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14 February 2007

The Secretary
Joint Standing Committee on Migration
House of Representatives
PO Box 6021
Parliament House
Canberra ACT 2600

By email: jscm@aph.gov.au

Dear Sir/Madam,

Please find enclosed our submission on the inquiry into eligibility requirements and monitoring, enforcement and reporting arrangements for temporary business visas.

We are grateful for the opportunity to make this submission and will be happy to assist if you have any further queries.

Yours Faithfully

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entity enterprise - IPro lifecycle management for corporations
entity engagement - IPro engagement solutions for organisations
entity management - IPro engagement solutions for individuals
entity migration - individual and corporate migration solutions
entity backoffice - financial and payroll services for organisations



**Submission to Joint Standing Committee on Migration
By Entity Solutions**

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

February 2007

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EXECUTIVE SUMMARY

Entity Solutions Pty. Ltd. is Australia's largest engagement consulting & services firm. Through combining consulting, back-office support and migration services we ensure our independent professionals and corporate customers have compliant, risk free and fully optimised relationships.

Entity Solutions is not a recruitment or labour hire organisation.

We represent over 2,000 Independent Professionals (of which around 200 are working in Australia under a temporary 457 business visa), as well as the numerous commercial and government organisations that engage them.

Our employees sponsored under the 457 visa program are primarily in the IT&T, engineering and accounting sectors (ASCO Groups 1 to 3) and have salaries in excess of \$70K per annum.

Through our migration division, we also represent other Australian businesses to become sponsor companies under this visa category.

Our submission to the committee confirms our belief that the current 457 eligibility requirements are adequate. Our recommendations therefore are in regard to the processing of these applications and our support for increased monitoring and sanctions for Sponsor Employers who are found to have breached the system.

In summary, we would confirm and recommend the following points:-

- The current eligibility requirements are adequate and do not need any strengthening, but may in fact benefit from a more flexible and understanding approach by DIAC, particularly in regard to training.
- If English language proficiency is to be introduced as a requirement, ensure that this does not delay processing or apply to those who are native speakers or can evidence their functional English skills.
- Introduce measures including a short term (3 month) 457 visa option or allocate electronic applications in a more effective manner to reduce the current processing times.
- Improve accessibility and processing times for Labour Agreements, which should be an alternative option to Business Sponsorship.
- Support for increased monitoring of Employer Sponsors and the exclusion of Overseas Labour Hire firms from this process.
- We also support the introduction of tougher sanctions for companies which are found to have exploited the system.

1. INTRODUCTION

- 1.1 Entity Solutions Pty. Ltd. is Australia's largest engagement consulting & services firm. Through combining consulting, back-office support and migration services we ensure our independent professionals and corporate customers have compliant, risk free and fully optimised relationships.
- 1.2 We represent over 2,000 Independent Professionals (of which about 200 are working in Australia under a temporary 457 business visa), as well as the numerous commercial and government organisations that engage them.
- 1.3 We would like to firstly note that it is widely acknowledged within the Australian business community that it is always preferable – and certainly less costly and time consuming – to employ Australian citizens or permanent residents whenever possible.
- 1.4 Due to our unique position in the market place, we are also well aware of the current skill shortages and the need to bring in highly skilled independent professionals from offshore. As a professional engagement company, we are contacted on a weekly basis by Australian companies and/or foreign individuals who require an appropriate engagement structure and visa sponsorship to facilitate their entry into the Australian labour force.
- 1.5 As a long standing Sponsor Company, we are also aware of the need for accurate record keeping, legal and ethical behaviour and constant detailed internal monitoring of all employees sponsored on 457 visas. This in turn assists with responding to DIAC monitoring requests and in the day to day employment and management of these highly skilled individuals from various parts of the world.
- 1.6 Given the recent negative media reports of exploitation of people brought here under the temporary 457 business visa scheme by unscrupulous operators, together with allegations surrounding the abuse of the scheme itself, we welcome this inquiry and hope it strengthens and acknowledges the contribution bona-fide employers play in easing the current skills crisis, and encourage the Committee in its endeavours to strengthen the program's integrity and improve its operating procedures.
- 1.7 To this end, we would like to address the Terms of Reference for this Inquiry, to assist with the identification of current areas of concern and table possible solutions.

