



Australian Government  
Department of Home Affairs

**Submission**

For decision  
PDMS Ref. Number: MS23-002266  
Date of Clearance: 06/11/2023

**To** Minister for Immigration, Citizenship and Multicultural Affairs  
**Subject** Regulation 2.25AA visa grant consideration for s. 47F(1) [redacted] (s. 47F(1) [redacted]) - Bridging (Removal Pending) (subclass 070) visa – Upcoming High Court hearing 7-8 November 2023

**Timing** This submission has been prepared in the event of a loss in the High Court requiring s. 47F(1) [redacted] to be released from immigration detention. s. 47F(1) [redacted] is in held detention and has an ongoing High Court matter that is listed for a final hearing on 7-8 November 2023. If the High Court finds in favour of s. 47F(1) [redacted], it may make orders that he be released immediately from immigration detention as an unlawful non-citizen. Legal risks for the Commonwealth are addressed in this submission and in an email to both Portfolio Ministers' Offices (dated 22 August 2023). Should the Minister wish to consider exercising his powers under regulation 2.25AA of the Migration Regulations 1994, a decision is requested **after** any judgment of the High Court that s. 47F(1) [redacted] is required to be released from immigration detention.

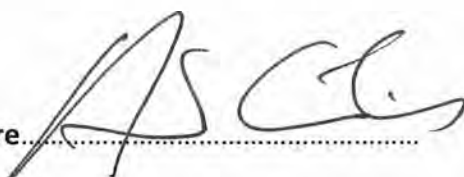
**Recommendations**

That you:

- 1. note the contents of this brief; and
- 2. agree that should the High Court order s. 47F(1) [redacted] release from immigration detention, that you agree to grant Mr s. 47F(1) [redacted] a Bridging R (Class WR) (Removal Pending) (subclass 070) visa (BVR) under regulation 2.25AA of the *Migration Regulations 1994* (the Regulations);
  - if you agree to grant a BVR, please specify a timeframe for reviewing s. 47F(1) [redacted] case;
- 3. note if you decide not to grant a BVR to s. 47F(1) [redacted] under regulation 2.25AA, he will remain in the community as an unlawful non-citizen and unless his circumstances change will not be liable for any further period of detention under section 189 of the *Migration Act 1958* (the Act) noting the High Court's judgment.

noted / please discuss  
 agreed / not agreed  
 one year / two years / other \_\_\_\_\_  
 (please specify)  
 noted / please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature: 

Date: 9/11/2023

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Minister's Comments

**Key Issues**

1. The purpose of this submission is to update you on the status of the High Court proceeding concerning s. 47F(1) (pseudonym 'NZYQ' (case summary at **Attachment A**)), and, in the event the High Court orders his release from immigration detention, to enable you to grant s. 47F(1) a visa after his release from detention so as to regularise his immigration status.
2. On 7 February and 18 September 2023, you declined to consider intervening under sections 195A and 197AB of the Act with respect to s. 47F(1) (MS22-002200 and MS23-001295 refer).
3. Since your decision of 18 September 2023, s. 47F(1) proceedings in the High Court have been set down for hearing on 7-8 November 2023.
4. s. 47F(1) is seeking release from immigration detention. He also seeks a declaration from the Court to the effect that the provisions of the Act do not authorise the lawful detention of a person in circumstances where the person:
  - (a) at present, cannot be removed from Australia; and
  - (b) as a matter of reasonable practicability is unlikely to be removed in the foreseeable future (or there is no real likelihood or prospect of the person being removed in the reasonably foreseeable future).
5. In addition to the declaration related to the lawfulness of his detention, s. 47F(1) seeks a declaration that, where the factual circumstances at paragraph 4 exist, the provisions of the Act which require and authorise his detention are invalid.
6. To grant these orders, s. 47F(1) will ask the High Court to overrule its past decision in *Al-Kateb v Godwin* (2004) 219 CLR 562 (*Al-Kateb*). By a 4:3 majority, the High Court in *Al-Kateb* held that detention of an individual under the Act remains lawful, even where their removal from Australia is not reasonably practicable at the present time, and there is no real likelihood or prospect of removal in the reasonably foreseeable future. In addition, at the level of constitutional validity, the majority held that the detention of an unlawful non-citizen for the purpose of removal remained consistent with Australia's system of government, even if that purpose of removal was not, and not likely to become, reasonably practicable in the foreseeable future.



Rehabilitation

13. <sup>s. 47F(1)</sup>

[Redacted]

Considerations for possible visa grant

14. If the High Court orders <sup>s. 47F(1)</sup> be released from immigration detention, his status would remain as an unlawful non citizen. As an unlawful non-citizen, <sup>s. 47F(1)</sup> would have no work rights and no access to social security support.

15. As an unauthorised maritime arrival (UMA), <sup>s. 47F(1)</sup> is prevented by the bar in subsection 46A(1) of the Act from making a valid visa application while he is in Australia as an unlawful non-citizen. <sup>s. 47F(1)</sup>

<sup>s. 47F(1)</sup>

<sup>s. 47F(1)</sup> however, he is still prevented by the subsection 46A(1) statutory bar from lodging a valid visa application.

16. <sup>s. 42(1)</sup>

[Redacted]

17. However, should the High Court order <sup>s. 47F(1)</sup> release from immigration detention, it is open to you to grant him a:

- Special purpose visa (SPV) under s 33 of the Act; or
- A Bridging R (Class WR) (Subclass 070 (Bridging (Removal Pending)) visa (BVR) under regulation 2.25AA of the Regulations.

18. You can grant <sup>s. 47F(1)</sup> a SPV by declaring, in writing, he is taken to have been granted a SPV. <sup>s. 47F(1)</sup> does not need to apply for a SPV and there are no specified criteria for the grant of a SPV. You could prescribe conditions which would apply to <sup>s. 47F(1)</sup> and the SPV could remain in force indefinitely, or until the end of a day on which the declaration is revoked (section 33(5)(b)(iv) of the Act). However, to grant a SPV you would need to cause to be laid before each House of Parliament a statement that sets out the declaration and reasons for making it (in accordance with section 33(6) of the Act).

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19. Alternatively, you could consider granting <sup>s. 47F(1)</sup> a BVR under regulation 2.25AA of the Regulations. Regulation 2.25AA provides:

(1) *"This regulation applies to an eligible non-citizen if:*

- a) *the eligible non-citizen is an unlawful non-citizen; and*
- b) *section 195A of the Act is not available to the Minister in relation to the grant of a visa to the eligible non-citizen; and*
- c) *the Minister is satisfied that the eligible non-citizen's removal from Australia is not reasonably practicable at that time.*

(2) *Despite anything in Schedule 1, the Minister may grant the eligible non-citizen a Bridging R (Class WR) visa if the Minister is satisfied that, at the time of decision, the eligible non-citizen satisfies the criteria set out in clause 070.222 of Schedule 2."*

20. You can grant <sup>s. 47F(1)</sup> a BVR if satisfied he meets the criteria above. Some statements of fact are set out below to assist your consideration in this regard:

a) <sup>s. 47F(1)</sup> is an eligible non-citizen per section 72 of the Act who is also an unlawful non-citizen.

- As outlined at paragraph 15, <sup>s. 47F(1)</sup> is an 'eligible non-citizen' per section 72 of the Act as he was granted an HSTV in September 2014. He also does not hold a valid visa that is in effect and so he is therefore an unlawful non-citizen. In the event the High Court orders <sup>s. 47F(1)</sup> be released from immigration detention, he will be released as an unlawful non-citizen therefore, <sup>s. 47F(1)</sup> would meet this eligibility requirement.

b) Section 195A of the Act is not available in <sup>s. 47F(1)</sup> case as he is no longer in immigration detention.

• <sup>s. 42(1)</sup>

c) <sup>s. 47F(1)</sup> removal from Australia is not reasonably practicable at this time.

- An order from the High Court to release <sup>s. 47F(1)</sup> from immigration detention would likely be on the basis the High Court finds <sup>s. 47F(1)</sup> :
  - a) at present, cannot be removed from Australia; and
  - b) as a matter of reasonable practicability is unlikely to be removed in the foreseeable future (or there is no real likelihood or prospect of the person being removed in the reasonably foreseeable future).
- While <sup>s. 47F(1)</sup> possible resettlement in the USA remains subject to ongoing consideration, if that issue has not been satisfactorily resolved at the time the High Court orders <sup>s. 47F(1)</sup> release from immigration detention, it is likely he would also meet this criterion. For this criterion to be satisfied, you will have to be satisfied about the reasonable practicability of his removal **at the time** you're deciding whether or not to grant <sup>s. 47F(1)</sup> a visa under reg 2.25AA.

d) At the time of decision, <sup>s. 47F(1)</sup> [redacted] satisfies the criteria set out in clause 070.222 of Schedule 2 of the Regulations, being:

- That you are satisfied that, if the BVR is granted, <sup>s. 47F(1)</sup> [redacted] will abide by the conditions to which the visa is subject.
  - As outlined at **Attachment C**, Division 070.6 of Schedule 2 to the Regulations provides that, there are 18 mandatory conditions that must be imposed on a BVR granted under regulation 2.25AA. These conditions broadly cover reporting and behavioural obligations while <sup>s. 47F(1)</sup> [redacted] is residing in the community. The mandatory conditions also cover a number of restrictions related to possession of weapons and provisions related to national security matters, which must be imposed.

21. BVRs cease when you (or a delegate) give written notice to the visa holder that you are satisfied that the holder's removal is reasonably practicable or the visa holder has breached a visa condition. If such a notice is given, the person cannot seek merits review; however, they may seek judicial review of the decision. The visa could also be liable for cancellation grounds (including on the basis of character). It may be necessary to provide procedural fairness before cancelling the visa and/or the cancellation decision may attract merits and/or judicial review rights depending on the cancellation power used and whether the decision is made by a Minister or a delegate of the Minister.

Support services available to BVR holders

22. BVR holders have access to Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia including meeting the income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control).

23. <sup>s. 47F(1)</sup> [redacted] would also be eligible for transitional assistance through the Status Resolution Support Services Program (SRSS) program. This may include extended transitional support noting your decision in MS22-001485 to allow SRSS transitional support (SRSS Band 4) for up to 12 weeks with a possible extension of a further 12 weeks for long term detainees released from immigration detention. These arrangements assist individuals to transition to residing lawfully in the community by supporting them while they source their own accommodation, and while they are seeking employment.

24. <sup>s. 47F(1)</sup> [redacted]

Decline to grant a visa

25. Should the High Court order <sup>s. 47F(1)</sup> [redacted] be released from immigration detention, and you decline to grant a visa, including a SPV, or a BVR under regulation 2.25AA of the Regulations, <sup>s. 47F(1)</sup> [redacted] would be released from detention into the community as an unlawful non-citizen.

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26. If the High Court orders s. 47F(1) be released from immigration detention (and irrespective of whether you choose to grant a visa or not), he has indicated his s. 47F(1) s. 47F(1) are willing to provide accommodation and support to s. 47F(1) s. 47F(1) ss. 47F(1) s. 47F(1)
27. Should s. 47F(1) remain in the community as an unlawful non-citizen, he will be unable to seek employment and will not have access to Medicare or welfare payments through Services Australia. Australia's international obligations require that all persons in Australia have an adequate standard of living and s. 47F(1) may be eligible for SRSS support, which would be assessed on an as-needs basis.

S. 47C(1)

### Background

30. Further, details regarding s. 47F(1) including immigration history, character, incidents in detention, health, identity, security, family/community links and removal availability is provided in the case summary at **Attachment A**.

### Consultation – internal/external

31. Status Resolution Network, National Removals, International and Legal Group.

### Consultation – A/g Secretary / A/g Deputy Secretary / ABF Commissioner

32. The A/g Secretary, A/g Deputy Secretary Immigration and ABF Commissioner were not consulted on this submission.

### Client service implications

33. There are no client service implications.

### Risks and Sensitivities

34. s. 42(1)

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35. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – media@homeaffairs.gov.au.

### Financial/systems/legal/deregulation/media implications

36. If you grant a BVR, <sup>s. 47F(1)</sup> [REDACTED] will be eligible to access Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia including meeting the income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control). The Special Benefit payment is currently \$749.20 fortnightly (for a single person, over 22 years old).
37. The payments and services attached to a BVR differs to the support services programs and policy settings available to other asylum seekers and UMAs who are granted a Bridging E (subclass 050) visa (BVE) and released from immigration detention. These persons are not eligible for mainstream social services income support such as Special Benefit, and are instead eligible for income support paid by Services Australia on behalf of the Department through the SRSS program. SRSS income support is 89 per cent of the current Jobseeker/Special Benefit rate currently \$666.79 fortnightly (for a single person, over 22 years old). Additionally UMAs granted a BVE are eligible for Medicare; however, non-UMAs granted a BVE are not eligible for Medicare. Where an asylum seeker holding a BVE is not eligible for Medicare, the Department may fund general health and medical services equivalent to what an Australian citizen or permanent resident would receive under Medicare via the SRSS program.

38. <sup>s. 47C(1)</sup> [REDACTED]



**Attachments**

**Attachment A** Case summary

**Attachment B** MS23-001295 – Minister signed

**Attachment C** BVR mandatory conditions – Regulation 2.25AA

<b>Authorising Officer</b>
Cleared by:
s. 22(1)(a)(ii)
A/g Assistant Secretary Status Resolution Branch
<b>Date:</b> 06/11/2023
Ph: s. 22(1)(a)(ii)

**Contact Officer** s. 22(1)(a)(ii), A/g Assistant Secretary, Status Resolution Branch, Ph: s. 22(1)(a)(ii)

- CC Minister for Home Affairs and Minister for Cyber Security
- A/g Secretary
- A/g Deputy Secretary Immigration
- Assistant Commissioner, Detention and National Removals
- Group Manager Legal
- A/g First Assistant Secretary, Immigration Policy
- Commander, National Immigration Detention
- Senior Director, Status Resolution Network
- Chief Superintendent, National Removals
- Director, Status Resolution NSW
- Director, Status Resolution Support Programs Section
- Superintendent, Detention Health
- Status Resolution Officers NSW

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Possible resettlement in the USA

The Department has approached authorities in the United States of America (USA) to pursue a resettlement pathway for s. 47F(1). This enquiry has been underway since 29 September 2023 and is ongoing. There is sufficient viability with this enquiry and evidence has been submitted to the High Court demonstrating potential removal prospects in respect of s. 47F(1). It will ultimately be for the High Court to determine whether this enquiry might equate to s. 47F(1) removal from Australia being 'reasonably practicable' in the foreseeable future, which is relevant to the claims he is making. It is difficult to predict when discussions with the USA may be finalised in respect of s. 47F(1) possible resettlement.

**Litigation:**

s. 47F(1) seeks to raise the correctness of the High Court's decision in *Al-Kateb v Godwin* (2004) (*Al-Kateb*) and either distinguish his case from *Al-Kateb* or have *Al-Kateb* overruled, so as to secure an order for his release from detention.

s. 47F(1) says that his detention is not authorised under the Act, or alternatively under the Constitution, in circumstances where at present he cannot be removed from Australia and there is no real likelihood or prospect of his removal in the reasonably foreseeable future. The Commonwealth is represented by the Australian Government Solicitor's Constitutional Litigation Unit, who in turn are briefing the Solicitor General and a team of senior and junior counsel ahead of the hearing.

The case is listed for hearing in the High Court on 7-8 November 2023.

Risks

s. 42(1)

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**Australian Government**  
**Department of Home Affairs**

**Submission**

For decision  
PDMS Ref. Number: MS23-001295  
Date of Clearance: 27/08/2023

**To** Minister for Immigration, Citizenship and Multicultural Affairs  
**Subject** Possible Ministerial Intervention under sections 195A and 197AB of the *Migration Act 1958* in relation to s. 47F(1) [redacted]  
s. 47F(1) [redacted]

**Timing** The Department seeks a decision no later than 30 September 2023. s. 47F(1) [redacted] is in held detention and has an ongoing High Court matter that may be listed for a final hearing in November 2023. s. 42(1) [redacted]  
s. 42(1) [redacted]  
Should the Minister wish to intervene, please arrange a suitable time with the Department for the signing to take place, **at the latest before 2pm on a week day**, so that s. 47F(1) [redacted] can be released on the same day the decision is made to avoid a circumstance of inappropriate detention.

**Recommendations**

That you:

- note the case summary at s. 47F(1) [redacted]
- s. 42(1), s. 47F(1) [redacted]  
s. 42(1) [redacted]
- indicate whether you wish to intervene under section 195A of the *Migration Act 1958* (the Act) to grant s. 47F(1) [redacted] a Humanitarian Stay (Temporary) (subclass 449) visa (HSTV) valid for seven days and a Bridging E (subclass 050) visa (BVE);
  - if you wish to grant a BVE, please indicate the time period applicable for the grant;
  - if you agree to exercise your power, please sign the section 195A documentation at s. 22(1)(a)(ii) [redacted]

noted/ please discuss  
noted/ please discuss  
intervene / decline to intervene  
six months / 12 months / other \_\_\_\_\_  
(please specify)  
signed / not signed

AND

- indicate whether you wish to exercise your power under subsection 46A(2) of the Act to lift the subsection 46A(1) bar for an indefinite period to allow s. 47F(1) [redacted] to lodge BVE applications;
  - if you agree to exercise your power, please sign the section 195A documentation at s. 22(1)(a)(ii) [redacted]

intervene / decline to intervene  
signed / not signed

OR

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5. indicate whether you wish to intervene under section 195A of the Act to grant s. 47F(1) a Bridging (Removal Pending) (subclass 070) visa (BVR);

intervene /  
decline to intervene

- if you agree to exercise your power, please sign the section 195A decision documentation at s. 22(1)(a)(ii)

signed / not signed

- if you agree to grant a BVR, please specify a timeframe for reviewing s. 47F(1) case;

one year / two years /

other

(please specify)

- if you agree to grant a BVR, please specify the discretionary conditions to be imposed, by circling the relevant conditions in s. 22(1)(a)(ii)

specified / not specified

AND

6. indicate whether you wish to have s. 47F(1) referred to you for consideration to lift the sections 46A and 48B statutory bars to allow a further protection visa application;

refer / not refer

OR

7. indicate whether you wish to consider intervening under section 197AB of the Act to make a residence determination to allow s. 47F(1) to reside in the community at a specified address;

consider / not consider

- if agreed to consider intervening under section 197AB of the Act, the Department of Home Affairs (the Department) will refer a submission for your final decision;

8. should you decide to grant s. 47F(1) a visa or make a residence determination, indicate whether you wish for the Department to inform s. 47F(1) of your expectation that he should make every effort to engage in rehabilitation, including attending his sex offender's rehabilitation program;

yes / no

9. s. 42(1), s. 47F(1)

noted / please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature.....

Date: 12/9/2023

Minister's Comments

### Key Issues

1. On 14 November 2022, you signed MS22-002407 – *Detention Status Resolution Review*, agreeing to the Department of Home Affairs (the Department) referring detainees in identified cohorts for your consideration under sections 195A or 197AB of the Act.
2. On 7 February 2023, you declined to consider intervening under sections 195A and 197AB of the Act with respect to s. 47F(1) (MS22-002200 refers).
3. The purpose of this submission is to present you with new information regarding this case, which is detailed below. This submission also attaches expert opinions regarding s. 47F(1) risk to others (community protection risk) - s. 47F(1) s. 47F(1).
4. Since your decision of 7 February 2023, the Detention Health Services provider, International Health and Medical Services (IHMS), has arranged s. 47F(1) participation in sex offender rehabilitation treatment. s. 47C(1), s. 47F(1) s. 47C(1), s. 47F(1)

5.

### Litigation

6. s. 47F(1) has commenced a proceeding in the original jurisdiction of the High Court seeking his release from immigration detention. He also seeks a declaration from the Court to the effect that the provisions of the Act do not authorise the lawful detention of a person in circumstances where the person:
  - (a) at present, cannot be removed from Australia; and
  - (b) as a matter of reasonable practicability is unlikely to be removed in the foreseeable future (or there is no real likelihood or prospect of the person being removed in the reasonably foreseeable future).
7. In addition to the declaration related to the lawfulness of his detention, s. 47F(1) seeks a declaration that, where the factual circumstances at paragraph 6 exist, the provisions of the Act which require and authorise his detention are invalid.

