

Iscah Migration Newsletter

Monday 20th January 2014 | Edition 187

Hiya Everyone,

I hope that you had a safe and enjoyable new years and you have lots of exciting plans for 2014.

This newsletter is published on the third Monday of each month and updates you on all the visa changes we are aware of. It is free and you are welcome to drop us a line anytime to newsletter@iscah.com to be on the permanent mailing list.

Also back copies are available on our website at www.iscah.com

On to January's news...



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1) Facebook Update

Iscah have just upgraded their Facebook page to a Company profile page to allow easier updates for all our visa news on Facebook. It will also give you more privacy than having us listed as a friend.

If you are an existing Facebook Friend

- You can still access our information as before however instead of a “friend” we will be listed through your FB contacts as a page you “like”.
- To receive news updates though you will have to go to our page (either through your current FB likes page or here www.facebook.com/iscah.migration?fref=ts) hover over the liked button for a few seconds and it will allow you to choose “Get Notifications”

If you would like to be a Facebook Friend

- Go to our new FB profile here www.facebook.com/iscah.migration?fref=ts
- And press “Like” button.
- To receive news updates though you will have to go reopen our FB page (either through your current FB likes page or here www.facebook.com/iscah.migration?fref=ts) hover over the liked button for a few seconds and it will allow you to choose “Get Notifications”

If you want to continue to receive the FB news updates you will need to make this change. Sorry for the inconvenience

2) WA State Government update

Closed occupations on the Western Australian skilled migration occupation list 15 January 2014

The following occupations on the Western Australian skilled migration occupation list are now closed: ANZSCO 233211 Civil engineer;

ANZSCO 233512 Mechanical engineer;

ANZSCO 233513 Production or plant engineer;

ANZSCO 234211 Chemist;

ANZSCO 263111 Computer network and systems engineer; and

ANZSCO 272413 Translator.

If your occupation is closed you will not receive an invitation to apply for State nomination. If you have already received an invitation, your application will not be affected. See the occupations in demand page for all available occupations.

(Source: WA State Government)

3) NSW State Government update

Skilled Nominated visa (subclass 190) – NSW nominations closed for 2013/14

NSW is pleased to announce that program targets for the Skilled Nominated visa (subclass 190) have been met for the 2013/14 financial year.

Effective 24 December 2013, applications for NSW nomination for the subclass 190 visa will close. Applications received after this date will not be processed or returned. NSW will reopen for the subclass 190 visa nomination in July 2014. Information regarding 2014/15 applications will be posted on this website in July 2014.

(Source: NSW State Government)

4) Adding a new born child to an MRT review – Procedures

Here is the DIBP process for when a child is born after a visa is refused and during the subsequent Migration Review Tribunal appeal period :

If a child is born after its parent has lodged a visa application, but before the application has been decided, regulation 2.08 deems that the child is taken to have applied at birth for the same class of visa as their parent. The child's application is taken to be combined with their parent's application. If both parents have unfinalised visa applications, the child is taken to have applied for the same visas as each parent.

Under s104, the child's parents are required to notify the department, as soon as practicable, of the child's birth.

Cases may arise where the parent's (or parents') visa applications have been refused and they have made applications for review with the MRT, prior to the department being notified by the parents of the child's birth. In cases such as these:

- the child's visa application should be decided as quickly as possible after the parents have provided documentary evidence of the birth
- if the child's application is refused, advice regarding the child's review rights, together with a current copy of the MRT leaflet regarding 'Applying for a review', should be provided with the decision notification and decision record for the child – see PAM3: Act – Code of procedure – Notification requirements
- as parents who have lodged a review application with the MRT before their child's visa application was decided often assume that this child is included in their review application, the case officer should inform the parents that this is not the case and advise them of the requirement to lodge a separate MRT review application for their child once the child's visa application has been refused. The MRT may be able to deal with the child's review application at the same time as the parents' review applications.
- if a separate review application is lodged for the child, to ensure that the applications are dealt with together, it is advisable for the department to bring the parent/child relationship to the attention of the MRT in the following manner – the case officer should:
 - forward the information regarding the child to the MRT through Governance and Tribunals Section (National Office) by way of an email to DIAC MRT-RRT File Transfer/IMMI/AU. The email should include as much information as possible for the MRT (for example, Client IDs, departmental client file numbers, and the parents' MRT number, if known)
 - then request that Governance and Tribunals Section forward this information to the MRT.

(Source: DIBP)

5) Students changing courses

Some international students may find the course they enrolled in to study isn't what they anticipated and would like to change their course. If this is you, it is important you do your research and are fully informed before you change courses. We've developed fictional scenarios to help you understand the conditions of your student visa and what it could mean when you change your course. We will post one of these scenarios each week for the next month on the Migration Blog.

The first scenario is about changing courses if you are struggling with the requirements of your university course and find an alternative vocational course is more practical for your learning ability and career aspirations...

Scenarios

Moving from a university to a vocational education course

- You must complete six months of the highest qualification course in which your visa was granted before changing courses with a different education sector.
- You must obtain a new visa to study in a different educational sector.

Names of people and education providers in this story are fictional for the purposes of this case study.

Mandeep was enrolled with the Eucalyptus University to study a Bachelor of Accounting. She was granted a *Higher Education Sector (subclass 573) visa*.

