

BUSINESS MIGRATION

Long Stay Business Visas - Subclass 457 Visa

Business people and skilled personnel from overseas can enter Australia on a temporary basis to conduct business or to undertake employment. The current range of temporary business visas is designed to allow for streamlined processing of applications.

The Subclass 457 visa caters for long-term business entry to Australia of up to 4 years. The visa is primarily intended for skilled people and managerial staff wishing to work for an established Australian company or an overseas company which is either establishing its presence or performing a contract in Australia.

The Subclass 457 visa application process consists of three stages, namely:

- **sponsorship** by the company wishing to engage the temporary entrant to work in Australia;
- **nomination** of the temporary entrant to fill a vacant position within the company; and
- **visa application** by the temporary entrant.

Sponsorship and nomination are the responsibility of the company seeking to employ a temporary entrant, while the final stage of the application is the responsibility of the temporary entrant seeking employment in Australia.

In order to ensure that all three stages of the application process are dealt with expeditiously, it is important to ensure that all legislative requirements are satisfied at the time of application.

In most cases where a company is seeking to employ a temporary entrant from overseas, the most difficult part of the application is the sponsorship stage.

In order to be approved as a business sponsor, a company is required to demonstrate that the proposed employment of the temporary entrant will either:

- create employment for Australian citizens and permanent residents; or
- enhance competitiveness within sectors of the Australian economy; or
- enhance Australian trade or business links with international markets; or
- expand Australian trade in goods or services.

In addition to having to prove a distinct benefit to Australia, the employer intending to be approved as a sponsor must also show that its business is committed to training Australian citizens and permanent residents.

After sponsorship has been approved, the assessment of the nomination stage of the application is subject to skill and salary requirements. The approved sponsor's right to nominate a temporary entrant to fill a position within its business is restricted to the extent that the temporary entrants can only be nominated for certain occupations. The occupations selected for the purpose of temporary business entry are listed in the government's *Gazette Notice* and are subject to frequent changes. The decision whether to include or exclude an occupation from the *Gazette Notice* depends on the Australian demand for that occupation.

The salary requirement determines the minimum salary that can be paid to a temporary entrant and is also subject to frequent changes. The most recent change to the salary requirement became effective on 3 May 2006. The new salary level, has been raised by 7 % compared to last year's level and the current minimum salary level has been set at \$41,850.00 for most occupations.

After the nomination has been approved, the final stage of the application is the visa application. The temporary entrant seeking to be employed in Australia must show that they have the skills necessary to perform the tasks of the position for which they have been nominated. If there is any doubt as to the skills of the temporary entrant, they may be required to undergo a formal skills assessment.

It is particularly important to satisfy all legislative requirements at the time of application because the need for the temporary entrant to undergo a skills assessment arising from the lack of either clarity or information provided at the application stage can, in some instances, delay the application process by up to 6 months. This can be of detriment to both the sponsor and the temporary entrant, particularly if the proposed employment contract in Australia is scheduled to commence earlier than the visa application process can be finalised.

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