8. The matter is to be set down for hearing at a time *not before* the November 2023 High Court sittings. To grant these orders, <sup>s. 47F(1)</sup> [redacted] will ask the High Court to overrule its past decision in *Al-Kateb v Godwin* (2004) 219 CLR 562 (*Al-Kateb*). By a 4:3 majority, the High Court in *Al-Kateb* held that detention of an individual under the Act remains lawful, even where their removal from Australia is not reasonably practicable at the present time, and there is no real likelihood or prospect of removal in the reasonably foreseeable future. In addition, at the level of constitutional validity, the majority held that the detention of an unlawful non-citizen for the purpose of removal remained consistent with Australia's system of government, even if that purpose of removal was not, and not likely to become, reasonably practicable in the foreseeable future.

9. <sup>s. 42(1), s. 47F(1)</sup> [redacted]

10. [redacted]

11. <sup>s. 42(1), s. 47F(1)</sup> [redacted]

*Ongoing detention and removal prospects*

12. <sup>s. 47F(1)</sup> [redacted] was convicted of one child sex offence and served three years and four months full-time custodial imprisonment (from a total five years sentence).<sup>s. 47C(1), s. 47F(1)</sup> [redacted]

13. <sup>s. 47C(1), s. 47F(1)</sup> [redacted]



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s. 42(1), s. 47F(1)

## Background

28. s. 47F(1) is a stateless person who arrived as a UMA and was detained under subsection 189(3) of the Act. He was released from held immigration detention on 6 July 2013 following a residence determination made under section 197AB of the Act by the then Minister. On 18 September 2014, s. 47F(1) was granted a BVE and released from immigration detention.
29. On 9 January 2015, s. 47F(1) was arrested and charged with one count of *sexual intercourse with a person aged between 10 and 14 years*, contrary to subsection 66C(1) of the *Crimes Act 1900* (NSW). One week later, s. 47F(1) BVE was cancelled pursuant to subsection 116(1)(g) of the Act and regulation 2.43(1)(p)(ii) of the *Migration Regulations 1994*. Upon his release from criminal custody on 8 May 2018, s. 47F(1) was detained under subsection 189(1) of the Act and has remained in held immigration detention since.
30. The Department has summarised aspects of opinions given by clinical and forensic psychologists, which address s. 47F(1) prospects of rehabilitation and recidivism at s. 47F(1) s. 47F(1)
31. Further, details regarding s. 47F(1) including immigration history, character, incidents in detention, health, identity, security, family/community links and removal availability is provided in the case summary at s. 22(1)(a)(ii).

## Options for future management

s. 47C(1), s. 47F(1)

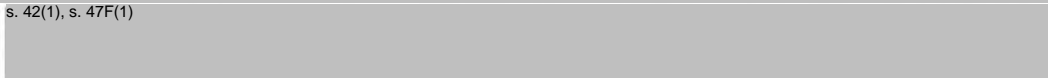


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60. s. 42(1), s. 47F(1)



61. s. 42(1), s. 47F(1)



**Consultation – internal/external**

62. Status Resolution Network, Detention Operations, National Removals, Humanitarian Program Operations, Migration and Citizenship Litigation, Migration and Citizenship Law and Compliance and Community Protection Policy.

**Consultation – Secretary/Associate Secretary/ABF Commissioner**

63. The Secretary was not consulted on this submission.

64. The Associate Secretary was not consulted on this submission.

65. The ABF Commissioner was not consulted on this submission.

**Client service implications**

66. There are no client service implications.



## Sensitivities

67. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – [media@homeaffairs.gov.au](mailto:media@homeaffairs.gov.au).

## Financial/systems/legislation/deregulation/media implications

68. The Department is unable to provide specific details regarding the financial implications of managing an individual, either in the community or in detention. The Department notes that the costs will be highly dependent on the individual circumstances, including the level of support required. However, in the 2021-22 financial year, the average cost of managing a person:

- in held detention was \$421,674
- in Residence Determination was \$59,565
- on a Bridging E visa in the community was \$2,585.

## Attachments

s. 47F(1)

s. 22(1)(a)(ii)

s. 47F(1)

### Authorising Officer

Cleared by:

s. 22(1)(a)(ii)

A/g Assistant Secretary  
Status Resolution Branch

Date: 27/08/2023

Ph: s. 22(1)(a)(ii)

Contact Officer s. 22(1)(a)(ii), A/g Assistant Secretary, Status Resolution Branch, Ph: s. 22(1)(a)(ii)

CC Minister for Home Affairs, Minister for Cyber Security  
Secretary  
Associate Secretary  
Assistant Commissioner, Detention and National Removals  
First Assistant Secretary, Immigration Policy  
First Assistant Secretary, Status Resolution and Visa Cancellation  
Commander, National Immigration Detention  
Assistant Secretary, Humanitarian Program Operations Branch  
Assistant Secretary, Migration and Citizenship Litigation Branch  
Assistant Secretary, Detention Policy  
Senior Director, Status Resolution Network  
Director, Status Resolution NSW  
Superintendent, Detention Health  
Director, Detention Litigation Section  
Director, Status Resolution Support Programs Section  
Status Resolution Officers in NSW

## Bridging (Removal Pending) (subclass 070) visa – mandatory conditions

There are a number of mandatory conditions that are attached to the Bridging (Removal Pending) (subclass 070) visa granted under regulations 2.25AA of the *Migration Regulations 1994* and by which holders are required to abide.

The mandatory conditions are:

<b>8303</b>	The holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community.
<b>8401</b>	The holder must report: (a) at a time or times and (b) at a place specified by the Minister for the purpose.
<b>8513</b>	The holder must notify Immigration of his or her residential address within five working days of the grant.
<b>8514</b>	During the visa period of the visa, there must be no material change in the circumstances on the basis of which it was granted.
<b>8541</b>	The holder: (a) must do everything possible to facilitate his or her removal from Australia and (b) must not attempt to obstruct efforts to arrange and effect his or her removal from Australia.
<b>8542</b>	The holder must make himself or herself available for removal from Australia in accordance with instructions given to the holder by Immigration for the purpose of that removal.
<b>8543</b>	The holder must attend at a place, date and time specified by Immigration in order to facilitate efforts to arrange and effect his or her removal from Australia.
<b>8550</b>	The holder must notify the Minister of any change in the holder's personal details, including a change to any of the following contact information: (a) the holder's name; (b) an address of the holder; (c) a phone number of the holder; (d) an email address of the holder; (e) an online profile used by the holder; (f) a user name of the holder; not less than 2 working days before the change is to occur.
<b>8551</b>	(1) The holder must obtain the Minister's approval before taking up employment in the following occupations, or occupations of a similar kind: (a) occupations that involve the use of, or access to, chemicals of security concern; (b) occupations in the aviation or maritime industries; (c) occupations at facilities that handle security-sensitive biological agents.

	<p>(2) In this clause: chemicals of security concern means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p> <ul style="list-style-type: none"> <li>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</li> <li>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</li> </ul>
8552	The holder must notify the Minister of any change in the holder's employment details, not less than 2 working days before the change is to occur.
8553	The holder must not become involved in activities that are prejudicial to security (within the meaning of section 4 of the <i>Australian Security Intelligence Organisation Act 1979</i> ).
8554	<p>(1) The holder must not acquire any of the following goods:</p> <ul style="list-style-type: none"> <li>(a) weapons;</li> <li>(b) explosives;</li> <li>(c) material or documentation that provides instruction on the use of weapons or explosives.</li> </ul> <p>(2) In this clause: weapon means a thing made or adapted for use for inflicting bodily injury.</p>
8555	<p>The holder must obtain the Minister's approval before undertaking the following activities, or activities of a similar kind:</p> <ul style="list-style-type: none"> <li>(a) flight training;</li> <li>(b) flying aircraft.</li> </ul>
8556	<p>The holder must not communicate or associate with:</p> <ul style="list-style-type: none"> <li>(a) an entity listed under Part 4 of the <i>Charter of the United Nations Act 1945</i>; or</li> <li>(b) an organisation prescribed by the regulations made under the <i>Criminal Code Act 1995</i> for the purposes of paragraph (b) of the definition of <b>terrorist organisation</b> in subsection 102.1(1) of the <i>Criminal Code</i>.</li> </ul>
8560	<p>(1) The holder must obtain the Minister's approval before acquiring chemicals of security concern.</p> <p>(2) In this clause: <b>chemicals of security concern</b> means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p>

	<p>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</p> <p>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</p>
<b>8561</b>	If the holder is directed by the Minister to attend an interview that relates to the holder's visa (including an interview with the Australian Security Intelligence Organisation), the holder must comply with the direction.
<b>8562</b>	<p>(1) The holder must not take up employment in:</p> <p>(a) occupations that involve the use of, or access to, weapons or explosives; or</p> <p>(b) occupations of a similar kind.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>
<b>8563</b>	<p>(1) The holder must not undertake the following activities, or activities of a similar kind:</p> <p>(a) using or accessing weapons or explosives;</p> <p>(b) participating in training in the use of weapons or explosives;</p> <p>(c) possessing or accessing material or documentation that provides instruction on the use of weapons or explosives.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>

**From:** s22(1)(a)(ii)  
**Sent:** 11/11/2023 9:25:08 AM  
**To:** "David ARNOLD" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @HOMEAFFAIRS.GOV.AU>  
**Cc:** s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; "Michael THOMAS" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @abf.gov.au; "Marian AGBINYA" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; "Stephanie FOSTER" s22(1)(a)(ii) @homeaffairs.gov.au; "Michael WILLARD" s22(1)(a)(ii) @homeaffairs.gov.au; "Clare SHARP" s22(1)(a)(ii) @homeaffairs.gov.au; "Michael BURKE" s22(1)(a)(ii) @homeaffairs.gov.au; "Stephanie KOLOBARIC" s22(1)(a)(ii) @homeaffairs.gov.au; "DLO.Giles" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au  
**Subject:** RE: Ministerial submission - MS23-002330- Regulation 2.25AA consideration to grant 17 non-citizens released from immigration detention a Bridging (Removal Pending) (subclass 070) visa (BVR) [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy, ACCESS=Legal-Pr  
**Attachments:** Attachment A - Regulation 2.25AA grant decision - BVR.docx, Attachment B - BVR mandatory conditions - Regulation 2.25AA.docx, Attachment C - Case details.DOCX, MS23-002330 001 Submission 1 - Regulation 2.25AA visa grant consideration for individuals released from immigration.docx  
**Categories:** DLO ~ s22(1)(a)(ii)

Hi David

Please see attached Submission MS23-002330 with e-signature, as instructed by Minister Giles in his email dated Fri 10/11/2023 9:33 PM.

Thank you

regards

s22(1)(a)(ii)

s22(1)(a)(ii)

Office of the Hon Andrew Giles MP  
Minister for Immigration, Citizenship and Multicultural Affairs  
Parliament House, Canberra

s22(1)(a)(ii)

E: s22(1)(a)(ii) @homeaffairs.gov.au

---

**From:** David ARNOLD s22(1)(a)(ii) @homeaffairs.gov.au>  
**Sent:** Friday, 10 November 2023 8:11 PM  
**To:** s22(1)(a)(ii) @HOMEAFFAIRS.GOV.AU>

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Cc: [redacted] s22(1)(a)(ii) [redacted] s22(1)(a)(ii) @homeaffairs.gov.au>; [redacted] s22(1)(a)(ii) [redacted] s22(1)(a)(ii) @homeaffairs.gov.au>; [redacted] s. 22(1)(a)(ii) [redacted] s22(1)(a)(ii) @homeaffairs.gov.au>; Michael THOMAS [redacted] s22(1)(a)(ii) @homeaffairs.gov.au>; [redacted] s22(1)(a)(ii) [redacted] s22(1)(a)(ii) s@abf.gov.au>; Marian AGBINYA [redacted] s22(1)(a)(ii) @homeaffairs.gov.au>; [redacted] s22(1)(a)(ii) [redacted] s22(1)(a)(ii) @homeaffairs.gov.au>; [redacted] s22(1)(a)(ii) [redacted] s22(1)(a)(ii) @homeaffairs.gov.au>; [redacted] s22(1)(a)(ii) [redacted] s22(1)(a)(ii) t@homeaffairs.gov.au>; [redacted] s22(1)(a)(ii) [redacted] s22(1)(a)(ii) @homeaffairs.gov.au>; Stephanie FOSTER [redacted] s22(1)(a)(ii) @homeaffairs.gov.au>; Michael WILLARD [redacted] s22(1)(a)(ii) @homeaffairs.gov.au>; Clare SHARP [redacted] s22(1)(a)(ii) @homeaffairs.gov.au>; Michael BURKE [redacted] s22(1)(a)(ii) @homeaffairs.gov.au>; Stephanie KOLOBARIC [redacted] s22(1)(a)(ii) @homeaffairs.gov.au>

**Subject:** Ministerial submission - MS23-002330- Regulation 2.25AA consideration to grant 17 non-citizens released from immigration detention a Bridging (Removal Pending) (subclass 070) visa (BVR) [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy, ACCESS=Legal-Privil

OFFICIAL: Sensitive  
Personal-Privacy, Legal-Privilege

Good Evening [redacted] s22(1)(a)(ii)

Sending this to you via email noting the submission is in PDMS and will flow through to you next week.

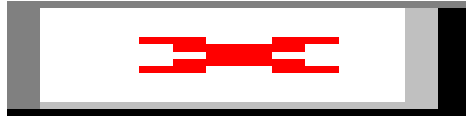
Please find attached Ministerial submission seeking the Minister's consideration to grant the non-citizens (at **Attachment A**) listed in the submission a Bridging (Removal Pending) (subclass 070) visa (BVR) as they have been released from immigration following the High Court judgment in NZYQ.

This is the first submission we are sending for the Minister's consideration and comprises [redacted] s. 47 individuals who have been released from immigration detention as unlawful non-citizens (brief case details are outlined in **Attachment C**).

Please do not hesitate to contact me if you would like to discuss the submission.

Thanks, David

David Arnold  
Assistant Secretary – Status Resolution Branch  
Status Resolution and Cancellation Division  
Immigration Group  
Department of Home Affairs  
[redacted] s22(1)(a)(ii)  
E: [redacted] s22(1)(a)(ii) @homeaffairs.gov.au



Personal-Privacy, Legal-Privilege  
OFFICIAL: Sensitive





Australian Government  
Department of Home Affairs

Submission

For decision  
PDMS Ref. Number: MS23-002330  
Date of Clearance: 10/11/2023

To Minister for Immigration, Citizenship and Multicultural Affairs

Subject Regulation 2.25AA visa grant consideration for <sup>s47F</sup> individuals released from immigration detention as unlawful non-citizens following the High Court judgment in NZYQ - Bridging (Removal Pending) (subclass 070) visa

Timing The individuals being referred in this submission are currently residing in the community as unlawful non-citizens as they were released from immigration detention following the High Court judgment in NZYQ on 8 November 2023. This submission seeks the Minister's consideration to exercise his powers under regulation 2.25AA of the Migration Regulations 1994 to grant a Bridging (Removal Pending) (subclass 070) visa to the individuals listed in this submission.

Recommendations

That you:

- 1. note the contents of this brief; and (noted) / please discuss
- 2. agree to grant the individuals listed in **Attachment A** a Bridging R (Class WR) (Removal Pending) (subclass 070) visa (BVR) under regulation 2.25AA of the Migration Regulations 1994 (the Regulations) by circling your decision for each individual and signing the decision; (agreed and signed) / not agreed
  - if you agree to grant a BVR, please specify a timeframe for reviewing these individuals' cases; (one year) / two years / other \_\_\_\_\_ (please specify)
- 3. note if you decide not to grant a BVR to the individuals listed in **Attachment A** under regulation 2.25AA, they will remain in the community as unlawful non-citizens and unless their circumstances change, they cannot be detained under section 189 of the Migration Act 1958 (the Act) noting the High Court's orders made in NZYQ. (noted) / please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature.....

Date: 10/11/2023

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Minister's Comments

**Key Issues**

1. The purpose of this submission is to seek your consideration to grant the <sup>s47F</sup> individuals listed in **Attachment A** a BVR under regulation 2.25AA of the Regulations, noting they are currently residing in the community as unlawful non-citizens following their release from immigration detention as a result of the orders made by the High Court in NZYQ <sup>s47F</sup> – MS23 002266 refers).
2. On 8 November 2023, the High Court made some initial orders in the matter of NZYQ, with its published reasons to follow in due course, finding that:
  - Sections 189(1) and 196(1), which the Commonwealth has relied on to authorise the detention of NZYQ, insofar as they applied to NZYQ as at 30 May 2023, are beyond legislative power;And made the following orders:
  - having been and continuing to be no real prospect of the removal of the plaintiff from Australia becoming practicable in the reasonably foreseeable future:
    - (a) the plaintiff's detention was unlawful as at 30 May 2023; and
    - (b) the plaintiff's continued detention is unlawful and has been since 30 May 2023.
  - A writ of habeas corpus was issued requiring the defendants to release the plaintiff forthwith.
3. The orders, to which 'at least a majority' of the Court agreed, effectively overturn the longstanding decision made by the High Court in *Al Kateb v Godwin* (2004) 219 CLR 562 (*Al-Kateb*), which held that detention of an individual under the Act remains lawful, even where their removal from Australia is not reasonably practicable at the present time, and there is no real likelihood or prospect of removal in the reasonably foreseeable future.
4. The orders made by the High Court have significant legal, policy and operational consequences for the Commonwealth; including the need to release a number of individuals in similar circumstances from immigration detention, possible false imprisonment claims and other claims seeking damages.
5. The individuals being referred to you in this submission (the 'NZYQ cohort') have been identified by the Department as falling within scope of the High Court's orders of 8 November 2023. Such individuals have been released from immigration detention as unlawful non-

**OFFICIAL: Sensitive Legal privilege**

citizens as there is no real prospect of removal being effected in the reasonably foreseeable future.

Considerations for possible visa grant

6. As outlined, the NZYQ cohort are residing as unlawful non-citizens in the community. As unlawful non-citizens, these individuals have no work rights and no access to social security support.

7. s. 47F(1), s. 42(1)



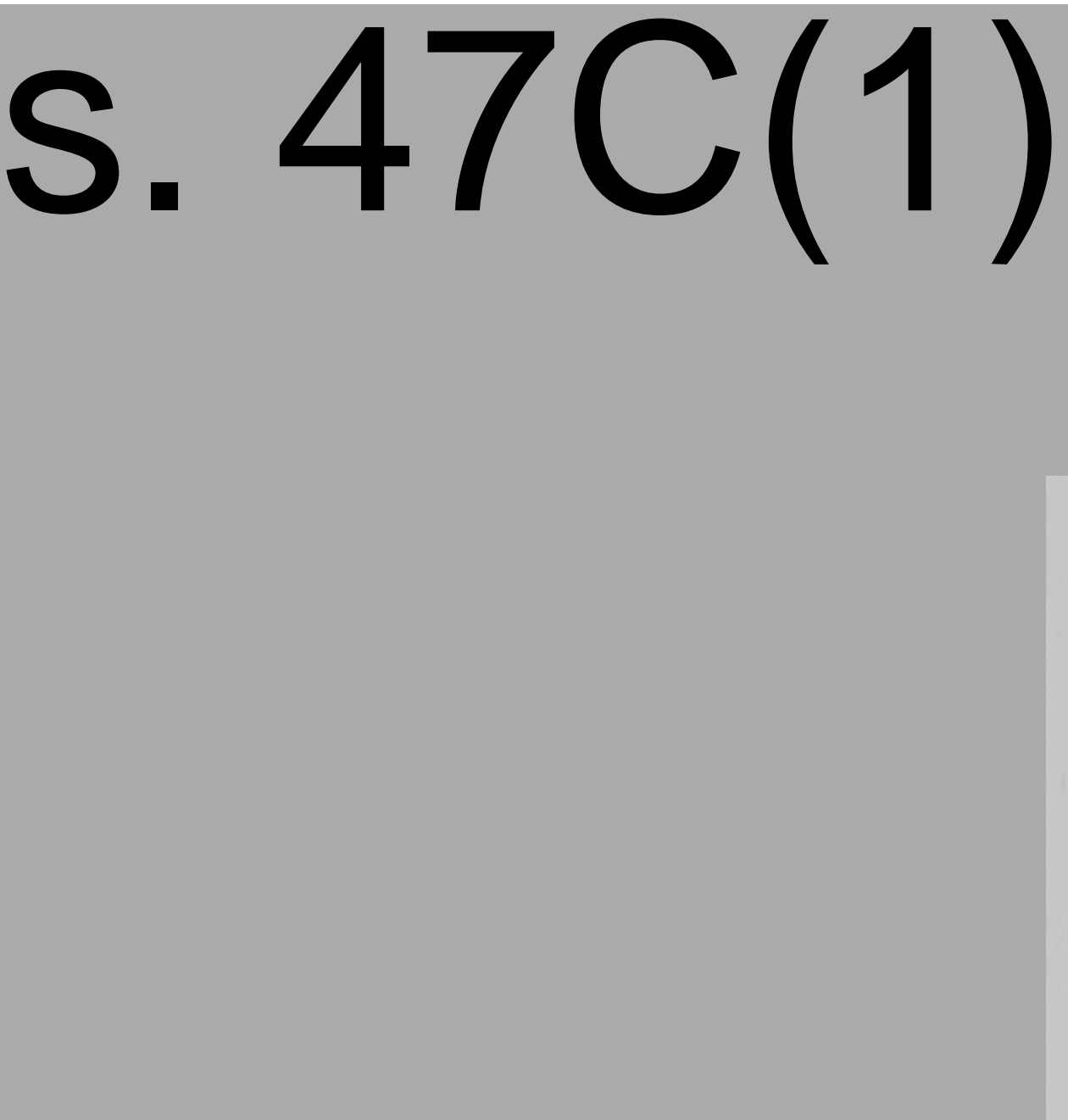
8.

s. 47C(1)

9.

