

Immigration Solutions for a Changing World

Did you know that Australian lawyers and migration agents are required each year to attend continuing practical development courses to remain registered? Each year every member of our professional staff undertakes over 20 hours of ongoing training to keep up to date with changes in the law. This means we are able to provide you with the most up to date advice and assistance.



This Issue

Important Changes to the RSMS **P.1**

RSMS changes continued **P.2**

Workers Rights Information **P.2**

Regional Sponsored Migration Scheme Changes

Important Changes Announced

On 19 July 2011 the Minister for Immigration and Citizenship announced that the Perth metropolitan area will be reclassified as a regional area for migration purposes. The effect of this will be that overseas workers will soon be able to be sponsored by Perth employers under the Regional Sponsored Migration Scheme (Subclass 119/857) ("RSMS").

What is the RSMS?

The RSMS enables Australian employers in regional or low-growth areas to fill 'skilled' positions, on a permanent basis, by sponsoring overseas workers for a permanent residence visa, where they have been unable to fill a vacancy from the Australian labor market or through their own training programs.

The RSMS Visa criteria is generally viewed as having a lower level of requirements for employers and migrants than that required by the Employer Nomination Scheme (Subclass 121/856) Visa. Furthermore the Department of Immigration and Citizenship ("DIAC") has made RSMS application their number one processing priority over all other skilled/employer sponsored visas. It is hoped that this may result in processing times of less than 6 months on average.

What is the RSMS Process?

The RSMS process consists of three stages:

Stage 1: Regional Certifying Body certification. The employer lodges an application with the Regional Certifying Body ("RCB") seeking certification of the employer nomination. The RCB assess the application to determine if it meets the RCB's criteria. This criteria may be different to the criteria set by DIAC.

Stage 2: Nomination Application The employer lodges its Nomination application with DIAC who assesses the nomination against the criteria set out by the Australia migration legislation. It should be noted that RCB certification does not guarantee that the nomination will be approved by DIAC.

Stage 3: Visa Application. The visa applicant who has been nominated lodges a visa application with DIAC and is assessed against the relevant migration legislation.

CONTACT US

If you require advice on this or other migration, commercial or employment law issues contact us at: mail@rothsteinlawyers.com

Changes to the RSMS continued

Regional Certifying Body Criteria

As of yet it has not been announced what the criteria will be for obtaining nomination certification from the Perth region RCB. Each RCB has a different criteria which is often dependent on what markets needs have been identified by the RCB for that area. As an example, some of the other Western Australian RCB's have the following criteria for approving a nomination:

The nominating employer must, among other things:

- be actively and lawfully operating a business in the prescribed regional area;
- have the financial capacity to employ the nominated employee;
- be able to demonstrate results of recent labour market testing that the nominated position is unable to be filled from the local labour market (unless the nominated person has already been employed on a Subclass 457 by that employer). This often requires that the position have been appropriately advertised in the 3 months before the application;
- have a training program in place and be able to demonstrate a commitment to employing and training Australians.

The nominated position must, among other things, be:

- a skilled position requiring qualifications equivalent to at least the Australian diploma level (or a Trade qualification);
- relevant to the business and a genuine, full-time vacancy that is available for a minimum of two years from date of the visa grant;
- located in the prescribed regional area;
- not subject to any probation period or express exclusion of the possibility of renewal;
- paid a salary of \$49,330 per annum based on a 38 hour week.

Again it should be noted that the requirements for certification by the Perth region RCB have not yet been announced.

DIAC Criteria

In addition to any criteria which may be prescribed by the Perth region RCB, DIAC imposes the following additional criteria

that the visa applicant must meet:

- they must be under the age of 45*;
- they must have functional English language skills*, which requires an IELTS average score of 4.5;
- they must hold a Trade or Diploma (or higher) level qualification* that is relevant to the nominated position;
- if they are in Australia, they must hold a qualifying visa at the time they apply for the RSMS visa;
- they must meet any mandatory licensing, registration or professional membership requirements which allow the visa applicant to work unsupervised and without further training.

Requirements marked with a * may be waived by DIAC if exceptional circumstances are found to apply. If you think this may apply to your situation, you are encouraged to seek further specialised advice on this issue.

Obligations

An important differentiation between the RSMS and the Employer Nomination Scheme (Subclass 856/121) visas is that a person granted an RSMS Visa must remain employed by their sponsor in the nominated position, in the nominated regional area, for **at least two years**. If the visa holder ceases work during that two year period DIAC has the power to cancel the visa. You should carefully consider this issue when choosing between an Employer Nomination Scheme Visa and a Regional Sponsored Migration Scheme Visa.

What Next

You should carefully consider whether these proposed changes may affect your migration options. Please note that the above information is only a general guide and other criteria may also apply. Again please note that this is a new announcement and there is still a lot of detail to be provided by the authorities. Before you proceed within any application you should obtain professional migration advice to ensure that you meet all of the relevant criteria.

If you would like for us to conduct an assessment of how this announcement may affect your situation, please contact us to arrange a consultation.



Workers Rights

The Fair Work Ombudsman has this month launched a new online information video series titled 'Working in Australia' to assist foreign workers understand their workplace rights and entitlements in Australia, and where they can go for help and advice.

The videos have been released in 14 languages including: Arabic; Cantonese; Dari; English; Farsi; Indonesian; Khmer; Korean; Mandarin; Serbian; Spanish; Thai; Turkish; and Vietnamese.

These videos can be accessed on YouTube by going to:

www.youtube.com/fairworkgovau

tion and Employment law we can provide you, or anyone you know, answers to questions you may have regarding workplace rights and entitlements. Please contact us if you want to find out more information or arrange a consultation.

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