

Iscah Migration Newsletter

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Well folks,

Summer is getting close and lots of fun with the kids, swimming, tennis, Christmas, blah blah .. anything but footy ha !

After things looked good for most of the season the Freo Dockers fell away at the end and the mighty Hawks beat us and then had an easy grand final win. Not sure if we will get another chance with our aging squad but then I thought that this year to and we finished top of the ladder prior to the finals !

Anyhow LOTS to look forward to including an interesting but short newsletter this month.

Hope you enjoy it and any brickbats or bouquets are warmly welcome to newsletter@iscah.com

On we go...



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1) Review Tribunal recent cases

Visa applicants who wish to apply for review can take their case to the Administrative Appeals Tribunal (which now incorporates the MRT). Here are some recent interesting cases from the last few months to get an idea how they may interpret certain cases.

Application not lodged because of Australia Post

SUBCLASS 401 - NO SUBSTANTIVE TEMPORARY VISA - LEGALLY EFFECTIVE APPLICATION (application

The delegate refused to grant the visa on the basis that the applicant had applied for the visa two days after his temporary substantive visa had ceased and was not satisfied the applicant had no substantive visa due to factors beyond his control. The applicant claimed that he held a substantive student visa which ceased on 15 March 2014. The applicant claimed that he lodged the visa application by post to the department's Parramatta office via Express Post, but that the parcel was returned to sender as it had been refused delivery. The application was lodged again a few days later by post. The applicant provided evidence of an Express Post Platinum envelope with the Parramatta address and documentary evidence which established that the parcel entered the Express Post mail delivery system on 11 March 2014. Held: Decision under review remitted.

The tribunal inferred from the term 'refused' that Australia Post had attempted to deliver the parcel to the department at the address listed, but that it had been refused and returned to sender. The tribunal found that the address on the envelope clearly identified the department and provided a full address to enable delivery. The tribunal found that the parcel which contained the application form and prescribed fee, addressed to the department at its Parramatta office, was delivered there on 12 March 2014. The tribunal found that there was no applicable written instrument which specified a post office box address, address for hand delivery or a fax number for this visa class, and that hence the absence of any written instrument had the effect that there were no such requirements. The tribunal found that the application made to the department's Parramatta office on 12 March 2014, an office of Immigration in Australia, was consequently legally effective.

The tribunal thus found that the applicant held a substantive visa at the time of application and was accordingly satisfied that the requirements of cl.401.211 were met.

Part time unpaid work allowed for Working Holiday visa 3 months in regional area

WORKING HOLIDAY (TEMPORARY) (CLASS TZ) VISA SUBCLASS 417
SPECIFIED WORK IN REGIONAL AUSTRALIA FOR THREE MONTHS –

The delegate refused to grant the visa on the basis that the applicant did not meet the requirements of cl.417.211(5). The applicant claimed to have worked on a farm between November 2013 and September 2014 but was vague about the dates. The applicant provided a letter from his employer which stated that the applicant worked from November 2013 to April 2014. The employer confirmed that the applicant worked 88 full days, calculating that for days where he worked 4 hours, 2 days were combined and counted as one whole

day. The employer confirmed that the applicant worked in exchange for food and accommodation rather than being paid. Held: Decision under review remitted. The tribunal accepted that the applicant worked from November 2013 to April 2014 and that he worked just over 4 hours a day, for every day and was not paid.

However, the tribunal found the value of food and accommodation received by the applicant was equivalent to remuneration. The tribunal found the departmental policy was inconsistent with the law since clause 417.211 did not require work to be done on a full-time basis and would explicitly prevent the applicant's 144 established work days from being taken into account, as each day was not the equivalent to a full time day. The tribunal found that the applicant had worked for 144 days for at least 4 hours a day and this would equate to 82 days on a 7 hours day basis, or 72 days for an 8 hour day, and that this time period would have increased as the applicant may have worked more hours on occasion.