2. LABOUR MARKET TRENDS & THE ROLE OF 457 IN MITIGATING THE SKILLS CRISIS

- 2.1 There is no doubt that Australia is in the midst of a skills crisis.
- 2.2 An ageing population, the exponential growth in technology and the expansion of emerging international markets has all contributed.
- 2.3 Recent studies¹ suggest the skills crisis will continue well into the future, particularly in the professional fields of information technology and telecommunications, healthcare and accounting along with trades such as construction, engineering, electrical, food and automotive.
- 2.4 Furthermore, shorter planning cycles, globalisation, instability in global markets and the speed of change in business has also seen the emergence of the borderless independent professionals (IPros) who work where, when and for whom they want. According to estimates by the Productivity Commission, it is estimated that around 10.1 per cent of the Australian workforce is self-employed, with professionals, managers and associated professionals representing the combined majority of the contractor market at approximately 33.5 per cent².
- 2.5 Similar to the findings of a study conducted by the Australian National University and the University of Adelaide³, Entity Solutions has found that organisations sponsor workers from overseas because the required skill is not available or is difficult to obtain in Australia. Usually the skills required are very specific to a company's product or systems or involve expert knowledge of newly developed technology.
- 2.6 As mentioned earlier, about 10 per cent of Entity Solutions' 2000 employed IPros come from overseas – the rest are Australian citizens or permanent residents. We do not believe overseas professionals are taking jobs away from Australians as has been purported in the media. Our experience suggests the commercial, not-for-profit and Government sectors prefer to employ local residents. Contrary to popular belief, it is far more costly and takes

¹ Federal Department of Employment and Workplace Relations, "Australian Jobs 2006" pg 20.

² House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation, "Making it Work: Inquiry into Independent Contractors and Labour Hire Arrangements." August 2005.

³ Federal Department of Employment and Workplace Relations, "A Global Market: The Recruitment of Temporary Skilled Labour from overseas" second Report on the ARC Project – Temporary Overseas Migration to Australia, by Siew-Ean Khoo, Carmen Voight-Graf, Peter McDonald and Graeme Hugo, Australian Centre for Population Research, The Australian National University and the University of Adelaide. May 2004.

a longer period of time to sponsor an overseas professional than to employ an Australian resident.

- 2.7 Due to the project-based nature of many jobs, particularly in the IT&T sector, time delays involved in sponsoring an overseas professional can often take longer than the project itself. Furthermore, waiting for up to 2 to 3 months to complete an urgent software upgrade does not make good commercial sense.
- 2.8 It should also be noted by the Committee that research suggests nearly 40 per cent of skilled professionals brought to Australia under the 457 business visa proceed to apply for and be granted permanent residency⁴.

3. ABOUT ENTITY SOLUTIONS

- 3.1 A wholly Australian-owned and operated company, Entity Solutions, was created in 2000 to meet the growing IPros and contractor market. We developed a unique risk mitigation consulting & services offering now known as the "Engagement Management" sector.
- 3.2 In the late 1990s, whilst organisations were engaging more contractors to meet their business demands, there was little attention given to the time and management costs associated with employing an ever-increasing number of contractors or minimising the potential compliance risks. Put simply, many organisations were unaware of their responsibilities and liabilities in relation to engaging IPros.
- 3.3 Likewise, the introduction of the GST and superannuation-guarantee legislation made it increasingly difficult for IPros to manage the back-office duties of their business at the same time as maintaining the workloads associated with their outsourced roles.
- 3.4 Entity Solutions is not a recruitment agency, labour hire organisation or contract management services organisation, but rather a consulting and back-office services company that consults and manages the engagement between IPros and the organisations engaging them.

