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Joint Standing Committee on Migration

**Inquiry into eligibility requirements and monitoring,
enforcement and reporting arrangements for temporary
business visas**

Submission relevant to Temporary Business Visa 457

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Introduction

The Temporary Business Visa 457 has been the centre of attention of many newspapers lately, being targeted as the easy way for migrants to get into the country and threaten the Australian economy and wealth.

Articles saying that even an astrologist or a dog catcher might qualify for a 457 Visa or that temporary workers, according to Unions, would lower the average wage of the market so “stealing” jobs to Australians can have definitely a huge impact on audience’s opinion (The West Australian, 4/7/06). The risk is to feed a negative feeling towards overseas migrants, preventing them from being integrated in the community, increasing episodes of racism and intolerance based on false beliefs or on a few “physiological” cases of law breaching.

As it is currently impossible to supply workers domestically due to the increased economic growth, both temporary and permanent migration is a necessity for Australia. Further it is inevitable as current trends in world globalisation are ruled by a capitalist society.

It is imperative then to plan such a migration policy to guarantee an effective skill recruitment starting with temporary workers as most of them will become permanent residents in the future and so part of the Australian community. You certainly do not want to create a sub-category of non-privileged workers as this trend will have a negative effect on Australian living standards one day. Moreover, a fair system, which gives equal opportunities to all, will certainly decrease illegal migration as a consequence.

This report is going to discuss specifically about the Temporary Business 457 Visa and my purpose is to discuss the several aspects involved in the process. The papers will reflect my experience as currently being a 457 visa holder, working as a physiotherapist, and others’ experiences, employers and employees involved in the sponsorship system, who I have interviewed.

Solutions will be proposed within every topic and sometimes they might look surprisingly against migrants’ interests. However, I believe in collaboration for reciprocal advantage, because although in time of need, Australia has the right to expect the best from a skilled worker and at the same time the skilled worker has the right to have given a fair go and to be respected and fairly valued as such.

Finally, I would like to thank this Committee, who previously met me during the inquiry on skills recognition, for giving me this second chance to speak and contribute to a process of improvement.

Note:

Data presented refer to:

- (*) Labour Force Australia 6202.0 – December 2006 (ABS - Australian Bureau of Statistics)
[www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/710B9BD05E54161BCA25725F00179B99/\\$File/62020_dec%202006.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/710B9BD05E54161BCA25725F00179B99/$File/62020_dec%202006.pdf)
- (**) Population Flows: Immigration aspects, 2005-06 Edition (DIMA)
www.immi.gov.au/media/publications/statistics/popflows2005-6/index.htm

Overview of Temporary Business Visa 457

According to data released by the Department of Immigration and Citizenship (DIC), 71,150 Temporary Business Visas 457 were been granted in 2005-2006. This is an increase of 46.4% compared with the previous year. Of these granted visas, 13,320 applied for permanent residence – a trend that has continued to increase. I will personally add that most of the ones that have not applied yet, might do it in one or two year-time, as one of the permanent residence requirements is to show some work experience.

This means 457 visa is one of the major contributors to permanent residence and as such it must be considered and set in a way to prevent the system from having difficulties later on.

As the Western Australian Chamber of Commerce stated, it appears that temporary workers are needed in spite of this 46.4% increase (The West Australian, 4/7/06). However what is the right way to calculate how many entries are still needed and more importantly what type of skills are required?

In December 2006, the Australian rate of unemployment was calculated to be 4.6% (*). However of greater significance is the rate of employment. A recent survey from the Australian Bureau of Statistics (ABS) has considered full time and part time positions - comparing data in the last ten years (*).

The survey showed that fifty per cent of women worked part time and over time this trend has not changed. In contrast, most men worked full time, however the trend of males looking for a full time job has been decreasing dramatically since 1996. This trend is currently at its lowest peak. So being very confident in saying that you will not convince that 50% of women to work full time to satisfy the job demand, it is inevitable to employ overseas workers.

In light of the mining and building boom in recent years, it is likely that most Australian males are working within this field. From my own experience in this industry, I can emphasis that it is unlikely that a 457 holder will chose to work in the mining industry. Further, in the building industry it is evident that there is still a small percentage of overseas workers compared to Australians. This is outlined in the DIC data below.

Onshore approved nominations 2005-2006 for 457 visas (**):

- | | |
|---------------------------|-----|
| - Professionals | 54% |
| - Tradespersons | 21% |
| - Manager/Admin | 11% |
| - Associate Professionals | 11% |
| - Other | 3% |

Looking at a future prospect, when the mining and building boom will be over, all those Australians will have difficulties in finding an alternative job, while all the temporary workers, that in the meantime have become permanent, will be working.

How to prevent this?

- Decreasing the intake of temporary workers at this stage as the unemployment rate will have increased. However will this be enough?
- Increasing now the opportunities for overseas people to establish a business in Australia as they will be the ones to create jobs in the future when expanding. In this case we talk about an incentive and an increase in intake of Business Owner Provisional/Permanent Visa Subclass 160, for example.
- Selecting 457 applications specifically in relation to the occupations most in demand. With regard to the skill topic I will spend few words in the visa and sponsorship requirements section.

