

migration to australia

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The Department of Immigration and Multicultural Affairs ("DIMA") manages all applications for all types of permanent visas for migration to Australia. DIMA's Migration Program for 1999/2000 has allocated 70,000 places to permanent migrants and favours applications from people who have education or work skills that will contribute to Australia's economic growth. Emphasis is placed upon people who have a high level of education, occupational skills or a good business record or outstanding talents in a particular field.

The various categories within which people migrate to Australia are:

- Skilled migrants
- Business migrants
- Employer nominated migrants
- Family migrants
- Special eligibility
- Refugees or humanitarian entrants
- New Zealand citizens

skilled

The 1999/2000 Migration Program allocated 35,000 (50%) of the available places to skilled migrants. To be eligible for this category the applicant should:

- have post-secondary qualifications
- have experience in one of the occupations gazetted by the Federal Government
- be under 45 years of age when they apply, and
- have 'vocational level' English (ie the level necessary to practise their chosen occupation).

This category also includes people applying as independent skilled migrants, skills matching and family and region sponsored categories.

A person applying under the independent category must satisfy DIMA (by use of a points test) that they are highly skilled and have the education, skills and employability to

enable them to contribute to the Australian economy. If the person passes the points test, they have the opportunity to apply for skills matching, whereby their details are placed on a database and become available for nomination by a State or Territory government or other employer.

A skilled migrant application will be looked upon more favourably if the person has a spouse or relative in Australia who is willing and able to provide financial sponsorship.

The Federal Government is seeking skilled persons to settle in specific regions in Australia. Therefore, an applicant is more likely to succeed under the skilled regional sponsored category provided they are prepared to settle in nominated areas. The applicant must have a related sponsor and an assurer to establish that they will not have to rely on the Government for financial support.

business

This category enables an applicant to migrate on the basis of their business track record either overseas or in Australia. The applicant must have experience in owning and managing a business or investment portfolio, or be a senior executive in a major corporation. They will be expected to own or part-own and manage a business in Australia, or to make a nominated investment.

The progress of business migrants is monitored after their arrival in Australia. Where no significant steps have been taken towards engaging in business within the first three years of arrival, the Minister for Immigration and Multicultural Affairs has the power to cancel the right to Australian residence of the business person and their family.

employer sponsored

The Employer Nomination Scheme (ENS) has been developed to enable an employer to fill a job vacancy that cannot be filled from the Australian labour market or through employer operated training programs. To qualify for the category, an employee must be sponsored by an Australian Employer. Australian Employers are able to permanently or temporarily recruit skilled staff from overseas, or temporary residents currently in the country.

Labour Agreements operate to enable employers to recruit a designated number of workers from overseas in response to an identified or emerging labour market shortage in Australia.

A further category of employer sponsored migration is Regional Sponsored Migration Schemes, whereby employers in regional or low population growth areas are given assistance when they are unable to fill skilled vacancies from the Australian labour market.

Regional Headquarters Agreements enable key executive and specialist personnel of an organisation to transfer to Australia on either a temporary or permanent basis where DIMA identifies that the organisation manages various functions of an international operation.

In circumstances other than Regional Headquarters Agreements, the employer must demonstrate that they have been unable to fill the vacancy with Australian employees. The Australian employer must nominate all applicants for this visa. Generally, the nominee must have vocational level English and their qualifications must be assessed against the Australian equivalent. Australian health and character requirements also apply.

family stream

The 1999-2000 Migration Program allocated 32,000 of the 70,000 (approximately 46%) available migrant positions to the family stream. Family applicants must be nominated or sponsored by a close family member or fiancé living in Australia. An applicant for migration under this visa is selected on the basis of their family relationship with their Australian sponsor. There is no test for skills or language ability as for Skilled Stream migrants. Applicants are assessed on an individual basis and are also assessed against the health and character requirements.

Family stream applicants can be sponsored for migration in one of the following categories:

- *Partner*: spouse, prospective marriage (fiance), interdependency
- *Child*: dependent child, adoption, orphan relative
- *Parent*: working age parent, aged parent, designated parent
- *Other family*: aged dependent relative, remaining relative, carer

Family stream applicants are subject to an Assurance of Support (AoS) bond. The AoS bond is a legal undertaking by the assurer to repay the Government any social security payments paid to the nominee in the first two years after migration.

The Government has set a capped limit for some of the categories of Family Stream visas. Accordingly, once the allocated number of visas have been granted, no further visas can be issued in that category in that year.

The Government has also issued a General Direction for guidance on the order of priority for processing Family Stream applications. A higher priority is given to child and partner applications than that given to parent applications.

special categories

Special migration categories include the following:

- *Former citizen*: the applicant must have lived in Australia for at least

two years and lost Australian citizenship for limited reasons. The applicant must have personal, cultural, business or strong family relationships and have maintained close links to Australia.