⁴ Federal Department of Employment and Workplace Relations. Temporary Skilled Migrants' Employment and Residence Outcomes: Findings from the Follow-up survey of 457 Business Visa Holders by Siew-Ean Khoo, Carmen Voight-Graf, Peter McDonald and Graeme Hugo, Australian Centre for Population Research, The Australian National University and the University of Adelaide. August 2006.

- 3.5 We operate in the IT&T, engineering and accounting sectors, providing organisations such as, AXA, AAPT, Sensis, the Department of Immigration and Citizenship, the Australian Tax Office, and many other professional organisations with expert advice, management & migration services, together with back-office services for the IPros.
- 3.6 Headquartered in Melbourne, with offices in both Sydney and Brisbane, Entity Solutions has grown into a \$150M business employing some 65 permanent full-time staff and over 2,000 IPros.
- 3.7 IPros sponsored to Australia by Entity Solutions or its clients are highly skilled, university educated or very experienced individuals, who earn a minimum annual income in excess of \$70K.

4. ADEQUACY OF CURRENT ELIGIBILITY REQUIREMENTS

- 4.1 As both a Sponsor Company, and representative of other Australian Sponsor Companies through our migration division, we believe that the current eligibility requirements for this visa class are adequate. Our suggested areas of improvement therefore, are in the current administration and decision making process and the monitoring performed by DIAC.

English Language Proficiency

- 4.2 In regard to the English language proficiency of sponsored employees, we do not find this to be an issue in the occupational categories for which we sponsor (ASCO Groups 1 -3). However, we would certainly be concerned by the delays which would inevitably result, should IELTS language testing be introduced as a requirement of 457 visa eligibility.
- 4.3 We would suggest that if this requirement is to be introduced at all, then it be at most at a functional level only and certainly not include native English speakers or those applicants who have previously worked in an English speaking country or been educated in English.
- 4.4 To date, we have found that all of our sponsored employees and those of our company clients, have already been assessed during the recruitment process for their English language ability. We do not believe that responsible and compliant Sponsor Companies would seek to employ candidates with insufficient English skills to perform their role.

Delays in processing of applications

- 4.5 As a regular user of the 457 visa program, we cannot make this submission without noting the inordinate delays with processing of 457 visa applications at present. Given that many of our sponsored employees are required in Australia as a matter of urgency in order to implement or oversee critical projects, particularly in a specialist ICT field, a 6 to 8 week processing delay is simply untenable to the operations of Australian businesses.
- 4.6 We certainly appreciate that the increase of applications in this category in recent years has been a major factor in the blow out of processing times, however there are some areas which we believe could be improved in order to increase efficiency of visa processing.
- 4.7 Firstly, in discussion with a Business Centre Manager in late 2006, we were advised that one factor contributing to increased processing times, was the need for work references of ASCO Group 4 (trade) occupations in particular, to be verified by an overseas post. As this process was said to take up to 3 months to complete, the applications for Group 1 to 3 occupations were therefore being "stuck in a queue" behind those that were awaiting verification and taking up the time of case officers who could therefore not process as many applications.
- 4.8 When it was suggested that ASCO Group 1 to 3 electronic applications be processed by a separate group of case officers to avoid this occurring, the response was that the electronic applications need to be opened and reviewed by a case officer before being allocated and that the current system has no way of immediately identifying the ASCO occupational level. Perhaps such an identification/alert method could be introduced?
- 4.9 Another suggestion would be to allocate specific resources to the processing of 457 visa applications which are being "renewed", as distinct from initial applications. Presumably if the applicant's role has not changed, the minimum salary level is still met and x-ray results are current, then these applications should not require substantial re-assessment.
- 4.10 Secondly, due to the delays mentioned above, we have also become aware of the ETA and Business (short stay) 456 visas being misunderstood by the business community as a legitimate method of bringing in short term labour for urgent projects. The introduction of a short term (3 month) version of the 457 visa with streamlined processing may therefore be one method of rectifying the potential misuse of the 456 and ETA visas.

