



VisAustralia — Américas

VisAustralia(Internacional) Pty Ltd (trading as VisAustralia), ABN 1111 0267 528
Aniceto Ortega 817, Oficina 303, Colonia Del Valle, CP 03100, México DF, MÉXICO
Tel: 5575 6204 Ext: 40, Email: nhouston@visaaustralia.com, Web: www.visaaustralia.com
Nicholas Houston: Registered Migration Agent No: 0428579

Committee Secretary
Joint Standing Committee on Migration
Department of House of Representatives
Parliament House
CANBERRA ACT 2600
AUSTRALIA

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SUBMISSION TO THE JOINT STANDING COMMITTEE ON MIGRATION - INQUIRY INTO SKILLS RECOGNITION, UPGRADING AND LICENSING

Introduction

1. The Terms of Reference of the Committee that we will address in this submission are as follows:

1. Investigate and report on current arrangements for overseas skills recognition and associated issues of licensing and registration for:

- Skills stream migrants who obtain assessment prior to migrating;

2. Identify areas where Australia's procedures can be improved including in terms of:

- Communication of processes to users

- Efficiency of processes and elimination of barriers

Background

2. VisAustralia is a small migration consultancy based in Mexico City. It was established in late 2003 by a lawyer with an Australian Public Service background (DIMIA, AQIS, DEWR) and a registered translator.

3. VisAustralia provides advice and assistance to people who wish to apply for skilled visas as well as other visas such as partner visas or business visas. To date we have made approximately 55 skills assessment applications on behalf of our clients.

Canada versus Australia

4. Due to our location, we have interviewed many clients who are considering the merits of migrating to Australia and Canada. The merits of Canada or Australia are fairly open, and in Mexico it often comes down to personal preferences relating to the weather, in which case Australia wins, or distance from family, in which case Canada wins.
5. What is not open is the level of risk associated with the visa process and the actual or perceived fairness of the visa process as a whole. In making a decision to choose Canada or Australia people are careful to look at the whole process, and if it appears that there will be a more certain outcome in one country, then the preference will be to choose that country.

Skills Assessment Requirements

6. Before a person can apply for a skilled visa, he or she must apply for an assessment of his or her skills by the relevant assessment authority. The assessment authorities are prescribed by Gazette Notice by the Minister for Immigration and Multicultural and Indigenous (“the Minister”) acting under certain provisions of the *Migration Regulations 1994* (“the Regulations”). Different authorities are prescribed for different skilled occupations.
7. In advising potential visa applicants of the likelihood of the success of their application, we cannot distinguish between the legal visa requirements set out in the Regulations and the skills assessment requirements of the prescribed assessment authorities, as effectively they mean the same thing for an applicant – success if they meet the requirements and failure if they do not.
8. This is despite the fact that the requirements set by the assessment authorities are set in policy not law, are not necessarily fully articulated, and carry no external review rights in the event of bad decisions or disputes.
9. In relation to some occupations on the Government’s Skilled Occupations List (“the List”) we cannot advise potential visa applicants to apply for a skills assessment as the level of uncertainty and risk associated with the assessment application is too high.
10. Further, we have been continually frustrated by administrative incompetencies and other problems and delays with the assessment authorities we have dealt with. The authorities we have found to be lacking are the Australia Computer Society (ACS), VETASSESS, the National Institute of Accountants (NIA) and the Australian Architects Accreditation Council (AACA). The only authority with which we have not encountered problems is the Institution of Engineers Australia.

Purpose of the Submission

11. The purpose of this submission is to describe some generic problems we have experienced in our dealings with certain assessment authorities and to suggest some solutions that would go some way to fixing these problems.

12. We will illustrate these problems by way of five examples concerning VETASSESS, the ACS and the NIA, and a detailed case study concerning the AACA. Due to the nature of the problems with the AACA and the NIA, we no longer advise potential visa applicants to apply for a skills assessment with those assessing authorities.

Generic Problems with Assessing Authorities

Communication issues

13. We have found communication to be difficult with the assessing authorities. This extends to emails not being unanswered, phone messages being ignored, written instructions not being followed, and substantive issues raised by VisAustralia in relation to assessment applications not being adequately addressed by the authorities.

14. Because we are based in Mexico City, these problems are compounded by time differences, unreliable local postal services and the expense of making international phone calls. Similar problems are faced by off-shore applicants particularly those who do not have a legal representative, who live in third world countries and who are not native English speakers.

15. The difficulty of communicating with the assessing authorities can compound other problems, waste our professional time as well as that of the authorities, and cause unnecessary stress and delay for applicants.

