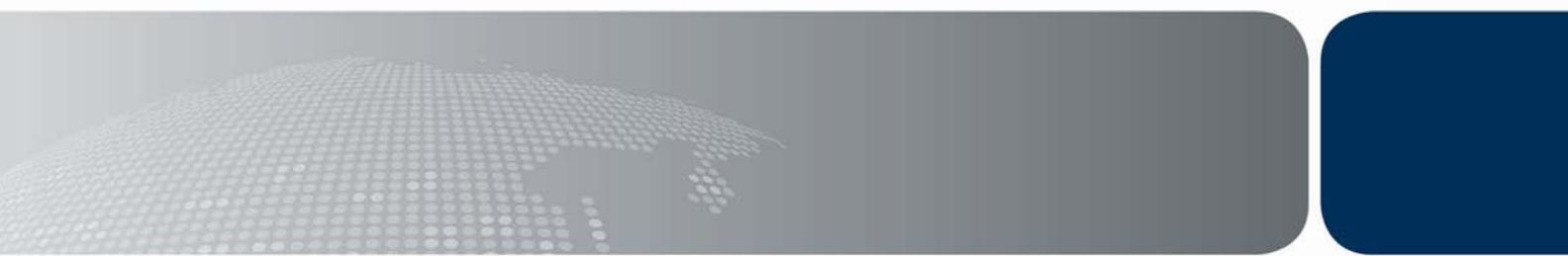




Australian Government
**Department of Immigration
and Citizenship**

Guide to the 457 Program

May 2012





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Background information

Introduction

Australia has a number of skilled migration programs each with a different aim and purpose. The 457 visa program is the simplest and fastest option to address immediate skill shortages in a business. This guide is designed to provide an overview of the 457 program.

The department also provides a booklet (Booklet 9) that comprehensively covers all aspects of the 457 program. If there is something that you would like further information on, then please look at the booklet. You can find the booklet on the department's web site.

See: www.immi.gov.au/allforms/booklets/books9.pdf

What is the 457 visa program?

The 457 program allows employers to address labour shortages by employing overseas workers where they cannot find an appropriately skilled Australian.

The 457 visa is a temporary skilled visa. This means that 457 visa holders can only work in eligible skilled occupations, and they do not have the right to stay in Australia permanently.

457 visa holders can:

- work in Australia for a period of between one day and four years
- change employers, providing the new employer is an approved sponsor
- bring any eligible family members, who can work and study, with them to Australia
- travel in and out of Australia as often as they like.

What occupations are eligible under the 457 program?

The 457 program is for skilled occupations only. This will mean that for some industries many typical occupations will **not** be eligible under the 457 program.

The department uses the Australian and New Zealand Standard Classification of Occupations (ANZSCO) to determine which occupations are eligible.

ANZSCO classifies occupations according to five 'skill levels'. Generally, occupations that are classified as skill level one, two and three are eligible under the 457 program.

Put another way, occupations that have a skill level equivalent to at least an AQF Certificate III and two years of on the job training and above are eligible under the 457 program.

The department has a full list of the occupations that are eligible on the website.

See: www.immi.gov.au/skilled/skilled-workers/legislative-instruments

What types of occupations are eligible?

The top 10 most common occupations in the 2010-11 financial year were:

Developer Programmer
Management Consultant
Program or Project Administrator
Software and Applications Programmers nec
Accountant (General)
Specialist Managers
University Lecturer
Marketing Specialist
Civil Engineer
ICT Business Analyst

What can I do if the vacancy in my business is not in an eligible 457 occupation?

If the vacancy in a business is not an eligible occupation then the business will not be able to use the standard 457 program.

The only option available to employ a 457 visa holder for ineligible occupations is to negotiate a 'labour agreement' with the department for those workers.