- 4.11 Further, we note that a sponsored version of the 456 visa exists, known as the Sponsored Business Visitor (Short Stay) 459 visa, for which a gazetted list of Australian businesses are included as approved sponsors. We would suggest that a similar list of approved sponsors could be attached to the short term 3 month 457 visa to maintain the integrity of this program and that a company such as our own, would be ideally suited to fill this role.

Labour Agreements

- 4.12 As a stand alone business, which is quite unique in both our structure and services to the Australia business community, we have not found any incentive to date to participate in the process of obtaining a Labour Agreement. Verbal advice from DIAC indicated that the most recent labour agreement to be approved, took around 10 months to obtain.
- 4.13 Whilst this agreement may then result in quicker processing of the associated 457 visa applications, a 10 month waiting period compared to the 6 to 8 week (in most cases) Business Sponsorship process is not attractive to either ourselves or our Company and Government clients.
- 4.14 We have also found it difficult to obtain detailed information on the process of obtaining such an agreement or it's suitability in covering a range of ASCO Group 1 to 3 occupations.

Overseas Labour Hire and Recruitment Agency Sponsors

- 4.15 As highlighted in recent media coverage of breaches of the 457 visa program, there appears to be a higher incidence of exploitation by overseas labour hire and recruitment agencies, compared to those companies based in Australia. We believe that Australian based companies, including our own, are not only compliant with the 457 visa regulations due to potential sanctions (as contained in the Migration Act) but because Australian employers recognize that bringing in unskilled or under-paid labour from offshore will cause detriment to their own working conditions and wages, and that of their families, friends and community. We therefore support the exclusion of overseas based labour hire or recruitment companies from the Business Sponsorship program.
- 4.16 Professional Engagement companies, such as Entity Solutions, as distinct from labour hire and recruitment agencies, are essential in facilitating the provision of highly skilled global professionals to more than one Australian work place for the purpose of both skills transfer and project completion. We submit that rather than our model resulting in "benching" of sponsored employees whilst they await assignments, as may occur with labour hire, our employees

are in high demand within their respective industries. The fact that they are employed by an engagement company such as ours, therefore means that they can move from project to project continuously to fulfill our client's requirements, without the need to re-lodge a new visa application each time and be idle (and unpaid) whilst awaiting the approval before re-starting work.

- 4.17 Given that the main purpose of our company, as noted in the Industry Overview section of this paper, is to provide Australian businesses and their employees with a structure compliant with all taxation, superannuation, work place and statutory requirements, we assist all our clients and companies to comply with Australian laws, including migration.
- 4.18 We would therefore suggest that we are ideally situated to assist Government in working together to ensure compliancy by all parties, particularly in regard to foreign employees.

Training Requirement and Labour Market Testing

- 4.19 We believe that the current training requirements are sufficient for assessment of each Business Sponsor's commitment to the training of their Australian employees, and should not require strengthening. Rather, we would suggest that a more flexible and realistic approach be taken in the assessment of each company in regard to the type and amount of training they are able to provide to their Australian employees. This is particularly relevant to the on-the-job training component which we believe should be more readily accepted by DIAC, given the continual skills transfer which occurs on site by the participation of these highly skilled professionals in our Australian work places. At present, DIAC case officers are likely to request evidence of formal training, which may not always be relevant or indeed required in certain industries and for some small businesses, well beyond their financial ability, when their focus is on tight budgets to ensure the company's ability to survive and prosper and therefore increase employment opportunities.
- 4.20 We would suggest that an economic advisory firm such as ACIL Tasman or Access Economics, may be engaged by the Department to ascertain the monetary value of such on-the-job training and skills transfer, and make this information available to Sponsor Companies who can then utilize these studies to indicate an accurate assessment of the training which is occurring on a daily basis within their particular work place.
- 4.21 Whilst we would certainly not suggest that formal labour market testing be added to the temporary visa criteria, as this has proven to be both costly and time consuming for Employer Sponsors in the

past (and most recently removed from the ENS visa scheme), we would however say that evidence of trying to fill a role from the local labour force, could be provided as an alternative or preferably in addition to evidence of training.