Written correspondence

16. The assessing authorities advise of the result of a skills assessment application by written letter sent by ordinary surface mail. The authorities will not advise or otherwise confirm the result by telephone, fax or email. Generally, we are not advised in advance that the authority has finalised an application or that the result letter has been posted.

17. In Mexico, as in many other countries, ordinary mail is unreliable and as a result written correspondence can take a number of weeks to arrive. In many cases letters do not arrive at all. When a letter does not arrive, generally the assessing authorities will not re-send an original result letter but will only issue a copy of the letter. Some will also request the payment of an extra charge for this.

18. We have spent many hours chasing up missing result letters and have been frustrated by the reluctance of assessing authorities to advise of the result of a skills assessment application by any means other than by written letter. This is particularly unsatisfactory given the current ease of electronic communication.

Administrative errors

19. It is not uncommon for the assessing authorities to make simple administrative errors such as sending result letters to the wrong address, sending emails that are not correctly addressed and when no response is received taking no action to follow up the initial email, failing to sign letters before despatching them, and asking for unnecessary documents.

20. When such mistakes are made, the authorities are reluctant to recognise any error on their part and it is difficult to communicate directly with the relevant officer to resolve the issue.
21. This level of administrative incompetence is unacceptable, and can result in otherwise eligible applicants losing their eligibility to apply for the skilled visa.

Inconsistent application of requirements

22. There have been instances where assessing authorities have applied their requirements to potential visa applicants in an inconsistent fashion and when the inconsistency has been brought to the attention of the authority no satisfactory explanation for the inconsistency is given. The only recourse given by the assessing authority is to appeal the initial decision but this has an added cost for a client.
23. Further, if the original assessment application has not been considered fairly and properly, or it is perceived that it has not been considered fairly and properly, there is little to encourage a potential visa applicant to spend further money for an internal review.

Lack of reasons for decision

24. The assessing authorities do not provide, and are not required to provide, a detailed statement of reasons for their decisions. A negative result letter merely states that an applicant has not met the requirements set by the assessing authority and does not provide an explanation of the reasons why an applicant's skills have been found to not meet the requirements.
25. Without a clear statement of the reasons for a negative decision, we have found it very difficult to advise clients whether to pursue their right of internal review or to advise future clients about their chances of success based on previous decisions by assessing authorities.
26. The right to reasons for decision is a basic right in any administrative system.

Lack of external review

27. There is no external review mechanism available to potential visa applicants in the case of a dispute with an assessing authority. While the assessing authorities are appointed by the Minister by legislative instrument to perform a function central to the visa process, unfortunately they remain private organisations and as a result, disputes or problems cannot be reviewed by oversight bodies such as the Ombudsman.
28. The implications of this are twofold. In the first place potential visa applicants are driven away through the lack of a fair and transparent review process and in the second place, there is no unifying oversight of the different systems of the assessment authorities that might lift the standards and force some consistency across the different authorities.

Lack of accountability

29. The assessing authorities often seem not to appreciate that their decisions can have a negative impact on an applicant's ability to apply for a skilled visa. This is particularly troublesome when a person becomes ineligible to apply for a skilled visa as a result of an error by an assessing authority. Some of the errors can be administrative in nature while others are more substantive but either way they can be disastrous for a person's eligibility to apply for a skilled visa.

Examples of problems with VETASSESS, the ACS and the NIA

Example 1 - VETASSESS

30. This situation occurred with VETASSESS in October 2004.

31. A result letter in relation to an assessment application was sent to us by VETASSESS. After some weeks of waiting for the letter to arrive we contacted VETASSESS to clarify whether a decision had been made and a result letter sent. We were advised that the letter had indeed been sent. However, after further email correspondence it was discovered that VETASSESS had not sent the letter to the correct address (VETASSESS had used the wrong street number).

32. We requested that VETASSESS re-send us the letter but we were advised that VETASSESS had a policy that prevented it from re-issuing a letter unless the original letter was first returned to it. We could not return the original letter because it had been sent to the wrong address and we could not retrieve it. Nor had the letter been returned to VETASSESS by anyone at the incorrect address (if there was any one at the address who could return it).

33. After further email correspondence, VETASSESS reluctantly agreed to re-issue the letter but refused to take responsibility for sending the letter to the wrong address in the first place maintaining that it had sent the letter to the address given on the application form. This was plainly incorrect as VETASSESS had sent the letter to the wrong street number.