See: www.skilledmigration.govspace.gov.au/files/2011/08/Labour-Agreement-Information-Pack-October-20115.pdf

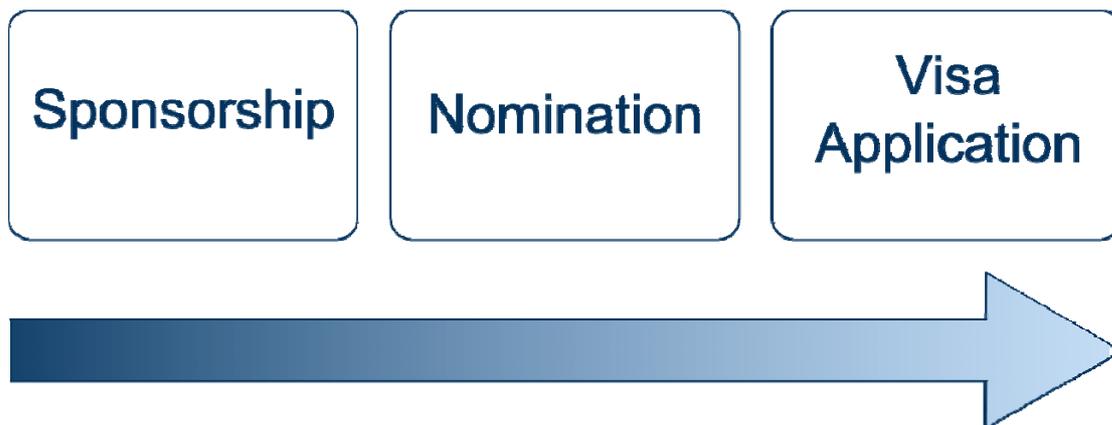
Using the 457 program

How do businesses sponsor overseas workers?

There are three steps to 'sponsoring', or employing, an overseas worker on a 457 visa. These are as follows.

Sponsorship	The employer applies for approval as a standard business sponsor.
Nomination	The employer nominates an overseas worker to fill a position in their business.
Visa application	The person nominated to work applies for the 457 visa.

The following diagram illustrates the three stages and their order for subclass 457 visas:



The employer is responsible for the sponsorship and nomination stages. The overseas employee is responsible for the visa application, although the sponsor may wish to assist them to ensure that they complete the process successfully.

How long will it take to process an application?

The department seeks to process 457 visa applications as quickly as possible. In order to achieve the fastest possible processing time, businesses should make sure that they lodge complete applications. Applications with missing information may take longer to process.

Sponsorship

How does a business become a standard business sponsor?

To nominate skilled overseas workers for a 457 visa, the business must first become an approved standard business sponsor. A standard business sponsor is the term the department uses for approved sponsors under the 457 program. The point of the sponsorship stage is to assess whether the business is a suitable employer for overseas workers on 457 visas.

The key requirements for becoming an approved sponsor are:

- demonstrating that the business is lawfully operating
- attesting to a strong record of employing local labour and non-discriminatory employment practices and
- demonstrating a strong record of training Australians.

The business will be required to complete an application to become a standard business sponsor by completing the relevant form and submitting it to the department for assessment. This can be completed online.

See: www.immi.gov.au/e_visa/employer-sponsored.htm

Lawfully operating a business

This requirement is fairly self explanatory. It requires the business to demonstrate that it is legally established and that it is actually operating. This can be done by

providing documents such as Business Activity Statements (BAS) or profit and loss statements for the last financial year.

Attesting to employing local labour

The 457 visa program is designed to only be used where businesses cannot find an appropriately skilled Australian. The sponsorship form requires the business to make an attestation that it has a strong record or demonstrated commitment to employing local labour and non-discriminatory employment practices.

Training of Australians

The most complicated aspect of the standard business sponsorship application relates to demonstrating the training of Australians. The 457 program requires businesses to demonstrate that they have a strong record of training Australians by meeting either of the 'training benchmarks'. The benchmarks require either demonstrating recent expenditure on training Australians, or recent expenditure to an industry training fund.

For further information on the training benchmarks, please read Booklet 9.

