

# IMMIGRATION NEWS

(Volume 152)

*Employer Nomination Scheme (ENS) -  
Useful for International Students?*



17th October 2009

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.

Due to immigration policy changes in the processing order of onshore GSM applications, a considerable amount of former students are affected and most will be waiting years for their visas. At the top of the recent priority list is the Employer Nomination Scheme, commonly known as ENS. Today we will discuss this alternative pathway to Permanent residency for those who are lucky enough to have an employer willing to sponsor them.

## ***Employer Nomination Scheme (Subclass 121/856)***

The Employer Nomination Scheme (ENS) allows Australian employers to sponsor employees who are foreign nationals for a permanent visa to work in Australia.

The employees can be either:

- Highly skilled workers from overseas
- Highly skilled temporary residents currently in Australia.

Visa applicants who are currently living and/or working in Australia on a qualifying visa (i.e. including Student (Temporary) (class TU) visas, Graduate-Skilled (Temporary) (Class UQ) 485 visas, etc) can apply for the onshore ENS (subclass 856) visa. If you do not hold a qualifying visa, you may still be eligible to apply onshore if you last held a qualifying visa no more than 28 days prior to lodging an application.

Most of the people who take advantage of this ENS visa are actually already sponsored by their employer on their 457 temporary business visa. After two years on this visa it is easy for them to make the transition for ENS. Many of the documents are the same as the ones for the 457 visa and the employer has had the opportunity to get to know the employee and wants to assist them in gaining

permanent residency.

Students who are studying in Australia can only apply for ENS after their course completion. It is also possible that if you are on a BVA for your onshore 885/886 application you can transfer to the ENS application without paying an extra fee (\$2525). This is very useful for those students who have lodged their PR applications and their employer wishes to help them to get permanent residency quickly.

Current processing time for an average onshore ENS application is about 3-6 months.

The offshore ENS (subclass 121) visa is for applicants who are outside Australia.

**Note:** Applicants who do not hold a qualifying visa can apply for the offshore ENS (subclass 121) visa and lodge their application in Australia, however applicants must be outside Australia at the time of visa grant. No Bridging visa is issued with this offshore application so if you want to remain in Australia whilst it is processed you must hold some other visa, like a student visa

There are no conditions on the PR visa when granted.

## **Who's eligible for this visa?**

There are three main steps in order to obtain permanent residency. Firstly the business which is sponsoring you must be approved by DIAC so they are allowed to sponsor anyone. Secondly they must nominate an occupation from a certain list of acceptable occupations. And finally you as the applicant must meet specific requirements such as Age, English, Skill level, medical, police checks, etc.

### ***1: Employer requirements***

To participate in the Employer Nomination Scheme, the employer must:

- be actively and lawfully operating a business in Australia
- have a genuine need for a paid employee to fill a position in their business
- follow all relevant Australian laws and have a satisfactory record of meeting immigration laws (if applicable)
- have a current training strategy for existing Australian employees, or if a newly established business, have a training plan for future training of Australian employees
- provide the employee with an offer of permanent employment. This must be evidenced by a written 3 year contract

## **2: Position requirements**

The nominated position must meet the following requirements:

- be full-time, ongoing and available for at least 3 years
- provide working conditions that are no less favourable than provided for under the relevant Australian legislation and awards
- be a highly skilled occupation that is on the Employer Nomination Scheme Occupation List (ENSOL)

**Note:** An employer cannot nominate a position which does not relate to an occupation on the ENSOL.

- meet the *minimum gazetted salary* level for ENS. This is where it gets a little complicated. The minimum for a Cook and most of the other occupations is \$45,220. The problem is however most small cooking establishments do not want to pay a Cook this rate of pay unless you have a great boss. Remember if your'e claiming that you are getting paid this salary then DIAC may ask to see other employee contracts to make sure the other Cooks are getting the same.

## **3: Employee requirements**

- you must hold a qualifying visa (i.e. for onshore 856 visa application)
- demonstrate that you have the appropriate skills, qualifications and/or experience to fill the position ( i.e. at the time of application, applicant have qualification that are assessed as equivalent to the Australian Standard by the appropriate assessment body in Australia for the nominated position, and has 3 years post qualification full-time work experience in the occupation immediately before the visa application is lodged). **Exemptions for this requirement:** If applicants have been on a 457 visa for 2 years and at least the last 12 months with the sponsor; if the occupation is on the MODL (international students must have completed their course within the last 6 months if they wish to use an MODL occupation to their advantage).
- meet any mandatory licensing, registration or professional membership requirements which allow you to work unsupervised and without further training. For example; in Queensland certain Engineers need to be registered; Architects must be licenced; Doctors must have unconditional registration; Nurses must be registered; etc.
- be under 45 years of age (unless an exceptional appointment)
- provide a letter of appointment or a contract signed by both the employer and yourself
- have vocational English language ability 5.0 on each level of IELTS (unless an exceptional appointment)

## **Recent News Stories**

Comments:

This week there were a number of interesting stories regarding international students. It shows that some of the media attention Indian students have brought upon themselves may be having a negative affect with DIAC responding with an over the top toughness on the student visa requirements. It is so typical of government departments that when you sting them with criticism they can turn very nasty against those who are brave enough to speak up. In this case DIAC is obviously taking a tough line against all student visa applicants from India. Hasn't enough damage been done already in this valuable market without a sledgehammer approach by DIAC?

Interestingly despite all the negative publicity about racial attacks, read the last article!

## **Student growth not sustainable**

Guy Healy | *October 14, 2009*

Article from: [The Australian](#)

Link: <http://www.theaustralian.news.com.au/story/0,,26205379-12149,00.html>

## **Foreign student enrolments crash since visa blitz**

Andrew Trounson | *October 14, 2009*

Article from: [The Australian](#)

Link: <http://www.theaustralian.news.com.au/story/0,,26207435-12149,00.html>

## **Overseas students feel the pressure**

Andrew Trounson | *October 14, 2009*

Article from: [The Australian](#)

Link: <http://www.theaustralian.news.com.au/story/0,,26205361-12149,00.html>

## **Australia 'safest for Indian students'**

AAP October 12, 2009 4:02PM

Article from: [The Daily Telegraph](#)

Link: <http://www.dailytelegraph.com.au/news/breaking-news/australia-safest-for-indian-students/story-e6freuz0-1225785833964>

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