10.

11.



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s. 47C(1)

s. 47C(1)

Support services available to BVR holders

13. BVR holders have work rights and access to Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia, including income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control).
14. The individuals listed may also be eligible for transitional assistance through the Status Resolution Support Services Program (SRSS) program. This may include extended transitional support noting your decision in MS22-001485 to allow SRSS transitional support (SRSS Band 4) for up to 12 weeks, with a possible extension of a further 12 weeks for long term detainees of more than two years released from immigration detention. These arrangements assist individuals to transition to residing lawfully in the community by supporting them while they source independent accommodation, and employment.
15. It is worth noting that some among the immediately affected cohort have extremely high health needs, including 24 hour care. While SRSS can support individuals in the short term, a longer term solution may be required for such individuals. The Department will bring forward options for your consideration at a later time.

Decline to grant a visa

16. Should you decline to grant a visa, including an SPV, or a BVR under regulation 2.25AA of the Regulations, these individuals will remain in the community as unlawful non-citizens.
17. Should they remain in the community as unlawful non-citizens, they will not have work rights or access to Medicare or social welfare payments through Services Australia. Australia's international obligations require that all persons in Australia have an adequate standard of living. These individuals may be eligible for SRSS support, which would be assessed on an as-needs basis. Until they are granted a visa, they will rely exclusively on SRSS support.

s. 47C(1)

**Background**

20. Further details regarding these individuals character matters is provided in the summary at Attachment C.

**Consultation – internal/external**

21. Status Resolution Network, National Removals, International Division and Legal Group.

**Consultation – A/g Secretary / A/g Deputy Secretary / ABF Commissioner**

22. The A/g Secretary, A/g Deputy Secretary Immigration and ABF Commissioner are aware of the approach taken in this submission.

**Client service implications**

23. There are no client service implications.

**Risks and Sensitivities**

24. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – media@homeaffairs.gov.au.

**Financial/systems/legal/deregulation/media implications**

25. If you grant a BVR, these individuals will be eligible to access Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia including meeting the income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control). The Special Benefit payment is currently \$749.20 fortnightly (for a single person, over 22 years old).

26. The payments and services attached to a BVR differs to the support services programs and policy settings available to other asylum seekers and unauthorised maritime arrivals (UMA) who are granted a Bridging E (subclass 050) visa (BVE) and released from immigration detention. These persons are not eligible for mainstream social services income support such as Special Benefit, and are instead eligible for income support paid by Services Australia on behalf of the Department through the SRSS program. SRSS income support is 89 per cent of the current Jobseeker/Special Benefit rate currently \$666.79 fortnightly (for a single person, over 22 years old). Additionally UMAs granted a BVE are eligible for Medicare; however, non-UMAs granted a BVE are not eligible for Medicare. Where an asylum seeker holding a BVE is not eligible for Medicare, the Department may fund general health and medical services equivalent to what an Australian citizen or permanent resident would receive under Medicare via the SRSS program.

27. s47C(1)



**Attachments**

**Attachment A** Regulation 2.25AA – Grant decision record

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**Attachment B** BVR mandatory conditions – Regulation 2.25AA

**Attachment C** Case details

<b>Authorising Officer</b>
Cleared by:  David Arnold Assistant Secretary Status Resolution Branch  <b>Date:</b> 10/11/2023 s22(1)(a)(ii)

**Contact Officer** David Arnold, Assistant Secretary, Status Resolution Branch, Ph: s22(1)(a)(ii)

- CC
- Minister for Home Affairs and Minister for Cyber Security
  - A/g Secretary
  - A/g Deputy Secretary Immigration
  - Assistant Commissioner, Detention and National Removals
  - Group Manager Legal
  - Commander, National Immigration Detention
  - Assistant Secretary, Migration and Citizenship Litigation
  - Senior Director, Status Resolution Network
  - Chief Superintendent, National Removals
  - Director, Status Resolution XX
  - Director, Status Resolution Support Programs Section
  - Superintendent, Detention Health
  - Status Resolution Officers XX

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**OFFICIAL SENSITIVE: Personal Privacy**

Attachment A

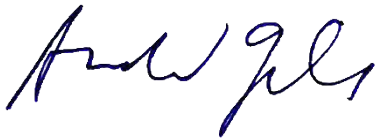
**RECORD OF MINISTERIAL DECISION UNDER REGULATION 2.25AA OF THE *MIGRATION REGULATIONS 1994***

1. The persons named below are unlawful non-citizens residing in the Australian community.
2. Pursuant to regulation 2.25AA of the *Migration Regulations 1994*, I have indicated my decision for each individual as to whether I have decided to grant these persons a Bridging (Removal Pending) (Class WR) (subclass 070) visa (BVR).

CLIENT ID	SURNAME	GIVEN NAME	CITIZENSHIP	STATE	BVR granted pursuant to regulation 2.25AA of the <i>Migration Regulations 1994</i>
s47F					



s47F



THE HON ANDREW GILES MP  
Minister for Immigration, Citizenship and Multicultural Affairs

10 / 11 / 2023

## Bridging (Removal Pending) (subclass 070) visa – mandatory conditions

There are a number of mandatory conditions that are attached to a Bridging (Removal Pending) (subclass 070) visa granted under regulations 2.25AA of the *Migration Regulations 1994* (Regulations) and by which holders are required to abide.

The mandatory conditions imposed by clauses 070.611 and 070.612(1) are set out in Schedule 8 to the Regulations :

<b>8303</b>	The holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community.
<b>8401</b>	The holder must report: (a) at the time or times; and (b) at a place or in a manner; specified by the Minister from time to time.
<b>8513</b>	The holder must notify Immigration of his or her residential address within five working days of the grant.
<b>8514</b>	During the visa period of the visa, there must be no material change in the circumstances on the basis of which it was granted.
<b>8541</b>	The holder: (a) must do everything possible to facilitate his or her removal from Australia and (b) must not attempt to obstruct efforts to arrange and effect his or her removal from Australia.
<b>8542</b>	The holder must make himself or herself available for removal from Australia in accordance with instructions given to the holder by Immigration for the purpose of that removal.
<b>8543</b>	The holder must attend at a place, date and time specified by Immigration in order to facilitate efforts to arrange and effect his or her removal from Australia.
<b>8550</b>	The holder must notify the Minister of any change in the holder's personal details, including a change to any of the following contact information: (a) the holder's name; (b) an address of the holder; (c) a phone number of the holder; (d) an email address of the holder; (e) an online profile used by the holder; (f) a user name of the holder; not less than 2 working days before the change is to occur.
<b>8551</b>	(1) The holder must obtain the Minister's approval before taking up employment in the following occupations, or occupations of a similar kind: (a) occupations that involve the use of, or access to, chemicals of security concern; (b) occupations in the aviation or maritime industries; (c) occupations at facilities that handle security-sensitive biological agents.

	<p>(2) In this clause: chemicals of security concern means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p> <p>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</p> <p>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</p>
8552	The holder must notify the Minister of any change in the holder's employment details, not less than 2 working days before the change is to occur.
8553	The holder must not become involved in activities that are prejudicial to security (within the meaning of section 4 of the <i>Australian Security Intelligence Organisation Act 1979</i> ).
8554	<p>(1) The holder must not acquire any of the following goods:</p> <p>(a) weapons;</p> <p>(b) explosives;</p> <p>(c) material or documentation that provides instruction on the use of weapons or explosives.</p> <p>(2) In this clause: weapon means a thing made or adapted for use for inflicting bodily injury.</p>
8555	The holder must obtain the Minister's approval before undertaking the following activities, or activities of a similar kind:
	<p>(a) flight training;</p> <p>(b) flying aircraft.</p>
8556	The holder must not communicate or associate with:
	<p>(a) an entity listed under Part 4 of the <i>Charter of the United Nations Act 1945</i>; or</p> <p>(b) an organisation prescribed by the regulations made under the <i>Criminal Code Act 1995</i> for the purposes of paragraph (b) of the definition of <b>terrorist organisation</b> in subsection 102.1(1) of the <i>Criminal Code</i>.</p>
8560	<p>(1) The holder must obtain the Minister's approval before acquiring chemicals of security concern.</p> <p>(2) In this clause: <b>chemicals of security concern</b> means chemicals specified by the Minister in an instrument in writing for this definition.</p>

	<p>Note: The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p> <p>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</p> <p>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</p>
8561	<p>If the holder is directed by the Minister to attend an interview that relates to the holder's visa (including an interview with the Australian Security Intelligence Organisation), the holder must comply with the direction.</p>
8562	<p>(1) The holder must not take up employment in:</p> <p>(a) occupations that involve the use of, or access to, weapons or explosives; or</p> <p>(b) occupations of a similar kind.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>
8563	<p>(1) The holder must not undertake the following activities, or activities of a similar kind:</p> <p>(a) using or accessing weapons or explosives;</p> <p>(b) participating in training in the use of weapons or explosives;</p> <p>(c) possessing or accessing material or documentation that provides instruction on the use of weapons or explosives.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>

**From:** s22(1)(a)(ii)  
**Sent:** 11/11/2023 3:13:34 PM  
**To:** "David ARNOLD" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @HOMEAFFAIRS.GOV.AU>  
**Cc:** "s22(1)(a)(ii) @homeaffairs.gov.au"; "s. 22(1)(a)(ii) s22(1)(a)(ii) @homeaffairs.gov.au"; "Michael THOMAS" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @abf.gov.au; "Marian AGBINYA" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; "s22(1)(a)(ii) @homeaffairs.gov.au"; "Stephanie FOSTER" s22(1)(a)(ii) @homeaffairs.gov.au; "Michael WILLARD" s22(1)(a)(ii) @homeaffairs.gov.au; "Clare SHARP" s22(1)(a)(ii) @homeaffairs.gov.au; "Michael BURKE" s22(1)(a)(ii) @homeaffairs.gov.au; "Stephanie KOLOBARIC" s22(1)(a)(ii) @homeaffairs.gov.au; "DLO.Giles" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au  
**Subject:** RE: Ministerial submission - MS23-002332-  
**Attachments:** Attachment A - Regulation 2.25AA grant decision - BVR.docx, Attachment B - BVR mandatory conditions - Regulation 2.25AA.pdf, Attachment C - Case details.docx, MS23-002332 - Regulation 2.25AA visa grant consideration for eight individuals released from immigration.docx  
**Categories:** DLO ~ s22(1)(a)(ii)

OFFICIAL: Sensitive  
Personal-Privacy, Legal-Privilege

Hi David

Please see attached Submission MS23-002332 with e-signature, as instructed by Minister Giles in his email dated Sat 11/11/2023 3:05 PM.

Thank you

regards  
s22(1)(a)(ii)  
s22(1)(a)(ii)  
Office of the Hon Andrew Giles MP  
Minister for Immigration, Citizenship and Multicultural Affairs  
Parliament House, Canberra  
s22(1)(a)(ii)  
E: s22(1)(a)(ii) @homeaffairs.gov.au

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**From:** David ARNOLD [redacted] @homeaffairs.gov.au>  
**Sent:** Saturday, 11 November 2023 1:50 PM  
**To:** [redacted] @HOMEAFFAIRS.GOV.AU>  
**Cc:** DLO.Giles [redacted] @homeaffairs.gov.au>; [redacted] @homeaffairs.gov.au>; [redacted] @homeaffairs.gov.au>; Michael THOMAS [redacted] @homeaffairs.gov.au>; [redacted] @homeaffairs.gov.au>; [redacted] @abf.gov.au>; Marian AGBINYA [redacted] @homeaffairs.gov.au>; [redacted] @homeaffairs.gov.au>; [redacted] @homeaffairs.gov.au>; [redacted] @homeaffairs.gov.au>; [redacted] @homeaffairs.gov.au>; Stephanie FOSTER [redacted] @homeaffairs.gov.au>; Michael WILLARD [redacted] @homeaffairs.gov.au>; Clare SHARP [redacted] @homeaffairs.gov.au>; Michael BURKE [redacted] @homeaffairs.gov.au>; Stephanie KOLOBARIC [redacted] @homeaffairs.gov.au>  
**Subject:** Ministerial submission - MS23-002332- Regulation 2.25AA consideration to grant Eight non-citizens released from immigration detention a Bridging (Removal Pending) (subclass 070) visa (BVR) [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy, ACCESS=Legal-Pri

OFFICIAL: Sensitive  
Personal-Privacy, Legal-Privilege

Hi [redacted]

Sending this to you via email noting the submission is in PDMS and will flow through to you next week.

Please find attached Ministerial submission seeking the Minister's consideration to grant the non-citizens (at **Attachment A**) listed in the submission a Bridging (Removal Pending) (subclass 070) visa (BVR) as they have been released from immigration following the High Court judgment in *NZYQ*.

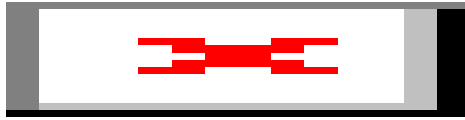
This is the second submission we are sending for the Minister's consideration and comprises [redacted] individuals who have been released from immigration detention as unlawful non-citizens (brief case details are outlined in **Attachment C**).

Please do not hesitate to contact me if you would like to discuss the submission.

Thanks, David

David Arnold  
Assistant Secretary – Status Resolution Branch  
Status Resolution and Cancellation Division  
Immigration Group  
Department of Home Affairs  
[redacted]

E: s22(1)(a)(ii) [@homeaffairs.gov.au](mailto: @homeaffairs.gov.au)



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Australian Government  
Department of Home Affairs

Submission

For decision  
PDMS Ref. Number: MS23-002332  
Date of Clearance: 11/11/2023

To Minister for Immigration, Citizenship and Multicultural Affairs

Subject Regulation 2.25AA visa grant consideration for <sup>s47F</sup> individuals released from immigration detention as unlawful non-citizens following the High Court judgment in NZYQ - Bridging (Removal Pending) (subclass 070) visa

Timing The individuals being referred in this submission are currently residing in the community as unlawful non-citizens as they were released from immigration detention following the High Court judgment in NZYQ on 8 November 2023. This submission seeks the Minister's consideration to exercise his powers under regulation 2.25AA of the Migration Regulations 1994 to grant a Bridging (Removal Pending) (subclass 070) visa to the individuals listed in this submission.

Recommendations

That you:

- 1. note the contents of this brief; and (noted) / please discuss
- 2. agree to grant the individuals listed in **Attachment A** a Bridging R (Class WR) (Removal Pending) (subclass 070) visa (BVR) under regulation 2.25AA of the Migration Regulations 1994 (the Regulations) by circling your decision for each individual and signing the decision; (agreed and signed) / not agreed
  - if you agree to grant a BVR, please specify a timeframe for reviewing these individuals' cases; (one year) / two years / other \_\_\_\_\_ (please specify)
- 3. note if you decide not to grant a BVR to the individuals listed in **Attachment A** under regulation 2.25AA, they will remain in the community as unlawful non-citizens and unless their circumstances change, they cannot be detained under section 189 of the Migration Act 1958 (the Act) noting the High Court's orders made in NZYQ. (noted) / please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature.....

Date: 11/11/2023

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Minister's Comments

**Key Issues**

1. The purpose of this submission is to seek your consideration to grant the eight individuals listed in **Attachment A** a BVR under regulation 2.25AA of the Regulations, noting they are currently residing in the community as unlawful non-citizens following their release from immigration detention as a result of the orders made by the High Court in NZYQ (s47F [REDACTED] – MS23 002266 refers).
2. On 8 November 2023, the High Court made some initial orders in the matter of NZYQ, with its published reasons to follow in due course, finding that:
  - Sections 189(1) and 196(1), which the Commonwealth has relied on to authorise the detention of NZYQ, insofar as they applied to NZYQ as at 30 May 2023, are beyond legislative power;And made the following orders:
  - having been and continuing to be no real prospect of the removal of the plaintiff from Australia becoming practicable in the reasonably foreseeable future:
    - (a) the plaintiff's detention was unlawful as at 30 May 2023; and
    - (b) the plaintiff's continued detention is unlawful and has been since 30 May 2023.
  - A writ of habeas corpus was issued requiring the defendants to release the plaintiff forthwith.
3. The orders, to which 'at least a majority' of the Court agreed, effectively overturn the longstanding decision made by the High Court in *Al Kateb v Godwin* (2004) 219 CLR 562 (*Al-Kateb*), which held that detention of an individual under the Act remains lawful, even where their removal from Australia is not reasonably practicable at the present time, and there is no real likelihood or prospect of removal in the reasonably foreseeable future.
4. The orders made by the High Court have significant legal, policy and operational consequences for the Commonwealth; including the need to release a number of individuals in similar circumstances from immigration detention, possible false imprisonment claims and other claims seeking damages.
5. The individuals being referred to you in this submission (the 'NZYQ cohort') have been identified by the Department as falling within scope of the High Court's orders of 8 November 2023. Such individuals have been released from immigration detention as unlawful non-

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citizens as there is no real prospect of removal being effected in the reasonably foreseeable future.

### Considerations for possible visa grant

6. As outlined, the NZYQ cohort are residing as unlawful non-citizens in the community. As unlawful non-citizens, these individuals have no work rights and no access to social security support.

7. s. 47F(1), s. 42(1)

8.

s. 47C(1)

9.

10.

11.

# s. 47C(1)

12.

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S. 47C(1)

Support services available to BVR holders

13. BVR holders have work rights and access to Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia, including income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control).
14. The individuals listed may also be eligible for transitional assistance through the Status Resolution Support Services Program (SRSS) program. This may include extended transitional support noting your decision in MS22-001485 to allow SRSS transitional support (SRSS Band 4) for up to 12 weeks, with a possible extension of a further 12 weeks for long term detainees of more than two years released from immigration detention. These arrangements assist individuals to transition to residing lawfully in the community by supporting them while they source independent accommodation, and employment.
15. It is worth noting that some among the immediately affected cohort have extremely high health needs, including 24 hour care. While SRSS can support individuals in the short term, a longer term solution may be required for such individuals. The Department will bring forward options for your consideration at a later time.

Decline to grant a visa

16. Should you decline to grant a visa, including an SPV, or a BVR under regulation 2.25AA of the Regulations, these individuals will remain in the community as unlawful non-citizens.
17. Should they remain in the community as unlawful non-citizens, they will not have work rights or access to Medicare or social welfare payments through Services Australia. Australia's international obligations require that all persons in Australia have an adequate standard of living. These individuals may be eligible for SRSS support, which would be assessed on an as-needs basis. Until they are granted a visa, they will rely exclusively on SRSS support.

S. 47C(1)

**Background**

20. Further details regarding these individuals character matters is provided in the summary at Attachment C.

**Consultation – internal/external**

21. Status Resolution Network, National Removals, International Division and Legal Group.

**Consultation – A/g Secretary / A/g Deputy Secretary / ABF Commissioner**

22. The A/g Secretary, A/g Deputy Secretary Immigration and ABF Commissioner are aware of the approach taken in this submission.

**Client service implications**

23. There are no client service implications.

**Risks and Sensitivities**

24. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – [media@homeaffairs.gov.au](mailto:media@homeaffairs.gov.au).

**Financial/systems/legal/deregulation/media implications**

25. If you grant a BVR, these individuals will be eligible to access Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia including meeting the income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control). The Special Benefit payment is currently \$749.20 fortnightly (for a single person, over 22 years old).

