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Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Migration Amendment (Visa Capping) Bill

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We make the following submission in regards to the above bill. It is noted that the need for this bill has arisen out of the high number of particular nominated occupations in the skilled migration stream and it is the government's intention to manage the skilled migration program to avoid this in the future.

It is our submission that the new changes introduced to the skilled migration program on 1/7/10, specifically limiting the number of skilled occupations that can apply from 400 down to slightly over 100, is a way of already successfully managing the migration program. If the proposed bill is implemented, this 'retrospective legislation' is extremely unfair to applicants who have their application in the department being processed and had a legitimate expectation that the case would be considered.

Section 65 of the Migration Act (1958) details that a valid visa application is to be considered by the minister or delegate. The Migration Amendment (Visa Capping) Bill would result in many applications being terminated without being considered, which is a cruel and unfair outcome. When a valid visa application is lodged with the department an applicant is aware that the case is not guaranteed to be approved, but they have the reasonable expectation that the case will at least be considered.

We have already seen the effects of a visa capping system, with the capping and ceasing of pre September 2007 applications. Our firm has had to provide this letter of visa termination to our clients and the response has been disheartening. One particular applicant affected by this had his application being processed at immigration for over 4 years, and upon informing him of his visa termination he was furious to say the least. He could not grasp why his valid visa application that had taken so long to be processed was terminated because the 'quota' had been reached. He had a legitimate expectation that his case would be fairly considered and processed, but alas his dreams were shattered without a helpful explanation.

Australia has always been known as the country that provides opportunity and a fair go, and this Migration Amendment (Visa Capping) Bill would severely tarnish this reputation on a global scale.

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As a Migration Consulting firm we have had hundreds of very qualified and talented applicants saying that they will look to migrate to other countries if Australia is going to treat them this way, that is, lodge an application and wait for many years with uncertainty. If this bill becomes legislation then Australia would loose many highly skilled migrants that will contribute to the economy and community.

With the long processing delays given by the 'priority processing arrangements' many visa applications are taking more than 2 years to be processed. Onshore applicants have created a life in Australia. They work, have studied here (and paid many thousands of dollars on tuition fees) pay taxes and contribute to society. After living in Australia for so many years, many applicants are more familiar and identify more with the Australian way of life then their home country. If this bill was to be implemented it will result in applicants living with uncertainty and intimidation. This is outrageous and something that should not be tolerated. Applicants deserve to be treated with respect.

Our recommendation is that the Migration Amendment (visa capping) Bill should not be passed. That its directive was to successfully manage the skilled migration program, but the changes implemented on 1/7/10 already provide this.

We expect that you will duly consider the above statements.

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