

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING : 08 February 2016

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

(AE16/159) - Correspondence to Registered Migrant Agents - Programme 2.3: Visas

Senator Carr, Kim (L&CA) written:

According to the Migration Institute of Australia the Department's 457 and Sponsor Monitoring Section has written to Registered Migrant Agents informing them that "The effect of the obligations under the KAFTA is that labour market testing will not be applied to Korean nationals/permanent residents or to employees of businesses in Korea transferring to an Australian branch of that business being nominated under the 457 programme." Reportedly the correspondence also advised that "The following information is provided by 457 and Sponsor Monitoring Section and for Registered Migration Agents only. This information is not for external distribution or publication" (see <http://www.mia.org.au/newsletters/id/759/idString/xljkr4607>).

Was this correspondence issued by the Department?

Who directed that this correspondence include the words: 'this information is not for external distribution or publication'? Was it the Immigration Minister or Assistant Immigration Minister, or was it was a departmental officer?

If it was a departmental officer, please advise the level of the officer concerned, and the legal basis for the instruction.

Is it customary for the Department to send advice to Registered Migration Agents that includes the instruction that 'This information is not for external distribution or publication'?

Please provide examples of any other Departmental emails or letters to Registered Migration Agents that have included the same or similar directives.

Why should information about the effect of an FTA on labour market testing in the 457 visa program be kept from the Australian public?

In relation to ChAFTA, which entered in to force on 20 December 2015, did the Department send any advice to Registered Migration Agents regarding the effect of ChAFTA on labour market testing in the 457 visa program?

If so, did the Department's advice regarding ChAFTA also include a directive that 'This information is not for external distribution or publication'?

Provide a copy of any Departmental advice provided to Registered Migration Agents (by email or any other means) regarding the effect of ChAFTA on labour market testing in the 457 visa program.

Answer:

On 10 December 2014, the Department sent an email, cleared by the Director of the 457 and Sponsor Monitoring Section, to all registered migration agents. The content of the email is at Attachment A.

A departmental officer, not the Minister or Assistant Minister, included a disclaimer that the information provided was for registered migration agents only and that the information was not for external distribution or publication.

The disclaimer was included because only registered migration agents can lawfully provide immigration assistance in Australia and hence, such departmental advice was intended for the information of registered agents only.

Information on the Korea-Australia Free Trade Agreement (KAFTA) was available to the public when:

- the legislative instrument , signed on 6 November 2014, was published on the Federal Register of Legislative Instruments on 13 November 2014; and
- the Department's website was updated on 12 December 2014 - the day the KAFTA entered into force.

A list of emails or letters sent to registered migration agents is not recorded in departmental systems and to provide this information would require an unreasonable diversion of resources.

For the China-Australia Free Trade Agreement (ChAFTA) the Department did not send any advice specifically to registered migration agents regarding the effect of ChAFTA on labour market testing in the subclass 457 visa program.

“Dear Registered Migration Agent

The following information is provided by 457 and Sponsor Monitoring Section and for Registered Migration Agents only. This information is not for external distribution or publication.

The Korea-Australia Free Trade Agreement (KAFTA) will enter into force on 12 December 2014. Australia’s international trade obligations which preclude labour market testing in the 457 programme are specified in a Legislative Instrument. Legislative Instrument IMMI 14/107: Determination of international trade obligations relating to labour market testing will commence immediately after the KAFTA enters into force and can be found at: <http://www.comlaw.gov.au/Details/F2014L01510>.

The effect of the obligations under the KAFTA is that labour market testing will not be applied to Korean nationals/permanent residents or to employees of businesses in Korea transferring to an Australian branch of that business being nominated under the 457 programme. PAM3: Sch2Visa457 Temporary Work (Skilled) - Nominations and visa applications will be updated to reflect these changes from the next available opportunity (1 January 2015). Any queries about the information provided above can be directed to the enquiry and feedback form on the Agents Gateway: <http://www.immi.gov.au/gateways/agents/contact/feedback/>

Regards,

*457 and Sponsor Monitoring Section
Department of Immigration and Border Protection”*