The tribunal was therefore satisfied that the applicant met this criterion.

RSMS visa granted, visa applicant leaves employer shortly afterwards

EMPLOYER NOMINATION (MIGRANT) (CLASS AN) –SUBCLASS 119 (REGIONAL SPONSORED MIGRATION SCHEME) –CL.119.221 –CANCELLATION -FAILURE TO REMAIN ENGAGED IN EMPLOYMENT –

The delegate cancelled the visa under Subsection 137Q (2) of the Migration Act 1958, on the basis that the lack of the claimed skills contributed to the visa holder's failure to complete the required employment within the required two year period. The applicant commenced employment as a metal fabricator with the nominating business in November 2012, and this employment was terminated by the employer after one week. As required by the legislation, the tribunal focused on whether the applicant made a genuine effort to be engaged in that employment for the required two years. Emails from the employer to the applicant and the department indicated that the applicant lacked the basic skills required for his position. The applicant testified that he was very nervous when commencing his employment, due to the different work organisation methods from his previous employment and also the presence of a CCTV camera, as he worked slowly so as to avoid mistakes. The applicant provided evidence of his qualification, a Certificate III Engineering –Fabrication Trade, from a registered training institute. The applicant provided evidence of passing a work test conducted by the employer before being offered the position, and of his employment agreement signed by the employer. The applicant provided evidence of further skilled employment in Australia, and related references which verified his quality work.

Held: Decision under review set aside. The tribunal was satisfied that the applicant's employment was terminated within the required two years. The tribunal gave weight to the contemporary documentary evidence from the employer that the applicant lacked basic skills required for the position. However, on the basis of the verified qualification and especially the work test of the nominating employer, the tribunal accepted that the applicant possessed the required skills for the nominated position. The tribunal accepted the applicant's genuine efforts to be engaged in the employment, by obtaining further skilled positions. On the basis of all the evidence presented, the tribunal concluded that the applicant did not engineer his dismissal from the nominating business, but that this position simply did not work out. Being satisfied of the applicant's genuine efforts to be engaged in employment, the tribunal concluded that section 137Q(2)(b) of the Act was not made out, and set aside the decision under review, substituting a decision not to cancel the visa

(Source: MRT/AAT)

2) Processing times for the “old” Parent visas

Here is a DIBP update on current queue/processing times

ONSHORE APPLICANTS (Subclass 804)

Once your application is allocated to a case officer (which may take up to 12 months) you or your authorised contact will be contacted and asked to provide more documents including police certificates and health clearances to complete your application. As soon as you are assessed as meeting all requirements your application will be placed in a queue and assigned a queue date to wait for a visa place.

We are currently assessing for a queue date applications lodged up to 10 December 2014

We are currently assessing for finalization applications with a queue date up to April 2009

OFFSHORE APPLICANTS (Subclass 103)

Once your application is allocated to a case officer (which may take up to 18 months) your eligibility for a visa will be assessed and if you are found to meet eligibility requirements your application will be placed in a queue and assigned a queue date to wait for a visa place.

We are currently assessing for a queue date applications lodged 01 June 2014

We are currently assessing for finalization applications with a queue date up to 10 December 2008

(Source: DIBP)

3) Northern Territory sponsoring of 457 visas

Because of its remote location and acute skills shortages in the Northern Territory, their government have negotiated a Migration agreement for companies to be able to more easily sponsor 457 visa holders.

Further details are here along with the allowable occupations :

What occupations can be sponsored and what concessions may be available under the Northern Territory DAMA?

The table below outlines all of the occupations that are eligible to be sponsored under the Northern Territory Designated Area Migration Agreement (DAMA) as well as the concessions that may be accessible.

Where a Northern Territory employer is seeking a Temporary Skilled Migration Income Threshold (TSMIT) concession, the business will need to demonstrate that the salary being offered to a prospective overseas worker is no less favourable than what an Australian citizen or permanent resident could expect doing the same job in the same location.

