

Supervising Partner GERALD SANTUCCI
Phone 02 6201 8956
Lawyer NICHOLAS TEBBEY
Phone 02 6201 8900
Email ntebbey@sneddenhall.com.au
Our Ref NT:sec
Your Ref

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The Joint Standing Committee on Migration
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Sirs

INQUIRY INTO TEMPORARY BUSINESS VISAS

We refer to your Inquiry into the Eligibility Requirements and Monitoring, Enforcement and Reporting Arrangements for Temporary Business Visas ("Inquiry"), which was adopted on 6 December 2006.

We welcome the Government's commitment to assessing and reviewing the Temporary Business Visa Scheme ("Scheme"), and are grateful for the opportunity to provide a submission.

Snedden Hall & Gallop's migration team has vast experience in temporary business visas, with one of our partners, Gerald Santucci, being one of Canberra's longest serving migration agents. Our first-hand experience of the current business visa stream has provided us with in-depth insight into this subject, which, we believe, will be of benefit to the Joint Standing Committee.

We will address the terms of reference in order.

1. Adequacy of Current Eligibility Requirements and the Effectiveness of Monitoring, Enforcement and Report Arrangements

▪ ***Eligibility Requirements***

We submit that for the most part, the existing eligibility requirements under the Scheme are adequate and necessary to ensure its livelihood.

Partners

Bill Andrews
Richard Faulks
Dennis Martin
Gerald Santucci

Level 4, 11 London Circuit ACT 2601,
GPO BOX 794 Canberra ACT 2601, Australia
Telephone: (02) 6201 8900
Facsimile: (02) 6201 8988
Email: reception@sneddenhall.com.au
Website: www.sneddenhall.com.au
ABN 45 845 302 457



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- Sponsorship

The current requirement that a temporary worker be sponsored by his employer, and the associated employer undertakings, are vital to the success of the Scheme. Given recent press, we repeat the importance of ensuring employers meet their undertakings and do not take advantage of temporary overseas workers.

We are concerned that the undertakings are insufficient to protect some employees. In our experience, there are instances where the employer/employee relationship has not been suitable, but where, given the current system, the employee has been forced to put up with that relationship or risk having his visa cancelled and being removed from Australia.

Given the serious nature of such an outcome, there needs to be built into this visa system, the ability for employees who believe they are being mistreated by, or are incompatible with, their employers to come forward and report any such issues. Those employees should then be given assistance and an extended period of time to seek new employment or other arrangements that will enable them to remain in Australia. Without such a scheme in place, those employees are much more likely to remain silent and endure abuse rather than risk being forced to leave the country.

- Required skill level

It is necessary that the applicant have the personal attributes and an employment background that is relevant to, and consistent with, the nature of the activity to be performed. We support this requirement in that it prevents people from sponsoring those who do not have any relevant work experience or skills from using this visa merely as a way of securing temporary residence in Australia.

We do not believe that the requirements for applying for a temporary employment visa should be anywhere near as stringent as those required when applying for permanent residency. On many occasions, applications have been refused on the basis that the sponsored employee has not had enough suitable experience for the position nominated, notwithstanding the fact that an Australian employer has met with, interviewed and tested the employee and therefore feels confident in sponsoring them.

It should not be for the Minister to decide whether or not a person is suitable for a particular job, but for the employer who has to employ that person.

Of course, that employer should then be accountable to the Minister in terms of justifying the choice by showing that the person has the relevant background or experience or that there is some other reason why the person would be suitable for the position.

- Minimum salary level

As Canberra agents, we believe that the minimum salary level is suitable, given our local economic market. However, discussions with agents from various parts of Australia have indicated that this may not be so across the board. We note that regional certification can enable an employer to lower the pay rate by 10%, but we believe that in some cases this may be an insufficient discount. Indeed there are reports of situations where overseas employees are earning up to \$10,000 more than their Australia co-workers.

Furthermore, the minimum salary level is prohibitive to those who need to sponsor someone from overseas but, given the nature of the employment and the employer, do not need to or simply cannot afford to sponsor someone at the rate of pay required.

We submit that a return to the old system, where regional certifiers could certify at a reasonable salary level, was much more appropriate. Lower salaries do not per se mean that an Australian is being deprived of employment.

- English language proficiency

We note your terms of reference specifically highlight the potential for including a requirement that 457 applicants demonstrate English language proficiency. We do not support this suggestion.

Many of the positions for which people are sponsored do not require English language proficiency in order for the person to be able to work and live under this visa. Again, it should be for the individual employer to decide whether they can work with the sponsored employee, which would include assessing whether the employee has the appropriate language skills to make him profitable, efficient and effective in the workplace. This really is an individual workplace matter, and should not be something for which the Government can impose a standard language level.

Instead, if a language requirement is necessary at all, then it should be simply a requirement that the employer explain how its sponsored employee's language will assist him in the workplace without any need for empirical proof.

