
From: Christopher Levingston
Sent: Tuesday, 1 April 2014 1:16 PM
To: Committee, Migration (REPS)
Cc: Christopher Levingston
Subject: Inquiry Into the Business Innovation and Investment Programme

The purpose of this email is to make a submission to the Inquiry Into the Business Innovation and Investment Programme being undertaken by the Joint Standing Committee on Migration.

I am aware of the terms of reference and what I propose to do is to make a submission to you in my private capacity as an Accredited Specialist in Migration Law and as a Registered Migration Agent (RMA).

Introduction

Since the introduction of the BIIP there have only been 144 applications under the SIV stream issued by DIBP. It has taken 18 months to achieve that result in a migration programme which had allocated to it no less than 7,500 places.

The “fault” lies squarely at the door of DIBP who have failed to process and give proper and genuine consideration to the many cases which have come before it where there has been a state support for the applications. DIBP and in particular Hong Kong has cast itself as a “gatekeeper” and have imposed additional and sometimes irrational requirements for what would otherwise be a relatively straight forward application. The failure of DIBP in Canberra and, in particular, the relevant policy unit to supervise the overseas posts and issue timely and clear instructions regarding issues as and when they have arisen have all contributed to the spectacular failure of this visa subclass (188-888).

I am aware that this Committee does not intend to look at the SIV because it is currently under review by DIBP. I take this opportunity to warn the Committee that DIBP has no idea and no expertise in this area. The decision to allow DIBP to review what is already a catastrophic failure is to permit procrastination and delay contrary to the national interest. I urge and urgent reconsideration of the limited scope of this review.

Terms of Reference

1. Is BIIP meeting it’s intended objectives?

The short answer to this question is no, and the reason for the spectacular failure of DIBP to process applications in a timely and reasonable manner requires a significant “adjustment” to the extent that DIBP needs to apply sufficient resources, and remove artificial barriers to the approval of applicants who intend to come to Australia and contribute to the development of Australia. The DIBP obsession with “money laundering”, and the in depth investigation of candidates, to detect conduct which may be of concern in the PRC (Peoples Republic of China), but is not criminal in Australia, raises concerns about DIBP’s commitment to the success of this programme.

The emphasis on a temporary as opposed to a permanent visa is inherently unattractive to candidates. DIBP are heavy handed and inconsistent in their approach to visa processing and visa grant. There is a lack of skill and expertise and “real world” business experience by DIBP case officers who are policy and process driven and do not have the training or the expertise to consider complex cases.

2. Decline in Rates of Application for the BIIP

The decline in the rates of application for the BIIP in a world-wide market place where other nations are shutting the door on this type of applicant is inexplicable. One of the reasons for the failure to attract increasing numbers of candidates, is the sharing of information gleaned by DIBP to PRC law enforcement

entities. Candidates correctly believe that DIBP, in sharing information with the PRC Bureau of Public Security, is not only a breach of privacy, but also places at risk persons who might be considering migration to Australia in order to spread the risk of having to operate a business in a totalitarian regime.

3. Current Eligibility Criteria

The current points test for the BIIP is relaxed and creates a system where candidates are able to achieve the pass mark with relatively low levels of skills and expertise. The “perfect candidate” would be a person with no less than 4 years continuous experience in business, a business with a turnover of no less than \$1 million, \$1.3 million in assets and between 35-39 years of age. The perfect candidate, however, would prefer to remain in the PRC where taxation and government regulation is relatively light. The compliance regime in Australia is a heavy burden on business, and the young entrepreneur is not likely to find a heavy compliance regime, a small market on the utmost edge of the Pacific Rim an exciting opportunity. What these candidates are interested in, is placing their families here, and having the principal applicant return to the PRC and continue to make money without exposing his family to the radical shifts in policy and law enforcement in a totalitarian regime. The spreading of the risk by placing the family in Australia beyond the reach of the authorities in the PRC, gives a level of comfort to these candidates which they seek but is inimical to the policy settings in this visa subclass.

4. Generation of Economic Growth

Although I have no qualifications in economics I believe that economic growth is likely to be an expression of the introduction of capital, and dynamic individuals who intend to apply themselves to the creation of jobs and opportunities here in Australia. The vast majority of skilled migrants under the skilled stream of migration, arrive in Australia with no job waiting for them and thus, through their own best efforts, apply themselves consistently and diligently to providing for the support of themselves and their families. The BIIP is predicated on a mistaken belief that candidates are in some way so attracted to Australia that they will put on risk their established businesses overseas to give them up and travel to Australia to create opportunities for Australians in what would be, in international terms, a backwater. The relative risk of a temporary visa, with a transition through to a permanent visa (188-888), is so great that the risk is unacceptable. DIBP’s history in the micromanagement of candidates who are under their control by reason of a scheme which emphasises the transition from a temporary visa to a permanent visa, is so bad that it would deter even the most enthusiastic and optimistic candidate. The Byzantine complexity of the Migration Act and Regulations and the shifting sands of public policy make these programmes very unattractive to most candidates.

Yours faithfully

Christopher Levingston

Principal Solicitor

BA. LLB. Accredited Specialist (Immigration Law)

MARN 9301108



w. levingston.com.au

Level 1, 73 York Street
Sydney NSW 2000
Australia

GPO Box 2502
Sydney NSW 2001
Australia