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Commonwealth Consolidated Regulations

MIGRATION REGULATIONS 1994 - REG 1.23 When is a person taken to have suffered or committed family violence?

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When is a person taken to have suffered or committed family violence?

(1) For these Regulations, this regulation explains when:

(a) a person (the *alleged victim*) is taken to have suffered family violence; and

(b) another person (the *alleged perpetrator*) is taken to have committed family violence in relation to the alleged victim.

Note: Schedule 2 sets out which visas may be granted on the basis of a person having suffered family violence. The criteria to be satisfied for the visa to be granted set out which persons may be taken to have suffered family violence, and how those persons are related to the spouse or de facto partner of the alleged perpetrator mentioned in this regulation.

Circumstances in which family violence is suffered and committed--injunction under [Family Law Act 1975](#)

(2) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if, on the application of the alleged victim, a court has granted an injunction under [paragraph 114\(1\)\(a\), \(b\) or \(c\) of the *Family Law Act 1975*](#) against the alleged perpetrator.

(3) For subregulation (2), the violence, or part of the violence, that led to the granting of the injunction must have occurred while the married relationship between the alleged perpetrator and the spouse of the alleged perpetrator existed.

Circumstances in which family violence is suffered and committed--court order

(4) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:

(a) a court has made an order under a law of a State or Territory against the alleged perpetrator for the protection of the alleged victim from violence; and

(b) the order was made after the court had given the alleged perpetrator an opportunity to be heard, or otherwise to make submissions to the court, in relation to the matter.

(5) For subregulation (4), the violence, or part of the violence, that led to the granting of the order must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

Circumstances in which family violence is suffered and committed--conviction

(6) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if a court has:

(a) convicted the alleged perpetrator of an offence of violence against the alleged victim; or

(b) recorded a finding of guilt against the alleged perpetrator in respect of an offence of violence against the alleged victim.

(7) For subregulation (6), the violence, or part of the violence, that led to the conviction or recording of a finding of guilt must have occurred while the married relationship or de facto relationship existed

between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

Circumstances in which family violence is suffered and committed--non - judicially determined claim of family violence

(8) For these Regulations, an application for a visa is taken to include a ***non - judicially determined claim of family violence*** if:

(a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and

(b) the alleged victim and the alleged perpetrator have made a joint undertaking to a court in relation to proceedings in which an allegation is before the court that the alleged perpetrator has committed an act of violence against the alleged victim.

(9) For these Regulations, an application for a visa is taken to include a ***non - judicially determined claim of family violence*** if:

(a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and

(b) the alleged victim is:

(i) a spouse or de facto partner of the alleged perpetrator; or

(ii) a dependent child of:

(A) the alleged perpetrator; or

(B) the spouse or de facto partner of the alleged perpetrator; or

(C) both the alleged perpetrator and his or her spouse or de facto partner; or

(iii) a member of the family unit of a spouse or de facto partner of the alleged perpetrator (being a member of the family unit who has made a combined application for a visa with the spouse or de facto partner); and

(c) the alleged victim or another person on the alleged victim's behalf has presented evidence in accordance with regulation 1.24 that:

(i) the alleged victim has suffered relevant family violence; and

(ii) the alleged perpetrator committed that relevant family violence.

(10) If an application for a visa includes a non - judicially determined claim of family violence:

(a) the Minister must consider whether the alleged victim has suffered relevant family violence; and

(b) if the Minister is satisfied that the alleged victim has suffered the relevant family violence, the Minister must consider the application on that basis; and

(c) if the Minister is not satisfied that the alleged victim has suffered the relevant family violence:

(i) the Minister must seek the opinion of an independent expert about whether the alleged victim has suffered the relevant family violence; and

(ii) the Minister must take an independent expert's opinion on the matter to be correct for the purposes of deciding whether the alleged victim satisfies a prescribed criterion for a visa that requires the

applicant for the visa, or another person mentioned in the criterion, to have suffered family violence.

(11) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:

(a) an application for a visa includes a non - judicially determined claim of family violence; and

(b) the Minister is satisfied under [paragraph \(10\)\(b\)](#) that the alleged victim has suffered relevant family violence.

(12) For subregulation (11), the Minister must be satisfied that the relevant family violence, or part of the relevant family violence, occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

(13) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:

(a) an application for a visa includes a non - judicially determined claim of family violence; and

(b) the Minister is required by [subparagraph \(10\)\(c\)\(ii\)](#) to take as correct an opinion of an independent expert that the alleged victim has suffered relevant family violence.

(14) For subregulation (13), the violence, or part of the violence, that led to the independent expert having the opinion that the alleged victim has suffered relevant family violence must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.