It is much more realistic to expect temporary business migrants to learn English once in Australia (and especially if they intend to seek to remain here permanently in the future), rather than to require it prior to their temporary migration.

- ***Monitoring, Enforcement and Reporting Arrangements***

There is some discussion that the current Departmental monitoring arrangements are merely for show, and they have very little deterrent effect on employers misusing these visas.

We do not agree. A more stringent approach to monitoring is not the most appropriate way to ensure employers maintain adequate working conditions, etc. Instead, the sanctions for employers who are found to be misusing the system need to be increased, and a more visa holder-friendly system needs to be put in place, which encourages those visa holders who are being abused to come forward, as set out above.

This, combined with the current Form 1101 Sponsorship Monitoring Requirements, would be sufficient to increase the co-operation of businesses and their adherence to the sponsorship undertakings.

2. Areas Where Procedures Can Be Improved

Snedden Hall & Gallop is a steadfast supporter of the online application system for the temporary business visas, and commends the Department for this development. However, there are some outstanding issues that need to be resolved in relation to this:

- Bugs in the online system

While the online system is a far superior method of applying for a visa compared with the traditional paper application, there are some restrictions in using the online system. Where answers to questions require more explanation than provided for, and where answers to some questions are, given the situation of a particular employer, not available at any given time, the online system is rendered useless. If all of the questions cannot be answered, the application simply cannot be lodged.

With a paper application and a covering letter, we are able to explain any issues relating to an application. We suggest that this needs review.

- DIMA case loads

Following the Palmer Report of 2005, there have been some important developments in the culture and operations of the Department. We remain concerned that it has not yet gone far enough. The Department has, as its primary responsibility, the facilitation of migration to Australia. It should not, as seems to be the case, use its role as a hurdle to be overcome by those seeking migration to Australia.

On countless occasions, we have been involved in matters where an acceptable applicant and business sponsor has been faced with delays within the Department as unnecessary records checks or skills questions are raised. In some situations, these applicants, despite having skills and experience most beneficial to Australia, have simply withdrawn their application and their potential Australian employer has had to miss out.

Furthermore, delays in the application processing by Department officers have cost money and unacceptable delays in the business operations of Australian businesses.

The application forms allow for businesses to put a date when they expect their employment of the sponsored employee will begin. Our experience shows that the Department disregards these dates, and pays little attention to countless reminders that visas are required by a certain date. While, of course, the Department cannot be expected to approve visas in exceedingly short periods of time, it should, as a primary goal, or even an obligation, process visas where time is of the essence, to avoid cost and delay to Australian businesses.

At the very least, department officers must be prevented from forgetting about files or for abandoning them as they go on leave or attend training sessions.

As stated above, we have seen some improvement in this area over the last twelve months, however, we believe it is not yet an adequate solution to the problems that are faced.

- Unskilled labour

Snedden Hall & Gallop has, over the last several months, received a number of enquiries from people who need to bring unskilled labourers to Australia. Given the make up of the current system, those people have been prevented from employing anyone from overseas, especially given the ASCO Occupation limitations and the high salary requirements.

Australia is in a period of low unemployment, which is, unfortunately, having a negative effect on some businesses that are unable to fill even the most mundane roles. As one business owner put it, we may be able to fill Australia with skilled workers and

professionals, but if there is no one to pick the fruit and milk the cows, then those professionals and skilled workers will not be able to eat!

It is true that the Working Holiday Visa allows seasonal work. However, the 6 month time limit on this work, and the selectivity of the countries, makes it hard for Australian employers to attract, locate and employ necessary workers.

We consider the time is right for the Government to redress this problem and introduce a new visa or add to the conditions to the current 457 that allow unskilled labourers to be brought to Australia for a specific period of time to meet an identified shortage of workers.

CONCLUSION

In an address to the Australian Business Council, Prime Minister John Howard stated that one of the greatest challenges facing business and government at present is the dramatic shortage of skilled workers. However, the challenge facing Australia is broader than this, and also involves maximising the benefits of workers brought into Australia under the Scheme as a supplement to the permanent migration streams. Ultimately, our government must strike the appropriate balance between the needs of migrants and the needs of the nation.

It is our view at Snedden Hall & Gallop that the ultimate goal of temporary business migration should be to further the national interest. The system needs to be designed to attract temporary workers to Australia, and to facilitate Australian businesses sponsoring and employing those people. It should not be a system full of barriers and hurdles for Australian businesses or potential migrants.

It is the submission of Snedden Hall & Gallop that the issues raised in this paper are real, practical matters that the Joint Standing Committee, and ultimately the Government, needs to pay close attention to as it considers refinement of the Scheme.

We thank you for the opportunity to make this submission, and invite you to contact us if you require any further information.

Sincerely



GERALD SANTUCCI
MIGRATION AGENTS
REGISTRATION NUMBER 9256528



NICHOLAS TEBBEY
MIGRATION AGENTS
REGISTRATION NUMBER 0533386



LYNETTE HEFFERNAN
MIGRATION AGENTS
REGISTRATION NUMBER 0641016