34. Further, instead of despatching another result letter promptly, VETASSESS took 1 month to despatch it. This was contemptuous of our client and displayed an inability on the part of VETASSESS to be responsive to a problem it had caused.

35. To resolve this matter required hours of our professional time, it required that we send numerous emails to VETASSESS many of which were ignored, and it required that we make international phone calls to try and resolve the matter.

36. VETASSESS was unhelpful and unresponsive and failed to take responsibility for a mistake that it had made.

37. The delay to the client was in the order of three months.

Example 2 – The ACS

38. In July 2004 we lodged a skills assessment application for a client with the ACS. The result letter was never received, with the assumption being that it was lost in the mail. It

took about a month to realise that the letter had been lost rather than delayed as the assessing bodies make it abundantly clear that clients are not to contact them during the standard processing or delivery time frames.

39. Due to the loss of time it became necessary to request the ACS to re-issue the result letter and to arrange to courier the letter to Mexico to allow our client to make a valid visa application while he remained eligible for the visa.
40. The ACS agreed to re-issue the letter if we organised and paid for the courier. We duly organised and paid for a courier to attend at the ACS office in Sydney to collect the letter and to bring it to our office in Mexico City. However, again the result letter did not arrive at our office.
41. After this result letter did not arrive within the expected time frame, we contacted the ACS to confirm that the letter had been collected by the courier company and to obtain the courier company's tracking code for the document. However, the ACS had failed to keep a record of the code or the invoice provided to it by the courier company.
42. Finally after many emails it was discovered that the ACS had sent the letter to the wrong address, being an old office address and not the address to which we had asked that it to send the result letter.
43. On travelling across the city to our old office, we were fortunate to be able to find the package. As we were not there to sign for the package every possibility existed that the letter would have been returned to Australia.
44. When we opened the package, it was discovered that the re-issued letter had not been signed by the ACS and so we could not use it. After further email correspondence and international phone calls to Australia, the ACS agreed to courier a third letter at its cost to Mexico City.
45. The time lost for our client was in the order of 2 months and the additional costs to the client in the order of AUS\$50.
46. The level of administrative incompetence displayed by the ACS in this case was astounding. It wasted a lot of time for us and for the ACS and most worryingly, put in jeopardy our client's eligibility to apply for a skilled visa.

Example 3 – The ACS

47. In May 2005 we lodged a skills assessment application for a client with the ACS. In our covering letter we clearly and specifically requested that the ACS send the result letter directly to the client who was living in Australia and not to us in Mexico City. This request was made because the client needed to apply for the skilled visa within a short period of time otherwise he would become ineligible for the visa and the result letter would merely take a few days to be delivered within Australia rather than weeks to arrive in Mexico City.
48. The ACS ignored our request.

49. When we discovered that the result letter had been sent to us in Mexico City, we immediately sent an email to the ACS case officer re-explaining the situation and requesting that another result letter be sent directly to the client. This was ignored.
50. We then sent a further email to the supervisor with the same request. This was also ignored.
51. The next day we made an international phone call to the ACS and left a voice mail message with case officer's supervisor about the same issue. Once again, this was ignored.
52. A day later we made a further international phone call and we were finally able to speak with the case officer who agreed to re-issue the result letter and send it directly to our client in Australia. No apology was given for the error.
53. The ACS recklessly ignored our request about where the result letter should be sent and then compounded its error by failing to be responsive to our emails and phone calls. This resulted in hours of our professional time being wasted and put in jeopardy our client's eligibility to apply for the skilled visa.

Example 4 – The NIA

54. In early October 2004, we lodged a skills assessment application for a client with the NIA. One of the required documents was the university syllabus for our client's Bachelor degree in accounting. As the university syllabus for our client's degree was no longer available, the university instead provided us with the syllabus for the current degree and a table of equivalency showing the equivalency between the subjects completed by our client as part of his degree and the subjects contained in the syllabus we were submitting.
55. In early December 2004, we received an email from the NIA requesting further syllabus details for our client's degree. The NIA had ignored the table of equivalency we had submitted with the assessment application and because of this thought that we had failed to submit the required syllabus details.
56. In our response to the NIA's request for further syllabus details, we carefully explained the situation with our client's degree and the nature of the documents that we had submitted. The NIA was then able to finalise the assessment application without the lodgement further syllabus details.
57. In May 2005, we sent another skills assessment application to the NIA with the same documents submitted with the October 2004 application. Again, we received an email from the NIA requesting further syllabus details as again the NIA had failed to consider the table of equivalency that we had submitted with the assessment application and because of this thought that we had failed to submit the required syllabus details.
58. We responded to the NIA's request for further syllabus details by again explaining the situation with our client's degree and the nature of the documents we had submitted. We also asked that the NIA take greater care to check the documents we submit because we

are very careful to submit the necessary documents so as to avoid unnecessary delays for our clients.

