

- Special residence requirement - Persons engaged in particular kinds of work requiring regular travel outside Australia (s22B)
- Confinement in prison or psychiatric institution (s22B(2) & (3))
- Ministerial discretion - Administrative error (s22B(4) & (5))
- Business Skills visa holders.

GENERAL RESIDENCE REQUIREMENT (S22)

Section 22 sets out the general residence requirement. For applications received on or after 21 September 2009, some applicants who need to travel regularly outside of Australia because of their professions, and cannot meet the general residence requirement, should be assessed against the requirements of the special residence requirements - see:

- Special residence requirement - Persons engaging in activities that are of benefit to Australia (s22A) or
- Special residence requirement - Persons engaged in particular kinds of work requiring regular travel outside Australia (s22B).

To meet the general residence requirement (s22) a person is required to have been lawfully present in Australia for a period of four years immediately prior to making their application, including the last 12 months as a permanent resident.

All periods of lawful residence in Australia, such as temporary visas, visitor visas, student visas, all classes of bridging visas etc, are taken into account when calculating the four year lawful residence period.

Unlawful non-citizen

A person's presence in Australia is determined to be lawful in accordance with the Migration Act. A person is lawful if they hold a visa that is in effect.

An unlawful non-citizen is a person who is not an Australian citizen and is present in Australia without a valid visa.

Under s22(1)(b), a person cannot meet the general residence requirement if they have been an unlawful non-citizen at any time during the 4-year period immediately before applying for citizenship. This means they will need to have spent 4 years in Australia since last ceasing to be an unlawful non-citizen before meeting the general residence requirement, unless they became unlawful because of administrative error - see Ministerial discretion - administrative error (s22(4A) & (5)).

Decision makers must be mindful of SREY-affected cases. In these cases, the person may show as a BVE holder but due to a past notification error, they may in fact still hold a BVA. This means that despite the Department's records showing periods of unlawfulness prior to the granting of a BVE, such applicants may be taken not to have been unlawful for that period. Where a *client of interest* note exists in ICSE indicating the person is SREY-affected, contact a Notification Contact Officer (NCO) in your office for assistance (a list of all NCOs is available on TRIM at PCD2009/3758). Most, but not all, SREY-affected cases will have a *client of interest* note. Further information on whether a person might be SREY-affected can be found in PAM3: Act - Notification - Notification requirements.

OVERSEAS ABSENCES (S22(1A) & (1B))

Section 22(1A) allows for absences from Australia of up to 12 months within the 4 years immediately before applying for citizenship. A period of time cannot be counted as an absence from Australia unless the person has already been present in Australia. This means that a person does not meet the residence requirement if they have 3 years continuous presence in Australia (with the last 12 months as a permanent resident) unless they were previously in Australia.

Example

Ms Jones first entered Australia on 01/01/2007, and became a PR on 01/01/2009. She has not left Australia since her first arrival. Ms Jones does not meet the 4-year lawful period until 01/01/2011.

Section 22(1B) allows a person to be absent for up to 90 days within the 12 months permanent residence immediately before applying providing they remain a permanent resident during this time. Before 15 March 2009, applicants were allowed 3 months absence during the 12 month permanent residence period.

Calculation of the 4-year lawful residence period when a person has been absent from Australia on the day 4 years immediately before applying

If a person's first arrival in Australia is less than 4 years before they apply for citizenship, they cannot meet the general residence requirement, even if they spend 3 years continuously in Australia.

The start date of the 4-year lawful residence period is usually the date 4 years immediately before they lodge their application. However, if the person has not made their first entry into Australia, they need to wait at least 4 years after their first entry to meet this requirement.

Where a person was outside Australia on the day 4 years immediately before applying, but had previously been in Australia, they may still use the day 4-years immediately before applying as a start date, providing that on that day they held visa which was granted in Australia, or which was granted offshore and the person had entered Australia on that visa.

If these conditions are met, then the person may use the full 4 year period immediately before applying towards meeting the general residence requirement.

Example

Mr Smith entered Australia on 01/01/2004 on a subclass 457 visa. He departs a week later, and re-enters on 01/01/2006 on the same subclass 457 visa. He remains in Australia, becomes a permanent resident on 01/01/2008 and applies for citizenship on 01/01/2009.

Mr Smith's 4-year lawful period starts on 01/01/2005 (4 years before applying) because although he was outside Australia on this date, he was previously in Australia and was still the holder s/c 457 visa.

New Zealand citizens

Specific policy guidelines apply to New Zealanders to ensure they are not disadvantaged by virtue of the unique status they hold under the Migration Act. These apply only to the calculation of the 4-year lawful residence period, and are not relevant to those New Zealand citizens who became permanent residents before 1 July 2007 and who apply for citizenship by conferral before 1 July 2010.

Unlike most other visas, the subclass 444 visa ceases immediately a person leaves Australia, and the person therefore does not hold a visa while outside Australia.

New Zealand citizens who were outside Australia 4 years immediately before applying for citizenship, but had previously entered Australia on a subclass 444 visa at any time within 8 years before lodging their application, may count the 4 years before lodging their application towards the general residence requirement.