

IMMIGRATION NEWS

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Is there life after the 485 Graduate Skilled visa?



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Dear Students

Welcome to the latest edition of IMMIGRATION NEWS and to the new subscribers. This free service is brought to you by Australian Immigration Law Services. You can subscribe by using the link below or by visiting our web site.

Is there life after the 485 visa?

This year there will be many former students holding the Graduate 485 visa who will find themselves not in a position to apply for the visas which lead to permanent residency via the 487, 886 and 885 subclasses.

Since the 485 visa is relatively new the first batch of students who obtained them will find their visas due to expire this year. So let's explore what are the alternatives if you cannot apply for the visa's listed above.

1) 485 to Student visa (572- Vocational or 573- Higher Education)

For the holder of a 485 visa it is possible to go back to a student visa whilst in Australia if you fall into the DIAC student visa Assessment Level 1 criteria. To learn more about these assessment criteria you can follow this link:

<http://www.immi.gov.au/students/student-visa-assessment-levels.htm>

If you do not fall in the Assessment Level 1 section to apply for a student visa while holding the 485 visa you must meet what is called "exceptional reasons". DIAC procedural advice manual has a policy in relation to former student visa holders;

Former student visa holder or temporary visa holder

If the applicant holds a temporary residence visa, under policy exceptional

reasons exist if they:

- ***have previously held a student visa and***
- ***while still in Australia as the holder of the student visa, were granted a class of temporary residence visa listed in clause 57x.211(2) [485 is one of them] and***
- ***now wish to change back from temporary residence status to a student visa to undertake further study or***
- ***if an applicant is a holder of an occupational trainee visa or a visiting academic visa and wishes to change to a student visa to continue their course of study.***

Since most of you on the 485 will fall into the category of holding a student visa before applying for the 485 there would be no problems in gaining another student visa onshore even being on Assessment Levels 2, 3, 4 or 5.

However be careful for those who have sponsored their spouse to obtain a 485 visa and they come to Australia as a dependent. If your spouse were to enroll into a course and apply for a student visa as the primary applicant, they would not meet the “exceptional reasons” rule since they have no history of holding a student visa in Australia. In these circumstances they may have their application rejected.

However even if you gain another student visa to upgrade your skills there is another problem to consider (see below).

485 visa to 485 visa?

Students who have obtained the graduate 485 visa are unable to apply again for another graduate 485 visa as a primary applicant. This is due to Regulation 485.211 which refers to a list of visas applicants must hold in order to meet the time of application criteria for the Graduate visa. This list does not include applicant who already hold Graduate visa's.

In addition to this Regulation 485.212 also stipulates

The applicant:

(a) *has not previously held a Subclass [476](#) (Skilled — Recognised Graduate) visa that was granted on the basis that the applicant satisfied the primary criteria for the grant of the visa; and*

(b) has not previously held a Subclass 485 visa that was granted on the basis that the applicant satisfied the primary criteria for the grant of the visa.

This effectively means that as a primary applicant (someone who has finished a course in Australia) you can only ever obtain the 485 visa once in your lifetime. Student's who are planning to apply for a new student visa and complete another course, will not be able to lodge for the 485 visa again if they have been granted the 485 visa before. You can apply for your second 485 visa only as a dependent (secondary applicant).

3) 485 to 457 Business Visa

This is a good option if you are fortunate to have an Australian business to sponsor you. This 457 business visa can be from 3 months to 4 years in duration depending upon the business owners request to DIAC.

Since last year it's now a complicated process to obtain business approval to sponsor any temporary visa applicant to work in Australia. If you are fortunate and wish to investigate this option visit DIAC's web site for further information. Link: <http://www.immi.gov.au/skilled/skilled-workers/visa-options.htm>

4) 485 to Employer Nomination Scheme (ENS)

In one of my newsletters last year I covered the topic of the ENS option and if again you are fortunate this is the best option of all because this is a permanent residency visa. For more information use the above link.

Spouse's proof of English for the 485 visa?

It has come to our attention over a period of time that DIAC has been making unlawful requests to 485 applicants who are including a dependent spouse in their applications. DIAC is often requesting spouses to demonstrate they have Functional English or pay the \$3510 second installment fee.

All applicants should be aware that for the 485 visa your spouse does not have to demonstrate any evidence of their English ability!!

If anyone reading this newsletter has paid the \$3510 fee for their 485 visa they should be requesting an immediate refund from DIAC as the request in the first instance was unlawful.

If you also made a booking for an IELTS test for your spouse on the basis of the case officer request for an IELTS result you also have the right to ask DIAC to

pay for the IELTS test.

Our office raised this issue to the Minister and we received a quick reply apologising for such requests being made. If any student out there has paid this 2nd installment for their spouse, please send us an e-mail.

What's Next?

In the next edition of IMMIGRATION NEWS we will have a closer at the new TRA's nightmare "Job Ready Program"

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I promise that even if you don't like what I write I will print your reply. Please limit them to 200 words and they cannot be questions regarding migration regulations or points test requirements.

Our last edition generated many comments but we have not enough time to respond to them as yet. I will print them all in our next edition.

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Kind regards

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