



Excerpt of Procedural Instructions provided to decision makers on key visa requirements for the Subclass 858 (Distinguished Talent) visa

3.1 Schedule 2 criteria - primary criteria

Division 858.2 sets out the primary criteria that must be satisfied by primary applicants. The primary criteria must be satisfied by at least one member of the family unit. The other members of the family unit who are applicants for this subclass only need to satisfy the secondary criteria.

Subdivision 858.21 sets out the criteria that must be satisfied at time of application and subdivision 858.22 sets out the criteria that must be satisfied at time of decision by an applicant seeking to satisfy the primary criteria.

3.3.1 Criteria to be satisfied at time of application

3.3.1.1 The applicant's distinguished talent

Clause 858.212 sets out the criteria relating to the applicant's distinguished talent that must be satisfied by an applicant seeking to satisfy the primary criteria, at the time of an application.

3.3.1.1.1 Must have an internationally recognised record of exceptional and outstanding achievement

Subclause 858.212(2) provides that the applicant has an internationally recognised record of exceptional and outstanding achievement in one of the following areas (as defined in accordance with their ordinary dictionary meaning):

- a profession (refers to 'a vocation requiring knowledge of some department of learning or science');
- a sport (refers to 'an activity involving physical exertion and skill, in which an individual or team competes against another or others for entertainment');
- the arts (refers to 'the theoretical or physical expression of creativity found in human cultures and societies. Major constituents of the arts include visual arts, literature, and performance arts');
- academia and research (refers to 'scholarly and systematic inquiry into a subject to discover facts or principles').

The applicant must also demonstrate that they:

- are still prominent in the area; and
- would be an asset to the Australian community; and
- would have no difficulty in obtaining employment, or in becoming established independently, in Australia in the area; and
- have produced a completed approved form 1000; and
- if the applicant has not turned 18, or is at least 55 years old, at the time of application—would be of exceptional benefit to the Australian community.

Guidance for decision makers on assessing these criteria is provided throughout section 3.3.1.1.1, including examples that demonstrate the ordinary dictionary meaning of the above.

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If decision makers have doubts about the applicant's international recognition, or level of achievements, then consideration should be given to seeking further information and supporting evidence from the applicant or nominator.

3.3.1.1.1.1 Policy requirements of international recognition

Under policy, 'internationally recognised record of exceptional and outstanding achievement' means that a person's achievements have been or would be acclaimed as exceptional and outstanding in any country.

An achievement that may attract national acclaim would be considered 'internationally recognised' if that achievement is in an area practised in other countries and has, or would attract, similar acclaim in those countries.

3.3.1.1.1.2 Assessing international recognition

In determining the international standing of the applicant within a field of note, decision makers should consider the standing of the achievement in relation to international standards.

For example, an applicant rated at or near the top of their field in their home country would be considered to have an internationally recognised record of exceptional and outstanding achievement if:

- the field is undertaken and recognised in a number of countries; and
- the achievement would be similarly recognised in relation to international and Australian standards (where such standards apply) for that area.

The following examples would meet the 'internationally recognised' threshold:

- an individual holding a senior position in a highly competitive 'international organisation'. An individual holding a senior position in an organisation with an internationally renowned reputation would typically be a senior academic (such as a professor), or a senior executive (such as a CEO or Vice President). An organisation with an internationally renowned reputation would be considered as an 'international organisation';
- an individual with an established track record of holding senior positions in organisations, in a number of countries;
- an individual completing major international projects that have had a wide reaching impact. For example, a pharmaceutical executive who has led projects and as a result, successfully accelerated the clinical trial process to achieve a medical outcome, would be considered as an individual who has had a wide-reaching impact on the health benefits of society;
- an individual whose research in their field is internationally lauded or has global applications. For example, a scientist involved in genomic sequencing whose has benefits for international pandemic control; or a computer scientist whose pioneering research has been recognised with an international award for enduring impacts on the computing industry.

When assessing the international standing of degree qualifications and research, decision makers should consider:

- the standing of the achievement in relation to Australian tertiary education quality standards of degree qualifications and research, to demonstrate achievements in the area of academia and research.
- In determining whether an overseas-obtained qualification is equivalent to Australian standards, decision makers should refer to Department of Education, Skills and Employment resources including the Australian Qualifications Framework and the Country Education Profiles.

