



Australian Government
Department of Home Affairs

Submission

For decision
PDMS Ref. Number: MS24-000466
Date of Clearance: 21/3/2024

To Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Subject Migration (Minister) (NZYQ Bridging R Visas—Grant Without Application) Delegation 2024 (ADMIN 24/039) and Related Matters

Timing *For consideration as soon as possible to give effect to the proposed delegation of certain powers to senior ABF personnel to grant BVRs to NZYQ-affected non-citizens.*

Recommendations

That you:

- 1. sign, date and record the time of signing on the proposed Migration (Minister) (NZYQ Bridging R Visas—Grant Without Application) Delegation 2024 at Attachment A.

signed / please discuss

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

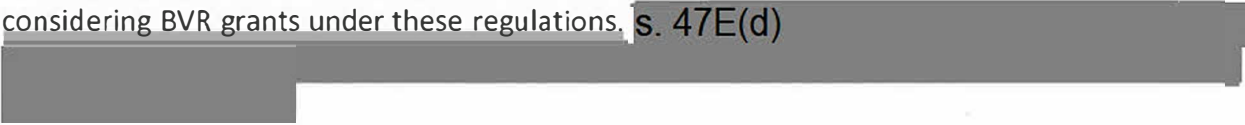
Signature..... 

Date.....21...../.....3...../2024


Minister's Comments

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Key Issues

1. On 8 December 2023, you signed the *Migration (Minister) (NZYQ Bridging R Visas—Grant Without Application) Delegation 2023* (the 2023 instrument), included at **Attachment B** for reference. This instrument delegated the Minister’s power to grant a Bridging (Removal Pending) visa (BVR), without application, under regulations 2.25AA and 2.25AB of the Migration Regulations 1994 to the ABF Commissioner and Deputy Commissioners (Senior Executive Band 3 equivalent).
2. It is now proposed to expand this delegation to the occupants of positions in the ABF at the Senior Executive Band 2 equivalent (ie. Assistant Commissioner or First Assistant Secretary), to expand the number of available delegates at appropriately senior levels in the ABF for the purposes of considering BVR grants under these regulations. **s. 47E(d)**

3. If you sign the proposed delegation instrument at **Attachment A**, the 2023 instrument will be revoked and replaced with the *Migration (Minister) (NZYQ Bridging R Visas—Grant Without Application) Delegation 2024* (the 2024 instrument). The 2024 instrument delegates the same powers as those in the 2023 instrument.
4. As with the 2023 instrument, the proposed instrument at **Attachment A**, for your consideration and signature, would delegate the Minister’s powers under the following regulations to the ABF Commissioner, ABF Deputy Commissioners (SES Band 3), and Assistant Commissioners and First Assistant Secretaries in the ABF:
 - subregulation 2.25AA(2): the power to grant a BVR without application to an unlawful non-citizen, where:
 - section 195A of the Migration Act is not available to the Minister to grant a visa to the non-citizen; and
 - the Minister is satisfied that, at the time of decision, the eligible non-citizen’s removal from Australia is not reasonably practicable.
 - subregulation 2.25AB(2): the power to grant a *further* (replacement) BVR without application to a non-citizen who holds a BVR and where there is no real prospect of the removal of the non-citizen from Australia becoming practicable in the reasonably foreseeable future (an NZYQ affected non-citizen).

Background

5. **s. 42(1)**


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Consultation – internal/external

- 6. Internal: Compliance & Community Protection Policy Branch; Australian Border Force; Group Manager, Legal.
- 7. External: Nil. AGS provided advice on the 2023 instrument; aside from the inclusion of SES Band 2 employees in the ABF, the 2024 instrument is substantively the same.

Consultation – Secretary / A/g Dep Sec Immigration / ABF Commissioner

- 8. **SECRETARY** – The Secretary was not consulted on this submission.
- 9. **A/g DEPUTY SECRETARY IMMIGRATION** – The A/g Deputy Secretary Immigration was not consulted on the approach in the submission.
- 10. **ABF COMMISSIONER** – The A/g Commissioner was consulted on the approach to the delegation instrument at Attachment C.

Client service implications

- 11. This submission has no direct client service implications.

Risks and Sensitivities

- 12. 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

- 13. There are no direct financial or systems implications associated with this submission. Legal considerations are described above.

Attachments

Attachment A *Migration (Minister) (NZYQ Bridging R Visas—Grant Without Application) Delegation 2024 (ADMIN 24/039)*

Attachment B *Migration (Minister) (NZYQ Bridging R Visas—Grant Without Application) Delegation 2023 (ADMIN 23/190)*

Authorising Officer
Cleared by:
Kevin Cunnington AS Legislation Legal Group
Date: 21/3/2024
Mob: s.22(1)(a)(ii)

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Contact Officer Kevin Cunnington, AS Legislation, M **s.22(1)(a)(ii)**, Ph: **s.22(1)(a)(ii)**

- CC Minister for Home Affairs, Minister for Cyber Security
- Secretary
- A/g DS Immigration
- DS Chief Operating Officer
- DS Executive
- Group Manager Legal
- First Assistant Secretary Immigration Compliance
- Assistant Secretary Security Disputes and Operations Law

- ABF Commissioner
- Deputy Commissioner Regional Operations
- Assistant Commissioner South

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ADMIN 24/039

Migration (Minister) (NZYQ Bridging R Visas—Grant Without Application) Delegation 2024

I, Andrew Giles, Minister for Immigration, Citizenship and Multicultural Affairs, make the following instrument.

