

IMMIGRATION UPDATES

March 2012

PERMANENT EMPLOYER-SPONSORED VISA PROGRAM REFORMS

SUMMARY: Changes to the Permanent Employer-Sponsored Visa Program which have been designed to bring it closer in line with Australia's current economic needs, will be introduced on 1 July 2012.

Following a comprehensive review of the permanent employer-sponsored visa program, the Department of Immigration and Citizenship (DIAC) has announced reforms to the program that will take place on 1 July 2012.

The current permanent employer-sponsored visa program includes the following streams:

- Employer Nomination Scheme (ENS) – Visa Subclass 121 (offshore) and 856 (onshore);
- Regional Sponsored Migration Scheme (RSMS) – Visa Subclass 119 (offshore) and 857 (onshore); and
- Labour Agreement program – Visa Subclass 120 (offshore) and 855 (onshore).

THE KEY CHANGES

The key reforms announced by DIAC include:

- reducing the existing visa subclasses from six to two, by
 - removing the onshore and offshore differentiations
 - replacing the permanent labour agreement visas with streams in ENS and RSMS;
- introducing a streamlined and simplified pathway to permanent residence for eligible Temporary Business (Long Stay) Subclass 457 visa holders;
- raising the current upper age limit of 45 to less than 50 years;
- changing key visa criteria including English language and skill requirements;
- introducing one consolidated sponsored occupation list to replace the 457 Occupation List, the Employer Nomination Skilled Occupation List (ENSOL) and the State and Territory Sponsored Occupation List (StatSOL);
- refocussing the regional certifying network network to the Direct Entry Stream of RSMS; and
- integrating the new ENS and RSMS visas with the skilled migrant selection model (*SkillSelect*) that will be launched on 1 July 2012.

A NEW VISA STRUCTURE

The current permanent employer-sponsored visa classes and subclasses will be replaced with two new visas, namely:

- Employer Nomination (Class EN) Employer Nomination Scheme (Subclass 186) , and
- Regional Employer Nomination (Class RN) Regional Sponsored Migration Scheme (Subclass 187).

Within each of these visa subclasses there will be three streams:

- **Temporary Residence Transition stream**, which is for Subclass 457 visa holders who have worked for their employer for at least the last two years;
- **Direct Entry stream**, which is for applicants who are untested in the Australian labour market and have not held a Subclass 457 for at least the last two years, or apply directly from outside Australia; and
- **Agreement stream**, which is for applicants who are being sponsored by an employer through a labour agreement or regional migration agreement.

An employer or visa applicant will need to meet the specific requirements of the particular stream to be eligible.

SPECIFIC REQUIREMENTS

Temporary Residence Transition Stream

Employers who want to nominate Subclass 457 visa holders who they are currently sponsoring will need to meet the following criteria:

- The job or position being nominated for permanent residence is consistent with the position the person held while on their Subclass 457 visa;
- The position will continue to be available to the prospective migrant for at least two years;
- The terms and conditions of employment are the same as any that would apply to an Australian citizen;
- The prospective migrant will be paid the 'market rate'. That is, the nominee will be paid at least as much as an Australian employed in the same position in the same location; and
- The employer has met, or continues to meet, the Subclass 457 training requirement.

Employers applying for an RSMS Temporary Residence Transition employer nomination will need to be actively and lawfully operating in *regional* Australia.

Visa applicants who are eligible to apply through this stream will need to meet the following:

- Being less than 50 years of age; and
- Have English language proficiency of at least 5 in each of the four components of the International English Language Testing System (IELTS) test (except for those who are a citizen of and hold a valid passport for the United Kingdom, the United States of America, Canada, the Republic of Ireland or New Zealand).

These visa applicants will *not* need to have their skills and qualifications assessed for the permanent visa as these were already proven as a Subclass 457 holder.

The Direct Entry Stream

Employers who apply through ENS Direct Entry will need to demonstrate:

- The business is actively and lawfully operating in Australia;
- The position is full-time and available to the prospective migrant for at least two years;
- The nominated occupation is on the new consolidated sponsored occupation list;

- The prospective migrant will be paid the 'market rate'. That is, the nominee will be paid at least as much as an Australian employed in the same position in the same location; and
- The employer provides training to Australians.

In addition to the above, *Employers* who apply through the RSMS Direct Entry will need to ensure that the business is actively and lawfully operating in *regional* Australia, and that the position on offer has been certified by a Regional Certifying Body.

Visa applicants applying under ENS Direct Entry will need to:

- provide a positive skills assessment and have at least three years of relevant prior work experience;
- be less than 50 years old;
- possess 'competent English' that is equivalent to a score of 6 in each of the IELTS test components (except for those who are a citizen of and hold a valid passport for the United Kingdom, the United States of America, Canada, the Republic of Ireland or New Zealand).

In addition to the above requirements, those applying under RSMS Direct Entry will need to have a relevant Australian or overseas qualification(s).

The Labour Agreement Stream

Visa applicants applying under a labour agreement will need to meet skills and experience, English language proficiency, age and other requirements as specified in the applicable labour agreement.

A labour agreement is a formal arrangement negotiated between an employer and the Australian Government and will only be considered where genuine skills shortage exists and there are no suitably qualified or experienced Australians readily available.

Please note we have prepared the above updates based on DIAC's latest media release. We will write again once relevant legislative instrument is available. In the meantime, should you have any questions concerning these reforms, please contact:

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