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3.3.1.1.3 Policy requirements of 'record', 'exceptional' and 'outstanding' achievement

'Exceptional' and 'outstanding achievement' is not defined in the Regulations. Therefore, the ordinary dictionary meaning of the words applies. As such, exceptional and outstanding achievement is the act of accomplishing something extraordinary that places the individual above the average. Individuals with an internationally recognised record of exceptional and outstanding achievement are usually those who are leaders in their particular field.

It is anticipated that an applicant would generally have a record of sustained and multiple achievement. However, a single achievement by an applicant may still be regarded as a record of 'exceptional and outstanding' achievement if that achievement is cutting edge and highly innovative in nature.

3.3.1.1.4 Assessing 'exceptional and outstanding achievement'

In assessing the applicant's record of achievement, decision makers should take into account information such as indicated in the following examples:

- information provided by an accepted nominator who has a national reputation in relation to the applicant's area of claimed achievement. This may include a full account of the reasons why the nominator believes the applicant has an exceptional and outstanding record of achievement;
- supporting statements and material provided by the applicant detailing relevant aspects of their record of achievement, including their qualifications, awards, and professional or academic positions held. This should include information relating to achievements both in Australia and overseas;
- supporting statements from internationally recognised individuals or organisations in the applicant's claimed area of achievement who are qualified to comment on the applicant's achievements and the applicant's reputation within the area; and
- prestigious and internationally recognised awards received from internationally recognised institutions or organisations.

Academia and research

- If the applicant's area of achievement is in the area of academia and research, evidence of exceptional and outstanding achievements including:
 - reports commissioned;
 - books published;
 - articles published in refereed journals with strong reputation, high Journal Impact Factor (JIF) and a high standard of peer-review as reflected by the prestige of the journal
 - prestigious and internationally recognised awards received;
 - recognition by peers (including an exceptional record of citations in journals);
 - statements of achievement from government, professional, scientific or other relevant bodies;
 - honours and accolades (for example, a Nobel Prize; an award from the United Nations Educational, Scientific and Cultural Organization (UNESCO), or the Asia-Pacific Economic Cooperation (APEC));
 - professional designation such as Professor, PhD, or M.D (Doctor of Medicine), or associated with credentials attesting to specific competence, learning or skills;
 - membership of international groups and organisations associated with the area of learning;
 - evidence of government/private grants associated with the applicant's research;
 - evidence of receiving a fellowship or an honorary appointment such as Professor or Associate Professor in one or more highly regarded educational institutions that specialises in the same field;

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- academic qualifications associated with the applicant's area of expertise that are equivalent to Australian standards, as set out in the Australian Qualifications Framework;
- scale and audience of research undertaken or completed;
- statements from the applicant's research supervisor (or professor) that the student's thesis/ research has strong prospects of being published;
- academic statement of results (demonstrating high academic achievement) from an internationally recognised university with an international reputation in the applicant's field of expertise;
- an established record of peer reviewed publications in the applicant's area of study/research;
- links to any reputable websites that refer to the applicant and what they have done/achieved.

A profession

- If the applicant's area of achievement is in the area of a profession, evidence of exceptional and outstanding professional achievement could include:
 - national and international industry awards and accolades;
 - references from current and past employers;
 - statements from prominent business and industry peers;
 - academic degrees or professional designations associated with the applicant's profession;
 - personal/professional titles (such as CEO, Director, Department Head and Professor) indicating an earned rank or position that is senior, in relation to the hierarchy within the formal structure of an internationally recognised organisation;
 - newspaper and magazine articles attesting to achievements and/or awards; and
 - links to any reputable websites which refer to the applicant and what they have achieved.

A sport

- If the applicant's area of achievement is in the area of a sport, evidence of exceptional and outstanding international sporting achievements; including:
 - national and international rankings;
 - membership of national sporting teams;
 - results in international competitions or tournaments;
 - statements from international sporting bodies;
 - sporting scholarships received;
 - newspaper and magazine articles attesting to achievements; and
 - links to any reputable websites which refer to the applicant's sporting achievements.

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The arts

- If the applicant's area of achievement is in the arts, evidence of exceptional and outstanding achievements in the arts including:
 - books published;
 - national and international sales achieved;
 - awards and commissions received;
 - galleries in which works are displayed;
 - scale and audience of displays held;
 - recognition by peers;
 - honours and accolades (for example, a Screen Actors Guild Award, a British Academy of Film and Television Arts Award, an Academy Award, or a Nobel Prize in Literature);
 - academic qualifications associated with the applicant's area of the arts;
 - statements from national and international artistic bodies;
 - newspaper and magazine articles attesting to achievements;
 - links to any reputable websites which refer to the applicant's artistic achievements.