26. The payments and services attached to a BVR differs to the support services programs and policy settings available to other asylum seekers and unauthorised maritime arrivals (UMA) who are granted a Bridging E (subclass 050) visa (BVE) and released from immigration detention. These persons are not eligible for mainstream social services income support such as Special Benefit, and are instead eligible for income support paid by Services Australia on behalf of the Department through the SRSS program. SRSS income support is 89 per cent of the current Jobseeker/Special Benefit rate currently \$666.79 fortnightly (for a single person, over 22 years old). Additionally UMAs granted a BVE are eligible for Medicare; however, non-UMAs granted a BVE are not eligible for Medicare. Where an asylum seeker holding a BVE is not eligible for Medicare, the Department may fund general health and medical services equivalent to what an Australian citizen or permanent resident would receive under Medicare via the SRSS program.

27. s47C(1)



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**Attachments**

**Attachment A** Regulation 2.25AA – Grant decision record

**Attachment B** BVR mandatory conditions – Regulation 2.25AA

**Attachment C** Case details

<b>Authorising Officer</b>
Cleared by:  David Arnold Assistant Secretary Status Resolution Branch  <b>Date:</b> 11/11/2023 s22(1)(a)(ii)

**Contact Officer** David Arnold, Assistant Secretary, Status Resolution Branch, s22(1)(a)(ii)

- CC**
- Minister for Home Affairs and Minister for Cyber Security
  - A/g Secretary
  - A/g Deputy Secretary Immigration
  - Assistant Commissioner, Detention and National Removals
  - Group Manager Legal
  - Commander, National Immigration Detention
  - Assistant Secretary, Migration and Citizenship Litigation
  - Senior Director, Status Resolution Network
  - Chief Superintendent, National Removals
  - Director, Status Resolution NSW
  - Director, Status Resolution Support Programs Section
  - Superintendent, Detention Health
  - Status Resolution Officers NSW

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Attachment A

**RECORD OF MINISTERIAL DECISION UNDER REGULATION 2.25AA OF THE *MIGRATION REGULATIONS 1994***

1. The persons named below are unlawful non-citizens residing in the Australian community.
2. Pursuant to regulation 2.25AA of the *Migration Regulations 1994*, I have indicated my decision for each individual as to whether I have decided to grant these persons a Bridging (Removal Pending) (Class WR) (subclass 070) visa (BVR).

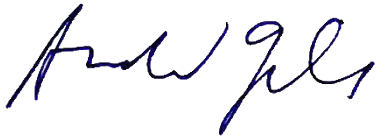
	CLIENT ID	SURNAME	GIVEN NAME	CITIZENSHIP	STATE	BVR granted pursuant to regulation 2.25AA of the <i>Migration Regulations 1994</i>
--	-----------	---------	------------	-------------	-------	--

s47F



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s47F

A handwritten signature in blue ink, appearing to read "Andrew Giles".

THE HON ANDREW GILES MP  
Minister for Immigration, Citizenship and Multicultural Affairs

11/11/2023



## Bridging (Removal Pending) (subclass 070) visa – mandatory conditions

There are a number of mandatory conditions that are attached to a Bridging (Removal Pending) (subclass 070) visa granted under regulations 2.25AA of the *Migration Regulations 1994* (Regulations) and by which holders are required to abide.

The mandatory conditions imposed by clauses 070.611 and 070.612(1) are set out in Schedule 8 to the Regulations :

<b>8303</b>	The holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community.
<b>8401</b>	The holder must report: (a) at the time or times; and (b) at a place or in a manner; specified by the Minister from time to time.
<b>8513</b>	The holder must notify Immigration of his or her residential address within five working days of the grant.
<b>8514</b>	During the visa period of the visa, there must be no material change in the circumstances on the basis of which it was granted.
<b>8541</b>	The holder: (a) must do everything possible to facilitate his or her removal from Australia and (b) must not attempt to obstruct efforts to arrange and effect his or her removal from Australia.
<b>8542</b>	The holder must make himself or herself available for removal from Australia in accordance with instructions given to the holder by Immigration for the purpose of that removal.
<b>8543</b>	The holder must attend at a place, date and time specified by Immigration in order to facilitate efforts to arrange and effect his or her removal from Australia.
<b>8550</b>	The holder must notify the Minister of any change in the holder's personal details, including a change to any of the following contact information: (a) the holder's name; (b) an address of the holder; (c) a phone number of the holder; (d) an email address of the holder; (e) an online profile used by the holder; (f) a user name of the holder; not less than 2 working days before the change is to occur.
<b>8551</b>	(1) The holder must obtain the Minister's approval before taking up employment in the following occupations, or occupations of a similar kind: (a) occupations that involve the use of, or access to, chemicals of security concern; (b) occupations in the aviation or maritime industries; (c) occupations at facilities that handle security-sensitive biological agents.

	<p>(2) In this clause: chemicals of security concern means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p> <ul style="list-style-type: none"> <li>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</li> <li>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</li> </ul>
8552	The holder must notify the Minister of any change in the holder's employment details, not less than 2 working days before the change is to occur.
8553	The holder must not become involved in activities that are prejudicial to security (within the meaning of section 4 of the <i>Australian Security Intelligence Organisation Act 1979</i> ).
8554	<p>(1) The holder must not acquire any of the following goods:</p> <ul style="list-style-type: none"> <li>(a) weapons;</li> <li>(b) explosives;</li> <li>(c) material or documentation that provides instruction on the use of weapons or explosives.</li> </ul> <p>(2) In this clause: weapon means a thing made or adapted for use for inflicting bodily injury.</p>
8555	The holder must obtain the Minister's approval before undertaking the following activities, or activities of a similar kind: <ul style="list-style-type: none"> <li>(a) flight training;</li> <li>(b) flying aircraft.</li> </ul>
8556	The holder must not communicate or associate with: <ul style="list-style-type: none"> <li>(a) an entity listed under Part 4 of the <i>Charter of the United Nations Act 1945</i>; or</li> <li>(b) an organisation prescribed by the regulations made under the <i>Criminal Code Act 1995</i> for the purposes of paragraph (b) of the definition of <b>terrorist organisation</b> in subsection 102.1(1) of the <i>Criminal Code</i>.</li> </ul>
8560	<p>(1) The holder must obtain the Minister's approval before acquiring chemicals of security concern.</p> <p>(2) In this clause: <b>chemicals of security concern</b> means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p>

	<p>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</p> <p>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</p>
<b>8561</b>	If the holder is directed by the Minister to attend an interview that relates to the holder's visa (including an interview with the Australian Security Intelligence Organisation), the holder must comply with the direction.
<b>8562</b>	<p>(1) The holder must not take up employment in:</p> <p>(a) occupations that involve the use of, or access to, weapons or explosives; or</p> <p>(b) occupations of a similar kind.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>
<b>8563</b>	<p>(1) The holder must not undertake the following activities, or activities of a similar kind:</p> <p>(a) using or accessing weapons or explosives;</p> <p>(b) participating in training in the use of weapons or explosives;</p> <p>(c) possessing or accessing material or documentation that provides instruction on the use of weapons or explosives.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>

**From:** s22(1)(a)(ii)  
**Sent:** 11/11/2023 8:18:39 PM  
**To:** "David ARNOLD" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @HOMEAFFAIRS.GOV.AU>  
**Cc:** s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; "Michael THOMAS" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; "Marian AGBINYA" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @abf.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; "Stephanie FOSTER" s22(1)(a)(ii) @homeaffairs.gov.au; "Michael WILLARD" s22(1)(a)(ii) @homeaffairs.gov.au; "Clare SHARP" s22(1)(a)(ii) @homeaffairs.gov.au; "Michael BURKE" s22(1)(a)(ii) @homeaffairs.gov.au; "Stephanie KOLOBARIC" s22(1)(a)(ii) @homeaffairs.gov.au; "DLO.Giles" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au  
**Subject:** RE: Ministerial submission - MS23-002333  
**Attachments:** Attachment A - Regulation 2.25AA grant decision - BVR.docx, Attachment B - BVR mandatory conditions - Regulation 2.25AA.pdf, Attachment C - Case details.docx, MS23-002333 - Regulation 2.25AA visa grant consideration for individuals released from immigration.docx  
**Categories:** s22(1)(a)(ii)

OFFICIAL: Sensitive  
 Personal-Privacy, Legal-Privilege

Hi David

Please see attached Submission MS23-002333 with e-signature, as instructed by Minister Giles in his email dated Sat 11/11/2023 8:08 PM.

Thank you

regards  
 s22(1)(a)(ii)  
 s22(1)(a)(ii)  
 Office of the Hon Andrew Giles MP  
 Minister for Immigration, Citizenship and Multicultural Affairs  
 Parliament House, Canberra  
 s22(1)(a)(ii)  
 E: s22(1)(a)(ii) @homeaffairs.gov.au

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**From:** David ARNOLD <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>  
**Sent:** Saturday, 11 November 2023 6:36 PM  
**To:** <sup>s22(1)(a)(ii)</sup> @HOMEAFFAIRS.GOV.AU>  
**Cc:** DLO.Giles <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>;  
Michael THOMAS <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>;  
<sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @abf.gov.au>; Marian AGBINYA  
<sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>;  
<sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>;  
<sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; Stephanie FOSTER <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>;  
Michael WILLARD <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; Clare SHARP  
<sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; Michael BURKE <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; Stephanie  
KOLOBARIC <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>  
**Subject:** Ministerial submission - MS23-002333- Regulation 2.25AA consideration to grant 30 non-citizens released from immigration detention a Bridging (Removal Pending) (subclass 070) visa (BVR) [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy, ACCESS=Legal-Privil

OFFICIAL: Sensitive  
Personal-Privacy, Legal-Privilege

Evening <sup>s22(1)(a)(ii)</sup>

Sending this to you via email noting the PDMS submission will flow through to you next week.

Please find attached Ministerial submission seeking the Minister's consideration to grant the non-citizens (at **Attachment A**) listed in the submission a Bridging (Removal Pending) (subclass 070) visa (BVR) as they have been released from immigration following the High Court judgment in NZYQ.

This is the third submission we are sending for the Minister's consideration and comprises <sup>s. 47</sup> individuals who have been released from immigration detention as unlawful non-citizens (brief case details are outlined in **Attachment C**).

Please do not hesitate to contact me if you would like to discuss the submission. This will be the final submission for today.

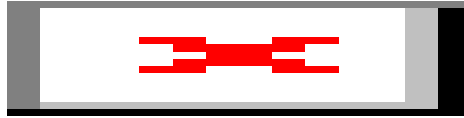
Thanks, David

David Arnold  
Assistant Secretary – Status Resolution Branch

Status Resolution and Cancellation Division  
Immigration Group  
Department of Home Affairs

s22(1)(a)(ii)

E: <sup>s22(1)(a)(ii)</sup> [\[REDACTED\]@homeaffairs.gov.au](mailto: [REDACTED]@homeaffairs.gov.au)



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Australian Government  
Department of Home Affairs

Submission

For decision  
PDMS Ref. Number: MS23-002333  
Date of Clearance: 11/11/2023

To Minister for Immigration, Citizenship and Multicultural Affairs  
Subject Regulation 2.25AA visa grant consideration for <sup>s47F</sup> individuals released from immigration detention as unlawful non-citizens following the High Court judgment in NZYQ - Bridging (Removal Pending) (subclass 070) visa

Timing The individuals being referred in this submission are currently residing in the community as unlawful non-citizens as they were released from immigration detention following the High Court judgment in NZYQ on 8 November 2023. This submission seeks the Minister’s consideration to exercise his powers under regulation 2.25AA of the Migration Regulations 1994 to grant a Bridging (Removal Pending) (subclass 070) visa to the individuals listed in this submission.

Recommendations

That you:

- 1. note the contents of this brief; and (noted) / please discuss
- 2. agree to grant the individuals listed in **Attachment A** a Bridging R (Class WR) (Removal Pending) (subclass 070) visa (BVR) under regulation 2.25AA of the *Migration Regulations 1994* (the Regulations) by circling your decision for each individual and signing the decision; (agreed and signed) / not agreed
  - if you agree to grant a BVR, please specify a timeframe for reviewing these individuals’ cases; (one year) / two years / other \_\_\_\_\_ (please specify)
- 3. note if you decide not to grant a BVR to the individuals listed in **Attachment A** under regulation 2.25AA, they will remain in the community as unlawful non-citizens and unless their circumstances change, they cannot be detained under section 189 of the *Migration Act 1958* (the Act) noting the High Court’s orders made in NZYQ. (noted) / please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature.....

Date: 11/11/2023

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Minister's Comments

Key Issues

1. The purpose of this submission is to seek your consideration to grant the <sup>s47F</sup> individuals listed in **Attachment A** a BVR under regulation 2.25AA of the Regulations, noting they are currently residing in the community as unlawful non-citizens following their release from immigration detention as a result of the orders made by the High Court in NZYQ (<sup>s47F</sup> – MS23 002266 refers).
2. On 8 November 2023, the High Court made some initial orders in the matter of NZYQ, with its published reasons to follow in due course, finding that:
  - Sections 189(1) and 196(1), which the Commonwealth has relied on to authorise the detention of NZYQ, insofar as they applied to NZYQ as at 30 May 2023, are beyond legislative power;And made the following orders:
  - having been and continuing to be no real prospect of the removal of the plaintiff from Australia becoming practicable in the reasonably foreseeable future:
    - (a) the plaintiff's detention was unlawful as at 30 May 2023; and
    - (b) the plaintiff's continued detention is unlawful and has been since 30 May 2023.
  - A writ of habeas corpus was issued requiring the defendants to release the plaintiff forthwith.
3. The orders, to which 'at least a majority' of the Court agreed, effectively overturn the longstanding decision made by the High Court in *Al Kateb v Godwin* (2004) 219 CLR 562 (*Al-Kateb*), which held that detention of an individual under the Act remains lawful, even where their removal from Australia is not reasonably practicable at the present time, and there is no real likelihood or prospect of removal in the reasonably foreseeable future.
4. The orders made by the High Court have significant legal, policy and operational consequences for the Commonwealth; including the need to release a number of individuals in similar circumstances from immigration detention, possible false imprisonment claims and other claims seeking damages.
5. The individuals being referred to you in this submission (the 'NZYQ cohort') have been identified by the Department as falling within scope of the High Court's orders of 8 November 2023. Such individuals have been released from immigration detention as unlawful non-



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citizens as there is no real prospect of removal being effected in the reasonably foreseeable future.

### Considerations for possible visa grant

6. As outlined, the NZYQ cohort are residing as unlawful non-citizens in the community. As unlawful non-citizens, these individuals have no work rights and no access to social security support.

7. s. 47F(1), s. 42(1)

8. **S. 47C(1)**

9.

10.

11.

# s. 47C(1)

12.

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S. 47C(1)

Support services available to BVR holders

13. BVR holders have work rights and access to Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia, including income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control).
14. The individuals listed may also be eligible for transitional assistance through the Status Resolution Support Services Program (SRSS) program. This may include extended transitional support noting your decision in MS22-001485 to allow SRSS transitional support (SRSS Band 4) for up to 12 weeks, with a possible extension of a further 12 weeks for long term detainees of more than two years released from immigration detention. These arrangements assist individuals to transition to residing lawfully in the community by supporting them while they source independent accommodation, and employment.
15. It is worth noting that some among the immediately affected cohort have extremely high health needs, including 24 hour care. While SRSS can support individuals in the short term, a longer term solution may be required for such individuals. The Department will bring forward options for your consideration at a later time.

Decline to grant a visa

16. Should you decline to grant a visa, including an SPV, or a BVR under regulation 2.25AA of the Regulations, these individuals will remain in the community as unlawful non-citizens.
17. Should they remain in the community as unlawful non-citizens, they will not have work rights or access to Medicare or social welfare payments through Services Australia. Australia's international obligations require that all persons in Australia have an adequate standard of living. These individuals may be eligible for SRSS support, which would be assessed on an as-needs basis. Until they are granted a visa, they will rely exclusively on SRSS support.

S. 47C(1)

**Background**

20. Further details regarding these individuals character matters is provided in the summary at Attachment C.

**Consultation – internal/external**

21. Status Resolution Network, National Removals, International Division and Legal Group.

**Consultation – A/g Secretary / A/g Deputy Secretary / ABF Commissioner**

22. The A/g Secretary, A/g Deputy Secretary Immigration and ABF Commissioner are aware of the approach taken in this submission.

**Client service implications**

23. There are no client service implications.

**Risks and Sensitivities**

24. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – [media@homeaffairs.gov.au](mailto:media@homeaffairs.gov.au).

**Financial/systems/legal/deregulation/media implications**

25. If you grant a BVR, these individuals will be eligible to access Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia including meeting the income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control). The Special Benefit payment is currently \$749.20 fortnightly (for a single person, over 22 years old).
26. The payments and services attached to a BVR differs to the support services programs and policy settings available to other asylum seekers and unauthorised maritime arrivals (UMA) who are granted a Bridging E (subclass 050) visa (BVE) and released from immigration detention. These persons are not eligible for mainstream social services income support such as Special Benefit, and are instead eligible for income support paid by Services Australia on behalf of the Department through the SRSS program. SRSS income support is 89 per cent of the current Jobseeker/Special Benefit rate currently \$666.79 fortnightly (for a single person, over 22 years old). Additionally UMAs granted a BVE are eligible for Medicare; however, non-UMAs granted a BVE are not eligible for Medicare. Where an asylum seeker holding a BVE is not eligible for Medicare, the Department may fund general health and medical services equivalent to what an Australian citizen or permanent resident would receive under Medicare via the SRSS program.

27. s47C(1)



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under the Freedom of Information Act 1982

**Attachments**

**Attachment A** Regulation 2.25AA – Grant decision record

**Attachment B** BVR mandatory conditions – Regulation 2.25AA

**Attachment C** Case details

<b>Authorising Officer</b>
Cleared by:  David Arnold Assistant Secretary Status Resolution Branch  <b>Date:</b> 11/11/2023 s22(1)(a)(ii)

**Contact Officer** David Arnold, Assistant Secretary, Status Resolution Branch, Ph: s22(1)(a)(ii)

- CC**
- Minister for Home Affairs and Minister for Cyber Security
  - A/g Secretary
  - A/g Deputy Secretary Immigration
  - Assistant Commissioner, Detention and National Removals
  - Group Manager Legal
  - Commander, National Immigration Detention
  - Assistant Secretary, Migration and Citizenship Litigation
  - Senior Director, Status Resolution Network
  - Chief Superintendent, National Removals
  - Director, Status Resolution WA and QLD
  - Director, Status Resolution Support Programs Section
  - Superintendent, Detention Health
  - Status Resolution Officers WA and QLD

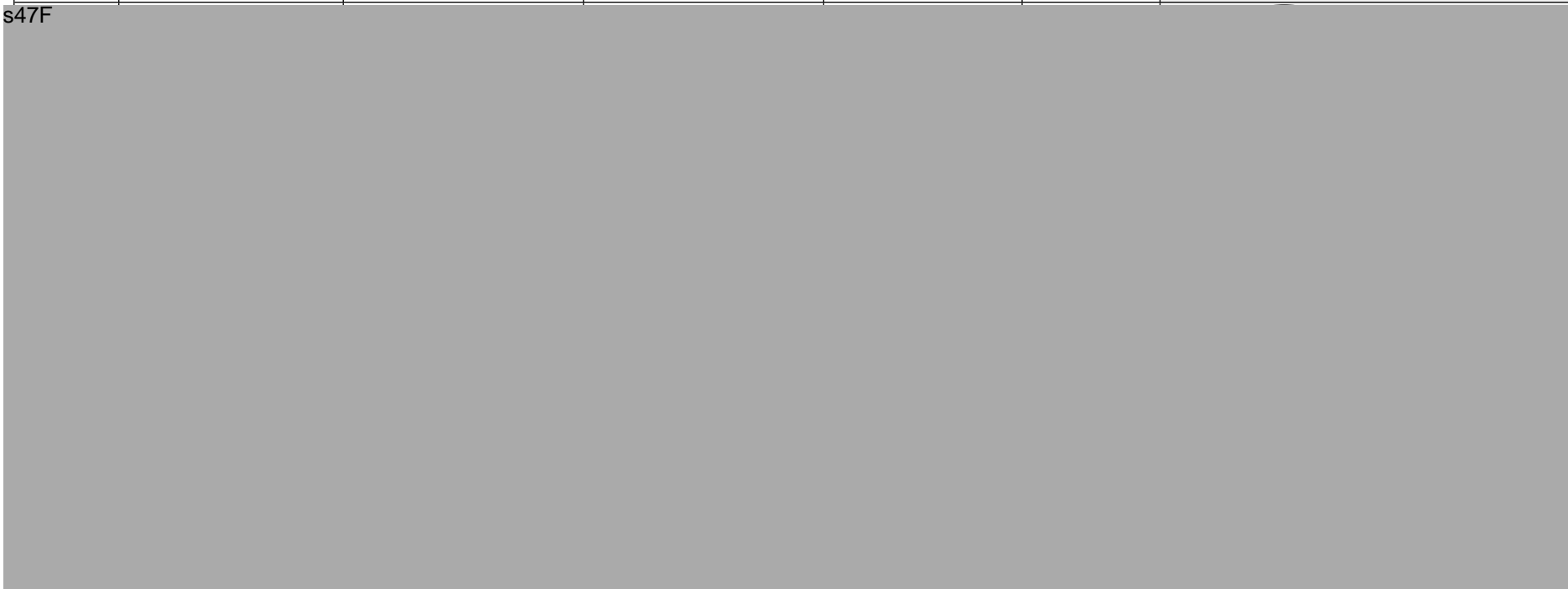
Released by Department of Home Affairs  
under the Freedom of Information Act 1982

**OFFICIAL SENSITIVE: Personal privacy**Attachment A**RECORD OF MINISTERIAL DECISION UNDER REGULATION 2.25AA OF THE *MIGRATION REGULATIONS 1994***

1. The persons named below are unlawful non-citizens residing in the Australian community.
2. Pursuant to regulation 2.25AA of the *Migration Regulations 1994*, I have indicated my decision for each individual as to whether I have decided to grant these persons a Bridging (Removal Pending) (Class WR) (subclass 070) visa (BVR).