59. Again, the NIA finalised the assessment application without the lodgement of further syllabus details.

60. When a person applies for a skills assessment, he or she is entitled to expect that his or her application will be assessed properly especially given that an applicant is required to pay a fee for the assessment to the assessing authority. In these cases, the NIA clearly failed to make a proper assessment of the documents submitted with an assessment application which suggests that there is something lacking in the NIA's decision making processes.

61. It also resulted in unnecessary delays for our clients and a waste of our professional time explaining and then re-explaining the situation with the degrees and the nature of the documents we had submitted.

Example 5 – The NIA

62. In January 2005 and April 2005, the NIA advised that it was unable to ascertain whether the Bachelor degrees of two clients who had applied for a skills assessment were equivalent to an Australian Bachelor degree, and as a consequence, we needed to apply for an individual educational assessment of each degree from the National Office of Overseas Skills Recognition (NOOSR).

63. In relation to the first client, we contacted NOOSR to discuss the matter before making a formal individual educational assessment application. We did this because the process of obtaining the assessment takes approximately 3 months and costs a further \$300 and we wanted to be sure that this extra process was required.

64. We received a response from NOOSR to the effect that they were able to update its advice to NIA and that an individual education assessment by NOOSR would no longer be required. The nature of this new advice was not shared with us or our client.

65. The NIA then proceeded to finalise the skills assessment application and the result letter was despatched to us. We received the result letter but it had not been signed before being despatched and so we had to request that a signed copy be sent to us. A signed copy of the letter was duly despatched to us.

66. In April 2005, when we received another request from the NIA for an individual educational assessment by NOOSR in relation to the degree of another client, we again contacted NOOSR before making a formal application for the assessment. We were advised by NOOSR that in this case it did not have "any information" that it could usefully provide to the NIA to avoid the need for an individual educational assessment of our client's degree.

67. We also sent an email to the NIA asking whether the NIA had sought advice from NOOSR before requesting that our client seek an individual educational assessment of her degree. We were again advised by the NIA that we needed to seek an individual assessment from

NOOSR because our client's university was not listed in NOOSR's Country Education Profile for Mexico.

68. We responded by noting that last time the NIA requested an individual educational assessment it turned out not to be needed because NOOSR was able to provide the NIA with further information about the degree in question which made an individual educational assessment unnecessary.
69. About a week later, the NIA advised that it had "clarified the matter of Mexican degrees" with NOOSR and that an individual educational assessment would not be needed. We sent 2 further emails to NIA seeking its advice as to why the individual educational assessment was no longer needed and we were advised that the NIA was unable to "share" NOOSR's advice with us or our client.
70. We were concerned about the issue of individual educational assessments and so we sent an email to both the NIA and NOOSR outlining our concerns about how the issue of the need for individual educational assessments had been handled by the organisations. No response was received from either organisation and so we sent a further email to them a week later.
71. On the same day we received a reply from NOOSR stating that it did not have information about the degree we had enquired about and that it merely used its "experience of Latin American countries" to give advice to the NIA that obviated the need for an individual educational assessment. This was a direct contradiction of their previous advice which was that NOOSR did not hold "any information" that could help obviate the need for an individual educational assessment.
72. To date we have not received any reply from the NIA about our concerns about how it handles the issue of individual educational assessments.
73. The NIA failed to appreciate that a request for an individual educational assessment delays the skills assessment process by at least 3 months and costs a client a further \$300 in what is already a very expensive and very lengthy visa process. It also failed to take responsibility for seeking information that is available from NOOSR before asking for a process that was not actually necessary.
74. We have lost confidence in the NIA and its decision making processes. As there are other assessing authorities prescribed for the accounting occupations, we are now directing our clients' assessment applications to these other authorities.

Summary regarding the Problems Experienced with VETASSESS, the ACS and the NIA

75. We are professional organisation and we are assiduous in preparing complete and well documented skills assessment applications that meet the requirements of the assessment authorities. The kinds of problems described above are not isolated, and in fact are typical of the way the assessing authorities make the visa process unnecessarily difficult for migration agents and for potential visa applicants.

