

VISA PAK ISSUE 333 — 3 NOVEMBER 2017

## **IMMIGRATION INSTRUCTION R5.115**

Regulation 20 *Applications involving family members* of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 was amended on 8 May 2017 by the addition of section 2A which is reflected in immigration instructions at R2.40 (d) and R5.115 below.

### **R2.40 Mandatory requirements for lodging an application for a residence class visa**

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, Reg 5 & 20*

(d) include all dependants of the principal applicant where they hold or have applied for a temporary entry class visa based on their relationship to the principal applicant;

### **R5.115 Partners and dependent children who must be included in a residence class visa application**

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, Reg 5 & 20*

A partner or dependent child of the principal applicant included in a residence class visa application cannot be removed from that application while the application is being processed, unless a change in circumstances results in the partner ceasing to be the applicant's partner or the child ceasing to be a dependent child.

**Effective 08/05/2017**

It is important to note that these new requirements in the Immigration Regulations and instructions apply to *all* residence class visa applications that are being processed and not just those that were accepted on or after 8 May 2017. The effect of these new requirements is that secondary applicants (SAs) subject to the requirements must now be included at lodgement and cannot be removed from residence applications that are being processed. This has most commonly happened in the past when a SA has been found to have health issues and were either not eligible for a medical waiver, or would have had a medical waiver declined, resulting in the decline of the residence application as provided by instructions at A4.10(a).

#### **Examples:**

##### **Where R5.115 applies**

On the date the residence application was made the SA partner included in the application was the holder of a temporary entry class visa granted on the basis of his relationship with the Principal Applicant (PA). The SA was later found to have health issues that would have resulted in the decline of a medical waiver. The SA cannot be removed from the residence application (either prior to or after the consideration of a medical waiver) and the application must be declined.

##### **Where R5.115 does not apply**

An adult child was included in a residence application by her father but was subsequently found to be ineligible for inclusion as she had been granted a work visa on the basis she was living in a partnership with a work visa holder. In this case the SA child could be removed from the application as she was not eligible to be included in the first place.