	CLIENT ID	SURNAME	GIVEN NAME	CITIZENSHIP	STATE	BVR granted pursuant to regulation 2.25AA of the <i>Migration Regulations 1994</i>
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s47F

**OFFICIAL SENSITIVE: Personal privacy**

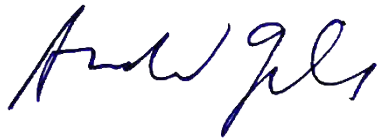
**OFFICIAL SENSITIVE: Personal privacy**

s47F



**OFFICIAL SENSITIVE: Personal privacy**

s47F



THE HON ANDREW GILES MP  
Minister for Immigration, Citizenship and Multicultural Affairs

11/11/2023



## Bridging (Removal Pending) (subclass 070) visa – mandatory conditions

There are a number of mandatory conditions that are attached to a Bridging (Removal Pending) (subclass 070) visa granted under regulations 2.25AA of the *Migration Regulations 1994* (Regulations) and by which holders are required to abide.

The mandatory conditions imposed by clauses 070.611 and 070.612(1) are set out in Schedule 8 to the Regulations :

<b>8303</b>	The holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community.
<b>8401</b>	The holder must report: (a) at the time or times; and (b) at a place or in a manner; specified by the Minister from time to time.
<b>8513</b>	The holder must notify Immigration of his or her residential address within five working days of the grant.
<b>8514</b>	During the visa period of the visa, there must be no material change in the circumstances on the basis of which it was granted.
<b>8541</b>	The holder: (a) must do everything possible to facilitate his or her removal from Australia and (b) must not attempt to obstruct efforts to arrange and effect his or her removal from Australia.
<b>8542</b>	The holder must make himself or herself available for removal from Australia in accordance with instructions given to the holder by Immigration for the purpose of that removal.
<b>8543</b>	The holder must attend at a place, date and time specified by Immigration in order to facilitate efforts to arrange and effect his or her removal from Australia.
<b>8550</b>	The holder must notify the Minister of any change in the holder's personal details, including a change to any of the following contact information: (a) the holder's name; (b) an address of the holder; (c) a phone number of the holder; (d) an email address of the holder; (e) an online profile used by the holder; (f) a user name of the holder; not less than 2 working days before the change is to occur.
<b>8551</b>	(1) The holder must obtain the Minister's approval before taking up employment in the following occupations, or occupations of a similar kind: (a) occupations that involve the use of, or access to, chemicals of security concern; (b) occupations in the aviation or maritime industries; (c) occupations at facilities that handle security-sensitive biological agents.

	<p>(2) In this clause: chemicals of security concern means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p> <ul style="list-style-type: none"> <li>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</li> <li>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</li> </ul>
8552	The holder must notify the Minister of any change in the holder's employment details, not less than 2 working days before the change is to occur.
8553	The holder must not become involved in activities that are prejudicial to security (within the meaning of section 4 of the <i>Australian Security Intelligence Organisation Act 1979</i> ).
8554	<p>(1) The holder must not acquire any of the following goods:</p> <ul style="list-style-type: none"> <li>(a) weapons;</li> <li>(b) explosives;</li> <li>(c) material or documentation that provides instruction on the use of weapons or explosives.</li> </ul> <p>(2) In this clause: weapon means a thing made or adapted for use for inflicting bodily injury.</p>
8555	The holder must obtain the Minister's approval before undertaking the following activities, or activities of a similar kind: <ul style="list-style-type: none"> <li>(a) flight training;</li> <li>(b) flying aircraft.</li> </ul>
8556	The holder must not communicate or associate with: <ul style="list-style-type: none"> <li>(a) an entity listed under Part 4 of the <i>Charter of the United Nations Act 1945</i>; or</li> <li>(b) an organisation prescribed by the regulations made under the <i>Criminal Code Act 1995</i> for the purposes of paragraph (b) of the definition of <b>terrorist organisation</b> in subsection 102.1(1) of the <i>Criminal Code</i>.</li> </ul>
8560	<p>(1) The holder must obtain the Minister's approval before acquiring chemicals of security concern.</p> <p>(2) In this clause: <b>chemicals of security concern</b> means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p>

	<p>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</p> <p>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</p>
<b>8561</b>	If the holder is directed by the Minister to attend an interview that relates to the holder's visa (including an interview with the Australian Security Intelligence Organisation), the holder must comply with the direction.
<b>8562</b>	<p>(1) The holder must not take up employment in:</p> <p>(a) occupations that involve the use of, or access to, weapons or explosives; or</p> <p>(b) occupations of a similar kind.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>
<b>8563</b>	<p>(1) The holder must not undertake the following activities, or activities of a similar kind:</p> <p>(a) using or accessing weapons or explosives;</p> <p>(b) participating in training in the use of weapons or explosives;</p> <p>(c) possessing or accessing material or documentation that provides instruction on the use of weapons or explosives.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>

**From:** s22(1)(a)(ii)  
**Sent:** 12/11/2023 6:46:45 PM  
**To:** "David ARNOLD" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @HOMEAFFAIRS.GOV.AU>  
**Cc:** s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; "Michael THOMAS" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @abf.gov.au; "Marian AGBINYA" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; "Stephanie FOSTER" s22(1)(a)(ii) @homeaffairs.gov.au; "Michael WILLARD" s22(1)(a)(ii) @homeaffairs.gov.au; "Clare SHARP" s22(1)(a)(ii) @homeaffairs.gov.au; "Michael BURKE" s22(1)(a)(ii) @homeaffairs.gov.au; "Stephanie KOLOBARIC" s22(1)(a)(ii) @homeaffairs.gov.au; "DLO.Giles" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au

**Subject:** RE: Ministerial submission - MS23-002335- Regulation 2.25AA consideration to grant 24 non-citizens released from immigration detention a Bridging (Removal Pending) (subclass 070) visa (BVR) [SEC=OFFICIAL]

**Attachments:** Attachment A - Regulation 2.25AA grant decision - BVR.docx, Attachment B - BVR mandatory conditions - Regulation 2.25AA.pdf, Attachment C - Case details.docx, MS23-002335 - Regulation 2.25AA visa grant consideration for 24 individuals released from immigration.docx

OFFICIAL

Hi David

Please see attached Submission MS23-002335 with e-signature, as instructed by Minister Giles in his email dated Sun 12/11/2023 6:36 PM.

Thank you

regards

s22(1)(a)(ii)

s22(1)(a)(ii)

Office of the Hon Andrew Giles MP  
 Minister for Immigration, Citizenship and Multicultural Affairs  
 Parliament House, Canberra

s22(1)(a)(ii)

E: s22(1)(a)(ii) @homeaffairs.gov.au

OFFICIAL

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**From:** David ARNOLD <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>  
**Sent:** Sunday, 12 November 2023 5:23 PM  
**To:** <sup>s22(1)(a)(ii)</sup> @HOMEAFFAIRS.GOV.AU>  
**Cc:** <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; Michael THOMAS <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @abf.gov.au>; Marian AGBINYA <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; Stephanie FOSTER <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; Michael WILLARD <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; Clare SHARP <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; Michael BURKE <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; Stephanie KOLOBARIC <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; DLO.Giles <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>  
**Subject:** Ministerial submission - MS23-002335- Regulation 2.25AA consideration to grant 24 non-citizens released from immigration detention a Bridging (Removal Pending) (subclass 070) visa (BVR) [SEC=OFFICIAL]

OFFICIAL

Hi <sup>s22(1)(a)(ii)</sup>

Sending this to you via email noting the PDMS submission will flow through to you next week.

Please find attached Ministerial submission seeking the Minister's consideration to grant the non-citizens (at **Attachment A**) listed in the submission a Bridging (Removal Pending) (subclass 070) visa (BVR) as they have been released from immigration following the High Court judgment in NZYQ.

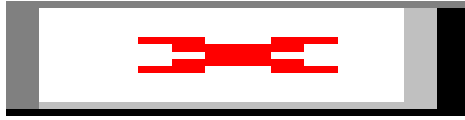
This is the fourth submission we are sending for the Minister's consideration and comprises <sup>s. 47</sup> individuals who have been released from immigration detention as unlawful non-citizens (brief case details are outlined in **Attachment C**).

Please do not hesitate to contact me if you would like to discuss the submission. This will be the one and only submission for today.

Thanks, David

David Arnold  
Assistant Secretary – Status Resolution Branch  
Status Resolution and Cancellation Division  
Immigration Group  
Department of Home Affairs

<sup>s22(1)(a)(ii)</sup>  
E: <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au



OFFICIAL

**OFFICIAL: Sensitive Legal privilege**

**Australian Government**  
**Department of Home Affairs**

**Submission**

For decision  
 PDMS Ref. Number: MS23-002335  
 Date of Clearance: 12/11/2023

**To** **Minister for Immigration, Citizenship and Multicultural Affairs**

**Subject** **Regulation 2.25AA visa grant consideration for <sup>s47F</sup> individuals released from immigration detention as unlawful non-citizens following the High Court judgment in NZYQ - Bridging (Removal Pending) (subclass 070) visa**

**Timing** *The individuals being referred in this submission are currently residing in the community as unlawful non-citizens as they were released from immigration detention following the High Court judgment in NZYQ on 8 November 2023. This submission seeks the Minister's consideration to exercise his powers under regulation 2.25AA of the Migration Regulations 1994 to grant a Bridging (Removal Pending) (subclass 070) visa to the individuals listed in this submission.*

**Recommendations**

That you:

1. note the contents of this brief; and (noted) please discuss
2. agree to grant the individuals listed in **Attachment A** a Bridging R (Class WR) (Removal Pending) (subclass 070) visa (BVR) under regulation 2.25AA of the *Migration Regulations 1994* (the Regulations) by circling your decision for each individual and signing the decision; (agreed and signed) / not agreed
  - if you agree to grant a BVR, please specify a timeframe for reviewing these individuals' cases; (one year) / two years / other \_\_\_\_\_  
(please specify)
3. note if you decide not to grant a BVR to the individuals listed in **Attachment A** under regulation 2.25AA, they will remain in the community as unlawful non-citizens and unless their circumstances change, they cannot be detained under section 189 of the *Migration Act 1958* (the Act) noting the High Court's orders made in NZYQ. (noted) please discuss

**Minister for Immigration, Citizenship and Multicultural Affairs**

Signature.....

Date: 12/11/2023

Minister's Comments

**Key Issues**

1. The purpose of this submission is to seek your consideration to grant the <sup>s47F</sup> individuals listed in **Attachment A** a BVR under regulation 2.25AA of the Regulations, noting they are currently residing in the community as unlawful non-citizens following their release from immigration detention as a result of the orders made by the High Court in NZYQ (<sup>s47F</sup> – MS23 002266 refers).
2. On 8 November 2023, the High Court made some initial orders in the matter of NZYQ, with its published reasons to follow in due course, finding that:
  - Sections 189(1) and 196(1), which the Commonwealth has relied on to authorise the detention of NZYQ, insofar as they applied to NZYQ as at 30 May 2023, are beyond legislative power;And made the following orders:
  - having been and continuing to be no real prospect of the removal of the plaintiff from Australia becoming practicable in the reasonably foreseeable future:
    - (a) the plaintiff's detention was unlawful as at 30 May 2023; and
    - (b) the plaintiff's continued detention is unlawful and has been since 30 May 2023.
  - A writ of habeas corpus was issued requiring the defendants to release the plaintiff forthwith.
3. The orders, to which 'at least a majority' of the Court agreed, effectively overturn the longstanding decision made by the High Court in *Al Kateb v Godwin* (2004) 219 CLR 562 (*Al-Kateb*), which held that detention of an individual under the Act remains lawful, even where their removal from Australia is not reasonably practicable at the present time, and there is no real likelihood or prospect of removal in the reasonably foreseeable future.
4. The orders made by the High Court have significant legal, policy and operational consequences for the Commonwealth; including the need to release a number of individuals in similar circumstances from immigration detention, possible false imprisonment claims and other claims seeking damages.
5. The individuals being referred to you in this submission (the 'NZYQ cohort') have been identified by the Department as falling within scope of the High Court's orders of 8 November 2023. Such individuals have been released from immigration detention as unlawful non-



## OFFICIAL: Sensitive Legal privilege

citizens as there is no real prospect of removal being effected in the reasonably foreseeable future.

### Considerations for possible visa grant

6. As outlined, the NZYQ cohort are residing as unlawful non-citizens in the community. As unlawful non-citizens, these individuals have no work rights and no access to social security support.

7. s. 47F(1), s. 42(1)

8. **S. 47C(1)**

9.

10.

11.

s. 47C(1)

12.

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S. 47C(1)

Support services available to BVR holders

13. BVR holders have work rights and access to Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia, including income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control).
14. The individuals listed may also be eligible for transitional assistance through the Status Resolution Support Services Program (SRSS) program. This may include extended transitional support noting your decision in MS22-001485 to allow SRSS transitional support (SRSS Band 4) for up to 12 weeks, with a possible extension of a further 12 weeks for long term detainees of more than two years released from immigration detention. These arrangements assist individuals to transition to residing lawfully in the community by supporting them while they source independent accommodation, and employment.
15. It is worth noting that some among the immediately affected cohort have extremely high health needs, including 24 hour care. While SRSS can support individuals in the short term, a longer term solution may be required for such individuals. The Department will bring forward options for your consideration at a later time.

Decline to grant a visa

16. Should you decline to grant a visa, including an SPV, or a BVR under regulation 2.25AA of the Regulations, these individuals will remain in the community as unlawful non-citizens.
17. Should they remain in the community as unlawful non-citizens, they will not have work rights or access to Medicare or social welfare payments through Services Australia. Australia's international obligations require that all persons in Australia have an adequate standard of living. These individuals may be eligible for SRSS support, which would be assessed on an as-needs basis. Until they are granted a visa, they will rely exclusively on SRSS support.

S. 47C(1)

**Background**

20. Further details regarding these individuals character matters is provided in the summary at Attachment C.

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**Consultation – internal/external**

21. Status Resolution Network, National Removals, International Division and Legal Group.

**Consultation – A/g Secretary / A/g Deputy Secretary / ABF Commissioner**

22. The A/g Secretary, A/g Deputy Secretary Immigration and ABF Commissioner are aware of the approach taken in this submission.

**Client service implications**

23. There are no client service implications.

**Risks and Sensitivities**

24. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – [media@homeaffairs.gov.au](mailto:media@homeaffairs.gov.au).

**Financial/systems/legal/deregulation/media implications**

25. If you grant a BVR, these individuals will be eligible to access Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia including meeting the income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control). The Special Benefit payment is currently \$749.20 fortnightly (for a single person, over 22 years old).

26. The payments and services attached to a BVR differs to the support services programs and policy settings available to other asylum seekers and unauthorised maritime arrivals (UMA) who are granted a Bridging E (subclass 050) visa (BVE) and released from immigration detention. These persons are not eligible for mainstream social services income support such as Special Benefit, and are instead eligible for income support paid by Services Australia on behalf of the Department through the SRSS program. SRSS income support is 89 per cent of the current Jobseeker/Special Benefit rate currently \$666.79 fortnightly (for a single person, over 22 years old). Additionally UMAs granted a BVE are eligible for Medicare; however, non-UMAs granted a BVE are not eligible for Medicare. Where an asylum seeker holding a BVE is not eligible for Medicare, the Department may fund general health and medical services equivalent to what an Australian citizen or permanent resident would receive under Medicare via the SRSS program.

27. s47C(1)



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under the Freedom of Information Act 1982

**Attachments**

**Attachment A** Regulation 2.25AA – Grant decision record

**Attachment B** BVR mandatory conditions – Regulation 2.25AA

**Attachment C** Case details

<b>Authorising Officer</b>
Cleared by:  David Arnold Assistant Secretary Status Resolution Branch  <b>Date:</b> 12/11/2023 s22(1)(a)(ii)

**Contact Officer** David Arnold, Assistant Secretary, Status Resolution Branch, s22(1)(a)(ii)

- CC**
- Minister for Home Affairs and Minister for Cyber Security
  - A/g Secretary
  - A/g Deputy Secretary Immigration
  - Assistant Commissioner, Detention and National Removals
  - Group Manager Legal
  - Commander, National Immigration Detention
  - Assistant Secretary, Migration and Citizenship Litigation
  - Senior Director, Status Resolution Network
  - Chief Superintendent, National Removals
  - Director, Status Resolution WA, NSW, VIC, SA and QLD
  - Director, Status Resolution Support Programs Section
  - Superintendent, Detention Health
  - Status Resolution Officers WA, NSW, VIC, SA and QLD

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**OFFICIAL SENSITIVE: Personal privacy**

Attachment A

**RECORD OF MINISTERIAL DECISION UNDER REGULATION 2.25AA OF THE *MIGRATION REGULATIONS 1994***

1. The persons named below are unlawful non-citizens residing in the Australian community.
2. Pursuant to regulation 2.25AA of the *Migration Regulations 1994*, I have indicated my decision for each individual as to whether I have decided to grant these persons a Bridging (Removal Pending) (Class WR) (subclass 070) visa (BVR).

	CLIENT ID	SURNAME	GIVEN NAME	CITIZENSHIP	STATE	BVR granted pursuant to regulation 2.25AA of the <i>Migration Regulations 1994</i>
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s47F



**OFFICIAL SENSITIVE: Personal privacy**

**OFFICIAL SENSITIVE: Personal privacy**

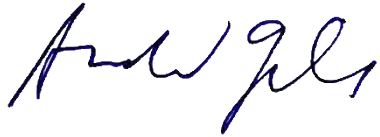
s47F



**OFFICIAL SENSITIVE: Personal privacy**

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under the *Freedom of Information Act 1982*

s47F

A handwritten signature in blue ink, appearing to read "Andrew Giles".

THE HON ANDREW GILES MP  
Minister for Immigration, Citizenship and Multicultural Affairs

12/11/2023



## Bridging (Removal Pending) (subclass 070) visa – mandatory conditions

There are a number of mandatory conditions that are attached to a Bridging (Removal Pending) (subclass 070) visa granted under regulations 2.25AA of the *Migration Regulations 1994* (Regulations) and by which holders are required to abide.

The mandatory conditions imposed by clauses 070.611 and 070.612(1) are set out in Schedule 8 to the Regulations :

<b>8303</b>	The holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community.
<b>8401</b>	The holder must report: (a) at the time or times; and (b) at a place or in a manner; specified by the Minister from time to time.
<b>8513</b>	The holder must notify Immigration of his or her residential address within five working days of the grant.
<b>8514</b>	During the visa period of the visa, there must be no material change in the circumstances on the basis of which it was granted.
<b>8541</b>	The holder: (a) must do everything possible to facilitate his or her removal from Australia and (b) must not attempt to obstruct efforts to arrange and effect his or her removal from Australia.
<b>8542</b>	The holder must make himself or herself available for removal from Australia in accordance with instructions given to the holder by Immigration for the purpose of that removal.
<b>8543</b>	The holder must attend at a place, date and time specified by Immigration in order to facilitate efforts to arrange and effect his or her removal from Australia.
<b>8550</b>	The holder must notify the Minister of any change in the holder's personal details, including a change to any of the following contact information: (a) the holder's name; (b) an address of the holder; (c) a phone number of the holder; (d) an email address of the holder; (e) an online profile used by the holder; (f) a user name of the holder; not less than 2 working days before the change is to occur.
<b>8551</b>	(1) The holder must obtain the Minister's approval before taking up employment in the following occupations, or occupations of a similar kind: (a) occupations that involve the use of, or access to, chemicals of security concern; (b) occupations in the aviation or maritime industries; (c) occupations at facilities that handle security-sensitive biological agents.

