



Australian Government
Department of Immigration and Citizenship

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Ms Joanne Towner
Secretary
Joint Standing Committee on Migration
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Ms Towner

copy attached

Thank you for your letter of 30 March 2007 seeking advice on how the Department manages cases where a Subclass 457 primary visa holder is dismissed by their employer or loses their position in some other fashion. You also seek advice on possible protection that might be afforded to Subclass 457 visa holders should they give evidence to the Committee's current enquiry.

The general approach the Department takes with visa holders who cease working for a particular employer is to provide the visa holder with 28 days to find another sponsor. During this time, the visa holder is entitled to continue to be paid the Minimum Salary Level (MSL) under Subclass 457 by the sponsor whose employ the visa holder has left. At the end of the 28 days, the Department will seek to make contact with the visa holder to discuss options. If the visa holder has reasonable prospects of finding another sponsor, we will provide the visa holder with more time to continue to look. It should be noted, however, that after the 28 days, the original sponsor is no longer liable for provision of salary to the employee unless this is part of an applicable industrial entitlement. It is the link to continuation of salaries paid after the visa holder loses their job that tends to highlight the 28 day period.

If the visa holder does not have reasonable prospects of finding another sponsor, the Department's approach is to work with the original sponsor and visa holder to help the visa holder to return home. The concept of 'deportation' is not relevant in this context as the term has a very narrow technical meaning. Please note that the original sponsor will have signed an undertaking to ensure the costs of return travel are met.

In respect of any Subclass 457 visa holder who may give evidence to the Committee, subject to permission from the visa holders themselves, the Department can give its assurance to advise the Committee of any action the Department may consider to assist the visa holders to return to their country of origin if the visa holders are dismissed by their sponsor and are unable to find another sponsor.

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With regard to the approach the Department takes to allegations and complaints made by visa holders regarding their employment, the first point to note is that in respect of matters such as workplace relations, occupational health and safety, worker's compensation and employment agent legislation, Subclass 457 visa holders have the same protections available to all Australian workers.

Where allegations are made that go to issues relating to these matters and the allegations appear to have some substance, the Department's approach is to refer the matter to the agency responsible for their consideration. We will advise the Subclass 457 visa holders that such a referral has been made and that they may expect to be contacted by the relevant agency.

Where the allegations from the visa holder are in relation to immigration matters, DIAC officers normally interview the visa holder(s) and obtain any supporting information. Where possible, these matters are investigated in a manner that provides as much protection to the visa holder as possible. For example, where the allegation is in relation to underpayment of the MSL, DIAC investigates salary records for a number of workers, where this is possible, not just the complainant. In this way, any issues that are identified are seen to arise from normal monitoring activities, not from an allegation made by the visa holder.

In terms of applying sanctions, DIAC also favours barring sponsors from sponsoring further overseas workers rather than cancelling the sponsorship. The latter has the effect of forcing all Subclass 457 primary visa holders with that sponsor to find another sponsor.

I hope this information is of assistance to the Committee.

Yours sincerely

Abul Rizvi



PARLIAMENT of AUSTRALIA

JOINT STANDING COMMITTEE ON MIGRATION

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30 March 2007

Mr Abul Rizvi PSM
Deputy Secretary
Department of Immigration and Citizenship
PO Box 25
Belconnen ACT 2616

Dear Mr Rizvi

As discussed briefly by telephone earlier this week, the Joint Standing Committee on Migration has asked me to seek your advice on possible protections that might be afforded holders of 457 visas should they give evidence to the Committee's current inquiry into Temporary Business Visas.

As you would be aware, the giving of evidence to a parliamentary committee is protected by parliamentary privilege. Under section 12 of the *Parliament Privileges Act 1987*, it is an offence to influence another person in respect of any evidence given before a committee, or induce a person not to give evidence. Similarly it is an offence to inflict 'any penalty or injury upon, or deprive of any benefit, another person' on account of evidence they may give before a committee. Therefore, action by an employer to terminate employment under a 457 visa, based on the visa holder giving evidence to the Committee, would be a breach of privilege and a statutory offence.

Should such a circumstance arise and an individual complains to the Committee that they have been subject to adverse consequences as a result of having given evidence, the usual process is for the Committee to undertake an initial investigation prior to reporting the matter to the House. It is then a matter for the House to determine if further investigation is required by the Privileges Committee.

While this process is occurring, the Committee is concerned that 457 visa holders potentially remain vulnerable to action by an employer, in that if they are unable to find alternative employment within the 28 day period specified in the guidelines, they may be deported.

The Committee would welcome any information you can provide on what discretion might be applied to potential witnesses facing such circumstances, and the degree to which discretion might be shown by the department in dealing with such a situation. In addition, the Committee seeks information on how complaints made to the department by 457 visa holders regarding their employment are handled and what protection is afforded to such individuals bringing possible abuses of the scheme to the department's notice.

I note your comment in our conversation that, in your view, the emphasis on the 28 day timeframe has been misrepresented, and that discussions would occur with the visa holder prior to any action being taken to remove them from Australia. Given that the 28 day period is set out in the visa guidelines, the Committee seeks assurances that, in the case of witnesses to the inquiry, it be consulted prior to action being taken to terminate the visa of the witness and return them to their country of origin.

As the Committee will be holding further public hearings from mid-April, I would be grateful for your earliest response on this matter.

If you require any further information, please do hesitate to contact me.

Thank you for your continued assistance to the Committee.

Yours sincerely

Joanne Towner
Secretary