



AMMA Paper:

Temporary Immigration Options for Australian Employers

This paper gives a brief outline of the temporary immigration options available to Australian employers to fill skill shortages. The Subclass 457 visa and the Labour Agreement are explained here and an outline of each visa and information on the eligibility, obligations and responsibilities of both employers and employees for each is provided. It is envisaged that in the current environment most AMMA members would find the 457 visa the most appropriate visa option as this is the primary visa in this area.

Although other forms of visas exist for employees coming from overseas to work in Australia, such as the Professional Development visa and the Occupational Trainee visa, those outlined here enable Australian employers to actively recruit workers from overseas. The option of recruiting workers on their arrival in Australia also exists and in this case, independent visas for individuals wanting to work in Australia include:

- Skilled- Independent (Migrant) visa (subclass 175)
- Skilled- Regional sponsored (Provisional) visa (subclass 475)
- Skilled- Recognized Graduate (Temporary) visa (subclass 476)
- Working Holiday visa program
- Short Stay Business Visitor visas

Further information on these and other forms of recruitment can be gained from DIAC and DEEWR, as well as recruitment and human resource agencies.

1. Temporary Employer Sponsored visa (457)

The 457 visa allows an organization to employ overseas workers from 3 months to 4 years, and gives participants the opportunity to bring eligible secondary applicants with them to Australia to work and/or study. Holders of the 457 visa have no limitations on the number of times they can leave and enter Australia during the term of their visa. The 457 visa can be renewed at the end of the four year period.

The process requires three steps, which is then followed by ongoing monitoring of both the Sponsor and visa holder:

1. *Sponsorship* (business must show evidence that they are actively employing and training Australians, their sponsorship will benefit Australia and that they will directly employ the visa holder and be able to meet their sponsorship obligations)
2. *Nomination* (business provides details of position to be filled including skills and experience required to be assessed to ensure it meets skill and minimum salary levels)
3. *Visa application* (prospective employee must give evidence they have the skills and experience to match the nominated position, then submit their own visa application. Applicant will also be assessed against health and character requirements)

1.1 Eligibility

Employer

To qualify as an eligible sponsor, the employer must:

- be lawfully and actively operating a business in Australia. A 'business' must be one that is actually and actively engaged in business activities, and not one that exists on paper only, such as a shelf company. Business proposals may be considered if there is clear evidence of intention to establish the business
- be the direct employer of the participant (responsible for salaries/PAYG tax contributions, superannuation etc)
- have a good record and abide by immigration laws
- carry out the recruitment process
- meet costs and obligations of process and cooperate with DIAC's monitoring processes, which may entail contact with the business and/or employee on an ad hoc basis until the employee leaves Australia or they cease sponsorship with the business
- demonstrate how the process will be of benefit to Australia (i.e. expansion of trade, employment or business links internationally, or increase the competitiveness of the Australian economy, and will advance the skills of the existing workforce).

The Nominated Position/s

The Nominated Position must be included on the list of eligible occupations which are gazetted in the ASCO major groups 1 - 4. Additions and deletions to the approved list are specified in a Gazette Notice available at www.immi.gov.au. The full list is attached. The main groups are:

- Managers and Administrators
- Professionals
- Associate Professionals
- Tradespersons and Related Workers

The temporary position nominated allows for employment from three months to four years and must meet the minimum salary requirements during the period of sponsorship.

Employee

In relation to English language skills, the employee must:

- as of July 2007, meet an average score of at least 4.5 across all four components of the International English Language Testing System (IELTS); or
- demonstrate an exemption from the English test (speaking, listening, reading and writing) as a passport holder of Canada, Ireland, NZ, UK or the USA with first language as English; or
- have completed five continuous years of secondary or tertiary education where tuition is in English, or
- has been nominated to a highly skilled position ASCO Group 1-3; or
- will receive a minimum base salary of \$75,000 pa.

