

IMMIGRATION NEWS

Volume 147

DIAC Priority Processing Changes



23rd September 2009

Dear Students

Welcome to the latest edition of Immigration News and welcome to the new subscribers. This free service is provided by Australian Immigration Law Services.

I have been in Japan for a couple of weeks and then catching up on work so I am sorry for the delay in this latest edition. Some of our readers have emailed asking if DIAC or DEEWR might have knocked us offline? Much to this government department's disappointment, there will be no chance of that happening.

You will read today that DIAC has revised its priority processing list which seems strange for the last couple of months they were telling everyone that they were going to abolish the Critical Skills List and just keep the MODL as priority. It just goes to show that DIAC can change its policies without notice so never believe something is going to happen until it actually happens.

This priority list was confusing enough before but now they have one for the 485 processing as well.

I have reproduced the new information released on DIAC's web site today. For those who are not fortunate enough to be eligible for priority then you are going to have a very long wait for your permanent residency visa. Sorry to break the bad news. However remember that doesn't mean that you cannot lodge your application and who knows when the economy takes off again you'll have a front seat to all the action.

Updated Priority Processing Effective from 23 September 2009 Frequently Asked Questions

The Minister for Immigration and Citizenship, Senator Chris Evans, has set new priority processing arrangements for certain Skilled Migration visas. These arrangements are designed to better address the needs of

industry by targeting skills in critical need across a number of sectors. The current priority processing Direction commenced on 23 September 2009.

The Direction applies to applications in the pipeline that have not been finalised, and to applications lodged with the Department of Immigration and Citizenship, on or after 23 September 2009.

Frequently Asked Questions

Q1 What is priority processing?

Section 51 of the *Migration Act 1958* gives the Minister for Immigration and Citizenship powers to consider and finalise visa applications in an order of priority that the Minister considers appropriate. Departmental officers must follow this Ministerial direction, which applies to both new applications and those applications awaiting a decision.

Q2 What are the changes to the Skilled Migration visa processing priorities?

The Minister has set priority processing arrangements which apply to the following visas from 23 September 2009:

- Employer Nomination Scheme (ENS)
- Regional Sponsored Migration Scheme (RSMS)
- General Skilled Migration (GSM) visas except for:
 - Skilled – Recognised Graduate Subclass 476
 - Skilled – Designated Area – Sponsored (Residence) Subclass 883
 - Skilled – Regional Subclass 887.

Under the Ministerial Direction, the following processing priorities (with highest priority listed first) apply:

1. applications from people who are employer sponsored under the ENS and the RSMS
2. applications from people who are nominated by a State/Territory government and whose nominated occupation is listed on the Critical Skills List (CSL)
3. applications from people who are sponsored by family and whose nominated occupation is listed on the CSL
4. applications from people who are neither nominated nor sponsored but whose nominated occupation is listed on the CSL
5. applications from people who are nominated by a State/Territory government whose nominated occupation is not listed on the CSL
6. (i) applications from people whose occupations are listed on the Migration Occupations in Demand List (MODL) and
(ii) applications from people who are sponsored by family and whose nominated occupation is not listed on the CSL.
7. all other applications are to be processed in the order in which they are received.

priorities (with highest priority listed first) apply:

1. applications from people who have completed an Australian Doctor of Philosophy (PHD) at an Australian educational institution in Australia
2. applications from people who have nominated an occupation on the CSL
3. applications from people who have completed an Australian Bachelor degree and Australian Masters degree at an Australian educational institution in Australia
4. applications from people who have completed an Australian Bachelor degree and Australian Honours degree (at least upper second class level) at an Australian educational institution in Australia
5. applications from people who have completed an Australian Bachelor degree or Australian Masters degree at an Australian educational institution in Australia
6. all other valid applications are to be processed in the order in which they are received.

For Business Skills (Provisional) visas the following processing priorities (with highest priority listed first) apply:

1. applications from people who are sponsored by the Commonwealth or a State/Territory government
2. all other valid applications are to be processed in the order in which they are received.

See: [Critical Skills List \(see below\)](#)

Q3 Which GSM visas are affected by priority processing?

The following GSM visas are affected by priority processing:

- . Skill Matching Subclass 134
- . Skilled – Independent Subclass 136
- . Skilled – State/Territory-nominated Independent Subclass 137
- . Skilled – Australian-sponsored Subclass 138
- . Skilled – Designated Area-sponsored Subclass 139
- . Skilled – Independent Subclass 175
- . Skilled – Independent Subclass 176
- . Skilled – Regional Sponsored Subclass 475
- . Skilled – Graduate Subclass 485
- . Skilled – Regional Sponsored Subclass 487
- . Skilled – Independent Regional Subclass 495
- . Skilled – Designated Area-sponsored (Provisional) Subclass 496
- . Graduate – Skilled Subclass 497
- . Skilled – Onshore Independent New Zealand Citizen Subclass 861
- . Skilled – Onshore Australian-sponsored New Zealand Citizen Subclass 862
- . Skilled – Onshore Designated Area-sponsored New Zealand Citizen Subclass 863
- . Skilled – Independent Overseas Student Subclass 880
- . Skilled – Australian-sponsored Subclass 881
- . Skilled – Designated Area-sponsored Overseas Student Subclass 882
- . Skilled – Independent Subclass 885
- . Skilled – Sponsored Subclass 886

Q4 Which GSM visa subclasses are exempt from priority processing?