	<p>(2) In this clause: chemicals of security concern means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p> <ul style="list-style-type: none"> <li>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</li> <li>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</li> </ul>
8552	The holder must notify the Minister of any change in the holder's employment details, not less than 2 working days before the change is to occur.
8553	The holder must not become involved in activities that are prejudicial to security (within the meaning of section 4 of the <i>Australian Security Intelligence Organisation Act 1979</i> ).
8554	<p>(1) The holder must not acquire any of the following goods:</p> <ul style="list-style-type: none"> <li>(a) weapons;</li> <li>(b) explosives;</li> <li>(c) material or documentation that provides instruction on the use of weapons or explosives.</li> </ul> <p>(2) In this clause: weapon means a thing made or adapted for use for inflicting bodily injury.</p>
8555	<p>The holder must obtain the Minister's approval before undertaking the following activities, or activities of a similar kind:</p> <ul style="list-style-type: none"> <li>(a) flight training;</li> <li>(b) flying aircraft.</li> </ul>
8556	<p>The holder must not communicate or associate with:</p> <ul style="list-style-type: none"> <li>(a) an entity listed under Part 4 of the <i>Charter of the United Nations Act 1945</i>; or</li> <li>(b) an organisation prescribed by the regulations made under the <i>Criminal Code Act 1995</i> for the purposes of paragraph (b) of the definition of <b>terrorist organisation</b> in subsection 102.1(1) of the <i>Criminal Code</i>.</li> </ul>
8560	<p>(1) The holder must obtain the Minister's approval before acquiring chemicals of security concern.</p> <p>(2) In this clause: <b>chemicals of security concern</b> means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p>

	<p>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</p> <p>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</p>
<b>8561</b>	If the holder is directed by the Minister to attend an interview that relates to the holder's visa (including an interview with the Australian Security Intelligence Organisation), the holder must comply with the direction.
<b>8562</b>	<p>(1) The holder must not take up employment in:</p> <p>(a) occupations that involve the use of, or access to, weapons or explosives; or</p> <p>(b) occupations of a similar kind.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>
<b>8563</b>	<p>(1) The holder must not undertake the following activities, or activities of a similar kind:</p> <p>(a) using or accessing weapons or explosives;</p> <p>(b) participating in training in the use of weapons or explosives;</p> <p>(c) possessing or accessing material or documentation that provides instruction on the use of weapons or explosives.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>

**From:** s22(1)(a)(ii)  
**Sent:** 13/11/2023 7:15:30 PM  
**To:** "David ARNOLD" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @HOMEAFFAIRS.GOV.AU>  
**Cc:** s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; "Michael THOMAS" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @abf.gov.au; "Marian AGBINYA" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au; "Stephanie FOSTER" s22(1)(a)(ii) @homeaffairs.gov.au; "Michael WILLARD" s22(1)(a)(ii) @homeaffairs.gov.au; "Clare SHARP" s22(1)(a)(ii) @homeaffairs.gov.au; "Michael BURKE" s22(1)(a)(ii) @homeaffairs.gov.au; "Stephanie KOLOBARIC" s22(1)(a)(ii) @homeaffairs.gov.au; "DLO.Giles" s22(1)(a)(ii) @homeaffairs.gov.au; s22(1)(a)(ii) @homeaffairs.gov.au  
**Subject:** RE: Ministerial submission - MS23-002339-  
**Attachments:** MS23-002339 Attachment A.pdf, MS23-002339 Signed Submission.pdf

OFFICIAL: Sensitive  
 Personal-Privacy, Legal-Privilege

Hi David

Please see attached signed submission MS23-002339.  
 Hard copy will be returned to the Department.

Thank you

Regards

s22(1)(a)(ii)

s22(1)(a)(ii)

Office of the Hon Andrew Giles MP  
 Minister for Immigration, Citizenship and Multicultural Affairs  
 Parliament House, Canberra

s22(1)(a)(ii)

E: s22(1)(a)(ii) @homeaffairs.gov.au

Personal-Privacy, Legal-Privilege  
 OFFICIAL: Sensitive

Released by Department of Home Affairs  
 under the Freedom of Information Act 1982

**From:** David ARNOLD <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>  
**Sent:** Monday, 13 November 2023 6:09 PM  
**To:** <sup>s22(1)(a)(ii)</sup> @HOMEAFFAIRS.GOV.AU>  
**Cc:** <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; Michael THOMAS <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @abf.gov.au>; Marian <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; AGBINYA <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; Stephanie FOSTER <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; Michael WILLARD <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; Clare SHARP <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; Michael BURKE <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; Stephanie KOLOBARIC <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>; DLO.Giles <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au>  
**Subject:** Ministerial submission - MS23-002339- Regulation 2.25AA consideration to grant one non-citizen released from immigration detention a Bridging (Removal Pending) (subclass 070) visa (BVR) [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy, ACCESS=Legal-Privil

OFFICIAL: Sensitive  
Personal-Privacy, Legal-Privilege

Good Afternoon <sup>s22(1)(a)(ii)</sup>

Sending this to you via email noting the PDMS submission will flow through to you tomorrow.

Please find attached Ministerial submission seeking the Minister's consideration to grant <sup>s. 47F(1)</sup> (Mr <sup>s. 47F(1)</sup> (at **Attachment A**) listed in the submission a Bridging (Removal Pending) (subclass 070) visa (BVR) as he has been released from immigration following the High Court judgment in *NZYQ*.

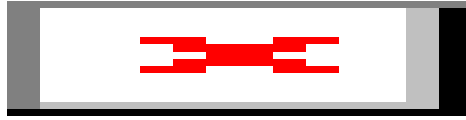
This is the fifth submission we are sending for the Minister's consideration and comprises <sup>s. 47F(1)</sup> <sup>s. 47F(1)</sup> been released from immigration detention as an unlawful non-citizen (brief case details are outlined in **Attachment C**).

Please do not hesitate to contact me if you would like to discuss the submission.

Thanks, David

David Arnold  
Assistant Secretary – Status Resolution Branch  
Status Resolution and Cancellation Division  
Immigration Group  
Department of Home Affairs

<sup>s22(1)(a)(ii)</sup>  
E: <sup>s22(1)(a)(ii)</sup> @homeaffairs.gov.au



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Australian Government  
Department of Home Affairs

Submission

For decision  
PDMS Ref. Number: MS23-002339  
Date of Clearance: 13/11/2023

To Minister for Immigration, Citizenship and Multicultural Affairs

Subject Regulation 2.25AA visa grant consideration for s. 47F(1) [redacted] released from immigration detention as s [redacted] unlawful non-citizen following the High Court judgment in NZYQ - Bridging (Removal Pending) (subclass 070) visa

Timing The individual being referred in this submission is currently residing in the community as an unlawful non-citizen as he was released from immigration detention following the High Court judgment in NZYQ on 8 November 2023. This submission seeks the Minister's consideration to exercise his powers under regulation 2.25AA of the Migration Regulations 1994 to grant a Bridging (Removal Pending) (subclass 070) visa to the individual listed in this submission.

Recommendations

That you:

- 1. note the contents of this brief; and
- 2. agree to grant s47F [redacted], listed in Attachment A, a Bridging R (Class WR) (Removal Pending) (subclass 070) visa (BVR) under regulation 2.25AA of the Migration Regulations 1994 (the Regulations) by circling your decision and signing the decision record;
  - if you agree to grant a BVR, please specify a timeframe for reviewing this individual's case;
- 3. note if you decide not to grant a BVR to the individual listed in Attachment A under regulation 2.25AA, he will remain in the community as an unlawful non-citizen and unless his circumstances change, he cannot be detained under section 189 of the Migration Act 1958 (the Act) noting the High Court's orders made in NZYQ.

noted / please discuss

agreed and signed / not agreed

one year / two years / other (please specify)

noted / please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature.....

Date: 13/11/2023

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Minister's Comments

Key Issues

1. The purpose of this submission is to seek your consideration to grant the individual listed in **Attachment A** (s47F [redacted]) a BVR under regulation 2.25AA of the Regulations, noting he is currently residing in the community as an unlawful non-citizen following his release from immigration detention as a result of the orders made by the High Court in NZYQ (s47F [redacted] – MS23 002266 refers).
2. On 8 November 2023, the High Court made some initial orders in the matter of NZYQ, with its published reasons to follow in due course, finding that:
  - Sections 189(1) and 196(1), which the Commonwealth has relied on to authorise the detention of NZYQ, insofar as they applied to NZYQ as at 30 May 2023, are beyond legislative power;And made the following orders:
  - having been and continuing to be no real prospect of the removal of the plaintiff from Australia becoming practicable in the reasonably foreseeable future:
    - (a) the plaintiff's detention was unlawful as at 30 May 2023; and
    - (b) the plaintiff's continued detention is unlawful and has been since 30 May 2023.
  - A writ of habeas corpus was issued requiring the defendants to release the plaintiff forthwith.
3. The orders, to which 'at least a majority' of the Court agreed, effectively overturn the longstanding decision made by the High Court in *Al Kateb v Godwin* (2004) 219 CLR 562 (*Al-Kateb*), which held that detention of an individual under the Act remains lawful, even where their removal from Australia is not reasonably practicable at the present time, and there is no real likelihood or prospect of removal in the reasonably foreseeable future.
4. The orders made by the High Court have significant legal, policy and operational consequences for the Commonwealth; including the need to release a number of individuals in similar circumstances from immigration detention, possible false imprisonment claims and other claims seeking damages.
5. The individual being referred to you in this submission (the 'NZYQ cohort') has been identified by the Department as falling within scope of the High Court's orders of 8 November 2023.



**OFFICIAL: Sensitive Legal privilege**

Such individuals have been released from immigration detention as unlawful non-citizens as there is no real prospect of removal being effected in the reasonably foreseeable future.

Considerations for possible visa grant

- 6. As outlined, the NZYQ cohort are residing as unlawful non-citizens in the community. As unlawful non-citizens, these individuals have no work rights and no access to social security support.

s. 47F(1), s. 42(1)

7.

8.

**s. 47C(1)**

9.

10.

11

s. 47C(1)

# s. 47C(1)

## Support services available to BVR holders

13. BVR holders have work rights and access to Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia, including income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control).
14. The individual listed may also be eligible for transitional assistance through the Status Resolution Support Services Program (SRSS) program. This may include extended transitional support noting your decision in MS22-001485 to allow SRSS transitional support (SRSS Band 4) for up to 12 weeks, with a possible extension of a further 12 weeks for long term detainees of more than two years released from immigration detention. These arrangements assist individuals to transition to residing lawfully in the community by supporting them while they source independent accommodation, and employment.
15. It is worth noting that some among the immediately affected cohort have extremely high health needs, including 24 hour care. While SRSS can support individuals in the short term, a longer term solution may be required for such individuals. The Department will bring forward options for your consideration at a later time.

## Decline to grant a visa

16. Should you decline to grant a visa, including an SPV, or a BVR under regulation 2.25AA of the Regulations, this individual will remain in the community as an unlawful non-citizen.
17. Should he remain in the community as an unlawful non-citizen, he will not have work rights or access to Medicare or social welfare payments through Services Australia. Australia's international obligations require that all persons in Australia have an adequate standard of living. These individuals may be eligible for SRSS support, which would be assessed on an as-needs basis. Until they are granted a visa, they will rely exclusively on SRSS support.

# s. 47C(1)

## **Background**

20. Further details regarding the individual's character matters is provided in the summary at Attachment C.

**Consultation – internal/external**

21. Status Resolution Network, National Removals, International Division and Legal Group.

**Consultation – A/g Secretary / A/g Deputy Secretary / ABF Commissioner**

22. The A/g Secretary, A/g Deputy Secretary Immigration and ABF Commissioner are aware of the approach taken in this submission.

**Client service implications**

23. There are no client service implications.

**Risks and Sensitivities**

24. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – [media@homeaffairs.gov.au](mailto:media@homeaffairs.gov.au).

**Financial/systems/legal/deregulation/media implications**

25. If you grant a BVR, this individual will be eligible to access Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia including meeting the income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control). The Special Benefit payment is currently \$749.20 fortnightly (for a single person, over 22 years old).

26. The payments and services attached to a BVR differs to the support services programs and policy settings available to other asylum seekers and unauthorised maritime arrivals (UMA) who are granted a Bridging E (subclass 050) visa (BVE) and released from immigration detention. This person is not eligible for mainstream social services income support such as Special Benefit, and is instead eligible for income support paid by Services Australia on behalf of the Department through the SRSS program. SRSS income support is 89 per cent of the current Jobseeker/Special Benefit rate currently \$666.79 fortnightly (for a single person, over 22 years old). Additionally UMAs granted a BVE are eligible for Medicare; however, non-UMAs granted a BVE are not eligible for Medicare. Where an asylum seeker holding a BVE is not eligible for Medicare, the Department may fund general health and medical services equivalent to what an Australian citizen or permanent resident would receive under Medicare via the SRSS program.

s47C(1)

27.



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under the Freedom of Information Act 1982

**Attachments**

**Attachment A** Regulation 2.25AA – Grant decision record

**Attachment B** BVR mandatory conditions – Regulation 2.25AA

**Attachment C** Case details

**Authorising Officer**

Cleared by:

David Arnold  
Assistant Secretary  
Status Resolution Branch

**Date:** 13/11/2023

s22(1)(a)(ii)

**Contact Officer** David Arnold, Assistant Secretary, Status Resolution Branch, Ph: s22(1)(a)(ii)

**CC** Minister for Home Affairs and Minister for Cyber Security  
A/g Secretary  
A/g Deputy Secretary Immigration  
Assistant Commissioner, Detention and National Removals  
Group Manager Legal  
Commander, National Immigration Detention  
Assistant Secretary, Migration and Citizenship Litigation  
Senior Director, Status Resolution Network  
Chief Superintendent, National Removals  
Director, Status Resolution WA  
Director, Status Resolution Support Programs Section  
Superintendent, Detention Health  
Status Resolution Officers WA

OFFICIAL SENSITIVE: Personal privacy

Attachment A

RECORD OF MINISTERIAL DECISION UNDER REGULATION 2.25AA OF THE *MIGRATION REGULATIONS 1994*

1. The person named below is an unlawful non-citizen residing in the Australian community.
2. Pursuant to regulation 2.25AA of the *Migration Regulations 1994*, I have indicated my decision as to whether I have decided to grant this person a Bridging (Removal Pending) (Class WR) (subclass 070) visa (BVR).

	CLIENT ID	SURNAME	GIVEN NAME	CITIZENSHIP	STATE	BVR granted pursuant to regulation 2.25AA of the <i>Migration Regulations 1994</i>
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s47F



THE HON ANDREW GILES MP  
Minister for Immigration, Citizenship and Multicultural Affairs

13/11 / 2023

OFFICIAL SENSITIVE: Personal privacy

## Bridging (Removal Pending) (subclass 070) visa – mandatory conditions

There are a number of mandatory conditions that are attached to a Bridging (Removal Pending) (subclass 070) visa granted under regulations 2.25AA of the *Migration Regulations 1994* (Regulations) and by which holders are required to abide.

The mandatory conditions imposed by clauses 070.611 and 070.612(1) are set out in Schedule 8 to the Regulations :

<b>8303</b>	The holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community.
<b>8401</b>	The holder must report: (a) at the time or times; and (b) at a place or in a manner; specified by the Minister from time to time.
<b>8513</b>	The holder must notify Immigration of his or her residential address within five working days of the grant.
<b>8514</b>	During the visa period of the visa, there must be no material change in the circumstances on the basis of which it was granted.
<b>8541</b>	The holder: (a) must do everything possible to facilitate his or her removal from Australia and (b) must not attempt to obstruct efforts to arrange and effect his or her removal from Australia.
<b>8542</b>	The holder must make himself or herself available for removal from Australia in accordance with instructions given to the holder by Immigration for the purpose of that removal.
<b>8543</b>	The holder must attend at a place, date and time specified by Immigration in order to facilitate efforts to arrange and effect his or her removal from Australia.
<b>8550</b>	The holder must notify the Minister of any change in the holder's personal details, including a change to any of the following contact information: (a) the holder's name; (b) an address of the holder; (c) a phone number of the holder; (d) an email address of the holder; (e) an online profile used by the holder; (f) a user name of the holder; not less than 2 working days before the change is to occur.
<b>8551</b>	(1) The holder must obtain the Minister's approval before taking up employment in the following occupations, or occupations of a similar kind: (a) occupations that involve the use of, or access to, chemicals of security concern; (b) occupations in the aviation or maritime industries; (c) occupations at facilities that handle security-sensitive biological agents.

	<p>(2) In this clause: chemicals of security concern means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p> <ul style="list-style-type: none"> <li>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</li> <li>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</li> </ul>
8552	The holder must notify the Minister of any change in the holder's employment details, not less than 2 working days before the change is to occur.
8553	The holder must not become involved in activities that are prejudicial to security (within the meaning of section 4 of the <i>Australian Security Intelligence Organisation Act 1979</i> ).
8554	<p>(1) The holder must not acquire any of the following goods:</p> <ul style="list-style-type: none"> <li>(a) weapons;</li> <li>(b) explosives;</li> <li>(c) material or documentation that provides instruction on the use of weapons or explosives.</li> </ul> <p>(2) In this clause: weapon means a thing made or adapted for use for inflicting bodily injury.</p>
8555	The holder must obtain the Minister's approval before undertaking the following activities, or activities of a similar kind: <ul style="list-style-type: none"> <li>(a) flight training;</li> <li>(b) flying aircraft.</li> </ul>
8556	The holder must not communicate or associate with: <ul style="list-style-type: none"> <li>(a) an entity listed under Part 4 of the <i>Charter of the United Nations Act 1945</i>; or</li> <li>(b) an organisation prescribed by the regulations made under the <i>Criminal Code Act 1995</i> for the purposes of paragraph (b) of the definition of <b>terrorist organisation</b> in subsection 102.1(1) of the <i>Criminal Code</i>.</li> </ul>
8560	<p>(1) The holder must obtain the Minister's approval before acquiring chemicals of security concern.</p> <p>(2) In this clause: <b>chemicals of security concern</b> means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p>



	<p>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</p> <p>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</p>
<b>8561</b>	If the holder is directed by the Minister to attend an interview that relates to the holder's visa (including an interview with the Australian Security Intelligence Organisation), the holder must comply with the direction.
<b>8562</b>	<p>(1) The holder must not take up employment in:</p> <p>(a) occupations that involve the use of, or access to, weapons or explosives; or</p> <p>(b) occupations of a similar kind.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>
<b>8563</b>	<p>(1) The holder must not undertake the following activities, or activities of a similar kind:</p> <p>(a) using or accessing weapons or explosives;</p> <p>(b) participating in training in the use of weapons or explosives;</p> <p>(c) possessing or accessing material or documentation that provides instruction on the use of weapons or explosives.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>



**Subject:** Ministerial submission - MS23-002348 - Regulation 2.25AA consideration to grant two non-citizens released from immigration detention a Bridging (Removal Pending) (subclass 070) visa (BVR) [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy, ACCESS=Legal-Priv

**OFFICIAL: Sensitive  
Personal-Privacy, Legal-Privilege**

Good Afternoon s22(1)(a)(ii)

Sending this to you via email noting the PDMS submission will flow through to you tomorrow.

Please find attached Ministerial submission seeking the Minister's consideration to grant s. 47F/ non-citizens (at **Attachment A**) a Bridging (Removal Pending) (subclass 070) visa (BVR) as they have been released from immigration following the High Court judgment in *NZYQ*.

This is the sixth submission we are sending for the Minister's consideration and comprises s. 47F/ individuals who have been released from immigration detention as unlawful non-citizens (brief case details are outlined in **Attachment C**).

Please do not hesitate to contact me if you would like to discuss the submission.