See: www.immi.gov.au/allforms/booklets/books9.pdf

Sponsorship Obligations

The department treats the welfare of overseas workers on 457 visas very seriously. There are a number of sponsorship obligations that businesses will take on as an approved sponsor, and it is important that they are aware of these obligations as penalties may apply if they do not comply.

See: www.immi.gov.au/allforms/booklets/books9.pdf

Nomination

The second step in using the 457 program is nominating a worker to fill a position in a business. The point of this step is to ensure that the occupation is eligible under the 457 program, and that the overseas worker is being paid the appropriate salary for the position in Australia.

The business will need to have at least lodged a sponsorship application before it can nominate a position for an overseas worker.

Just like with the sponsorship stage, the business will be required to complete a form and submit it to the department for assessment. This can be done online.

See: www.immi.gov.au/e Visa/employer-sponsored.htm

Selecting a 457-eligible occupation

As discussed earlier, only eligible skilled occupations can be sponsored under the 457 program. You can see the full list of eligible occupations on the department's website.

See: www.immi.gov.au/skilled/skilled-workers/legislative-instruments/

Market Salary Rates

The 457 program requires that overseas workers are paid at least as well as equivalently experienced Australians in the same workplace. Essentially this means that overseas workers can not be used to undercut Australian wages or conditions. This requirement is known as the 'market salary rate'.

How do I show that an overseas worker is being paid the market salary rate?

Depending on the business, demonstrating the market salary rate can be simple or quite complicated. If the business has an equivalent Australian worker to the overseas worker then the business will need to tell the department how much the Australian is paid and show that the overseas worker will be paid at least as well.

If the business does not employ an equivalent worker, then it will need to demonstrate why the amount it is paying is in-line with what an Australian would be paid to do the same job. Further detail on the market salary rates requirement is in Booklet 9.

See: www.immi.gov.au/allforms/booklets/books9.pdf

The Temporary Skilled Migration Income Threshold

The business must also demonstrate that the annual market salary rate is at least equal to the Temporary Skilled Migration Income Threshold or the TSMIT. Essentially the TSMIT represents the minimum amount that an overseas worker needs to be paid to live in Australia, considering that they don't have access to the social and medical safety nets of Australian citizens.

The TSMIT is currently set at \$49 330 and is indexed annually.

Visa application

The visa application is the third stage of sponsoring an overseas skilled worker under the subclass 457 visa program. The overseas skilled worker and any dependants must apply for and be granted a visa to travel to or remain in Australia.

The business will need to have at least lodged a sponsorship application, and a relevant nomination for the overseas worker to lodge a visa application.

The point of the visa application stage is to assess whether the overseas worker has the skills to perform the job and meets the required level of English proficiency as well as whether they meet the health and character requirements to enter Australia.

Just like the sponsorship and nomination stages, the visa application can be lodged online.

See: www.immi.gov.au/e_visas/employer-sponsored.htm

Genuine intention and skills assessments

Visa applicants are required to demonstrate that they have a genuine intention to perform the nominated occupation, and are required to demonstrate that they have the skills and experience necessary to perform the occupation. Evidence such as employment references, educational certificates or formal skill assessment reports can be provided to demonstrate this requirement.

English language proficiency

It is important that 457 visa holders can speak, write and understand a sufficient level of English while they are in Australia. The department uses the International English Language Testing System (IELTS) to determine an applicant's level of English language proficiency.

Most applicants in trade occupations (including cooks and chefs) must demonstrate that their level of English proficiency is equivalent to an IELTS test score of at least five in each of the four test components of speaking, reading, writing and listening. Some applicants are exempt from this requirement.

See: www.immi.gov.au/skilled/skilled-workers/legislative-instruments/

Health insurance

All 457 visa applicants must provide evidence that they have made adequate arrangements for health insurance during the period of their intended stay in Australia, before grant of the visa. Health insurance from either Australian or overseas insurance providers is acceptable and will be considered adequate as long as the policy provides at least the minimum cover required by the department.

Further information

For further details on any of the stages of the 457 visa process please read Booklet 9:

See: www.immi.gov.au/allforms/booklets/books9.pdf