

Employment Law Services

As of October we will begin offering specific employment law services to our clients dealing in the areas of employment contracts, unfair dismissal, sham contracting, overseas worker's rights and responsibilities and other employment law matters. Should you or anyone you know require assistance with an employment law issue please contact us to arrange a consultation.



NEWSLETTER

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UPDATE: RSMS Changes & Criteria Confirmed

We previously alerted our readers to the fact that the Minister for Immigration and Citizenship had announced that the Perth metropolitan area was to be reclassified as a regional area for migration purposes.

The legislation to implement this change has now been passed and the Perth Regional Certifying Body has now published its requirements. Overseas workers can now be sponsored by Perth employers under the Regional Sponsored Migration Scheme (Subclass 119/857) ("RSMS").

Please read on to find out more about the RSMS and what is now required:

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 applications 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 for this visa

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

CONTACT US

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



Regional Sponsored Migration Scheme Changes Continued

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.

RCB Criteria - Now Announced

The Perth RCB has now set out that the following criteria must be demonstrated by the nominating employer in order for the certification to be approved:

- 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 by an Australian. The RCB's official policy is that this requires evidence that the position has been widely advertised in the previous 3 months.

*** We have spoken to the RCB and they have confirmed that they will generally waive the labour market testing requirements where the nominated person has already been employed on a Subclass 457 Visa by that employer for 2 years;

In addition 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.

The Perth RCB will charge a non-refundable application fee of \$200 per nomination application.

DIAC Criteria

In addition to the criteria prescribed by the Perth 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.

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