The requirements of the process

The skill

As you are aware there is a list of around 500 skilled jobs set by DIC and a *Migration Occupation in Demand List* (MODL). This list is revised twice annually, however not modified unless needed. The following DIC data for 2005-2006 outlines the top five occupational groups nominated by employers (**):

- Registered nurses 7.7%
- Computing professionals 5.2%
- Business and information professionals 3.2%
- Slaughter persons 2.9%
- General medical practitioners 2.7%

All these skilled people appear in the MODL but slaughter persons. Considering a list of more 500 possible jobs, it is surprising to see that in the top five. It might be that the job has been cancelled lately from MODL as the demand has been satisfied or maybe there has been an increase in barbeque parties all of a sudden. I will leave the investigations to you.

You will excuse the joke, however I would like to underline that an appropriate monitoring of skill shortages should be done in the first instance. For example, how many workers apply with a skill for a temporary visa to change trade soon after the approval of an Employer Nomination Scheme Visa? How many overseas students attend an Australian school to obtain a certificate, apply for a visa with that qualification and soon after will change? If we look at that in terms of intake of money from overseas students I agree it is a good arrangement. However as a community investment, training people that will not do the job is a waste of time and energy.

A solution to this might be introducing a policy whereby those who are eligible for a 457 visa, if interested in permanent residency at a late stage, have to work for a certain number of years in the profession before being allowed to apply to change their status. In this case the job demand will be satisfied and there will be a better monitoring of the market.

Then at the end of the minimum working time required, the temporary visa holder should be given the chance to apply for permanent residence. This would occur without any other requirements to satisfy, apart from vocational English, and without the onus of getting a sponsorship. Permanent residency could then be applied through the Independent Skilled Migration visa.

As you are aware two years of work is the current requirement for a potential change of residence status. Further, I understand that if an applicant has been appropriately assessed or has completed a two year qualification in Australia then this period of working time is waived.

In relation to semi-skilled jobs, I believe that some fields should be expanded. This expansion would also decrease illegal migration. Currently only some type of semi-skilled work is considered for regional sponsorships. As I outlined in my previous submission, I propose that the occupation of physiotherapy assistant be placed on the DIC job list. This is also in light of the many other industries crying out for semi-skilled and trained workers, in particular primary production and the hospitality industry.

Minimum salary

The temporary workers “...*must be paid in line with Australian workplace laws or a set immigration minimum salary level (whichever is the higher)*...” (*). On 3rd May 2006 the minimum salary has been set to \$41,850 (\$57,300 for IT professions).

“Whichever is the higher” should not be written in brackets. Actually, it should be specified in the information booklet and on the DIC website. Currently much is left to interpretation. \$41,850 is a unique amount for those 500 possible skills and it is logical to think that some skills will be overpaid and others underpaid.

In general, it is my understanding that big business companies with a large number of employees abide by the requirement. If not, they would firstly be open to the criticism of the other employees and the Unions, and secondly I am quite sure there are other legal ways for them to save much more money. The small business companies may be more interested in this type of exploitation, but I believe it is still an occasional phenomenon.

Some skills might attract on average an inferior salary, leading to an overpayment of overseas workers in relation to the minimum set by DIC. This may assist overseas people with the initial cost when settling or with possible health care expenses - as most are not covered by Medicare. The issue of Medicare will be discussed later in my paper.

Given that it is difficult to reveal situations of exploitation within the workplace unless reported, highly investigated, or the controls are extended visas granted, the following points could resolve this situation:

- abolish the set salary, requiring instead the minimum already existing according to the Australian laws in relation to the type of job;
- require the employer to provide the contract together with the nomination, so that terms can not be changed afterwards when it is too late for the employee to refuse, risking to lose the sponsorship chance;
- require the employer to communicate the employment of the overseas worker to the appropriate association for that category, so to delegate further controls to other authorities;
- identify typical risk situations and direct controls towards them.

With regard to the particular concession to regional employers in meeting the minimum salary, this would certainly help sponsors. However, I do not believe that workers could be motivated by earning less. It would be an advantage to maintain the normal level of wage and instead offer a taxation deduction, both to the sponsor and the employee.

Full time position

The full time requirement is very easy to satisfy when it comes to big business. The small companies instead, with one or two employees only, find this requirement a bit hard to meet at the beginning. To try to expand, they invest with big sacrifices as they do not have the same financial opportunities of a big company.

In this case I would suggest that for business with less than a certain number of employees, approval for sponsorship should be granted with, for example, a three month-“window” to build up the working hours for the overseas worker from part time to full time.

English language

For a temporary worker English has importance in relation to the type of job. It is common opinion among employers that some skills require just basic knowledge of the language, while for some professions that should be mandatory.