76. As mentioned at the beginning of this submission, clarity in the visa process as a whole and the absence of risk are highly significant to a person's decision to apply for a skilled visa. If the skills assessment process is unnecessarily problematic, then Australia risks losing out to Canada and other migration destinations.
77. Another significant issue at the skills assessment stage is the lack of external review. As there is no external review mechanism available in relation to decisions made by the assessing authorities, there is no requirement that the assessing authorities abide by administrative law rules that have been applied in the sphere of public decision making since the 1970s. We believe that this has resulted in a lack of accountability, consistency and transparency in the decision making processes of the assessing authorities.
78. While it is possible to seek internal review of an assessing authority's decision this right is vitiated by the fact that without a statement of reasons for a decision it is difficult to know what to appeal against. Further, often matters germane to the decision lie outside the appeal grounds.
79. Finally, applicants pay a fee for making a skills assessment application. On payment of this fee an applicant is entitled to expect that his or her application will be assessed fairly and consistently, that the assessing authority will respond in a timely fashion to queries and problems, that the assessing authority will take responsibility for errors when they occur, and that the applicant will be provided with a meaningful explanation for a negative decision.
80. With these matters in mind, we would now like to suggest some solutions to the problems we have experienced.

Simple solutions

Internet based client interface

81. The assessing authorities should be obliged to maintain a secure client interface system accessible over the Internet by an applicant or his or her legal representative and through which the applicant/legal representative could at the least view:
- The date the skills assessment application and other documents were received by the assessing authority.
 - The name and contact details of the case officer processing the application.
 - Requests for further documents required by the assessing authority to finalise the assessment application.
 - The status of the assessment application.
 - The dates that any correspondence, including the result letter, was sent to the applicant/legal representative.
82. A system of this kind would limit both the need to make queries directly with the assessing authority/case officer and relieve the assessing authority/case officer of the need to respond to basic queries about the progress or status of an application. The additional value of such a system is that the applicant/legal representative would have a clear idea of

what was going on with his or her application, and it would become apparent rapidly if correspondence has been lost or not received.

83. We would submit that there would also be value in DIMIA introducing such a system.

Electronic register of skills assessment decisions

84. It is anachronistic that result letters have to be sent overseas to clients or their legal representatives and then sent back to Australia with the visa application. Apart from misadventure, paper correspondence is open to fraud.

85. There should be a system of direct communication between DIMIA and the assessing authorities about decisions made by the assessing organisations, or alternatively, the assessing authorities should be required to publish their decisions on line and these decisions should be accessible by DIMIA and an applicant/legal representative.

86. This would do away with the charade of misaddressed or unsigned result letters and correspondence being lost in unreliable mail systems.

External review

87. It is unsatisfactory that the skills assessment process is exempt from external review. We have found that there are questionable decision making processes being followed by assessing authorities and that if these processes were carried out by a government agency external review mechanisms would be triggered.

88. The assessing authorities are prescribed by the Minister by legislative instrument for the purpose of making an assessment of the skills of potential visa applicants. While the assessing bodies remain private organisations, when they undertake a skills assessment for migration purposes and the outcome of that process has significant consequences for an applicant's eligibility to apply for a skilled visa, applicants should be entitled to expect a process that is fair, consistent, transparent and accountable. Where the process does not meet these standards, an applicant should be able to seek redress of his or her grievances through an external review mechanism.

Detailed Case Study of the Problems Experienced with the AACA

89. This case study consists of:

- An overview of the problems we have encountered in making a skills assessment application to the AACA on behalf of a Colombian citizen.
- Correspondence between us and the AACA about the assessment application.
- The formal standards allegedly used by the AACA in assessing whether an overseas qualification in architecture is comparable to an Australian qualification in architecture.
- A description of the efforts we have made to bring the problems to the attention of DIMIA, the Department of Education Science and Technology (DEST), and the Commonwealth Ombudsman.

90. In considering this case study, we would ask the Committee to address itself directly to the following questions:

- Were reasons given by the AACA for refusing the assessment application?
- Are the criteria used by the AACA clear?
- Does the review process cover the matters taken into account by the AACA in making a decision?
- Are the fees charged by the AACA reasonable?

Brief History

91. We applied to the AACA for the skills assessment of our client's architecture qualifications on 21 October 1994. By letter dated 13 December 2004, the AACA refused the decision. Between 17 January 2005 and 31 March 2005, we engaged in correspondence with the AACA in an attempt to have the AACA reconsider its decision.

92. The AACA refused to reconsider the decision and invited our client to seek an internal review. Due to the cost of the review process, the failure of the AACA to provide reasons for its refusal decision, and that the review process is limited in what can be reviewed, our client decided not to seek an internal review and is currently exploring other migration options.

