; or

[177] cl 050.511(1)(b)(iia) as amended by F2016L01745.
[178] cl 050.511(1)(b)(iiia), inserted as cl 050.511(b)(iiia) by *Migration Amendment (Resolving the Asylum Legacy Caseload) Regulation 2015* (Cth) (SLI 2015, No 48) to coincide with the establishment of the Immigration Assessment Authority, subsequently amended by SLI 2015, No 103 to replace reference to review authorities with Tribunal and then amended by F2016L01745 to change to 35 days from when the decision was made.
[179] cl 050.511(1)(b)(viii) as amended by F2016L01745.
[180] cl 050.511C(1)(b)(i), cl 050.511C(1)(b)(iii) and cl 050.511C(1)(b)(iv)as amended by F2016L01745.
[181] cl 050.511C(1)(b)(ii)as amended by F2016L01745.

		– withdrawal of review application.
Application for revocation of cancellation	cls 050.513A and 050.514AA	• 14 working days after: – decision on application; – withdrawal of application; • Grant of a further bridging visa; or • If an application is made for merits review – in accordance with the relevant paragraph of cl 050.513B(1) / cl 050.514AB (see row below).
Merits review of decision not to revoke cancellation	cls 050.513B and 050.514AB	For BVE granted for s 137L decision not to revoke cancellation: • 35 days after: – Tribunal decides review application is invalid; – Tribunal decision on review application; – withdrawal of review application; or • Grant of a further bridging visa.
Merits review of cancellation decision	cls 050.513 and 050.514	• 35 days after: – Tribunal decides review application is invalid; – Tribunal decision on review application; – withdrawal of review application; or • Grant of a further bridging visa.

For the purposes of the 35 day period[182] – it begins to run

- despite any failure to comply with the requirements of the Act or the Regulations in relation to the decision mentioned; and
- irrespective of the validity of the decision.

[182] cls 050.511(1)(b)(ii), (iia), (iii), (iiia) and (vi), 050.511C(1)(b)(ii), cls 050.511D(1)(b)(i), (ia) and (ii), cls 050.513(1)(a) and (aa), cls 050.513B(1)(a) and (aa), cls 050.514(1)(a) and (aa) and cls 050.514AB(1)(a) and (aa).

Other circumstances where the BVE is granted, cessation depends upon the circumstances of the grant as follows:

Circumstances of grant	Relevant provision	Ceases when…
Judicial review application	cl 050.512(b)	• Another BVE is granted; • 28 days after: – judicial review completed or withdrawn or struck out; or – applicant no longer participating; • If the matter is remitted – in accordance with cll.050.511(b), 050.513 or 050.513B.
	cl 050.511A	For BVEs granted to family members of parties to proceedings: • when BVE of party to proceedings ceases.
	cl 050.511B	• 28 days after proceedings for declaration are completed
Review of citizenship decision	cls 050.511C(1)(c) and 050.511D(1)(c)[183]	• For BVE held after 1/7/11 granted for review of citizenship: remittal to Minister and citizenship approved – the day the non-citizen becomes an Australian citizen.
	cl 050.511E	• For member of family unit/sibling under 18: when BVE held by person who meets cl 050.212(4AAA) ceases.
cl 050.222(3) applies (officer not able to interview the applicant)	cl 050.514A	• 5 working days from the date of grant
Applicant in criminal detention	cl 050.515(1)	• Unconditional release; • Release on bail; • Completing imprisonment sentence;

[183] Inserted as cls 050.511C(c), 050.511D(c) by SLI 2011, No 105 and applicable to all BVE visas held at any time on or after 1 July 2011 irrespective of the date of grant, as amended by F2016L01745.

		• Parole granted; • Escaping from prison; • Completing periodic detention; • Signing of deportation order; • Grant of another visa; or • Breach of condition of periodic detention order.
Deemed grant (s 75)[184]	cl 050.516	• 5 working days from date of grant; or • 14 days from date of grant if within 5 days the holder made acceptable departure arrangements
All other cases	cl 050.517	Date specified by Minister

[184] s 75, the Act. The period can be extended in relation to a particular application by agreement between the applicant and the Minister: s 75(2). The period is prescribed in reg 2.24 and depends on the date the visa application was lodged. For visa applications lodged prior to 1 July 2011 and, where the applicant has been immigration cleared, the prescribed period is 2 working days. However, for applications made on or after 1 July 2011, the prescribed period is either, 2 working days, 28 days or 90 days, depending on the circumstances of the application. Regulation 2.24 was amended by SLI 2011, No 105, and prescribed new periods within which the Minister must made a decision on a BVE application.

Appendix B – Schedule 8 historical amendments

Relevant conditions in Schedule 8 have been subject to historical amendments, including:

- Condition 8201 (3 month study limitation) was amended for visa applications made on or after 24 March 2012.[185]
- Condition 8403 (evidence of visa) was effectively omitted from 24 November 2012.[186]
- Although condition 8507 (pay detention costs) may still be imposed, there is no longer any practical purpose in doing so because from 9 November 2009, applicants are no longer liable to pay detention costs (including previous detention debts).[187] Possible non-compliance with this condition should no longer be an issue when considering whether an applicant meets cl 050.223.
- Condition 8548 (4 month study limit) only applies to visa applications from 1 July 2006.[188]
- Condition 8566 (code of behaviour) was inserted in Schedule 8 on 14 December 2013.[189] It was amended for visas granted on or after 16 April 2021.[190]

Note that a variation of the conditions attached to a BVE can only be considered when applying for a further BVE with a request that the condition be varied.[191]

[185] *Migration Legislation Amendment Regulation 2012* (Cth) (No 1) (SLI 2012, No 35).
[186] Condition 8403 omitted by *Migration Legislation Amendment Regulation 2012* (Cth) (No 5) (SLI 2012, No 256). The omission of condition 8403 applies to a request to be given a prescribed form of evidence of a visa made from 24 November 2012. The transitional provisions operate to omit condition 8403 upon the visa holder making a request to be given evidence of the visa.
[187] *Migration Amendment (Abolishing Detention Debt) Act 2009* (Cth) (No 85 of 2009), with effect on 9 November 2009.
[188] Condition 8548 added by *Migration Amendment Regulations 2006* (Cth) (No 2) (SLI 2006, No 123). See Schedule 6, items [5]–[12] for consequential amendments. Condition 8548 applies to visa applications lodged on or after 1 July 2006.
[189] *Migration Amendment (Bridging Visas – Code of Behaviour) Regulation 2013* (Cth) (SLI No 269 of 2013), applying to visa applications made, but not finally determined before 14 December 2013, or on or after that date.
[190] *Migration Amendment (Bridging Visa Conditions) Regulations 2021* (Cth) (F2021L00444).
[191] See cl 050.223, which specifies compliance with visa conditions that will be imposed on the visa as a criterion for the grant of the visa. There is no Part 5 reviewable decision when a BVE is granted with conditions attached.