After commencing her bachelor degree, she was informed by a friend she could study her course faster and cheaper at a different institution. Mandeep thought this sounded like a good option as she wanted to get her degree as fast as possible. She thought she may have a problem with her visa if she changed her course.

Mandeep phoned the Department of Immigration and Border Protection to see if she could move to this cheaper institution. After confirming all the details of Mandeep's case, the immigration officer told Mandeep her visa was granted under streamlined visa processing arrangements with the Eucalyptus University—if she changed to a non-streamlined education provider while holding a streamlined student visa, she may be in breach of a condition of her visa (*condition 8516*).

(continued on next page)

The immigration officer informed Mandeep that if she wanted to change education provider she would have to choose one of the following options:

- transfer to another streamlined institution
- remain in her current course and apply for a new student visa (after completing six months of her principal course) with a letter of offer or confirmation of enrolment from the new provider
- depart Australia, request the voluntary cancellation of her student visa and then apply for a new student visa with a letter of offer or confirmation of enrolment from the new education provider.

Mandeep decided to move to the cheaper institution, regardless of the information she had found out about her visa. Shortly after, the department contacted her and issued a Notice of Intention to Consider Cancellation for her student visa. Mandeep responded to the notice and provided reasons why her visa should not be cancelled. The department considered her response and proceeded to cancel her student visa for breach of condition 8516.

Mandeep was upset and regretted not abiding by the conditions of her visa. Mandeep no longer held a visa to remain lawfully in Australia and made arrangements to return to her home country.

Stay tuned for another scenario next week about changing courses in the first six months of study.

(Source: DIBP)

6) Difference between Cafe/Restaurants and Fast Food outlets

It is very important to work out whether a food establishment is a :

Cafe/Restaurant (in which case can be sponsored for 457 or 187-RSMS) or a Fast food/ Fast casual outlet (in which case can only be sponsored under Retail Manager and for 187-RSMS) The following is a useful guide from the Immigration Departments policy manual

42.1 Fast food industry and fast casual dining outlets

Fast food outlets and fast casual dining outlets are not considered to be restaurants for the purposes of the Subclass 457 program.

Fast food outlets have relatively low cost, fixed menus with an emphasis on speedy service. Table service is not provided and customers consume their meals directly from the disposable containers it was served in.

Fast casual dining outlets are similar to fast food outlets except the quality and prices of the menu are somewhat higher. Table service is not usually a feature, and customers typically place their food orders at a counter.

Typically, these outlets:

- usually operate in chains or as franchises
- are heavily advertised
- offer limited menus
- offer speed, convenience, and familiarity to diners who may eat in the outlet or take their food home
- do not generally employ chefs
- prepare food according to a standardised format for distribution from a central location
- serve food in a packaged form (although some outlets may provide cutlery and crockery for customers dining in the establishment) and
- do not offer table service.

As a general rule, the work undertaken by managers of fast food and fast casual dining outlets more closely aligns with the occupation of Retail Supervisor (ANZSCO 621511) or Retail Manager (General) (ANZSCO 142111) than with Café or Restaurant Manager (ANZSCO 141111).

The occupations of Customer Service Manager (ANZSCO 149212) and Accommodation and Hospitality Managers nec (ANZSCO 141999) are not considered appropriate for food services-related positions.

(Source: DIBP)

7) Staying lawful with bridging visas

A common mistake we see from clients is the following scenario:

- Person holds a substantive visa (ie a 485 visa) for next three months
- Person applies for another visa (ie a 187 visa) and is granted a bridging visa A whilst waiting for a decision on this application
- Person will want to travel overseas for a two week holiday whilst on the 485 visa and use this 485 visa to return to Australia
- As they held a 485 visa that allowed travel they will not bother to apply for the normal bridging visa B to lawfully return to Australia
- In fact DIBP in their occasional short sighted wisdom will even advise a person that they are better to travel on this 485 and it is cheaper than a bridging visa B.
- Person will then return to Australia on their 485 visa and “assume” that when it ceases a month or so later that they will still have a Bridging visa A to keep themselves lawful.

Problem

When the person left for their 2 weeks holiday the BVA ceases automatically so when they returned to Australia they only hold a 485 visa. When this then ceased two months later they now have NO visa at all. Not a 485, not a bridging visa of any kind. They are now unlawful, cannot work and importantly it will likely mean major delays in obtaining Australian citizenship 4 years later. This is because you cannot be unlawful at any point in the previous 4 years before applying for Australian citizenship.

Solutions (before you become unlawful)

Option 1 – Apply for a Bridging visa B (BVB) before you travel overseas on your 2 weeks holiday. This will be in effect on your return to Australia. So that you will remain lawful then even when your 485 runs out.

Option 2 – If you do travel on your 485 overseas, and you don't apply for a BVB beforehand then you MUST Apply for a new bridging visa A on return to Australia and before your 485 ceases. This then keeps you lawful when your 485 runs out.

8) 489 – Relative Sponsored

We previously reported that DIBP would limit the offered invitations to the 489 Relative Sponsored Category to 35 places. It seemed that this was 35 places for the whole of the program year but now it looks from the departments wording that this is 35 places for each invitation round (2 per month). So for the rest of the program year until 30th June 2014 that may be around 450 places, a lot better.

Okay folks, end of another one, have a great few weeks and see you all on Monday February 17th 2014.



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