The following visa subclasses are exempt from priority processing:

- . Skilled – Recognised Graduate Subclass 476
- . Skilled – Designated Area – Sponsored (Residence) Subclass 883
- . Skilled – Regional Subclass 887.

Applications for these visa subclasses will be processed in the order in which they are received.

Q5 Why have the processing priorities changed?

The priority processing Direction gives priority to people seeking to migrate to Australia who have skills or qualifications in one of the occupations on the current CSL. This directive responds to the needs of the Australian economy.

Q6 When did the changes to priority processing come into effect?

The changes take effect from 23 September 2009 and apply to applications lodged with the Department of Immigration and Citizenship (the Department) on or after this date. The changes also apply to applications that had been lodged previously with the Department and have not been finalised.

Q7 Is there any difference in the processing priorities between onshore and offshore visa Subclasses?

No, priority processing applies to onshore and offshore applications equally, however, processing times between the two can vary.

Q8 What occupations or industries are affected?

Occupations that are not included on the CSL will not be given priority processing unless applicants are formally sponsored by an employer under ENS or RSMS.

Q9 What will happen to those applications which are in the final stages of processing and where the Department has requested applicants to provide health and character clearances?

The new arrangements apply to all visa applications, including those in the final stages of processing. Applications in lower priority groups cannot be processed further until those in higher priority groups are finalised in accordance with the priority processing Direction.

Q10 How long will it take for my application to be finalised if my nominated occupation is on the CSL?

If you have applied for an onshore or offshore GSM visa and your nominated occupation is on the CSL, it is estimated that your application will be finalised within 12 months from your lodgement date.

Q11 My application does not fall into one of the priority categories. When can I expect to have my application finalised?

If your nominated occupation is not on the CSL and you have applied for an offshore GSM visa or intend to apply for an offshore GSM before the end of 2009, it is unlikely that your visa will be finalised before the end of 2012.

If your nominated occupation is not on the CSL and you applied for an onshore GSM visa or intend to apply for an onshore GSM before the end of 2009, it is unlikely that your visa will be finalised before the end of 2011.

Your 'nominated occupation' is the occupation you nominated at the time you lodged your application and cannot be changed.

Q12 If my nominated occupation is not on the CSL can I still receive priority processing?

No. If your nominated occupation is not on the CSL your application will not be prioritised.

Please do not contact the Department to request your application be exempt from the priority processing Direction. Case officers must adhere to the Minister for Immigration and Citizenship's priority processing Direction.

Q13 What are my options if my application is unlikely to be finalised by the end of 2011 and I have applied for an onshore visa?

The options available are:

- . to continue to live and work in Australia (if your visa allows) whilst you await a decision on your visa application,
- . to consider your eligibility for an employer sponsored visa, or other substantive visa, or
- . to withdraw your application and return to your home country.

Note: If you choose to withdraw your application you will not be entitled to a refund of your Visa Application Charge (VAC).

Q14 What are my options if my application is unlikely to be finalised by 2012 and I applied for an offshore visa?

The options available are:

- . to continue to await a decision on your visa application,
- . consider your eligibility for an employer sponsored visa, or
- . to withdraw your application.

Note: if you choose to withdraw your application you will not be entitled to a refund of your Visa Application Charge (VAC).

Should you be in Australia after having applied for an offshore GSM visa, you will not be eligible for a bridging visa to remain in Australia while this application is being processed. You must apply for another visa or you will need to depart Australia.

Q15 I need to travel overseas but my visa application has not been finalised yet. What should I do?

If you were granted a Bridging visa A when you applied for your GSM visa you should be able to lodge an application for a Bridging visa B to allow you to travel and return to Australia (within a specified period). A Bridging visa B is generally not issued for greater than three months.

There is no need to contact the Department upon your return to apply for another Bridging visa unless you have further need to travel outside Australia.

Q16 I have been granted a provisional GSM visa and my spouse now

wishes to join me, will they be able to do so?

Yes. Applications for subsequent entrants for provisional GSM visas will be processed in date of lodgement order.

Q17 I already have a State and Territory nomination, how am I affected?