In relation to general requirements, the employee must:

- be less than 45 years of age, have vocational English language (as above)
- be highly skilled (as meeting Australian standards)
- have 3 years work experience

It should be noted that 'exceptional circumstances' may be acknowledged for age, language or experience requirements. Current visa holders will not be required to demonstrate their English skills while on their current visa (unless required by licensing or registration). Current visa holders who apply for a further 457 visa will need to meet the English language requirement, unless they are in an exempted person category described above.

Applicants that do not meet the English language requirement will not meet the criteria to be granted a further subclass 457 visa and will be required to make arrangements to depart Australia or apply for another visa that is appropriate to their continued stay in Australia. It should be noted that a higher level of English may be required for certain occupations where it forms part of registration/licensing e.g. electrician or plumber.

1.2 Employer/Sponsor Obligations

Sponsoring employer must underwrite the cost of:

- return travel for the employee
- any public health expenses (some employees may be covered under reciprocal country arrangements their governments have with Australia)
- any money spent by the Australian government as a result of the employee's stay in Australia (i.e. detention/deportation etc)

Comply with Australian immigration laws by:

- cooperating with government by notifying them of any changes to the circumstances;
- advising DIAC within five working days if employment is terminated;
- complying with the terms of the nomination, such as the location of employment.

1.3 Regional Employers Special Criteria

Regional concessions apply to most areas in Australia. A Regional concession allows for a 10% discount on the minimum salary (\$37,665) and consideration for occupations listed in ASCO Groups 5 – 7. The Western Australian government however will not recognise the 10% regional concession on minimum salary levels. On 23 May 2008 Senator Evans announced that as of 1 August 2008 the minimum salary level will increase by 3.8% from \$41,850 to \$43,440 per annum. Eligible post codes for the Regional Subclass 457 program and Regional Sponsored Migration Scheme can be found on the DIAC website. They are however not available to the following:

- overseas businesses
- recruitment /labour hire companies
- apprentice/trainee positions
- positions that have their own specific visas, such as religious workers
- positions that can only be filled by Australian citizens or permanent residents
- tour guides

- positions for clerical, sales and service workers or labourers
- general occupations not specifically included under the ASCO classification system

Employers must pay at least the minimum salary level to primary subclass 457 visa holders in their employ, and higher salaries where required under workplace law or where negotiated between the employer and visa holder. The minimum salary is based on a 38 hour week and is currently set for all gazetted occupations other than Information Communication Technology occupations.

The Nominated Position need only be available for at least two years (ordinarily three years) and necessitate a 'reasonable' skill level at a salary commensurate with the occupational as endorsed by the relevant Regional Development Commission.

The overseas applicant must be less than 45 years of age, have vocational English language and be highly skilled with three years work experience (with exceptional appointments possible for age, language or work experience).

A Regional Certifying Body must certify a nomination application for a company to obtain a regional concession. This ensures the position is genuine, necessary and full-time, cannot be reasonably filled locally and working conditions will at least be equal to those provided for under relevant Australian laws and awards. A list of the Regional Certifying Bodies can be found on the Immigration department's website at www.immi.gov.au.

2. Labour Agreements

Labour Agreements are designed to deal with circumstances that cannot be addressed through the standard subclass 457 visa. This may occur where occupations are not on the list of approved occupations for the temporary business (long stay) 457 visas, permanent or ENS, or Regional Sponsored Migration Scheme yet a general skills shortage exists or a reasonable number of workers are needed to fill tight time frames.

An agreement can also be initiated by an association or industry group, or an Australian governmental agency, such as DEEWR or DIAC. Benefits include a visa for up to 4 years, allowing secondary applicants (i.e. family), and temporary visa holders are able to enter and exit Australia as they please.