93. A copy of the skills assessment result letter and the correspondence between us and AACA is enclosed for the Committee's reference.

Problems with the AACA decision making process

94. In making a decision about a skills assessment application, the aim of the AACA is to determine the "equivalence of a completed course of study to an accredited course in architecture from a recognised Australian school of architecture".

95. We have found the decision making process of the AACA inadequate in relation to the following:

- Misleading skills assessment criteria.
- Confusion between academic standards and competency standards.
- Excessive application fee.
- Failure to provide reasons for a decision.
- Ineffectual appeals process and excessive appeals fee.

Misleading skills assessment criteria

96. The AACA states that in making a decision it gives careful consideration to a range of factors, including the following:

- the education system of the country concerned and the status of the awarding institution; and
- the level, structure and content of the program of study undertaken by the applicant.

The country education system and the status of the awarding institution

97. The AACA states that it takes into account the education system of the country and the status of the awarding university and that it relies on “in-depth and best research” in reaching its decisions (see AACA Response 1).
98. However, the AACA does not necessarily follow the guidelines set out in NOOSR’s Country Education Profiles and in this case it did not rely on the information published in the Country Education Profile for Colombia. The Country Education Profile for Colombia describes our client’s university as among the three best in Colombia and states that a degree from this university is comparable to an Australian degree.
99. Given that the AACA takes the country education system and status of the university into account in coming to a decision, and states that it relies on “in-depth and best research”, it must have assumedly used alternative information to make a decision in this case.
100. The AACA does not publish or disclose the information it has about a country or the status of a particular university or a particular course and it does not describe how this information is gathered.
101. Further, in this case when we requested that the AACA provide us with the particular information it used to make its decision but the AACA did not provide the information.
102. If the AACA has prejudicial information about a particular country, this should be published by the AACA, as an applicant is entitled to know whether his or her application will be rejected on the basis of the country in which he or she attended university prior to paying the AACA a fee of \$1050 to assess his or her qualification.
103. If the AACA does not have any specific country information, it should not be expressed to be one of the matters taken into account in making a decision about a skills assessment application.
104. Finally, and most importantly, if a decision is stated to be made on the basis that the educational system of a country is inadequate or the status of a university inadequate, an applicant is entitled to be given reasons for this and an explanation of why this is the case.

Level, structure and content of a course

105. The AACA requires an applicant to have studies in design, technology, professional studies, history, and communication. Beyond these broad specifications there is no guidance about the skills assessment requirements of the AACA.
106. In the current case, our client had in fact covered all of these subjects in his degree, yet the AACA deemed that he had not met the criteria. Further, the AACA did not give reasons why it considered that our client’s subjects did not meet its requirements, when on the face of things, he appeared to.
107. Further, the AACA does not request sufficient information from an applicant to be able to determine the level, structure and content of their course, and whether this is

comparable to an Australian degree. In particular, the AACA does not require that an applicant submit a university syllabus with an assessment application. This means that the AACA is making a decision about the “level, structure and content” of a course based on the one line title of the subject given in an applicant’s academic transcript.

108. It is difficult to imagine how the AACA can make a decision about these matters without examining the syllabus. The syllabus is the only document that describes how a course is structured, the topics that are covered, and how topics are dealt with.
109. By way of comparison, the assessing authorities for the accounting occupations publish requirements about the subjects that must be included in an overseas accounting degree and require the applicant to submit a university syllabus so that the authority can verify the content of each subject that comprises the degree.
110. The AACA requires an applicant to pay over a thousand dollars to have his or her qualifications assessed with the professed aim being to verify whether the course is equivalent to an Australian course in architecture. However, the AACA does not request sufficient documentation from the applicant to enable the AACA to carry out the assessment in proper or sufficient manner.
111. One of the consequences is that before making the application it is impossible to establish whether the qualifications held by the applicant will satisfy the requirements. In these circumstances it takes a very brave applicant to go ahead with an assessment application to the AACA.

Grade levels

112. One of the reasons provided by the AACA in this case for refusing our client’s assessment application was that the grade levels obtained by our client did not meet the standards of the AACA.
113. This was surprising as the AACA’s information about the skills assessment process does not indicate that the grades obtained by an applicant are relevant to the success of his or her assessment application. Further, as this “hidden” criterion is not mentioned in the information about the assessment process there is also no indication about what the required levels might be.
114. In this case, our client had studied for 5 years to complete his degree (a total of 10 semesters) and his average score over the course of the degree was 4.17, a grade score that according to the grading system in Colombia is "excellent".
115. No reasons were provided by the AACA as to why these “excellent” grades were not considered sufficient, but then again, when the criteria are not clear or published it is difficult for the AACA to provide reasons.