<http://www.australiasnorthernterritory.com.au/Working/bsm/employer-nominated/dama/Pages/accessible-occupations.aspx>

(Source: Northern Territory government)

4) Children aged over 18 being included in a visa application

DIBP can be quite strict when a visa applicant tries to include a child in an application who is aged over 18. The main criteria is that the child has been financial dependent and for a substantial period of time. In order to ascertain that DIBP have created a questionnaire to be completed in relation to the child.

Here it is :

QUESTIONNAIRE FOR DEPENDANTS OVER 18 YEARS OF AGE

A Dependent over 18 years of age is generally defined for migration purposes as a person who is, and has been for a substantial period, wholly or substantially reliant upon another person for financial support to meet basic needs for food, clothing and shelter.

1. Why do you think you are dependent? Please give reasons why you consider yourself to be dependent upon another person. If you are incapacitated for work due to total or partial loss of bodily or mental functions, please provide a letter of explanation from your Doctor.

2. Are you studying? If so, please provide the name of the school/ college/ university, details of whether the course is part-time or full-time, it's duration and expected date of completion. Provide evidence from the institution of your enrolment and details of school fees and any other fees and expenses paid by you and/or on your behalf by another person. If you are receiving a scholarship or other studies assistance from any source, provide details of the monetary amount and duration of that assistance.

3. Are you currently working? How long have you been working? Is it part-time or fulltime? Who is your employer? Provide evidence of your employment history, confirmation of your current employment (if any) and details of your earnings from that employment.

4. If you are not working at present, how do you support yourself? Who pays for your accommodation and basic needs such as food and clothing? Provide details (and receipts if possible) of how much and how often payments are made by other persons on your behalf.

5. Are you now looking for work? What sort of work have you been seeking? Do you intend to look for work in the near future? If you haven't looked for work nor intend to, why not?

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6. Do you receive any form of pension or allowance from the Government or any other organisation (including Superannuation, Investments, Trust Accounts etc)? If so, provide details of the amounts, frequency and duration of these payments.

7. If your application is not successful, what will you do? Where would you live and who will support you?

8. Are you married, living in a de-facto relationship or have any plans to marry in the near future?

Please provide detailed responses. Assessment of your dependency for migration purposes will be based upon your responses to the questions.

(Source: DIBP)

5) Permission to work for 417 Working Holiday visas

DIBP have updated their policy on permission to work beyond 6 months for working holiday visas (417 visa) as follows ...

Au pairs

Au pairs who can demonstrate they have worked for a family with young children for 6 months, can be approved for a further 6 months employment (total 12 months).

Other exceptional circumstances

- While the WHV holder is waiting for the decision on a visa that can be granted onshore for example Subclasses 457, 820, 402, 186 and 187
- While the WHV holder is receiving workers compensation as a result of a workplace injury
- While undertaking disaster recovery work following a declared major disaster
- In circumstances where the workplace has been affected by a major disaster and the VH was unable to attend work due to the disaster

(Source: DIBP)

6) Changes to State Migration plans for 190 and 489 visas

Changes to QLD state migration plan
<http://migration.qld.gov.au/qsols-effective-8-october-2015/>

The new 2015/2016 WA State Migration plan has been released here
<http://www.migration.wa.gov.au/services/skilled-migration-wa/occupations-in-demand>

7) Accountants at 65/70 points

In the last published Skill Select round (September) DIBP only invited 20 Accountants for the 189 visa (instead of the normal 210 invites).

As a result this pushed up the invite pass mark to 70 points. We asked DIBP why they did this and they replied as follows :

"...The occupation group of Accountants (ANZSCO code 2211) is subject to pro rata arrangements that can vary with each invitation round based on a number of factors. We are unable to advise what the pro rata amount will be for future invitation rounds."

