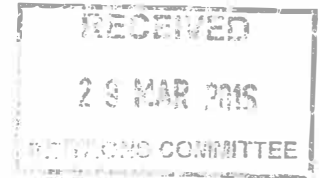


799-1261

29/3/2016



**THE HON PETER DUTTON MP  
MINISTER FOR IMMIGRATION  
AND BORDER PROTECTION**



Ref No: MS16-001010

Dr Dennis Jensen MP  
Chair of the Standing Committee on Petitions  
Parliament House  
CANBERRA ACT 2600

*Dennis,*  
Dear Dr Jensen

I refer to a letter from the former Chair of the Standing Committee on Petitions, the Hon John Murphy MP, of 24 June 2013 to the former Minister for Immigration and Citizenship, the Hon Brendan O'Connor MP, concerning a petition requesting that Dr Mihaela Gugula be granted permanent residency, waiving obligations under the Temporary Work (Skilled) visa (subclass 457) programme.

For privacy reasons, I am unable to comment on Dr Gugula's case. However, I can provide the following general information.

Individuals who wish to travel to, or remain in, Australia need to apply for an appropriate visa and be assessed against the criteria set out in Australia's migration legislation. My power to personally intervene is not enlivened until a refusal decision has been made by the Department of Immigration and Border Protection and is upheld by a review tribunal.

The subclass 457 visa programme has been designed to ensure that employers sponsor overseas workers only when they cannot find suitably qualified and experienced available Australian citizens or permanent residents. It is designed to fill temporary vacancies only.

The pathway to permanent residency most used by subclass 457 visa holders is the Temporary Residence Transition stream of the Employer Nomination Scheme or the Regional Sponsored Migration Scheme. The Employer Nomination Scheme (ENS) (subclass 186) visa and Regional Sponsored Migration Scheme (RSMS) (subclass 187) visa are demand-driven programmes which allow employers to nominate skilled workers for permanent residence to fill genuine vacancies in their business. These skilled workers can be from overseas or already living and working in Australia as temporary visa holders.

Applicants who are 50 years of age or over must meet one of the specified age exemptions in order to be granted an ENS (subclass 186) visa or a RSMS (subclass 187) visa. If Dr Gugula pursues a permanent residence visa under the Permanent Employer Sponsored Entry Programme, as a medical practitioner, she may already satisfy the age requirement. Unless an exemption applies, the ENS and RSMS visas require applicants to be under 50 years of age. This is to ensure that the focus of the skill stream of the permanent migration programme is on attracting highly skilled migrants with appropriate English language ability, who can make a long-term contribution to Australia.

However, in certain circumstances, Australia will benefit from skilled applicants who are older than 50 years of age. With this in mind, there are provisions for additional flexibility with regard to the age requirement. Exemptions are available to applicants who are nominated in certain occupations, such as senior academics, medical practitioners, scientists, eligible New Zealand citizens and their families, or those who have held a subclass 457 visa for the last four years and were paid at least the Fair Work Commission's Fair Work High Income Threshold in each of these years.

Further information about the ENS and RSMS visas is available on the Department's website at:

- ENS – <http://www.border.gov.au/Trav/Visa-1/186->
- RSMS – <http://www.border.gov.au/Trav/Visa-1/187->

Thank you for bringing Dr Gugula's case to my attention.

Yours sincerely

PETER DUTTON

24/03/16