While it is open to decision makers to accept a single strong achievement as evidence of an applicant meeting the criteria (for example, winning a Nobel Prize or Olympic Medal), it is generally expected that an individual who is exceptional and outstanding would be able to provide evidence of achievements such as those listed in the above examples.

The internet may be used by decision makers to source additional material and as a method of confirming the accuracy of any claims made. Decision makers should only consider information that is relevant, credible and significant. Decision makers should also have regard to their obligations under the *Privacy Act 1988* when sourcing information. Any adverse or conflicting information obtained from internet sources that is relevant to the decision being made, should be put to the applicant, in writing, for comment.

Refer to:

- LS- 1849 PI: GenGuideA – All visas – Visa application procedures – The code of procedure
- VM-977 PI: Caseload Assurance – Case referral management – Risk Treatments

3.3.1.1.1.5 Assessment of information and evidence provided by a nominator

Form 1000 requires the applicant's record of achievement in an area (a profession, sport, the arts, academia and research) to be attested to by an Australian citizen, an Australian permanent resident, an eligible New Zealand citizen, or an Australian organisation who has a national reputation relevant to the area of the applicant's achievement. In assessing the information and evidence provided by a nominator, decision makers should consider these requirements.

Note: the nominator is unable to be changed after time of application, as this is a time of application requirement (see section 3.3.2.5).

Meaning of 'Australian organisation'

The term 'Australian organisation' may be given a broad interpretation and includes any organisation registered in Australia or authorised to carry on business in Australia. It also includes an Australian organisation operating outside Australia.

Organisations operating a business in Australia will have an Australian Business Number (ABN) that is registered with the Australian Business Register. Decision makers can conduct a simple search on the ABN Lookup website at <https://abr.business.gov.au/> to determine the existence of the organisation.

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Australian organisations which operate both in and outside Australia will have an ABN. If the organisation only operates overseas but not in Australia, they must have been established by an Australian parent company, or an Australian citizen or Australian permanent resident who continues to operate the business, in order to be considered an Australian organisation.

Status of nominator

In assessing the information and evidence provided by a nominator, decision makers should consider whether nominators are authorised to provide a nomination on behalf of the relevant Australian organisation. A nomination that is provided by a person holding a senior position within the organisation, may indicate that the nominator has legal authority to act on behalf of the nominating organisation. Nominations that have been submitted on behalf of an organisation, but made by someone without the necessary legal authority to act on behalf of the nominating organisation, do not satisfy this requirement. Decision makers may need to verify the status of the nominator with the organisation, to be assured of their authorisation to act on behalf of the organisation.

National reputation

'National reputation' generally means an image or opinion which is held by the Australian public about an individual or an organisation as being a leader or innovator in their field.

A number of factors may be considered to gain insight on the nominator's reputation, which may attribute to the credibility of the nominator's attestation to the applicant's achievements. These factors may include the nominator's:

- solid track record of achievements and excellence in the relevant field;
- evidence of high calibre;
- leadership in the relevant field of expertise;
- professional associations with lead organisations and industry bodies;
- current and previous employment history;
- their leadership or noteworthy participation (such as being a keynote speaker) at conferences both in Australia and internationally; and
- their contribution to a number of international journals which would be utilised by researchers, academics and organisations undertaking work in the same field of research.

It is expected that a nominator who is a leader in their field would have a substantial record of excellence in more than one of the above factors.

National reputation qualified by association

The national reputation of a nominator may be demonstrated through their professional associations with organisations/ industry bodies renowned in the field nationally, for example:

- A senior academic (such as a professor) at a university recognised internationally for teaching excellence and cutting edge research, would be taken to have demonstrated a national reputation
- An individual nominator holding a senior position in an Information and Communications Technology (ICT) company would be assessed as having a national reputation if that company is a multi-national technology company, one of the world's largest employers, or a leader in creating technological innovations.

When considering whether an individual nominator holds a senior position, decision makers should take into account the nominator's relative position within the company hierarchy.

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National reputation qualified by international standing

A nominator with a leading international reputation would be taken to be of national significance to Australia. This broad interpretation of 'national reputation' ensures that the program is not excluding quality Australian citizen, Australian permanent resident or eligible New Zealand citizen nominators living abroad. For example, a nominator living abroad would demonstrate that they have a national reputation if they have a strong international record of achievement thereby making them reputable at a national level.