Thanks, David

David Arnold  
Assistant Secretary – Status Resolution Branch  
Status Resolution and Cancellation Division  
Immigration Group  
Department of Home Affairs

s22(1)(a)(ii)

E: s22(1)(a)(ii) [@homeaffairs.gov.au](mailto: @homeaffairs.gov.au)



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Australian Government  
Department of Home Affairs

Submission

For decision  
PDMS Ref. Number: MS23-002348  
Date of Clearance: 14/11/2023

To Minister for Immigration, Citizenship and Multicultural Affairs  
Subject Regulation 2.25AA visa grant consideration for <sup>s47F</sup> individuals released from immigration detention as unlawful non-citizens following the High Court judgment in NZYQ - Bridging (Removal Pending) (subclass 070) visa

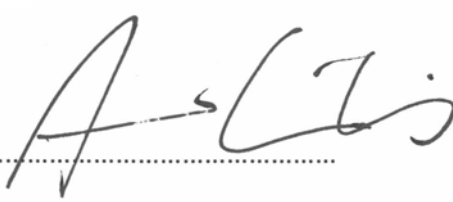
Timing The individuals being referred in this submission are currently residing in the community as unlawful non-citizens as they were released from immigration detention following the High Court judgment in NZYQ on 8 November 2023. This submission seeks the Minister's consideration to exercise his powers under regulation 2.25AA of the Migration Regulations 1994 to grant a Bridging (Removal Pending) (subclass 070) visa to the individuals listed in this submission.

Recommendations

That you:

- 1. note the contents of this brief; and noted / please discuss
- 2. agree to grant the individuals listed in **Attachment A** a Bridging R (Class WR) (Removal Pending) (subclass 070) visa (BVR) under regulation 2.25AA of the Migration Regulations 1994 (the Regulations) by circling your decision for each individual and signing the decision; agreed and signed / not agreed
  - if you agree to grant a BVR, please specify a timeframe for reviewing these individuals' cases; one year / two years / other \_\_\_\_\_ (please specify)
- 3. note if you decide not to grant a BVR to the individuals listed in **Attachment A** under regulation 2.25AA, they will remain in the community as unlawful non-citizens and unless their circumstances change, they cannot be detained under section 189 of the Migration Act 1958 (the Act) noting the High Court's orders made in NZYQ. noted / please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature..... 

Date: 14/11/2023

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Minister's Comments

**Key Issues**

1. The purpose of this submission is to seek your consideration to grant the <sup>s47F</sup> individuals listed in **Attachment A** a BVR under regulation 2.25AA of the Regulations, noting they are currently residing in the community as unlawful non-citizens following their release from immigration detention as a result of the orders made by the High Court in NZYQ (<sup>s47F</sup> – MS23 002266 refers).
2. On 8 November 2023, the High Court made some initial orders in the matter of NZYQ, with its published reasons to follow in due course, finding that:
  - Sections 189(1) and 196(1), which the Commonwealth has relied on to authorise the detention of NZYQ, insofar as they applied to NZYQ as at 30 May 2023, are beyond legislative power;And made the following orders:
  - having been and continuing to be no real prospect of the removal of the plaintiff from Australia becoming practicable in the reasonably foreseeable future:
    - (a) the plaintiff's detention was unlawful as at 30 May 2023; and
    - (b) the plaintiff's continued detention is unlawful and has been since 30 May 2023.
  - A writ of habeas corpus was issued requiring the defendants to release the plaintiff forthwith.
3. The orders, to which 'at least a majority' of the Court agreed, effectively overturn the longstanding decision made by the High Court in *Al Kateb v Godwin* (2004) 219 CLR 562 (*Al-Kateb*), which held that detention of an individual under the Act remains lawful, even where their removal from Australia is not reasonably practicable at the present time, and there is no real likelihood or prospect of removal in the reasonably foreseeable future.
4. The orders made by the High Court have significant legal, policy and operational consequences for the Commonwealth; including the need to release a number of individuals in similar circumstances from immigration detention, possible false imprisonment claims and other claims seeking damages.
5. The individuals being referred to you in this submission (the 'NZYQ cohort') have been identified by the Department as falling within scope of the High Court's orders of 8 November 2023. Such individuals have been released from immigration detention as unlawful non-

## OFFICIAL: Sensitive Legal privilege

citizens as there is no real prospect of removal being effected in the reasonably foreseeable future.

### Considerations for possible visa grant

6. As outlined, the NZYQ cohort are residing as unlawful non-citizens in the community. As unlawful non-citizens, these individuals have no work rights and no access to social security support.

7. s. 47F(1), s. 42(1)

8.

**S. 47C(1)**

9.

10.

11.

s. 47C(1)

# s. 47C(1)

## Support services available to BVR holders

13. BVR holders have work rights and access to Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia, including income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control).
14. The individuals listed may also be eligible for transitional assistance through the Status Resolution Support Services Program (SRSS) program. This may include extended transitional support noting your decision in MS22-001485 to allow SRSS transitional support (SRSS Band 4) for up to 12 weeks, with a possible extension of a further 12 weeks for long term detainees of more than two years released from immigration detention. These arrangements assist individuals to transition to residing lawfully in the community by supporting them while they source independent accommodation, and employment.
15. It is worth noting that some among the immediately affected cohort have extremely high health needs, including 24 hour care. While SRSS can support individuals in the short term, a longer term solution may be required for such individuals. The Department will bring forward options for your consideration at a later time.

## Decline to grant a visa

16. Should you decline to grant a visa, including an SPV, or a BVR under regulation 2.25AA of the Regulations, these individuals will remain in the community as unlawful non-citizens.
17. Should they remain in the community as unlawful non-citizens, they will not have work rights or access to Medicare or social welfare payments through Services Australia. Australia's international obligations require that all persons in Australia have an adequate standard of living. These individuals may be eligible for SRSS support, which would be assessed on an as-needs basis. Until they are granted a visa, they will rely exclusively on SRSS support.

# s. 47C(1)

## **Background**

20. Further details regarding these individuals character matters is provided in the summary at Attachment C.



**Consultation – internal/external**

21. Status Resolution Network, National Removals, International Division and Legal Group.

**Consultation – A/g Secretary / A/g Deputy Secretary / ABF Commissioner**

22. The A/g Secretary, A/g Deputy Secretary Immigration and ABF Commissioner are aware of the approach taken in this submission.

**Client service implications**

23. There are no client service implications.

**Risks and Sensitivities**

24. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – [media@homeaffairs.gov.au](mailto:media@homeaffairs.gov.au).

**Financial/systems/legal/deregulation/media implications**

25. If you grant a BVR, these individuals will be eligible to access Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia including meeting the income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control). The Special Benefit payment is currently \$749.20 fortnightly (for a single person, over 22 years old).

26. The payments and services attached to a BVR differs to the support services programs and policy settings available to other asylum seekers and unauthorised maritime arrivals (UMA) who are granted a Bridging E (subclass 050) visa (BVE) and released from immigration detention. These persons are not eligible for mainstream social services income support such as Special Benefit, and are instead eligible for income support paid by Services Australia on behalf of the Department through the SRSS program. SRSS income support is 89 per cent of the current Jobseeker/Special Benefit rate currently \$666.79 fortnightly (for a single person, over 22 years old). Additionally UMAs granted a BVE are eligible for Medicare; however, non-UMAs granted a BVE are not eligible for Medicare. Where an asylum seeker holding a BVE is not eligible for Medicare, the Department may fund general health and medical services equivalent to what an Australian citizen or permanent resident would receive under Medicare via the SRSS program.

s47C(1)

27.



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**Attachments**

**Attachment A** Regulation 2.25AA – Grant decision record

**Attachment B** BVR mandatory conditions – Regulation 2.25AA

**Attachment C** Case details

<b>Authorising Officer</b>
Cleared by:  David Arnold Assistant Secretary Status Resolution Branch  Date: 14/11/2023 Ph: s22(1)(a)(ii)

**Contact Officer** David Arnold, Assistant Secretary, Status Resolution Branch, Ph: s22(1)(a)(ii)

- CC**
- Minister for Home Affairs and Minister for Cyber Security
  - A/g Secretary
  - A/g Deputy Secretary Immigration
  - Assistant Commissioner, Detention and National Removals
  - Group Manager Legal
  - Commander, National Immigration Detention
  - Assistant Secretary, Migration and Citizenship Litigation
  - Senior Director, Status Resolution Network
  - Chief Superintendent, National Removals
  - Director, Status Resolution NSW and VIC
  - Director, Status Resolution Support Programs Section
  - Superintendent, Detention Health
  - Status Resolution Officers NSW and VIC

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**OFFICIAL SENSITIVE: Personal privacy**

Attachment A

**RECORD OF MINISTERIAL DECISION UNDER REGULATION 2.25AA OF THE *MIGRATION REGULATIONS 1994***

1. The persons named below are unlawful non-citizens residing in the Australian community.
2. Pursuant to regulation 2.25AA of the *Migration Regulations 1994*, I have indicated my decision for each individual as to whether I have decided to grant these persons a Bridging (Removal Pending) (Class WR) (subclass 070) visa (BVR).

	CLIENT ID	SURNAME	GIVEN NAME	CITIZENSHIP	STATE	BVR granted pursuant to regulation 2.25AA of the <i>Migration Regulations 1994</i>
s47F	[Redacted]					



THE HON ANDREW GILES MP  
 Minister for Immigration, Citizenship and Multicultural Affairs

14 / 11 / 2023

**OFFICIAL SENSITIVE: Personal privacy**

## Bridging (Removal Pending) (subclass 070) visa – mandatory conditions

There are a number of mandatory conditions that are attached to a Bridging (Removal Pending) (subclass 070) visa granted under regulations 2.25AA of the *Migration Regulations 1994* (Regulations) and by which holders are required to abide.

The mandatory conditions imposed by clauses 070.611 and 070.612(1) are set out in Schedule 8 to the Regulations :

<b>8303</b>	The holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community.
<b>8401</b>	The holder must report: (a) at the time or times; and (b) at a place or in a manner; specified by the Minister from time to time.
<b>8513</b>	The holder must notify Immigration of his or her residential address within five working days of the grant.
<b>8514</b>	During the visa period of the visa, there must be no material change in the circumstances on the basis of which it was granted.
<b>8541</b>	The holder: (a) must do everything possible to facilitate his or her removal from Australia and (b) must not attempt to obstruct efforts to arrange and effect his or her removal from Australia.
<b>8542</b>	The holder must make himself or herself available for removal from Australia in accordance with instructions given to the holder by Immigration for the purpose of that removal.
<b>8543</b>	The holder must attend at a place, date and time specified by Immigration in order to facilitate efforts to arrange and effect his or her removal from Australia.
<b>8550</b>	The holder must notify the Minister of any change in the holder's personal details, including a change to any of the following contact information: (a) the holder's name; (b) an address of the holder; (c) a phone number of the holder; (d) an email address of the holder; (e) an online profile used by the holder; (f) a user name of the holder; not less than 2 working days before the change is to occur.
<b>8551</b>	(1) The holder must obtain the Minister's approval before taking up employment in the following occupations, or occupations of a similar kind: (a) occupations that involve the use of, or access to, chemicals of security concern; (b) occupations in the aviation or maritime industries; (c) occupations at facilities that handle security-sensitive biological agents.

	<p>(2) In this clause: chemicals of security concern means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p> <ul style="list-style-type: none"> <li>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</li> <li>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</li> </ul>
8552	The holder must notify the Minister of any change in the holder's employment details, not less than 2 working days before the change is to occur.
8553	The holder must not become involved in activities that are prejudicial to security (within the meaning of section 4 of the <i>Australian Security Intelligence Organisation Act 1979</i> ).
8554	<p>(1) The holder must not acquire any of the following goods:</p> <ul style="list-style-type: none"> <li>(a) weapons;</li> <li>(b) explosives;</li> <li>(c) material or documentation that provides instruction on the use of weapons or explosives.</li> </ul> <p>(2) In this clause: weapon means a thing made or adapted for use for inflicting bodily injury.</p>
8555	<p>The holder must obtain the Minister's approval before undertaking the following activities, or activities of a similar kind:</p> <ul style="list-style-type: none"> <li>(a) flight training;</li> <li>(b) flying aircraft.</li> </ul>
8556	<p>The holder must not communicate or associate with:</p> <ul style="list-style-type: none"> <li>(a) an entity listed under Part 4 of the <i>Charter of the United Nations Act 1945</i>; or</li> <li>(b) an organisation prescribed by the regulations made under the <i>Criminal Code Act 1995</i> for the purposes of paragraph (b) of the definition of <b>terrorist organisation</b> in subsection 102.1(1) of the <i>Criminal Code</i>.</li> </ul>
8560	<p>(1) The holder must obtain the Minister's approval before acquiring chemicals of security concern.</p> <p>(2) In this clause: <b>chemicals of security concern</b> means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p>

	<p>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</p> <p>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</p>
<b>8561</b>	If the holder is directed by the Minister to attend an interview that relates to the holder's visa (including an interview with the Australian Security Intelligence Organisation), the holder must comply with the direction.
<b>8562</b>	<p>(1) The holder must not take up employment in:</p> <p>(a) occupations that involve the use of, or access to, weapons or explosives; or</p> <p>(b) occupations of a similar kind.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>
<b>8563</b>	<p>(1) The holder must not undertake the following activities, or activities of a similar kind:</p> <p>(a) using or accessing weapons or explosives;</p> <p>(b) participating in training in the use of weapons or explosives;</p> <p>(c) possessing or accessing material or documentation that provides instruction on the use of weapons or explosives.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>



**Subject:** Ministerial submission - MS23-002351 - Regulation 2.25AA consideration to grant one non-citizen released from immigration detention a Bridging (Removal Pending) (subclass 070) visa (BVR) [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy, ACCESS=Legal-Privi

**OFFICIAL: Sensitive  
Personal-Privacy, Legal-Privilege**

Good Afternoon <sup>s22(1)</sup><sub>(a)(ii)</sub>

Sending this to you via email noting the PDMS submission will flow through to you tomorrow.

Please find attached Ministerial submission seeking the Minister's consideration to grant <sup>s.</sup><sub>47F(1)</sub> (at **Attachment A**) a Bridging (Removal Pending) (subclass 070) visa (BVR) as <sup>s.</sup><sub>47F(1)</sub> been released from immigration following the High Court judgment in *NZYQ*.

This is the seventh submission we are sending for the Minister's consideration and comprises <sup>s.</sup><sub>47F(1)</sub> <sup>s.</sup><sub>47F(1)</sub> been released from immigration detention as an unlawful non-citizen (brief case details are outlined in **Attachment C**).

Please do not hesitate to contact me if you would like to discuss the submission.

Thanks, David

David Arnold  
Assistant Secretary – Status Resolution Branch  
Status Resolution and Cancellation Division  
Immigration Group  
Department of Home Affairs

<sup>s22(1)(a)(ii)</sup>  
E: <sup>s22(1)(a)(ii)</sup> [@homeaffairs.gov.au](mailto: @homeaffairs.gov.au)



**Personal-Privacy, Legal-Privilege  
OFFICIAL: Sensitive**

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**OFFICIAL: Sensitive Legal privilege**

Australian Government  
Department of Home Affairs

**Submission**

For decision  
PDMS Ref. Number: MS23-002351  
Date of Clearance: 15/11/2023

**To** Minister for Immigration, Citizenship and Multicultural Affairs

**Subject** *Regulation 2.25AA visa grant consideration for <sup>s47F</sup> individual released from immigration detention as an unlawful non-citizen following the High Court judgment in NZYQ - Bridging (Removal Pending) (subclass 070) visa*

**Timing** *The individual being referred in this submission is currently residing in the community as an unlawful non-citizen as he was released from immigration detention following the High Court judgment in NZYQ on 8 November 2023. This submission seeks the Minister's consideration to exercise his powers under regulation 2.25AA of the Migration Regulations 1994 to grant a Bridging (Removal Pending) (subclass 070) visa to the individual listed in this submission.*

**Recommendations**

That you:

1. note the contents of this brief; and
2. agree to grant <sup>s47F</sup>, listed in **Attachment A**, a Bridging R (Class WR) (Removal Pending) (subclass 070) visa (BVR) under regulation 2.25AA of the *Migration Regulations 1994* (the Regulations) by circling your decision and signing the decision record;
  - if you agree to grant a BVR, please specify a timeframe for reviewing this individual's case;
3. note if you decide not to grant a BVR to the individual listed in **Attachment A** under regulation 2.25AA, he will remain in the community as an unlawful non-citizen and unless his circumstances change, he cannot be detained under section 189 of the *Migration Act 1958* (the Act) noting the High Court's orders made in NZYQ.

noted / please discuss  
agreed and signed / not agreed

one year / two years /  
other \_\_\_\_\_  
(please specify)

noted / please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature.....

Date 15/11/2023

Minister's Comments

**Key Issues**

1. The purpose of this submission is to seek your consideration to grant the individual listed in **Attachment A** (s47F [redacted]) a BVR under regulation 2.25AA of the Regulations, noting he is currently residing in the community as an unlawful non-citizen following his release from immigration detention as a result of the orders made by the High Court in NZYQ (s47F [redacted] – MS23 002266 refers).
2. On 8 November 2023, the High Court made some initial orders in the matter of NZYQ, with its published reasons to follow in due course, finding that:
  - Sections 189(1) and 196(1), which the Commonwealth has relied on to authorise the detention of NZYQ, insofar as they applied to NZYQ as at 30 May 2023, are beyond legislative power;And made the following orders:
  - having been and continuing to be no real prospect of the removal of the plaintiff from Australia becoming practicable in the reasonably foreseeable future:
    - (a) the plaintiff's detention was unlawful as at 30 May 2023; and
    - (b) the plaintiff's continued detention is unlawful and has been since 30 May 2023.
  - A writ of habeas corpus was issued requiring the defendants to release the plaintiff forthwith.
3. The orders, to which 'at least a majority' of the Court agreed, effectively overturn the longstanding decision made by the High Court in *Al Kateb v Godwin* (2004) 219 CLR 562 (*Al-Kateb*), which held that detention of an individual under the Act remains lawful, even where their removal from Australia is not reasonably practicable at the present time, and there is no real likelihood or prospect of removal in the reasonably foreseeable future.
4. The orders made by the High Court have significant legal, policy and operational consequences for the Commonwealth; including the need to release a number of individuals in similar circumstances from immigration detention, possible false imprisonment claims and other claims seeking damages.
5. The individual being referred to you in this submission (the 'NZYQ cohort') has been identified by the Department as falling within scope of the High Court's orders of 8 November 2023.

**OFFICIAL: Sensitive Legal privilege**

Such individuals have been released from immigration detention as unlawful non-citizens as there is no real prospect of removal being effected in the reasonably foreseeable future.

Considerations for possible visa grant

6. As outlined, the NZYQ cohort are residing as unlawful non-citizens in the community. As unlawful non-citizens, these individuals have no work rights and no access to social security support.

7. s. 47F(1), s. 42(1)

8. **s. 47C(1)**

9.

10

11

# s. 47C(1)

s. 47C(1)

Support services available to BVR holders

13. BVR holders have work rights and access to Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia, including income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control).
14. The individual listed may also be eligible for transitional assistance through the Status Resolution Support Services Program (SRSS) program. This may include extended transitional support noting your decision in MS22-001485 to allow SRSS transitional support (SRSS Band 4) for up to 12 weeks, with a possible extension of a further 12 weeks for long term detainees of more than two years released from immigration detention. These arrangements assist individuals to transition to residing lawfully in the community by supporting them while they source independent accommodation, and employment.
15. It is worth noting that some among the immediately affected cohort have extremely high health needs, including 24 hour care. While SRSS can support individuals in the short term, a longer term solution may be required for such individuals. The Department will bring forward options for your consideration at a later time.

Decline to grant a visa

16. Should you decline to grant a visa, including an SPV, or a BVR under regulation 2.25AA of the Regulations, this individual will remain in the community as an unlawful non-citizen.
17. Should he remain in the community as an unlawful non-citizen, he will not have work rights or access to Medicare or social welfare payments through Services Australia. Australia's international obligations require that all persons in Australia have an adequate standard of living. These individuals may be eligible for SRSS support, which would be assessed on an as-needs basis. Until they are granted a visa, they will rely exclusively on SRSS support.

s. 47C(1)

**Background**

20. Further details regarding the individual's character matters is provided in the summary at Attachment C.

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**Consultation – internal/external**

- 21. Status Resolution Network, National Removals, International Division and Legal Group.

**Consultation – A/g Secretary / A/g Deputy Secretary / ABF Commissioner**

- 22. The A/g Secretary, A/g Deputy Secretary Immigration and ABF Commissioner are aware of the approach taken in this submission.

**Client service implications**

- 23. There are no client service implications.