2.1 Employer eligibility

Employers must:

- be able to demonstrate their need to recruit skilled workers from overseas for a number of years
- give evidence of their efforts made to recruit from the local labour market
- have a willingness to work with the government to increase training and recruitment prospects of Australian workers
- have a good record of training Australian workers
- have evidence of previous compliance with immigration law and policy
- be the direct employer of the employee

2.2 Responsibilities/Obligations

Employers must:

- make the initial request for the Labour Hire Agreement to the DIAC
- negotiate its terms with DIAC as agreements are granted at the discretion of the Minister. Employers seeking agreements are now also required to consult with relevant stakeholders such as peak bodies, unions and professional associations about the proposed agreement
- nominate the positions needing to be filled
- provide information to DIAC and DEEWR where necessary
- Ensure the terms and conditions of the employment are in accordance with the Labour Agreement (obligations will vary in accordance with these terms and be on a case-by case basis)

As of 1 October 2007, on-hire firms who seek to recruit overseas workers to hire out to unrelated businesses will only be able to do so through accessing a Labour Agreement. This replaces the former access arrangements through the 457 sub-class standard sponsorship program, and mandates for the training of Australian workers and sets the skill level high for overseas workers, aimed at further strengthening the 457 visa program. Where an on-hire firm becomes party to a labour agreement, they will be able to nominate positions they seek to fill with overseas workers as specified in the agreement. There is no cost in becoming a party to a labour agreement.

Employees must:

- notify DIAC of any changes, such as if they cease employment, or change sponsor employer or apply for another form of visa, or if not they must leave Australia within 28 days of the change to circumstances
- not stop working for the employer that nominated them, work in a different position, or work for another person or themselves during the period of the visa.

3. Professional Development Visa (470)

This is a visa used by approved Australian sponsorship organizations that have agreements with overseas employers. The Australian organization lodges visa applications on the applicant's behalf (applicants are nominated by the o/s employer).

3.1 Eligibility of sponsoring organization

The sponsoring organization must:

- be a lawfully established, actively operating organization in Australia (i.e. a corporation, association or government agency)
- have been operating for at least 1 year
- have the capacity to conduct the professional development, either by itself or supported by additional training providers
- have the capacity to comply with sponsorship undertakings
- provide evidence of a professional development agreement with an o/s employer
- have a development program in place for the o/s participants
- provide a security bond if required.

3.2 Obligations of Australian sponsoring organizations

Immigration compliance:

- sponsor and participants must comply with the immigration laws of Australia
- give accurate information about material change in circumstances, ability to carry out undertakings etc

Obligations towards program and participants:

- must provide accommodation of a reasonable standard of living
- no material changes to program unless approved
- Compliance with the Migration Act and Regulations

Financial Obligations:

- meet all financial responsibilities agreed to as part of its sponsorship application, including paying all medical expenses, and costs of non-compliance (e.g. costs of locating, detaining, removing or processing applications)

- security bond is normally required for each professional development program involving overseas participants from states not eligible to use an Electronic Travel Authority (\$15,000). A bond may be forfeited as a result of non-compliance with any conditions or obligations associated with sponsorship.

4. Occupational Trainee Visa (442)

This is a workplace based training or academic research program visa provided on a temporary basis. It requires a Trainee and an Australian Nominating Organization. They are usually valid for up to 2 years.

4.1 The Program

Australian nominating organizations must provide a workplace based structured and supervised occupational training programme that suits the needs of the occupational trainee by enhancing the skills the trainee has already gained through one of the following:

- current occupation
- current o/s institution studies
- recently completed studies
- demonstrated and current expertise in a particular field.

(Note that the individual must have at least 12 months experience in their chosen field).

4.2 Eligibility of Nominating Organization

A nominating Australian business must be actively involved in a business in Australia. It should:

- have a structured and supervised training regime for the occupational training (OT)
- be financially viable, registered and actively operating in Australia
- demonstrate that the grant of the visa will not adversely affect the occupational opportunities of Australian Citizens or permanent residents

Compliance obligations of nomination organization

- suitable staff to provide training
- comply with nomination obligations
- comply with workplace relations laws
- sign declaration stating trainee will be paid in accordance with the relevant workplace relations laws (if unpaid, must sign forms declaring program does not breach Australian IR laws i.e.- recent graduates completing up to 3 months work)

More information on these and other visa opportunities can be found at the Department of Immigration and Citizenship (DIAC) website, www.immi.gov.au or from the Department of Education and Employment Relations (DEEWR) at www.deewr.gov.au/.

Alternatively, you can contact [your local AMMA office](#) for assistance.