Dated: 21 March 2024 Time: 3.26 pm

A handwritten signature in black ink, appearing to read 'AGiles', is written over the printed name of Andrew Giles.

Andrew Giles

Minister for Immigration, Citizenship and Multicultural Affairs

1 Name

This instrument is the *Migration (Minister) (NZYQ Bridging R Visas—Grant Without Application) Delegation 2024*.

2 Commencement

This instrument commences immediately after it is signed.

3 Authority

This instrument is made under subregulation 1.16(1) of the Migration Regulations.

4 Definitions

In this instrument:

Australian Border Force has the meaning given by subsection 4(1) of the *Australian Border Force Act 2015*.

Australian Border Force Commissioner has the meaning given by subsection 4(1) of the *Australian Border Force Act 2015*.

Migration Act means the *Migration Act 1958*.

Migration Regulations means the *Migration Regulations 1994*.

position means a position in the Department, including the Australian Border Force.

SES2 means the approved classification, Senior Executive Brand 2, under the *Public Service Classification Rules 2000*.

SES3 means the approved classification, Senior Executive Band 3, under the *Public Service Classifications Rules 2000*.

5 Australian Border Force Commissioner—officer under the Migration Act

The Australian Border Force Commissioner is an officer within the meaning of paragraph (b) of the definition of ***officer*** in subsection 5(1) of the Migration Act.

Note: Subsection 4(1) of the *Customs Act 1901* provides that, in that Act, ***officer*** means an officer of Customs. The Australian Border Force Commissioner is an officer of Customs under paragraph (b) of the definition of ***officer of Customs*** in subsection 4(1) of that Act.

6 Delegation

My powers under the Migration Regulations are delegated as set out in Schedule 1 to this instrument.

7 Repeal of ADMIN 23/190

The instrument *Migration (Minister) (NZYQ Bridging R Visas—Grant Without Application) Delegation 2023* is repealed.

Schedule 1—Delegations

(section 6)

1 Migration Regulations

The power, function or duty under a provision of the Migration Regulations mentioned in an item in the following table is delegated to an officer from time to time holding, occupying or performing the duties of:

- (a) the Australian Border Force Commissioner; or
- (b) a position in the Australian Border Force classified at the level mentioned in that item.

Item	Provision	Delegate
1	reg 2.25AA(2)	SES2, SES3
2	reg 2.25AB(2)	SES2, SES3



ADMIN 23/190

Migration (Minister) (NZYQ Bridging R Visas—Grant Without Application) Delegation 2023

I, Andrew Giles, Minister for Immigration, Citizenship and Multicultural Affairs, make the following instrument.

Dated: 8 December 2023 Time: 2.25 pm

Andrew Giles

Minister for Immigration, Citizenship and Multicultural Affairs

1 Name

This instrument is the *Migration (Minister) (NZYQ Bridging R Visas—Grant Without Application) Delegation 2023*.

2 Commencement

This instrument commences immediately after it is signed.

3 Authority

This instrument is made under subregulation 1.16(1) of the Migration Regulations.

4 Definitions

In this instrument:

Australian Border Force has the meaning given by subsection 4(1) of the *Australian Border Force Act 2015*.

Australian Border Force Commissioner has the meaning given by subsection 4(1) of the *Australian Border Force Act 2015*.

Migration Act means the *Migration Act 1958*.

Migration Regulations means the *Migration Regulations 1994*.

position means a position in the Department, including the Australian Border Force.

SES3 means the approved classification, Senior Executive Band 3, under the *Public Service Classifications Rules 2000*.

5 Australian Border Force Commissioner—officer under the Migration Act

The Australian Border Force Commissioner is an officer within the meaning of paragraph (b) of the definition of *officer* in subsection 5(1) of the Migration Act.

Note: Subsection 4(1) of the *Customs Act 1901* provides that, in that Act, *officer* means an officer of Customs. The Australian Border Force Commissioner is an officer of Customs under paragraph (b) of the definition of *officer of Customs* in subsection 4(1) of that Act.

6 Delegation

My powers under the Migration Regulations are delegated as set out in Schedule 1 to this instrument.

7 Effect on other instruments

This instrument is not taken to repeal or revoke any other instrument that is in effect immediately before this instrument commences.

Schedule 1—Delegations

(section 6)

1 Migration Regulations

The power, function or duty under a provision of the Migration Regulations mentioned in an item in the following table is delegated to an officer from time to time holding, occupying or performing the duties of:

- (a) the Australian Border Force Commissioner; or
- (b) a position in the Australian Border Force classified at the level mentioned in that item.

Item	Provision	Delegate
1	reg 2.25AA(2)	SES3
2	reg 2.25AB(2)	SES3

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