STIRLING HENRY MIGRATION SERVICES

ABN 94 054 539 534

(Incorporating Consultrade Australia Pty Ltd)

Suite 402, Level 4, 19-31 Pitt Street, Sydney NSW 2000, Australia
Postal address: PO Box R83, Royal Exchange NSW 1225, Australia
Phone: (61/2) 9251 4511 • Fax: (61/2) 9251 5144
Email: visas@stirlinghenry.com.au • Internet: www.stirlinghenry.com.au

Solicitor
Stirling Henry

Registered Migration Agents

Stirling Henry	9250251
Tim Denney	9683856
Diana Hsu	0000593
Martin Hildebrand	0210935
Louisa Wei	0211341

Inquiry into Temporary Business Visas
Submission to Joint Standing Committee on Migration
From Stirling Henry Migration Services
(www.stirlinghenry.com.au)

Terms of Reference

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

1. Inquiry into the adequacy of the current eligibility requirements (including English language proficiency) and the effectiveness of monitoring, enforcement and reporting arrangements for temporary business visas, particular Temporary Business (Long Stay) 457 visas and Labour Agreements; and
2. Identify areas where procedures can be improved.

1. Overview

The subclass 457 visa program is generally operating well with some adjustments required (see below). Applicants are limited to applying for skilled occupations in accordance with a gazetted list. The list is presumably based on consultations between DEWR and DIAC and is limited to managerial, professional and trades positions.

There is flexibility for persons lacking the above skills to obtain a 457 visa on the positive assessment of a designated regional authority.

It is well known that the cost of employing an expatriate on expatriate conditions frequently includes allowances, incentives, accommodation, airfares etc and is considerably greater than the cost of hiring a local person. It could reasonably be assumed that employers sponsoring overseas residents would consider hiring suitable local employees if available.

Australia can not and should not, stand in the way of globalisation. We can not expect opportunities for Australians to work overseas as part of their career development and deny reciprocal opportunities for other nationals wanting to come here.

2. Current Eligibility Requirements including English Language Proficiency

English language requirements should continue to be assessed by employers. They know what they need. The introduction of English testing for all applicants would further delay processing times and make it unattractive for businesses to choose this path with a negative impact on business and the economy.

It should be noted that skilled occupations on the gazetted list requiring licensing or registration to enable persons to practise in Australia, would normally require demonstrated English language proficiency at vocational level or above. This would usually be part of the assessment process undertaken by the relevant licensing or registration authority. Examples of occupations where English proficiency would be a prerequisite include medical practitioners, nurses, aircraft maintenance engineers, electricians and gas fitters. It follows that in occupations where public safety is involved registration or licensing will continue to be a prerequisite to practice and English language proficiency will continue to be required as at present.

3. Minimum Salary Levels

There is a need for more tiers than in the current two tier salary level system which distinguishes IT ($57,300 and non IT ($41,850) occupations. For example salary levels in Sydney are certainly higher than in, say, Adelaide or Hobart for the same occupations. There are also significant differences between salaries for lower paying trades (eg hairdressers) and higher paying trades (eg plumbers and gasfitters).

4. Linkage between Employer Nomination Scheme (ENS) and 457 visas

The number of different skilled occupation lists is leading to some confusion. At present there are separate lists for the following types of applications: 457, ENS, points tested migration applications excluding Sydney and surrounds, points tested applications including Sydney and surrounds. Since the 457 visa is for many people a pathway to permanent residence under ENS it would be sensible for the lists, which have some present variations in either direction, to be the same. At present a small number of occupations are on the 457 list and not on the ENS list and vice versa.

5. Work rights for persons coming for less than 3 months

According to Migration Regulations the 457 visa is for applicants seeking employment in Australia for more than 3 months. There is no comparable visa for persons needing to enter Australia for employment purposes for less than 3 months. Subclass 456 business (short stay) visas are available for periods of up to three months but carry the condition 8112 "the holder must not engage in work in Australia that might otherwise be carried out by an Australian citizen or an Australian permanent resident".

Policy guidelines state that 456 visa holders may only be employed in Australia under very limited circumstances. Examples of employment situations where a business visit visa may be appropriate are needs constituting "an emergency and very short term and of a highly specialised nature".

Elsewhere Policy Guidelines state that the 456 visa "is intended for genuine business visitors seeking a short term entry to Australia for business purposes (up to three months at a time)". Also "Generally, persons seeking to engage in paid employment in Australia should apply for the visa 457...".