Confusion between academic standards and competency standards

116. The ACCA advises that the standards applicable to graduates in architecture in Australia are published on its website in The National Competency Standards in Architecture NCSA 01 (NCSA 01). The preamble to this document states the following:
- “The purpose of NCSA 01, The National Competency Standards in Architecture, is to establish the benchmark standard of *competence* required for admission to registration as an Architect in Australia.” (Emphasis added.)
117. NCSA 01 does not refer to the process of pre-migration skills assessment conducted by the AACCA pursuant to the Regulations and it does not refer to academic standards. In fact it is a document that sets out standards for people applying for a competency based assessment pursuant to the separate process of applying for registration as an architect in Australia.
118. In its correspondence to us, the AACCA asked our client to consider NCSA 01 in deciding whether to apply for an internal review of the AACCA’s decision. In effect, the AACCA asked our client to make his own assessment as to whether his course satisfied the requirements of the AACCA.
119. Asking an applicant to assess his or her qualifications against NCSA 01 is completely inappropriate. In the first place this is the role of the AACCA as this is what an applicant pays the AACCA the assessment fee for. In the second place, the document is not relevant to academic qualifications as it refers to practical competencies.
120. That the AACCA would ask an applicant to do this suggests that the decision making process of the AACCA is lacking in accountability and transparency and that the AACCA is not properly carrying out its responsibilities in relation to the pre-migration skills assessment process.

Excessive skills assessment application fee

121. The accreditation fee charged by the AACCA is \$1050. This is three times higher than the fees of most assessing bodies including the Australian Computer Society, VETASSESS and the three assessing authorities for accounting occupations. The only other assessing bodies that have similarly high fees are those dealing with the skills assessment of health professionals which is a much more comprehensive and intensive process.
122. We would further note that it is only possible to pay this fee with a bank cheque in Australian dollars or an international money order drawn in Australian dollars payable to the AACCA. It is not possible to pay this fee using a credit card or by making an electronic transfer into a bank account.
123. In Latin America it is not easy to get the financial instruments required by the AACCA, and it causes an applicant to engage in extra and often fruitless research amongst many banks to find a bank that is able to issue an instrument required by the AACCA. Even if it is even possible, as it was in Mexico after finally finding a bank that had a relationship with a US bank from whom it could buy the necessary financial instrument, further bank fees and transaction costs are incurred by an applicant.

124. On speaking to the AACA about this matter we found them to be rude and unhelpful about alternatives. We were told by the receptionist at the AACA that they are a small organisation and have had problems in the past with accepting payments in any other way.
125. We advised the AACA that in Latin America it is not easy to get Australian dollars in any form and that this represented an additional difficulty in making an assessment application. We requested that in the circumstances they accept a personal cheque drawn on an Australian bank but the AACA was not willing to accept this form of payment.
126. There should be no reason why in 2005 all assessing authorities should not provide applicants with the option of paying the assessment fee by credit card. This is an easy and relatively risk free way of paying the fee.
127. In our view, the amount of the assessment fee and the obstacles imposed to the easy payment of the fee create an unnecessary barrier for applicants who wish to apply for a skills assessment with the AACA.

Failure to provide reasons for a decision

128. The AACA did not provide any reasons for its decision about our client's skills assessment application.
129. The AACA's result letter merely states whether an applicant's academic qualifications in architecture are equivalent or not equivalent to an accredited course of architecture from a recognised Australian school of architecture (see AACA decision). This does not provide the reasons for the AACA's decision but merely a statement of the decision.
130. In none of our subsequent correspondence with the AACA, has it given a clear statement of why our client's assessment application was refused, or why in relation to the criteria that the AACA expresses to be determinative, the applicant's academic qualifications were not considered equivalent to an Australian qualification.
131. For example, in AACA Response 4, the AACA reiterated that our client failed to produce sufficient evidence to establish the equivalency of his degree. However, there is no analysis of why this is the case or what was wrong with the degree or what the reasons were for the decision.
132. Further, the AACA had not examined the syllabus so it is difficult to understand how the AACA could make a decision about the equivalency of the degree when it did not know the content of the course. Finally, the NOOSR Country Education Profile for Colombia describes our client's university as among the three best in Colombia and states that a degree from this university is comparable to an Australian degree.
133. Without a statement of reasons, there is no way of knowing the basis of the AACA's decision.

