

IMMIGRATION NEWS

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Australian Work Experience Points
Part 1



Dear Students

Welcome to the new subscribers and we hope you find this latest edition interesting. This service is brought to you by Australian Immigration Law Services.

Please feel free to e-mail this newsletter to any of your friends.

Australian Work Experience Points

Many students are planning to take advantage of the generous 10 points on offer for the Australian work experience component of Schedule 6B under the new GSM applications.

The basic requirement of these points is that you have at least 12 months of work experience in Australia, in your **nominated occupation** (or closely related) within the last 4 year years immediately before you lodged your application.

A 'closely related' occupation would usually be a job in the same industry and in which the occupant exercises substantially the same skills and requires the same level qualifications as would be required in their nominated occupation.

According to DIAC, "work" is defined as having paid employment for at least 20 hours per week. If you have one week less than 20 hours of employment then this week cannot be used towards your 12 months.

This means that from the date your application is lodged, DIAC will search back 4 years in time and they are looking to find this 12 months of work experience. These 12 months it do not have to consecutive and it does not require that you have been with just one employer.

Employment must be skilled

For employment to be considered 'skilled' it must meet two requirements:

- that it was undertaken after the applicant met the entry level requirements for that occupation (ie completed a sufficient level of study or amount of on-the-job training) and
- that it involved duties at the level of depth and complexity expected in Australia.

DIAC case officers will have regard to the ASCO Dictionary when making their

decisions whether an applicant meets the skill level requirement. For occupations for which the ASCO Dictionary does not provide adequate guidance DIAC will consider the requirements set by the relevant assessing authority.

An applicant is taken to be capable of undertaking work at a skilled level only after they have met the entry level requirements for that occupation.

If the entry level prescribed for the applicant's nominated occupation is a certain qualification only work undertaken after the applicant has completed that qualification will be counted as skilled employment.

For example;

James has been working as a Cook at the Ultimate Café for six months for 20 hours per week in the final six months whilst completing his Advanced Diploma of Hospitality Management at XYZ School of Hospitality. This is a two year course and in the first 12 months of study he had already completed his Certificate III of Cooking. His boss was happy with his work and paid him the NSW State Award as a Cook, Superannuation and ensured his tax deduction was forwarded to the ATO. James made sure that he did not exceed his maximum allowed work period of 20 hours under Condition 8101 of his student visa.

Since he had completed his study and met the basic 2 Year Study Requirement, he decided to lodge for the new 485 Graduate Visa. He tried to get 7.0 on the IELTS test but that was just too hard so he was happy with the minimum he achieved of 5.0 on each test component. He could use this level of IELTS since he was nominating a Trade Qualification as a Cook.

James then left this café and went for a holiday to Central Australia to walk around the Alice Springs region for three months. When he returned to Sydney he worked at another café as a Cook, called Harry's Cafe and completed another 6 months usually working at least 35 hours per week.

He then lodged his permanent residency application because he had met the minimum English level required for the IELTS test and now had the extra 10 points he needed to reach the pass mark of 120 for the 885 GSM visa.

Some issues?

DIAC has stated that you cannot use pre-graduation experience to meet the Australian Work experience component.

For the occupation of a Cook, the minimum requirement to satisfy this skill level is a Certificate III or higher qualification. Since James completed this level of education after his first 12 months of study it is assumed that he is qualified to work as a Cook. James would be regarded to have met the skill level for this occupation when he completed his Certificate III, not the day he obtained his positive skill assessment from Trades Recognition Australia (TRA). Having a gap in his employment between the two

employers was no problem and both the periods working as a Cook could be added together.

Salary Rate?

In this example as long as James was in paid employment at around the usual salary paid as would be expected as a Cook for 20 hours per week, then could use the time in the first café towards the 12 months of time needed.

In cases the salary is too low, such as \$11-\$13 per hour, DIAC would be within their rights to ask questions whether an applicant was working as a Cook or Assistant Cook/Kitchen Hand.

It is the employer's responsibility to pay you the correct wage according to individual State Awards. There may be times where an applicant is underpaid but that does not necessarily mean that they have not been working in your nominated occupation. If there is any doubt in DIAC's mind they will usually contact the employer directly to verify your duties whilst employed.

Worked more than 20 hours whilst studying?

With the new law from the 1st of September 2007 DIAC has brought in new enforcement provision to try and stop students from working more than 20 hours whilst they are studying.

The effect of the new regulation is that employment in Australia cannot be counted unless the applicant:

- held a visa with permission to work during that period and
- complied with the conditions of that visa.

If an applicant has breached the conditions of their visa, by working when they had no work rights, or by working in excess of the amount of work allowed that employment cannot be counted under Schedule 6B.

When you are asking for these new 10 points for Australian work experience, if you have exceeded your 20 hours whilst on your student visa and you are expecting DIAC to accept these hours to calculate your 12 months of experience, then you may be in for a shock.

If the 20 hours work limitation has been exceeded based upon the 8101 visa condition, then they exclude the entire work period from the calculations.

In the past if DIAC found out that applicants have failed to comply with the 8101 condition then there was little they could do to impose a penalty. With these new laws they will not reject your PR application just because you worked more than 20 hours but they will not accept any work experience during your study period.

If you have exceeded your 20 hours and breached 8101 condition then do not use this

period of working whilst on your student visa to try and gain the extra 10 points. You would be better off obtaining the 485 visa first, then work for another 12 months whilst on this new visa. Once you have met the 12 months of work experience you need, then apply for PR

Stay Tuned For Part 2

In the near future we will write more about this Australian work experience criteria discussing the issue of many accounting graduates seeking to demonstrate work experience as an Accountant.

Next Seminar?

Our next Seminar is on the Friday the 7th December at UTS at 2.00 pm (as usual), Lecture Theatre CB02.04.11. The room is marked 04.11. You can find this easily by entering the Tower building at street level and then it is to the left near the IT student support section. Level 4 is actually street level.

Any students from any school may attend. You may ask as many questions as you like at the seminar.

I am sorry that we do not have time to respond to general e-mail questions but we do appreciate the feed back that many of you provide.

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Kind regards

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