- *Former resident*: the applicant must have spent the greater part of their life before the age of 18 in Australia. They must have maintained close links with Australia and never have been an Australian citizen.
- *Family of New Zealand citizen*: the applicant must be a dependent of the New Zealand citizen - either their child, parent, brother, sister, grand parent, grand child, aunt, uncle, niece or nephew.
- *Distinguished talent*: The applicant must have an outstanding record of achievement in a particular field or profession, in the arts or sport. The applicant must demonstrate that they will be an asset to Australia and be nominated to an Australian citizen, permanent resident or organisation with a national reputation in the given field.
- *Close ties*: The applicant must be in Australia and satisfy one of the following four basic requirements:
 - last entered Australia before 1 January 1975;
 - previously an Australian permanent resident and returned within 5 years;
 - spent the greatest part of their first 18 years in Australia;
 - the application is made within 12 months from the day their last substantive visa expired and they have maintained close ties with Australia according to the given criteria.
- *Certain unlawful non-citizens*: The applicant must have:
 - arrived in Australia as a minor before September 1994;
 - become an unlawful non-citizen before turning 18, and since turned 18; and
 - spent most of their formative years in Australia.

humanitarian program

In the past 50 years, almost 600,000 refugees and displaced people have resettled in Australia. The program

reflects an international protection framework and a cooperative responsibility under United Nations guidelines for resolving refugee problems. In keeping with the UN guidelines, asylum is normally provided by the closest safe country from that which the refugee has fled. This proximity is intended to enable the person to return to their homeland in safety and dignity as soon as possible.

Australia's offshore resettlement program comprises:

- *Refugee category*: for people who are subject to persecution and have been identified as in need of resettlement.
- *Special humanitarian program*: for people who have suffered discrimination amounting to gross violation of human rights. The applicant must have strong support from an Australian citizen or resident or community group.
- *Special assistance category*: for people who do not meet the refugee or special humanitarian criteria but are in situations of discrimination, displacement or hardship. Generally the application is proposed by close family members of the applicant.

The 1999-2000 Humanitarian program comprises 12,000 places. 10,000 of those places are for people from overseas: 4,000 refugees; 4,300 special humanitarian program applicants; 900 special assistance category and 2,000 places for people already in Australia who are found to be in need of protection in the Onshore protection program. Flexibility is maintained between the categories according to levels of need and any emerging humanitarian crises.

The Humanitarian program allows holders of humanitarian visas to support applications of the person's immediate family members to enter Australia. To be eligible, the immediate family relationship must have been declared to DIMA by the proposers before they were granted their visas and time limits apply to applications. It is important that the applicant contact the relevant Australian Embassy or Consulate to find about specific procedures **before** the application is lodged.

how to apply for a permanent visa

Booklets with detailed information and application forms on the family stream, employer sponsored, skilled, business skills and special visa categories are available from the DIMA website (www.immi.gov.au). The booklets are also available from any Australian mission overseas or regional office of DIMA in Australia. Each booklet costs \$10 and provides details on application charges, health, character and settlement in Australia.

The booklets do not cover information on temporary or humanitarian visas and separate information forms are also available for each of the Special Assistance Categories under the Humanitarian Program.

To make a valid application, an applicant is usually required to lodge a completed approved form (if there is one) together with payment of the amount of the visa application charge payable at the time of application (if any), and meet any other relevant requirements in Schedule 1 of the Migration Regulations.

An application will not be valid, and therefore cannot be considered, until all of the above requirements have been met.

exceptions

There are numerous people who wish to stay in Australia, who need not complete the migration documentation. These include those who:

- are *already in Australia* and want to stay permanently (Permanent Residence)
- want to visit and work for a *limited time only* (Temporary Residence)
- want to *retire* to Australia (Retirement)
- are already living in Australia but want to *travel* on their foreign passport (Return Travel Documents)

want more information?

Try the Department of Immigration and Multicultural Affairs website (www.immi.gov.au). Relevant legislation includes:

- *Migration Act 1958*
- Regulations made under the *Migration Act 1958* -
 - Migration Regulations
 - Migration Agents Regulations
 - Migration (Iraq - United Nations Security Council Resolutions) Regulations
 - Migration (Republic of Sudan - United Nations Security Resolution No 1054) Regulations
- *Migration Reform Act 1992* and *Migration Reform (Transitional Provisions) Regulations*

- *Australian Citizenship Act 1948* and *Australian Citizenship Regulations*
- *Migration Agents Registration (Application) Levy Act 1992*
- *Migration Agents Registration (Renewal) Levy Act 1992*
- *Immigration (Guardianship of Children) Act 1946* and *Immigration (Guardianship of Children) Regulations*
- *Migration (Health Services) Charge Act 1991* and *Migration (Health Services Charge) Regulations*
- *Immigration (Education) Act 1971* and *Immigration (Education) Regulations*
- *Immigration (Education) Charge Act 1992* and *Immigration (Education) Charge Regulations*
- *Aliens Act Repeal Act 1984*
- *Temple Society Trust Fund Act 1949*
- *Migration Legislation Amendment Act (No. 5) 1995*
- *Migration (Visa Application) Charge Act 1997*

Don't forget that online access to legislation and regulations is available from:

- SCALEplus (legal information retrieval system owned by the Australian Attorney General's Department; and
- AustLII (the Australasian Legal Information Institute).

refugee protection:

chen shi hai v minister for immigration and multicultural affairs

introduction

Asylum seekers are protected in Australia provided they meet the United Nations' definition of 'refugee', as defined in the 1951 Convention and 1967 Protocol relating to the Status of Refugees.

The Convention defines 'refugees' as people who:

- are outside their country of nationality or their usual country of residence; and
- are unable or unwilling to return

or to seek the protection of that country due to a well-founded fear of being persecuted for reasons of:

- race;
- religion;
- nationality;
- membership of a particular social group; or
- political opinion.

Where an application for a protection visa (ie. a visa that confirms the applicant's refugee status and confers

protection in Australia) is denied, merits review is available in either the Refugee Review Tribunal (RRT) or the Administrative Appeals Tribunal, depending on why the application was refused. Where merits review fails, judicial review of the Tribunal's decision is available in the Federal Court.

In 1998-1999, 979 applicants were granted protection visas by the Department of Immigration and Multicultural Affairs (DIMA) at first