All GSM applications, other than a Subclass 476, 883 and 887 are subject to the priority processing arrangements under the Minister's Direction. Applicants who are nominated by a State or Territory and have nominated an occupation on the CSL receive the second highest priority. Applicants who are nominated by a State/Territory and have not nominated an occupation on the CSL will receive lower priority.

Q18 I am an Accountant with a score of International English Language Testing System (IELTS) 7 in all four components of the test, am I eligible for priority processing?

Accountants who have scored a minimum of 7 (Proficient English) in all four components of an IELTS test are eligible for priority processing under the CSL. All Accountants, including those who hold a current British, American, Canadian, New Zealand or Republic of Ireland passport must present an IELTS test of at least 7 in each test component if they wish to receive priority processing.

Note: The results must be from an IELTS test you sat no more than two (2) years before the day you made your application.

You will only be eligible for priority processing under the CSL once you provide evidence of your 'proficient English' IELTS results to the Department.

Q19 I am a Computing Professional with a specialisation on the Migration Occupation in Demand List (MODL), how am I affected?

Only Computing Professionals who have a specialisation listed on the MODL are eligible for priority processing in the order outlined at Q2.

Q20 Why are medical and police clearances still required for applicants applying for an onshore GSM visa who do not have an occupation on the CSL or State or Territory government nomination?

Under the Migration Regulations, you must provide evidence that you have made arrangements to undergo a medical examination and applied for an Australian Federal Police check when you lodge an onshore GSM visa application.

Visa applicants are required to undergo medical examinations in order to protect the Australian community from high health risks, costs, and overuse of scarce health resources. Similarly, to ensure that all visa applicants are of good character, an Australian Federal Police check is required.

You should not initiate any further medical or police clearances to update any clearances that have expired until you are requested to do so by your case officer.

Q21 My application is currently with the Migration Review Tribunal (MRT). If my application is remitted to the Department will I be subject to the priority processing requirements?

No. Applications remitted by the MRT to the Department are exempt from the new priority processing Direction. This means your application will continue to

be processed by the Department.

Q22 I have applied for a Subclass 485 visa and have completed an Australian Qualification Framework (AQF) III, IV or Diploma. How will I be affected by the priority processing Direction?

Applicants who have completed an AQF III, IV, or Diploma do not receive priority processing. The priority processing Direction for Subclass 485 gives priority to applicants with post-graduate qualifications and those whose nominated occupation is on the CSL. This includes applications that have been partially assessed and those in the final stages of processing.

Q23 I do not wish to wait for my application to be processed. Can I withdraw my application and get a refund?

If you wish to withdraw your application, you may do so. All requests for withdrawals must be made in writing and signed by each applicant aged 18 years and over.

It is open to you to seek a refund, however legislation provides only limited circumstances in which refunds may be given. A Visa Application Charge (VAC) is usually only refunded when an application is deemed unnecessary or was made as a result of a mistake by either the applicant or the Department.

A refund will not be given in circumstances where an applicant considers a 'mistake' was made because they:

- . changed their mind
- . do not satisfy a criterion for visa grant or
- . do not wish to proceed with their application because it will take longer to process than expected.

Q24 Am I entitled to compensation if my visa application is taking longer to process than expected due to the new priority processing direction?

Compensation is not available for delays in processing.

Critical Skills List

The following provides a list of occupations effective from 16 March 2009. This list will only apply to people who are seeking to migrate under the skilled migration program who are not sponsored by an employer or nominated by a state or territory government. ASCO Number	OCCUPATION SHORTAGES - PROFESSIONAL
2312-11	Anaesthetist
2381-11	Dentist
4315-11	Electronic Equipment Trades
2312-15	Emergency Medicine Specialist
2129-17	Engineer - Chemical
2124-11	Engineer - Civil

2125-11	Engineer - Electrical
2125-13	Engineer - Electronics
2126-11	Engineer - Mechanical
2127-11	Engineer - Mining
2126-13	Engineer - Production or Plant Engineer
4114-15	Aircraft Maintenance Engineer - Avionics
4114-11	Aircraft Maintenance Engineer - Mechanical
4431-13	Gasfitter
2311-11	General Medical Practitioner
2391-11	Medical Diagnostic Radiographer
2312-17	Obstetrician & Gynaecologist
2383-11	Occupational Therapist
2382-11	Pharmacist (Hospital)
2382-15	Pharmacist (Retail)
2385-11	Physiotherapist
2388-11	Podiatrist
2312-27	Psychiatrist
2122-11	Quantity Surveyor
2325-11	Registered Mental Health Nurse
2324-11	Registered Midwife
2323-11	Registered Nurse
2413-11	Secondary School Teacher
2312-79	Specialist Medical Practitioners NEC
2312-25	Specialist Physician

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Sorry that I am behind on these but I will put them together in the next edition due out this weekend.

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.

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Kind regards

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