What if someone is required to be employed in Australia for a period of less than three months, say two or four weeks? There is no visa which meets this requirement.

Some applicants are able to come to Australia with business Electronic Travel Authority (ETA) visas, subclasses 956 and 977. These ETA visas are available to nationals of "low risk" countries such as those in Western Europe, North America and Asian countries including Japan, Malaysia, Brunei, Singapore, Korea and Taiwan. These visas carry the same 8112 employment limitation condition but they are granted without assessment on the basis of passport details and are available over the internet or through travel agents or major airlines. They are granted for three months multiple entry as a matter of course even in situations where an applicant may only need to spend a couple of weeks in Australia. By contrast with the virtual automatic approval of ETA business visas for three months, in this firm's, admittedly limited experience, subclass 456 applications from China for instance are subject to a ridiculous degree of scrutiny.

In short there is a need for a 3 months employment visa with expedited processing.

6. Processing Times and Periods of Stay

457 visa processing times, at least in Sydney, take from six to eight weeks for non ETA nationals and four to six weeks for ETA nationals. Processing times appear to be getting progressively longer.

Processing times for 457 visas are virtually the same whether an applicant is applying for three months or four years. This provides a temptation for employers to sponsor an applicant for a four year visa even if they are unlikely to be required for that period of time. This can lead to significant numbers of employees, particularly with overseas business sponsors, coming and going throughout the period and spending significant periods of time outside Australia working in other countries. The Department's approach to this at present is not to take any action to cancel longer term visas unless an applicant is likely to be overseas for a period of at least 12 months. It is an undesirable situation because of the imposition of additional record keeping to track staff members who are coming and going and, particularly, must lead to situations where a staff member returns overseas while employed by the sponsor and then leaves that sponsor's employ. In such situations the staff member could be carrying a subclass 457 visa which may have another three years or so to run and may continue to come and go while working independently or working for another employer.

As a general principle visas should be granted for the period of time required plus some margin for contingencies. In some cases this will result in visas being granted for a period of 12 months and not four years thus allowing the Department a greater element of control consistent with improving integrity of the visa subclass.

On a related issue, 457 visa holders are entitled to have their superannuation fund contributions refunded on leaving Australia without the intention of returning. Somewhat inexplicably it seems to be taking six to nine months for such visas to be cancelled, with a consequent delay in the refund of superannuation payments.

7. Overseas Labour Hire Firms

There is a need for ongoing scrutiny of overseas labour hire firms. Reportedly some of these firms have traditionally made little effort to find employment for applicants but have sponsored applicants for visas on the basis of the applicant finding their own employment. Overseas labour hire firms should not be given sponsorship approval for more than a single applicant at a time to circumvent the possibility of rorting the system by getting approval for large numbers of applicants and then farming them around. Visa approvals for nominees of such firms should be limited to 12 months.

8. Monitoring

Monitoring of businesses is stretching out to six to nine months (again in Sydney). Unless additional resources can be provided it is submitted that monitoring should take place every second year instead of every year which should result in shorter processing times and greater scrutiny of monitored applications. Another approach would be to require monitoring returns from all sponsors in the first 12 months of sponsorship operation and thereafter to operate on the basis of random audit. Monitoring units should better profile companies to ensure that most of the Department's resources are directed towards potentially risky employers.

9. Training

Reg. 120D(c) requires the Minister to be satisfied that an applicant for approval as a 457 visa holder will introduce to, or utilise or create, new or improved technology or business skills or has a satisfactory record of or will demonstrate a commitment towards training Australians in business operations of the applicant in Australia.

Overwhelmingly in our experience most employers apply on the basis of the training requirement rather than new technology or business skills. The policy refers to new technology or business skills being generally not readily available in Australia and "vital" to a business maintaining its competitive edge. There are unlikely to be many firms who can meet this requirement, particularly smaller firms. Smaller firms with less than 10 employees also have difficulty in meeting the training requirement. It is simply not realistic to expect a small employer to offer the same smorgasbord of training and development opportunities as BHP or Qantas or Coca Cola Amatil etc. A more lenient approach should be taken with the training requirements as it relates to small employers.

10. Involvement of Registered Migration Agents

Applications lodged through a registered migration agent, as for tax agents, should be granted priority processing. Also agents should be able to sign off on having sighted copies of certain documents such as degree certificates, academic transcripts, employment references, birth and marriage certificates without having to actually provide the documents. They should be subject to random audit in relation to this. The outcome should benefit DIAC as well as the clients.

Stirling Henry

1 February 2007