**Risks and Sensitivities**

- 24. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – [media@homeaffairs.gov.au](mailto:media@homeaffairs.gov.au).

**Financial/systems/legal/deregulation/media implications**

- 25. If you grant a BVR, this individual will be eligible to access Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia including meeting the income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control). The Special Benefit payment is currently \$749.20 fortnightly (for a single person, over 22 years old).
- 26. The payments and services attached to a BVR differs to the support services programs and policy settings available to other asylum seekers and unauthorised maritime arrivals (UMA) who are granted a Bridging E (subclass 050) visa (BVE) and released from immigration detention. This person is not eligible for mainstream social services income support such as Special Benefit, and is instead eligible for income support paid by Services Australia on behalf of the Department through the SRSS program. SRSS income support is 89 per cent of the current Jobseeker/Special Benefit rate currently \$666.79 fortnightly (for a single person, over 22 years old). Additionally UMAs granted a BVE are eligible for Medicare; however, non-UMAs granted a BVE are not eligible for Medicare. Where an asylum seeker holding a BVE is not eligible for Medicare, the Department may fund general health and medical services equivalent to what an Australian citizen or permanent resident would receive under Medicare via the SRSS program.

- 27. s47C(1)



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under the Freedom of Information Act 1982

**Attachments**

**Attachment A** Regulation 2.25AA – Grant decision record

**Attachment B** BVR mandatory conditions – Regulation 2.25AA

**Attachment C** Case details

<b>Authorising Officer</b>
Cleared by:
David Arnold Assistant Secretary Status Resolution Branch
Date: 15/11/2023 s22(1)(a)(ii)

**Contact Officer** David Arnold, Assistant Secretary, Status Resolution Branch, Ph: s22(1)(a)(ii)

- CC**
- Minister for Home Affairs and Minister for Cyber Security
  - A/g Secretary
  - A/g Deputy Secretary Immigration
  - Assistant Commissioner, Detention and National Removals
  - Group Manager Legal
  - Commander, National Immigration Detention
  - Assistant Secretary, Migration and Citizenship Litigation
  - Senior Director, Status Resolution Network
  - Chief Superintendent, National Removals
  - Director, Status Resolution VIC
  - Director, Status Resolution Support Programs Section
  - Superintendent, Detention Health
  - Status Resolution Officers VIC

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OFFICIAL SENSITIVE: Personal privacy

Attachment A

RECORD OF MINISTERIAL DECISION UNDER REGULATION 2.25AA OF THE *MIGRATION REGULATIONS 1994*

- 1. The person named below is an unlawful non-citizen residing in the Australian community.
- 2. Pursuant to regulation 2.25AA of the *Migration Regulations 1994*, I have indicated my decision for this individual as to whether I have decided to grant this person a Bridging (Removal Pending) (Class WR) (subclass 070) visa (BVR).

	CLIENT ID	SURNAME	GIVEN NAME	CITIZENSHIP	STATE	BVR granted pursuant to regulation 2.25AA of the <i>Migration Regulations 1994</i>
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THE HON ANDREW GILES MP  
 Minister for Immigration, Citizenship and Multicultural Affairs

15 / 11 / 2023

OFFICIAL SENSITIVE: Personal privacy



## Bridging (Removal Pending) (subclass 070) visa – mandatory conditions

There are a number of mandatory conditions that are attached to a Bridging (Removal Pending) (subclass 070) visa granted under regulations 2.25AA of the *Migration Regulations 1994* (Regulations) and by which holders are required to abide.

The mandatory conditions imposed by clauses 070.611 and 070.612(1) are set out in Schedule 8 to the Regulations :

<b>8303</b>	The holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community.
<b>8401</b>	The holder must report: (a) at the time or times; and (b) at a place or in a manner; specified by the Minister from time to time.
<b>8513</b>	The holder must notify Immigration of his or her residential address within five working days of the grant.
<b>8514</b>	During the visa period of the visa, there must be no material change in the circumstances on the basis of which it was granted.
<b>8541</b>	The holder: (a) must do everything possible to facilitate his or her removal from Australia and (b) must not attempt to obstruct efforts to arrange and effect his or her removal from Australia.
<b>8542</b>	The holder must make himself or herself available for removal from Australia in accordance with instructions given to the holder by Immigration for the purpose of that removal.
<b>8543</b>	The holder must attend at a place, date and time specified by Immigration in order to facilitate efforts to arrange and effect his or her removal from Australia.
<b>8550</b>	The holder must notify the Minister of any change in the holder's personal details, including a change to any of the following contact information: (a) the holder's name; (b) an address of the holder; (c) a phone number of the holder; (d) an email address of the holder; (e) an online profile used by the holder; (f) a user name of the holder; not less than 2 working days before the change is to occur.
<b>8551</b>	(1) The holder must obtain the Minister's approval before taking up employment in the following occupations, or occupations of a similar kind: (a) occupations that involve the use of, or access to, chemicals of security concern; (b) occupations in the aviation or maritime industries; (c) occupations at facilities that handle security-sensitive biological agents.

	<p>(2) In this clause: chemicals of security concern means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p> <ul style="list-style-type: none"> <li>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</li> <li>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</li> </ul>
8552	The holder must notify the Minister of any change in the holder's employment details, not less than 2 working days before the change is to occur.
8553	The holder must not become involved in activities that are prejudicial to security (within the meaning of section 4 of the <i>Australian Security Intelligence Organisation Act 1979</i> ).
8554	<p>(1) The holder must not acquire any of the following goods:</p> <ul style="list-style-type: none"> <li>(a) weapons;</li> <li>(b) explosives;</li> <li>(c) material or documentation that provides instruction on the use of weapons or explosives.</li> </ul> <p>(2) In this clause: weapon means a thing made or adapted for use for inflicting bodily injury.</p>
8555	The holder must obtain the Minister's approval before undertaking the following activities, or activities of a similar kind: <ul style="list-style-type: none"> <li>(a) flight training;</li> <li>(b) flying aircraft.</li> </ul>
8556	The holder must not communicate or associate with: <ul style="list-style-type: none"> <li>(a) an entity listed under Part 4 of the <i>Charter of the United Nations Act 1945</i>; or</li> <li>(b) an organisation prescribed by the regulations made under the <i>Criminal Code Act 1995</i> for the purposes of paragraph (b) of the definition of <b>terrorist organisation</b> in subsection 102.1(1) of the <i>Criminal Code</i>.</li> </ul>
8560	<p>(1) The holder must obtain the Minister's approval before acquiring chemicals of security concern.</p> <p>(2) In this clause: <b>chemicals of security concern</b> means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p>

	<p>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</p> <p>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</p>
<b>8561</b>	If the holder is directed by the Minister to attend an interview that relates to the holder's visa (including an interview with the Australian Security Intelligence Organisation), the holder must comply with the direction.
<b>8562</b>	<p>(1) The holder must not take up employment in:</p> <p>(a) occupations that involve the use of, or access to, weapons or explosives; or</p> <p>(b) occupations of a similar kind.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>
<b>8563</b>	<p>(1) The holder must not undertake the following activities, or activities of a similar kind:</p> <p>(a) using or accessing weapons or explosives;</p> <p>(b) participating in training in the use of weapons or explosives;</p> <p>(c) possessing or accessing material or documentation that provides instruction on the use of weapons or explosives.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>



Australian Government  
Department of Home Affairs

Submission

For decision  
PDMS Ref. Number: MS23-002362  
Date of Clearance: 16/11/2023

To Minister for Immigration, Citizenship and Multicultural Affairs  
Subject Regulation 2.25AA visa grant consideration for <sup>s47F</sup> individuals released from immigration detention as unlawful non-citizens following the High Court judgment in NZYQ - Bridging (Removal Pending) (subclass 070) visa

Timing The individuals being referred in this submission are currently residing in the community as unlawful non-citizens as they were released from immigration detention following the High Court judgment in NZYQ on 8 November 2023. This submission seeks the Minister's consideration to exercise his powers under regulation 2.25AA of the Migration Regulations 1994 to grant a Bridging (Removal Pending) (subclass 070) visa to the individuals listed in this submission.

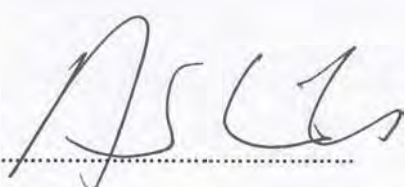
Recommendations

That you:

- 1. note the contents of this brief; and
- 2. agree to grant the individuals listed in **Attachment A** a Bridging R (Class WR) (Removal Pending) (subclass 070) visa (BVR) under regulation 2.25AA of the Migration Regulations 1994 (the Regulations) by circling your decision for each individual and signing the decision;
  - if you agree to grant a BVR, please specify a timeframe for reviewing these individuals' cases;
- 3. note if you decide not to grant a BVR to the individuals listed in **Attachment A** under regulation 2.25AA, they will remain in the community as unlawful non-citizens and unless their circumstances change, they cannot be detained under section 189 of the Migration Act 1958 (the Act) noting the High Court's orders made in NZYQ.

noted / please discuss  
 agreed and signed / not agreed  
 one year / two years / other \_\_\_\_\_  
 (please specify)  
 noted / please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature..... 

Date 16 / 11 / 2023

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Minister's Comments

**Key Issues**

1. The purpose of this submission is to seek your consideration to grant the <sup>s47F</sup> individuals listed in **Attachment A** a BVR under regulation 2.25AA of the Regulations, noting they are currently residing in the community as unlawful non-citizens following their release from immigration detention as a result of the orders made by the High Court in NZYQ (<sup>s47F</sup> – MS23 002266 refers).
2. On 8 November 2023, the High Court made some initial orders in the matter of NZYQ, with its published reasons to follow in due course, finding that:
  - Sections 189(1) and 196(1), which the Commonwealth has relied on to authorise the detention of NZYQ, insofar as they applied to NZYQ as at 30 May 2023, are beyond legislative power;And made the following orders:
  - having been and continuing to be no real prospect of the removal of the plaintiff from Australia becoming practicable in the reasonably foreseeable future:
    - (a) the plaintiff's detention was unlawful as at 30 May 2023; and
    - (b) the plaintiff's continued detention is unlawful and has been since 30 May 2023.
  - A writ of habeas corpus was issued requiring the defendants to release the plaintiff forthwith.
3. The orders, to which 'at least a majority' of the Court agreed, effectively overturn the longstanding decision made by the High Court in *Al Kateb v Godwin* (2004) 219 CLR 562 (*Al-Kateb*), which held that detention of an individual under the Act remains lawful, even where their removal from Australia is not reasonably practicable at the present time, and there is no real likelihood or prospect of removal in the reasonably foreseeable future.
4. The orders made by the High Court have significant legal, policy and operational consequences for the Commonwealth; including the need to release a number of individuals in similar circumstances from immigration detention, possible false imprisonment claims and other claims seeking damages.
5. The individuals being referred to you in this submission (the 'NZYQ cohort') have been identified by the Department as falling within scope of the High Court's orders of 8 November 2023. Such individuals have been released from immigration detention as unlawful non-

## OFFICIAL: Sensitive Legal privilege

citizens as there is no real prospect of removal being effected in the reasonably foreseeable future.

### Considerations for possible visa grant

6. As outlined, the NZYQ cohort are residing as unlawful non-citizens in the community. As unlawful non-citizens, these individuals have no work rights and no access to social security support.

7. s. 47F(1), s. 42(1)

8.

s. 47C(1)

9.

10.

11.

s. 47C(1)

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# s. 47C(1)

## Support services available to BVR holders

13. BVR holders have work rights and access to Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia, including income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control).
14. The individuals listed may also be eligible for transitional assistance through the Status Resolution Support Services Program (SRSS) program. This may include extended transitional support noting your decision in MS22-001485 to allow SRSS transitional support (SRSS Band 4) for up to 12 weeks, with a possible extension of a further 12 weeks for long term detainees of more than two years released from immigration detention. These arrangements assist individuals to transition to residing lawfully in the community by supporting them while they source independent accommodation, and employment.
15. It is worth noting that some among the immediately affected cohort have extremely high health needs, including 24 hour care. While SRSS can support individuals in the short term, a longer term solution may be required for such individuals. The Department will bring forward options for your consideration at a later time.

## Decline to grant a visa

16. Should you decline to grant a visa, including an SPV, or a BVR under regulation 2.25AA of the Regulations, these individuals will remain in the community as unlawful non-citizens.
17. Should they remain in the community as unlawful non-citizens, they will not have work rights or access to Medicare or social welfare payments through Services Australia. Australia's international obligations require that all persons in Australia have an adequate standard of living. These individuals may be eligible for SRSS support, which would be assessed on an as-needs basis. Until they are granted a visa, they will rely exclusively on SRSS support.

# s. 47C(1)

## **Background**

20. Further details regarding these individuals character matters is provided in the summary at Attachment C.



**Consultation – internal/external**

21. Status Resolution Network, National Removals, International Division and Legal Group.

**Consultation – A/g Secretary / A/g Deputy Secretary / ABF Commissioner**

22. The A/g Secretary, A/g Deputy Secretary Immigration and ABF Commissioner are aware of the approach taken in this submission.

**Client service implications**

23. There are no client service implications.

**Risks and Sensitivities**

24. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – [media@homeaffairs.gov.au](mailto:media@homeaffairs.gov.au).

**Financial/systems/legal/deregulation/media implications**

25. If you grant a BVR, these individuals will be eligible to access Medicare and Special Benefit income support payments through Services Australia, (with access to Special Benefit subject to them meeting other eligibility criteria specified by Services Australia including meeting the income and assets tests and demonstrating that they are in financial hardship for reasons beyond their control). The Special Benefit payment is currently \$749.20 fortnightly (for a single person, over 22 years old).
26. The payments and services attached to a BVR differs to the support services programs and policy settings available to other asylum seekers and unauthorised maritime arrivals (UMA) who are granted a Bridging E (subclass 050) visa (BVE) and released from immigration detention. These persons are not eligible for mainstream social services income support such as Special Benefit, and are instead eligible for income support paid by Services Australia on behalf of the Department through the SRSS program. SRSS income support is 89 per cent of the current Jobseeker/Special Benefit rate currently \$666.79 fortnightly (for a single person, over 22 years old). Additionally UMAs granted a BVE are eligible for Medicare; however, non-UMAs granted a BVE are not eligible for Medicare. Where an asylum seeker holding a BVE is not eligible for Medicare, the Department may fund general health and medical services equivalent to what an Australian citizen or permanent resident would receive under Medicare via the SRSS program.
27. s47C(1)

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### Attachments

**Attachment A** Regulation 2.25AA – Grant decision record

**Attachment B** BVR mandatory conditions – Regulation 2.25AA

**Attachment C** Case details

#### Authorising Officer

Cleared by:

David Arnold  
Assistant Secretary  
Status Resolution Branch

**Date:** 16/11/2023

**Ph:** s22(1)(a)(ii)

**Contact Officer** David Arnold, Assistant Secretary, Status Resolution Branch, Ph: s22(1)(a)(ii)

**CC** Minister for Home Affairs and Minister for Cyber Security  
A/g Secretary  
A/g Deputy Secretary Immigration  
Assistant Commissioner, Detention and National Removals  
Group Manager Legal  
Commander, National Immigration Detention  
Assistant Secretary, Migration and Citizenship Litigation  
Senior Director, Status Resolution Network  
Chief Superintendent, National Removals  
Director, Status Resolution NSW  
Director, Status Resolution Support Programs Section  
Superintendent, Detention Health  
Status Resolution Officers NSW

**OFFICIAL SENSITIVE: Personal privacy**

Attachment A

**RECORD OF MINISTERIAL DECISION UNDER REGULATION 2.25AA OF THE *MIGRATION REGULATIONS 1994***

1. The persons named below are unlawful non-citizens residing in the Australian community.
2. Pursuant to regulation 2.25AA of the *Migration Regulations 1994*, I have indicated my decision for each individual as to whether I have decided to grant these persons a Bridging (Removal Pending) (Class WR) (subclass 070) visa (BVR).

	CLIENT ID	SURNAME	GIVEN NAME	CITIZENSHIP	STATE	BVR granted pursuant to regulation 2.25AA of the <i>Migration Regulations 1994</i>
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s47F



THE HON ANDREW GILES MP  
Minister for Immigration, Citizenship and Multicultural Affairs

16/11 2023

**OFFICIAL SENSITIVE: Personal privacy**

## Bridging (Removal Pending) (subclass 070) visa – mandatory conditions

There are a number of mandatory conditions that are attached to a Bridging (Removal Pending) (subclass 070) visa granted under regulations 2.25AA of the *Migration Regulations 1994* (Regulations) and by which holders are required to abide.

The mandatory conditions imposed by clauses 070.611 and 070.612(1) are set out in Schedule 8 to the Regulations :

<b>8303</b>	The holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community.
<b>8401</b>	The holder must report: (a) at the time or times; and (b) at a place or in a manner; specified by the Minister from time to time.
<b>8513</b>	The holder must notify Immigration of his or her residential address within five working days of the grant.
<b>8514</b>	During the visa period of the visa, there must be no material change in the circumstances on the basis of which it was granted.
<b>8541</b>	The holder: (a) must do everything possible to facilitate his or her removal from Australia and (b) must not attempt to obstruct efforts to arrange and effect his or her removal from Australia.
<b>8542</b>	The holder must make himself or herself available for removal from Australia in accordance with instructions given to the holder by Immigration for the purpose of that removal.
<b>8543</b>	The holder must attend at a place, date and time specified by Immigration in order to facilitate efforts to arrange and effect his or her removal from Australia.
<b>8550</b>	The holder must notify the Minister of any change in the holder's personal details, including a change to any of the following contact information: (a) the holder's name; (b) an address of the holder; (c) a phone number of the holder; (d) an email address of the holder; (e) an online profile used by the holder; (f) a user name of the holder; not less than 2 working days before the change is to occur.
<b>8551</b>	(1) The holder must obtain the Minister's approval before taking up employment in the following occupations, or occupations of a similar kind: (a) occupations that involve the use of, or access to, chemicals of security concern; (b) occupations in the aviation or maritime industries; (c) occupations at facilities that handle security-sensitive biological agents.

	<p>(2) In this clause: chemicals of security concern means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p> <ul style="list-style-type: none"> <li>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</li> <li>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</li> </ul>
8552	The holder must notify the Minister of any change in the holder's employment details, not less than 2 working days before the change is to occur.
8553	The holder must not become involved in activities that are prejudicial to security (within the meaning of section 4 of the <i>Australian Security Intelligence Organisation Act 1979</i> ).
8554	<p>(1) The holder must not acquire any of the following goods:</p> <ul style="list-style-type: none"> <li>(a) weapons;</li> <li>(b) explosives;</li> <li>(c) material or documentation that provides instruction on the use of weapons or explosives.</li> </ul> <p>(2) In this clause: weapon means a thing made or adapted for use for inflicting bodily injury.</p>
8555	<p>The holder must obtain the Minister's approval before undertaking the following activities, or activities of a similar kind:</p> <ul style="list-style-type: none"> <li>(a) flight training;</li> <li>(b) flying aircraft.</li> </ul>
8556	<p>The holder must not communicate or associate with:</p> <ul style="list-style-type: none"> <li>(a) an entity listed under Part 4 of the <i>Charter of the United Nations Act 1945</i>; or</li> <li>(b) an organisation prescribed by the regulations made under the <i>Criminal Code Act 1995</i> for the purposes of paragraph (b) of the definition of <b>terrorist organisation</b> in subsection 102.1(1) of the <i>Criminal Code</i>.</li> </ul>
8560	<p>(1) The holder must obtain the Minister's approval before acquiring chemicals of security concern.</p> <p>(2) In this clause: <b>chemicals of security concern</b> means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p><b>Note:</b> The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p>

	<p>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</p> <p>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</p>
<b>8561</b>	If the holder is directed by the Minister to attend an interview that relates to the holder's visa (including an interview with the Australian Security Intelligence Organisation), the holder must comply with the direction.
<b>8562</b>	<p>(1) The holder must not take up employment in:</p> <p>(a) occupations that involve the use of, or access to, weapons or explosives; or</p> <p>(b) occupations of a similar kind.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>
<b>8563</b>	<p>(1) The holder must not undertake the following activities, or activities of a similar kind:</p> <p>(a) using or accessing weapons or explosives;</p> <p>(b) participating in training in the use of weapons or explosives;</p> <p>(c) possessing or accessing material or documentation that provides instruction on the use of weapons or explosives.</p> <p>(2) In this clause: <b>weapon</b> means a thing made or adapted for use for inflicting bodily injury.</p>