We expect it is because so many Accountants have been invited in the State sponsored 190 and 489 visas and also as DIBP may want to keep places for later in the program year so that they guarantee obtaining the highest scoring candidates in their 189 program. We also expect that those at 65 points who have already lodged an EOI will likely get an invite before Jun 2016. But any new EOIs lodged from now on at 65 points may struggle to be allocated a place in the 2015/2016 program year.

(Source: DIBP and Iscah comment)

8) Cap and Cease of 175, 176 and 475 visas

A DIBP announcement last month :

The Assistant Minister set a cap for offshore General Skilled Migration (GSM) visas which takes effect on 22 September 2015. The following offshore GSM visas are affected:

- Skilled Independent (subclass 175)
- Skilled Sponsored (subclass 176)
- Skilled Regional Sponsored (subclass 475).

The cap sets the maximum number of places that can be granted in the 2015–16 financial year for these visa subclasses. This total has already been reached. Therefore, applications for these visas that were not finalised before 22 September 2015 are taken not to have been made and the relevant visa application charge will be repaid to affected applicants.

If your application is affected by the Cap and Cease determination, we will send you, or your authorised recipient (if you have one), a letter of notification.

Full details are below including some FAQs ...
<http://www.border.gov.au/Trav/Work/Work/CapandCease>

Note also that we are aware of two possible Federal Court cases to challenge this announcement by the (former) Assistant Minister.

9) Iscah FAQs from the last month

Here is a small selection of our answers to Facebook questions we received over the last month. Some of these have been edited for clarity and to protect privacy.

Q. My husband has applied for a EOI for a 189 visa. He turns 33 on 8th December. Will he lose points for his age ?

A. Whatever age a person is at the TIME OF INVITE is used to work out their age points. So if a person becomes older after invitation but before the visa application is lodged, they do NOT lose any age points.

Q. I have been on a 457 visa for nearly 2 years. Will there be any problems if for 2 months I was not working. My employer is willing to later pay wages and taxes for this period.

A. In my opinion the 2 months you have not worked will not count towards the 2 years unless it was pre arranged and fully paid leave. So it is likely that you will have to work an EXTRA two months to make up for this.

Q. Hey I am a Registered Nurse working here... Right now I am on visa 485 which is valid up to September 2016. In June or Jly i am getting married to my bf who is Australian citizen... What will be my options if I am getting married to him... Can I apply for a visa after getting married? What will be the visa subclass? Can it be onshore? Please reply.... Thanks

A. You can apply onshore for a 820 Partner visa application after you are married.

Q., Hi there, Is anyone students working more than 20 hrs a week and applying RSMS very soon. Will it be trouble or not?

A. Whilst applying for RSMS you must still abide by your student visa conditions. If your studies are not in session then you can work more than 40hours per fortnight,

Q. For Accountant do you think 60 points will be enough for a 189 invite ?

A. I think you will need more points to get an invite. However, you've got to be in it to have any chance and an EOI costs nothing, so I'd advise to still lodge an EOI as soon as you have 60points....you can always add points later through age, work experience and higher IELTS.

Q. My mother is from Afghanistan, can she apply for a visa to visit me in Australia ?

A. Your mother can always apply for a visitor visa. DIBP have the right to refuse it though if they believe your mother is not a genuine visitor and does not intend to leave Australia at the end of her visit. It is likely that an Afghan national would be refused a visitor visa at the moment (as it is a high risk locayion according to DIBP) and you may have to rely on an appeal to the AAT (review tribunal) to have a better chance of her obtaining the visa. This may end up taking around 6 months.

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Q. Hello, does it cause any trouble or would immigration come to know, if I apply for two EOIs, one with accountant and another as taxation accountant. Actually I applied EOI as accountant in May and as taxation accountant in October with different email id. Just trying to get an invitation from NSW in every possible way. I know a lot of people apply as an accountants and only few go for taxation accountant. Just trying my luck. I was able to get two positive skill assessments from two different bodies, CPA and ICAA, so I have two valid skill assessment as accountant and taxation accountant

A. You are allowed to apply for as MANY EOIs as you want as long as you do not give any false information on them.

Q. Hi my owner move his business to Victoria and he already bought new business . I also moved to Victoria I am on 457 for 1/half year he didn't give me any acknowledgement from immigrant that he update his address with immi . Can you please tell me what I have to do !