Verifying claims

When assessing the content of a nomination, decision makers should be alert to information, such as the nature of the relationship between nominator and applicant, which could undermine the credibility of statements of support for the applicant's record of achievement. Decision makers may need to independently verify nominator's claims, or request additional evidence in support of the applicant's claims in order to be satisfied of the veracity of claims to attest to the applicant's achievements. Adverse or conflicting information obtained during verification checks that is relevant to the decision being made, should be put to the applicant, in writing, for comment.

Refer to:

- LS- 1849 PI: GenGuideA – All visas – Visa application procedures – The code of procedure

3.3.1.1.1.6 Assessing 'Exceptional and outstanding achievement' and international recognition for PhD graduates and students

Under policy, decision makers may be satisfied that a PhD graduate is able to demonstrate exceptional and outstanding achievement on the basis of their completed academic qualification.

A PhD student who has provided evidence that they are close to completing their PhD may also be considered, but will generally only demonstrate the criteria if they have a prior record of exceptional and outstanding professional achievement as is outlined in section 3.3.1.1.1.4.

Decision makers should, however, be satisfied that if the applicant's qualification was obtained outside Australia from a non-Australian education provider, that it is the equivalent of a PhD obtained in Australia. Decision makers should have regard to any relevant guidance from the Department of Education, Skills and Employment – including the Australian Qualifications Framework and Country Education Profiles.

In considering whether the achievements by a PhD graduate or student are exceptional and outstanding, and are internationally recognised, decision makers should be satisfied:

- their research is of international interest and significance;
- their research would be relevant to an international audience;
- they have presented their research at international forums;
- their research could be used to inform academia, governments and industry abroad;
- their research is relevant to Australian academia, governments and industry in respect to advancing Australia's international competitiveness; and
- their research highlights the potential for innovation and productivity increases for Australian organisations and industries operating in an international or globalised context.

A decision maker may accept that the information and evidence provided by a nominator satisfies the above requirements, provided that information is accepted as credible (see Section 3.3.1.1.1.5). Independent verification, enquiry or requests for further information may also be necessary in order for a decision maker to be satisfied.

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3.3.2.2 Must still be prominent

3.3.2.2.1 Policy requirements of prominence

Paragraph 858.212(2)(b) requires an assessment of the applicant's prominence in their identified area at the time of application.

3.3.2.2.2 Assessing prominence

An applicant should provide most, if not all, of the following information/documentation to demonstrate they are prominent in their field/area of expertise:

- details of recently completed projects;
- details of recent publications;
- details of current and recently held senior positions in a sizable business or organisation;
- evidence of delivering a presentation at professional forums, conferences and events;
- reference letter from a university or employer;
- evidence of patents, trademarks, copyrights, and other intellectual property held;
- evidence of recent national and international awards;
- evidence of membership of prominent international bodies, professional associations and current registrations/ licences.

The information/documentation described under '3.3.1.1.1 Must have an internationally recognised record of exceptional and outstanding achievement' is also relevant to the assessment of this criterion. It would be expected that they are currently active.

3.3.2.2.3 Assessing 'Prominence' for PhD graduates and students

PhD graduates must have completed their studies in the last 3 years in order to satisfy the requirement to still be prominent in their area of academia and research at the time of application. A full academic transcript and letter from the applicant's university must be provided, detailing the submission date of their thesis.

In assessing 'prominence' for PhD graduates, decision makers should consider whether the applicant has remained employed or academically engaged in their field (such as through accredited studies or research) if they have graduated 12 months or more before the time of application.

PhD students nearing completion of their qualifications would be taken to meet prominence on this basis, as it is expected that they will have a conferral date close to the time of visa application finalisation.

3.3.2.3 Must be an asset to Australia

3.3.2.3.1 Policy requirements of being an asset

Paragraph 858.212(2)(c) requires an applicant to demonstrate that they would be an asset to the Australian community. The term 'asset' is not defined in the Regulations. Therefore the ordinary dictionary meaning of the word applies. As such, an applicant would be considered an asset, if the applicant's settlement in Australia will be 'useful' to and benefit the Australian public, not limited to the applicant and/or nominator, a prospective employer or the applicant's local community.

'Asset' does not only refer to economic benefit. It could also refer to social and/or cultural benefit to the Australian community.

