

# IMMIGRATION NEWS

## (Volume 34)

### *Business Visa (457) Overview*



Dear Students

We felt that now more options are going to be available through the new 485 visa that you may appreciate an understanding of how the 457 Business Visa works and perhaps it may be useful for you to use at a later date.

Most students use an Australian business to be sponsored but as you will read there are other alternatives.

#### Purpose of the 457 visa

The 457 visa is a subclass of the Temporary Business Entry visa class. It provides *Long Stay* entry to Australia for personnel of overseas businesses or local businesses needing to recruit staff from overseas. The visa also provides temporary stay for independent executives wishing to maintain ownership of their business in Australia.

There are several streams under which visa 457 can be applied. The three most popular streams are discussed in detail below. Students can apply for this visa before or after they finish their course of studies if you are sponsored by an Australian business.

#### Sponsorship by an Australian business

Applicant must be able to demonstrate to the case officer that they and their sponsor satisfy all the following requirements:

- The sponsor must be an approved Australian sponsor under the laws and have completed the 1196 nomination form which clearly states their intention to sponsor the applicant.
- The sponsorship must still be in effect at the time of the application and a nomination approval must be included in the application form.
- The applicant must have suitable personal attributes, qualifications and employment history for the position.

- The nominated position has not been created solely for the purpose of entering Australia.
- The applicant is to be paid at least the *minimum gazetted salary* that applied when the nomination was approved.
- For regional nominations, the proposed salary and working conditions must not be less than those stipulated in relevant Australian awards employment legislations.

#### Sponsorship by an overseas business

This visa stream is intended for the entry to Australia of employees of overseas businesses who need to fulfil a contract they have won in Australia or establish an Australian arm of the overseas business operations.

Applicants of this visa streams and their sponsor have to demonstrate to the case officer they satisfy the same criteria as required under the **Sponsorship by an Australian business** stream. In addition, the following points will be taken into account in assessing the application:

- Applicant must show a genuine and realistic commitment to establishing a business activity in Australia and fulfilling contractual obligations on behalf of their employer.
- In submitting a business nomination, offshore companies seeking to send personnel to Australia must sign an undertaking in the sponsorship form to comply with Australian industrial relations law, award levels of remuneration and conditions of employment.

#### Service sellers

This stream of the 457 visa allows the entry to Australia of persons who are representatives of suppliers of services located outside of Australia. It makes explicit provision for Australia's commitment under the General Agreement on Trade in Services (GATS) to the temporary entry and stay, without labour market testing, of service sellers.

To be granted a visa under this provision, the applicant must:

- Plan to negotiate, or enter into agreements, for the sale of services, but not be involved in the actual supply or sale of the services.
- Must not intend to engage in work in Australia that might otherwise be carried out by an Australia citizen or permanent resident. In other words, the service seller's remuneration and financial support for the duration of the visit are derived entirely

from sources outside Australia.

Visa 457 applications under the Service Seller stream can be made onshore or offshore and require the following support documents:

- A supporting letter from their employer confirming that they are acting on the employer's behalf.
- Details of relevant skills and experience.
- Evidence that their supplier or overseas business is actively engaged in business (business registration, statements of annual reports, profit/loss statements etc).
- A statement describing the business activities of the supplier and their plans to conduct their trade in Australia.
- A statement or proposal with details of how the visa applicant proposes to represent the supplier in Australia.
- Details of how the main applicant and any family members, intend to support themselves for the duration of their stay in Australia.

#### Formal qualifications and registration

If the assessor is in doubt about the applicant's abilities, a formal request is made for the applicant to take a skill assessment from a relevant skill assessing authority. Formal qualifications are required only if they would formally be required in Australia.

If the position for which the nominated activities require registration or licensing, the applicant must provide evidence that they would be eligible for this on arrival in Australia. It is **not necessary** that the applicant holds a registration or licensing at the time of visa application or grant. Upon their arrival in Australia, the applicant will be granted a registration or licensing if they satisfy the following criteria:

- The period between their arrival in Australia and obtaining the registration/licensing is **no more than 4 weeks and**
- The nature of their employment during this period is consistent with their nominated activity, i.e training is not considered an acceptable activity.

If obtaining the registration/licence takes more than 4 weeks or requires formal training, the applicant is advised to apply for a visitor, occupational or student visa for this training period.

Many fortunate students have obtained employment in Australia and now on this 457 visa with the view of gaining recent work experience so they can apply for residency later. Nurses are one of the prime uses of this visa. Others are looking towards their employer to sponsor them for permanent residence using the Employer Nomination Scheme (ENS). In a later newsletter we will give an overview of this visa.

Best regards,

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19th June 2007

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