134. As a matter of general fairness, if the AACA refuses an assessment application, an applicant is entitled to know the reasons for the refusal. Further, it is not enough for the AACA to advise the applicant of the general policy parameters of its decisions without applying these to the particular circumstances of the case.

Ineffectual appeals process and excessive appeals fee

135. Under the AACA internal appeal process, an applicant is restricted to providing supplementary information relating to their academic qualifications. An application for internal appeal costs \$750.

136. No guidance is given by the AACA as to what this supplementary information might be. Further, if there is information that could be useful to the AACA on appeal, such as a university syllabus, it should be asked for as part of the initial application and not left to the appeal process.

137. More importantly, the restriction means that it is not possible to seek a review of the full range of matters that the AACA has taken into account in making its original decision. Matters such as the status of the university, the educational standards of the country, and the grades received by the applicant are expressed by the AACA to be material to the decision, but are beyond review.

138. Further, if the AACA makes an error on the basis of information provided with the original assessment application, this cannot be reviewed.

139. Most significantly, because no reasons are given for why an assessment application is refused, it is impossible for an applicant to make an informed decision about whether to appeal the AACA's decision. If the reasons for the assessment application being denied are not provided, how is an applicant or his legal representative to know what he or she is appealing?

140. The AACA's appeal process does not provide an applicant with an adequate avenue of redress if he or she believes the decision of the AACA was wrong, arbitrary or unfair, and does not conform to common law or legislative standards of procedural fairness.

141. Finally, the expense of the initial assessment fee and the expense of the appeal application create a suspicion that the AACA is raising money beyond the purpose of its role in the visa process.

Other Actions Taken to Seek Redress of the Problems with the AACA

142. VisAustralia has made submissions to both DIMIA and DEST in relation to this case.

143. DEST replied in March 2005 that it only has an advisory role in relation to the assessing authorities and could not deal with individual cases due to privacy law.

144. DIMIA sought a response from the AACA and forwarded this to us in May 2005. Unfortunately, DIMIA did not analyse the AACA's response in relation to the issues raised

in our submission. DIMIA also advised that DEST is responsible for monitoring the assessing authorities and that DEST would determine if any action could be taken.

145. From these responses, it appears that neither department has any real oversight responsibility for the assessing authorities and neither is able or willing to take action of any kind to address what is a significant problem.

146. After receiving DIMIA's and DEST's responses, we contacted the Commonwealth Ombudsman to seek advice on whether that office could investigate the decision making processes of the AACA. The Ombudsman replied in June 2005 that it did not have any power to investigate the decision making processes of the AACA as it was a private organisation. The Ombudsman did, however, agree to follow up with DIMIA in relation to its response to our submission.

Summary regarding the Problems Experienced with the AACA

147. By applying assessment criteria that are not published, the AACA is breaching an applicant's right to have his or her application considered against clearly articulated criteria. In failing to provide reasons for a decision the AACA makes it difficult for an applicant to challenge a negative decision as he or she does not know what criteria his or her application was considered against or whether the criteria were accurate, fair and properly applied to his or her case.

148. The effect of this is that applicants are not being accorded procedural fairness in the processing of a skills assessment application by the AACA. Further, the internal appeals mechanism is not a real option for the reasons discussed above and the lack of an external review mechanism compounds the unsatisfactory nature of the whole process even further.

149. Making a skills assessment application to the AACA is a high risk activity for applicants as there is little certainty whether they will meet the AACA's "criteria" or not.

150. For all of the above reasons, we do not advise potential visa applicants with architecture qualifications, no matter how well qualified, to apply for a skills assessment with the AACA.

Conclusion

151. We could not finish this submission without some recognition of the fact that the assessing authorities are performing a difficult function in circumstances where they may not have the resources to carry out their function as they would like. There have also been times when we have not encountered problems with the assessing authorities, but the examples and cases we have outlined in this submission are common of the type of problems we have suffered during the skills assessment process.

152. We would also like to clarify that the reason we have prepared this submission is not to be unnecessarily critical of the assessing authorities but rather to cast light on the problems we have experienced in the hope that the skills assessment process can be

improved for applicants, migration agents and the assessing authorities and thereby contribute to, rather than hinder, the continued success of Australia's migration program.

153. If the Committee requires further information about this submission or our experiences with the assessing authorities, we would be happy to provide the information or assist in any other way we can. We can be contacted by email at nhouston@visaaustralia.com or by telephone on + 52 55 5575 6204.

154. Thank you for your time in reading this submission.

Yours sincerely,

Nicholas Houston (BA, LLB)
Senior Lawyer/Migration Agent
VisAustralia