A. If the business has changed ABN you will need to do a new SBS and nomination application. If it is just a change of location DIBP still need to be informed

Q. How many people can be sponsored by new business? (My friend is planning to hire one chef and a manager, Restaurant has 70 sits) Any fund required to show in business account for 457 visa? Thank you

A. There are no limits as to how many people can be sponsored as long as there is the genuine need for the positions and the business can financially sustain the applicants salary. 485 has less conditions/limitations than the 457. The business needs to evidence they can be financially viable.

10) SkillSelect – 7 September 2015 round results

The table below shows the number of invitations issued in the SkillSelect invitation round on 7 September 2015.

Invitations issued on 7 September 2015

Visa Subclass	Number
Skilled - Independent (subclass 189)	2300
Skilled - Regional Provisional (subclass 489)	80

During 2015-16 the following number of invitations have been issued:
Invitations issued during 2015-16

Visa Subclass	July	August	September	Total
Skilled - Independent (subclass 189)	2300	2300	2300	6900
Skilled - Regional Provisional (subclass 489)	80	80	80	240
TOTAL	2380	2380	2380	7140

The above figures do not include invitations issued for State and Territory Government nominated visa subclasses. State and Territory Governments nominate throughout the month for specific points tested skilled migration and business innovation and investment visas. Separate results for these visa subclasses are provided monthly.

Invitation process and cut offs

The highest ranked clients by points score are invited to apply for the relevant visa. For clients who have equal points scores, the time at which they reached their points score for that subclass (referred to as the visa date of effect) determines their order of invitation. Expressions of Interest with earlier dates of effect are invited before later dates.

Visa Subclass	Number	Visa date of effect
Skilled - Independent (subclass 189)	60	27 July 2015 9.22 am
Skilled - Regional Provisional (subclass 489)	60	17 June 2015 3.37 pm

Due to the continuing high numbers of EOIs received for the below occupations, invitations for these occupations will be issued on a pro rata basis in each monthly invitation round over the 2015-16 programme year. These arrangements are subject to change throughout the programme year. SkillSelect first allocates available places to Skilled – Independent (subclass 189) visas and then remaining to Skilled – Regional (subclass 489) (Provisional – Family Sponsored) visas. If all places are taken up by subclass 189 visas then there will be no invitations issued for subclass 489 visas in these occupations:

- ICT Business and Systems Analysts
- Accountants
- Software and Applications Programmers.

The points score and the visa date of effect cut-off for the above occupations in the 7 September 2015 invitation round is as follows. Below points score and visa date of effect is for Skilled Independent (subclass 189).

Points scores and the visa dates of effect cut off for the above occupations in the 7 September 2015 invitation round

Points	Description	Points score	Visa date of effect
2211	Accountants	70	6 August 2015 11.13 am
2611	ICT Business and System Analysts	65	16 July 2015 3.28 am
2613	Software and Applications Programmers	60	9 May 2015 7.16 pm

Note: the following occupation group has reached its ceiling and no more invitations will be issue during the 2015-16 programme year:

- 2212 – Auditors, Company Secretaries and Corporate Treasures

Okay folks, all done for another month.
See you all Monday 16h November 2015
for more exciting news ...

Cheers



Steven O'Neill

 iscah.migration

 iscahmigration

 iscah.com

 Phone: 08 9353 3344

 Fax: 61-8-9353 3350

 E-mail: newsletter@iscah.com

 Iscah Migration
Suite 14 (Kewdale Business Park)
133 Kewdale Road, Kewdale
Perth Western Australia, 6105
PO Box 75 Welshpool BC 6986



Registered Migration Agent 9687267