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3.3.2.3.2 Assessing whether the applicant would be an asset to Australia

An applicant will be an asset to the Australian community if they:

- raise Australia's technical and/or academic standards internationally;
- will introduce and/or transfer skills to Australia;
- will elevate Australia's competitiveness and reputation in sports and the arts; or
- will make a significant positive social or cultural impact on the Australian community.

An applicant may provide the following information/documentation to demonstrate they will be an 'asset':

- evidence that they have created a product/ technological advancement that is unique, and cutting edge in nature;
- evidence demonstrating that the applicant's research fills a significant knowledge gap and will be of benefit to industry, business or academia in Australia; or
- evidence of their involvement in successfully establishing a start-up company, which is still operating.

An applicant would not be an asset to the Australian community if the applicant was involved in an area that:

- is outside the generally accepted social or cultural norms of most people in Australia;
- is likely to be offensive to large segments of the Australian community; or
- would otherwise give rise to controversy were the applicant to enter Australia as a distinguished talent.

3.3.2.4 Employability

3.3.2.4.1 Policy requirements of employability

To satisfy paragraph 858.212(2)(d), the applicant must demonstrate that they would have no difficulty in obtaining employment, or in becoming established independently in Australia within their area of achievement.

The policy intent is to ensure that the applicant will be economically independent in Australia, either from employment or becoming independently established in the applicant's area of talent, and not be reliant on social welfare. Importantly, both the ability to obtain employment or become established independently must be in the applicant's area of achievement and take place in Australia. Hence, employment which is not related to the applicant's area of achievement cannot be used to satisfy paragraph 858.212(2)(d).

An applicant would be unable to demonstrate that they would become independently established in their area of achievement should they migrate to and settle in Australia, solely by the existing funds and/or assets held by them. They must also show that they can continue to maintain this independence through their skills in their area of achievement.

3.3.2.4.2 Assessing employability

When assessing this criterion, decision makers should be satisfied that the applicant has demonstrated a number, of the following:

- employment contracts or offers of employment related to the area of achievement for work in Australia. This may be evidenced by current and future employment opportunities from employers, employment/recruitment agencies, universities or organisations involved with the area of achievement in Australia;
- evidence of self-employment or opportunities to establish a viable business within the area of achievement;

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- evidence of sponsorships, scholarships, grants or other payments intended to support the applicant while they are engaged in activities related to the area of achievement;
- evidence of academic qualifications in their area of achievement;
- demonstrated track record of previous employment in their area of achievement.

3.3.2.4.3 Assessing employability for PhD graduates and students

PhD graduates and student applicants should provide details of employment opportunities that they will undertake in their field after they have completed their PhD.

Details of employment opportunities that they will undertake in their field should include evidence that the student will be able to earn above the FWHIT in their nominated field. This could include, but is not limited to:

- the applicant's employment history in the nominated field;
- offers of employment for the applicant in the nominated field;
- letters from organisations or individuals in the field detailing potential employment opportunities available that the applicant would qualify for;
- median salary for the applicant's likely employment position in the nominated field within Australia and, if below FWHIT, an explanation for why the applicant is likely to earn above the FWHIT;
- Australian market research on the hiring demand for individuals with similar qualifications.

3.3.2.5 Nomination

3.3.2.5.1 Must be nominated

For paragraph 858.212(2)(e), the applicant is required to produce a completed approved Form 1000 (Nomination for Distinguished Talent) at the time of application. This means that the nomination cannot change after the time of application ie when the application was made. This form requires the applicant's record of achievement to be attested to by a nominator who has a national reputation in relation to the area of achievement. A nominator must be:

- an Australian citizen; or
- an *Australian permanent resident*; or
- an *eligible New Zealand citizen*; or
- an Australian organisation.

Note: *Australian permanent resident* and *eligible New Zealand citizen* are defined in regulation 1.03 of Part 1 of the Regulations.

3.3.2.6 If under 18 years old, or 55 years or older

3.3.2.6.1 Exceptional benefit

Paragraph 858.212(2)(f) requires applicants who are less than 18 years old or 55 years or older, at the time the visa application is made, to demonstrate that they would be of exceptional benefit to the Australian community. Under policy, exceptional benefit to the Australian community would be a contribution that would elevate the international standing of the particular area in Australia. The applicant would also need to demonstrate that this benefit would be immediately realised and ongoing in the future. An applicant who intended to retire from their area of achievement or no longer participate in this area shortly after arriving in Australia would be unable to demonstrate that they would be of exceptional benefit to the Australian community.