A chef or a bricklayer can commit themselves to study while they are in the country if they are interested in applying for permanent residence later on. While a nurse or an engineer not only should they be required to have an advanced level of English but they should be also tested on technical specific language.

At the moment IELTS test is used with a score from zero to nine, available in two modules, general and academic. Personally, I arrived in Australia with an overall score of seven, academic module, as this is the minimum required for a physiotherapist. Although, my level was advanced it took me months to understand the local language.

Work experience

Certainly work experience is a requirement needed to understand the level and reliability of the skill of a temporary worker. However, it appears to be not essential in other cases, like when overseas students, having studied two years in Australia, can apply for permanent residence onshore with no work experience at all.

Training

Currently an employer has to show that an overseas worker is a benefit to Australia and has to give evidence that the employee will advance skills through training or technology. When a business has too a small number of employees to be trained, this seems to be a hurdle for a nomination approval. It might be discussed though that a sponsor offers a position as a private business and not as a school.

Moreover, I see a big contradiction as most of temporary workers have not been skill assessed yet. Example: a physiotherapist in some States can be sponsored under limited registration with the professional board. This means that the physiotherapist is allowed to work only under supervision because not yet comparable to the Australian

standard. How can a non-assessed physiotherapist, and in general a non-assessed skilled worker, be required to train Australian colleagues?

If it is valid the concept that an overseas worker will be employed where there are no Australians available for that position, it is as much valid that indeed the main benefit to the country will be covering the position itself, providing a service to the community that otherwise would not have. I propose then training to be cancelled from the list of the requirements.

Health requirements

Currently health checks vary case by case or depending on the agreement existing between Australia and some countries. For example, workers from San Marino are not required to provide chest X-rays, while Italians are. Now, San Marino is a tiny country in the middle of Italy, with the same lifestyle and culture, and so the same health level.

Medical checks are valid for one year. Sometimes these expire and although applicants have never moved away from Australia, they still are required to provide another health clearance with further costs and radiations.

Moreover, given that almost all the tourists and students coming to Australia are not required to have any medical check, I find it unnecessary also for temporary workers, unless they are employed in health and school system, in child care, in hospitality and in some food/water industries and for those who will receive Medicare.

Other issues

Medicare

Some countries have an agreement with Australia for reciprocal public health care coverage. The 457 holders that are not part of this program have Medicare levy exemption and have to organise their own private health insurance.

I suggest Medicare should be offered to all 457 applicants, who should pay the appropriate Medicare levy as every resident does. You might argue that some workers come from countries where the health conditions are poor. I agree, but then I would suggest arranging compulsory medical checks to all 457 applicants. Once they are clear, whatever disease or injury they develop will be in Australia and so it would be fair to offer them assistance in the public system.

Sanctions

Once the visa is approved, both temporary workers and employers must be in line with the parameters. In case of non-compliance, the worker will have the visa cancelled; the employer may be prevented from sponsoring for some time in the future.

I find these sanctions to be unequal. I do not think the employer will be much disturbed for not being able to sponsor again for some time, while a visa cancelled means definitely much more to the employee. I believe sanctions should be more severe for the employers, as this would also be a disincentive to exploit temporary workers.

Information and bureaucracy

I acknowledge that in the last year the information provided to applicants have improved in quantity and quality, in particular on DIC website. In spite of this, many applicants still find the process hard and long to go through. Some employers rely on specialised recruitment agencies for overseas workers, some others give up. Many workers apply through migration agents with great expenses.

I hope for a continuation of the improvement process like it has been recently done. In particular, it would be helpful to have an appropriate section on DIC website where the applicants can easily access the updated information regarding the continuous modification of the migration system.

Conclusion and recommendations

In light of the data presented, Temporary Business Visa 457 should not be considered a separate visa but the launch base for permanent migration. Moreover, other visas should be taken into account when looking at modifying the requirements for eligibility, to avoid possible contradictions.

Recommendations for changes and improvements are:

- monitoring of the entries over the years to evaluate the real employment rate in the chosen skill, with introduction of minimum number of years worked in that skill as mandatory for permanent residence application;
- introduction of more categories of semi-skilled workers;
- concession of a three month-period for small sponsors to build up working hours to a full time position;
- abolition of the set minimum salary, maintaining the requirement of respecting the Australian industry laws in relation to the skill, also for regional workers;
- introduction of special tax deductions for sponsors and employees in regional areas;
- work contract as a mandatory document to add to the nomination application;
- involvement of the professional and trade associations to monitor employment compliance;
- introduction of a "typical risk situation" to target possible exploitations, so that controls for non-compliance can be easily conducted;
- advanced English level only for high skilled professions;
- revision of the minimum work experience required;
- abolition of training requirement;
- revision of the health requirements;
- Medicare available for all the 457 holders, provided compulsory health check;
- introduction of severe sanctions for non-compliant sponsors to discourage exploitation;
- improvement of the information network to guide the applicants at best and reduce the process time length.

Yours sincerely,

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