

New Changes for the 1st April 2004

On the 1st of April 2004, two new laws come into operation which will affect International Students wishing to apply for permanent residency under the Skilled migration stream (e.g. 880, 881).

Firstly, from 01/04/2004, you will need to prove that the course that you have completed in Australia is 'relevant' to the occupation you are nominating. Secondly, the old one-year of full time study to gain the 5 points and an exemption from the usual recent work experience requirement, becomes two-years full time study.

The Issue of Relevance

In terms of relevant study, the overall DIMIA policy intention is to ensure that applicants have qualifications that are compatible with the nominated skilled occupation.

The critical factor in determining qualification/occupation compatibility is whether the skill set/s underpinning the qualification/s obtained are complementary and can be used in the nominated occupation.

Examples:

Qualifications that are not related to the nominated skilled occupation would generally be in different fields of study e.g. an applicant has completed Motor Mechanic and Baker qualifications as a result of 2 years of full time Australian study. These qualifications would not meet the 'relevant to' requirement.

Acceptable complementary qualifications may include such combinations as Hairdressing and Information Technology (if nominating hairdressing but not if nominating an IT occupation) where the person has a suitable trades assessment from TRA and can demonstrate that they will be able to use the IT skills in a business environment.

The rationale underpinning this position is that both qualifications are complementary, equipping the applicant with a better-rounded skill set.

Other complementary courses could include ICT, business, or legal qualifications at diploma level, undertaken to supplement an 18 month generalist Masters degree where the person claim 50 points for a generalist occupation. In these cases, the applicant would generally not be able to obtain suitable skills assessment from the 60 point assessing authority.

The Two-Year Rule

In terms of acceptable study, the overall policy intention is that the student has completed at least two academic years of full-time study in Australia. The intention is that the study will consist of at least two academic years of actual full-time study without substantial benefit from credits from a previous course that would allow a reduction in contact hours below that of the study load undertaken and approved by the institution as maintaining full-time study status.

The requirement of two-years of Australian study also sets a benchmark for the period that students need to be physically in Australia during which they can develop a familiarity with Australian conditions and thereby improve their settlement prospects. The requirement that students be physically present in Australia aims to ensure that overseas students have the opportunity to forge links with communities, prospective employers and to become more familiar generally with living in Australia.

Current policy advice is that these new policy guidelines will enable students to extend a 78 week course to two years, providing they maintain full-time status as determined by their institution and do not breach the conditions of their student visa. Where doubt exists about the full-time status of the student, DIMIA will write to the head of the educational institution seeking advice on whether the student has been undertaking full-time study in Australia for the required

period. Details of such cases will also be referred to the Department of Education Science and Training and the Australian Vice-Chancellors Committee. However, this policy guidance has yet to be finalised and could change prior to implementation.

Applying before the 01/04/04?

If you have finished your course and you can apply for your permanent residence (P/R) before the 1st of April 2004 then your application will be judged under the old one-year rule, even though the decision will come after this date.

Many students do realise that if you make a valid application for the Graduate Skilled 497 Visa before the 01/04/04 your application and subsequent P/R application will be judged by the old law even though you apply for the permanent visa (880,881,882 etc) after the 01/04/04.

DIMIA recognises that many students will complete their courses in December (03) or after Summer Semester (February 04). Many of these students may not have enough time to organise their skill assessments and other documents required to lodge a valid P/R application before the 01/04/04.

In these cases as long as you have lodged the 497 visa before the 01/04/04, you will have until the end of your six months to lodge your P/R application. For example if you finish your course on the 15th February 2004 and you lodge your 497 visa before the 1st of April 2004 then you will have until the 15th of August 2004 to lodge your P/R application and still only have to prove the old one-year full-time study rule. Similarly, if you finished your course on the 15th December 2003 you will have until the 15th June 2004 to lodge your P/R, again as long as you have made a valid 497 visa application before the 01/04/04.

Please attend one of our seminars or our office if you are still unsure about this matter. November 2003