5. MONITORING AND REPORTING

- 5.1 Our most prevalent issue in regard to the current monitoring process, is the fact that whilst salary packaging is recognized at visa application stage, it is not taken into account at monitoring time when only the taxable income component is assessed.
- 5.2 Given that many highly skilled resources are being sought in parts of the world where a 10% - 20% tax rate may exist, it is essential that Australian businesses are able to offer attractive salary packages to these individuals in order to acquire their skills here. As the cash component may only form part of the complete package offered, we believe that the additional components such as living away from home allowance (LAFHA) and a car allowance for instance, should also be taken into account and be included in monitoring.
- 5.3 Whilst we certainly support the need for a minimum taxable salary level to exist as part of the eligibility requirements, we note that if this cash component of the salary package is raised higher, these individuals essentially become unable to claim tax free allowances to which they would otherwise be entitled - and therefore their transition to Australia for the purpose of short term work, will ultimately become less attractive. In this manner, we may then lose the "cream of the crop" resources to other countries that also require their skills. Our suggestion would be that the entire salary package, including both cash and non-monetary components are recognized at both application and monitoring stages.
- 5.4 It may also be of assistance for Employer Sponsor companies to be made aware that in some cases, applying the maximum tax free allowance (LAFHA in particular) allowed under Australian Tax Office legislation, may inadvertently drop their sponsored employees salary levels below the minimum taxable salary specified by migration law.
- 5.5 As an Australian business with up to 200 sponsored employees at any one time, we have implemented a payroll system which is able to monitor all sponsored employees salaries on a monthly basis and restrict any tax free allowances from being applied, which would affect their minimum taxable salary levels. We would suggest that other Employer Sponsors be made aware of this measure, as an outsourced payroll function for instance, to ensure that they are

also able to monitor salaries accurately and meet the monitoring requirements.

- 5.6 In regard to reporting requirements and in particular the need to inform DIAC within 5 business days that an employee has ceased work, we would simply suggest that more detailed information is provided to Employer Sponsors at visa approval stage, to ensure that they have a simple, user-friendly method of doing so. Our suggestion would be to include a link to the email address of the relevant Business Centre Monitoring unit with a template email to be completed by the Employer Sponsor with the relevant details. In this way the Department will help to facilitate compliance by Employer Sponsors with their obligations in a most efficient and effective manner.

6. SANCTIONS FOR BREACHES OF 457 PROGRAM

- 6.1 We fully support the introduction of tougher sanctions, including monetary fines, to be available in cases where Employer Sponsors are found to have breached their obligations or abused the 457 visa program in some way. We would recommend that a fair system be introduced, however, to assess these cases individually – rather than a trial by media occurring – and that only senior, experienced members of the Department be involved.
- 6.2 Our further suggestion would be that DIAC implement a policy of open and honest communication with Employer Sponsors during the investigative process, to ensure that an assumption of abuse by the employer is not preferred over what may in fact be a misunderstanding or miscommunication between Employer and sponsored Employee.
- 6.3 As a business that has a large number of employees, both sponsored and Australian, working on site at client projects, we would also suggest that Employer Sponsors be encouraged to ensure the safety and well being of their employees by providing internal measures to facilitate communication of any work place issues by these individuals. At present we have a system in place to ensure that they are able to report any potential issues on site to our company, as their employer, without fear of recrimination or potential loss of visa status. We would suggest that the Department also make such a “helpline” available to all sponsored employees, who may be wary of reporting issues due to concerns over losing their visa status and being returned home through no fault of their own. Once again, we would be happy to assist DIAC implement such a program.

7. CONCLUSION

- 7.1 As an Employer Sponsor and company who has a migration division assisting other Australian Businesses to become Employer Sponsors, we believe that overall the current eligibility criteria and sponsorship obligations in the 457 visa program are adequate.
- 7.2 Where we believe improvement needs to be made is primarily in the areas of processing of visa applications and increased monitoring and tougher sanctions for those found to be abusing or misunderstanding in some way the obligations of an Employer Sponsor.
- 7.3 We would be happy to assist further in any process to make the above improvements and thank you for the opportunity to make this submission.