

MAY 18, 2017 BULLETIN TO ALL IMMIGRATION CLIENTS

## New Restrictive Policies Australia and China Tighten Up

In recent months, we've seen a general tightening of immigration policies in many of our clients' most common destinations. In addition to Canada's increased enforcement efforts and the United Kingdom's struggle to figure out how to make immigration more difficult but still welcome EU citizens after the Brexit, there have been some significant changes in Australia and China which may affect your business plans.

### AUSTRALIA:

The Australian Government has announced its intention to abolish the Temporary Work (Skilled) visa (subclass 457 visa) in March 2018, and to replace it with a new Temporary Skill Shortage (TSS) visa program aimed at maintaining stronger government jurisdiction over appointing foreign employees. The government says that the new TSS program will be implemented gradually over the next year, with the first changes taking effect in late April, 2017. Here's a summary of the more significant changes that have been announced so far:

Effective April 19, 2017:

- Skilled Occupation and Consolidated Sponsored Occupation lists cancelled and replaced with the Short-Term Skilled Occupation List (STSOL) and the Medium and Long-Term Strategic Skills List (MLTSSL).
- 216 occupations previously nominated as eligible for appointment of a foreign national to work under the 457 visa program have been eliminated.
- 59 additional occupations have strict caveats attached
- Pending subclass 457 applications already lodged but whose occupation eligibility has been eliminated may withdraw their application and request a refund of the application fee (visa applicant and nominating employer)
- Subclass 457 visas granted on or after April 19, regardless of application date, will be valid for a maximum of 4 years for MLTSSL. These visa holders may be eligible to apply for Permanent Residence (subclass 186/187 visa) after 3 years with the same employer, in the same occupation.
- Short-term Skilled Occupation List (STSOL) visas granted after April 19, regardless of application date, have maximum validity of 2 years, with one only renewal (onshore).

Effective July 1, 2017 (some details have not yet been decided/released):

- Mandatory Police clearance certificates required for applicants
- Further modifications to eligible occupation lists
- Abolition of current English language exemption for high-salary earners (at least \$A96,400/year)
- More stringent requirements for employers to contribute towards training Australian workers

Before December 31, 2017 - for existing 457 visa holders:

- DIBP begins collecting Tax File Numbers for 457 visa holders and other employer-sponsored migrants. The data will be matched with the Australian Tax Office's records to verify that visa holders are not paid less than their nominated salary.

Effective March, 2018 - Subclass 457 visa stream to be eliminated and replaced by TSS, with more stringent criteria, shorter validity, and labor market testing required for each nomination. Other points to note are:

- Applicants must have a minimum of 2 years' previous work experience in their proposed employment occupation
- Requirement to adhere to minimum market rate salary will remain
- Mandatory Labor Market Testing (except where an international agreement applies)
- Employers' strict adherence required to anti-discrimination practices against Australians
- Expanded requirements of employers' financial contributions to training
- IELTS or equivalent score of 5, with minimum of 4.5 in each component for STSOL and MLTSSL

Going forward, with respect to the new temporary work visa program, significant changes have also been made to the list of accepted occupations. This includes the removal of a large number of occupations from the previous eligible lists and splitting the eligible occupations into two categories, as mentioned above:

- Short Term Skills – Occupations on this list are eligible for a 2 year work visa, with the ability to renew once, for a further extension of 2 years. There will be no pathway to permanent residency.
- Medium to Long Term Skills – Occupations on this list are eligible for a 4 year work visa. After 3 years of working with the nominating employer, the employer may apply for permanent residency for the individual.

The new occupation lists came into effect for all pending and new Subclass 457 visa applicants on 19 April 2017. Applicants who currently hold a Subclass 457 visa, retain this visa for the validity of their visa, and will not be affected by the new policies until/unless they submit a new application.

We believe that those who currently hold a valid Subclass 457 visa will continue to be eligible for employer nominated Permanent Residence at least until March 2018, under the existing rules. It's unclear at this point what options will exist for this population beyond that date.

Note: Immigration regulations are subject to change with little or no warning and a Government decision may be made to amend the regulations at any time in the coming months.

## CHINA:

As discussed in a previous bulletin, the People's Republic of China has been re-writing a number of their work permit and visa policies over the past several months. Elements of the new policies have been gradually implemented at different times in different cities, and some have evolved further after implementation. As of 1 April, 2017, however, the new immigration policies have been formally implemented across the country—though there are still (as there always have been) regional differences on the details. Here's a summary of the major changes that apply, generally, in all locations across China:

- Employers (host companies) are required to register in the new Alien Employment Management Service System before filing any work permit applications for foreign employees
- Additional documents for new applications - Legalized non-criminal record and legalized highest academic degree now required.
- Additional step required for Alien Employment Notification - The application must now be submitted online first, before the official Alien Employment License application and hard copy documents are filed over the counter.
- Pre-review process of application - A pre-review of the online application will be done by the Employment Bureau before the hard-copy Employment Permits are officially processed. Previously, no pre-review was done before the adjudication of the hard copy application submitted to the Bureau directly. This pre-review may add to the overall processing time.
- Age limitation - Maximum age for both of male and female applicants is now set at 60 years old for Category B applications. There will be no age limit for Category A. Previously, age restrictions were different for male and female applicants and applied to all classes of employment.
  - Category A - High level talent (i.e. scientists, technological experts, international entrepreneur, specialized talent) to fulfill the urgent needs of the market.
  - Category B - Professionals (i.e. foreign employees who will be working in China for the development of their industry and meeting the needs of the China market)

## Impacts and Recommendations:

Longer processing times - Since the online application and pre-review process is now required before the official applications are filed to the local bureaus, processing times will likely be between 15-20 working days longer than in the past. We recommend a lead time of at least 3 months to ensure sufficient time to complete the work permit process.

Preparation of documents - The legalization of non-criminal records and academic degrees will be required for the visa procedures at the Chinese Consulates. Document legalizations can sometimes take several weeks, so we recommend allowing additional time (about 1-2 months) to prepare these documents before the work permit process.

Age limitation - For foreign employees who already have Chinese work authorization and who are nearing 60 years of age, we recommend conducting a review of the employee's qualifications and experience in well in advance of preparing an extension application.

If you have any questions about any of the above information, or wish to discuss a particular immigration concern for any destination outside the United States, please feel free to speak with any member of our Global Immigration Practice by calling us at 412-297-4900. To receive future news alerts, please send an e-mail to [bulletins@cohenlaw.com](mailto:bulletins@cohenlaw.com).

*NOTE: We are knowledgeable and experienced immigration professionals, but we are not authorized to practice law or give advice in every jurisdiction in which our clients do business. Therefore, and when appropriate and/or required by local laws, we seek the counsel of authorized immigration professionals within the target jurisdiction and work closely with them to evaluate immigration requirements and options, prepare and file applications, etc.*

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