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Legal and Constitutional Affairs References Committee

Parliament House

Canberra ACT 2600

Australia

Via email:<legcon.sen@aph.gov.au

07/06/2013

Dear Secretary

Submission Framework and operation of subclass 457 visa, enterprise migration agreements and regional migration agreements

We thank you for the opportunity to provide additional comments. Please find our comments enclosed.

Yours sincerely

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Several issues were raised during the proceedings that we would like to address. In some cases these issues concerned provisions already available in the legislation in others instances we would the opportunity to respond or address the issues in light of our experience as practitioners and educators in this area of migration law.

Sponsorship

The issue of introducing changes to requirements to allow 457 visa holders the right to change sponsor following a minimum period of three months was raised during committee hearings[1]. We would like to bring to the Committees attention that there is currently no legislative barrier in place that prevents or inhibits a 457 visa holder from changing sponsors. Condition 8107[2] requires a 457 visa holder to work in the position that was nominated. Therefore a 457 visa holder can change sponsors, once a new nomination is approved. The ease with which 457 holders can change sponsors is in fact a major disincentive to employing someone on a 457 directly from overseas. An employer may expend significant amounts of money to recruit, relocate and obtain a visa for an employee only to have them move immediately to another employee. This particularly impacts small employers.

On hire companies

The issue of on hire companies was raised with the committee[3]. Concerns focused on regulation of this area and concern that companies can make an application to hire overseas staff without testing or 'checks.

We would like to clarify that businesses seeking to enter into a Labour Agreement with the Commonwealth are required to demonstrate that they have a satisfactory record of local employment, and show proof of labour market testing. As such, there are rigorous and comprehensive criteria set by DIAC which ensures prerequisites are fully met in advance of becoming party to a Labour Agreement. Furthermore, these requirements must be met in advance each and every year of the Term of Operation (most usually 3 years) of a Labour Agreement.

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[1] Hansard, Legal and Constitutional Affairs References Committee, 23 May 2013,p2

[2] Migration Regulations 1994, Schedule 8

[3] Hansard, Legal and Constitutional Affairs References Committee, 23 May 2013,p3

On-hire Labour Agreements also contain clauses that put the onus on the labour hire firm to ensure that the actual workplace complies with all relevant workplaces law, that the sponsored worker is not placed into the workplace of a sanctioned sponsor, and that the client organization contract aligns with the terms and conditions of the labour agreement.

Benchmarks

With regard to current 457 benchmarks and their effectiveness in securing sponsor training of Australian workers and specific occupations for which 457 visas are granted;[4] we advocate that the primary objective of 457 training requirements in skilled trade occupations should be to increase training through trade apprenticeships and graduate cadetships in the specific occupations allegedly in short supply. It should be noted that Migration Regulation 2.59(d)(e)(f) - Instrument F2012L01311 addresses training benchmarks. Where a sponsor meets training benchmark as specified in that Instrument, they are required to contribute at least 2% of the payroll of the business annually in payments to an industry training fund that operates in the same industry as the business.

Impact of 457 visas on wages

In regard to comments and concerns that employees may use 457's to reduce wages in the marketplace[5] we would like to draw your attention to Regulation 2.79(2) which specifically addresses the obligation of a 457 Sponsor to ensure equivalent terms and conditions of employment. In fact it is our experience as practitioners that the effect of employing staff on 457 can often be exactly the opposite – to push wages up in a workplace.

Furthermore the legislation has built in protections for workers where there is no Australian worker employed in the job. Migration Regulation 2.79(2) addresses the obligations of 457 Sponsors to ensure equivalent terms and conditions of employment to 457 visa holders.

Skills v Job Titles

To clarify concerns regarding skill sets v job titles[6] we would like to reinforce that the nomination process in practice is quiet complex. In practice, the nomination process includes the nominating of;

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[4] Hansard, Legal and Constitutional Affairs References Committee, 23 May 2013,p5

[5] Hansard, Legal and Constitutional Affairs References Committee, 23 May 2013,p7

[6] Hansard, Legal and Constitutional Affairs References Committee, 23 May 2013,p11

- the ANZSCO code
- the position title
- a description of the responsibilities and main duties of the position
- qualifications
- essential skills and employment experience required.

Then the nominator certifies that the qualification and experience of the nominee are commensurate with the qualification and experience specified for the occupation in the ANZSCO dictionary or Legislative Instrument.

Regional Exemptions

The issues of regional exemptions were raised before the committee. Whilst we have no recommendation regarding the reintroduction of exemptions it is important that the committee recognise the program did contain a number of regional concessions from 2006 to 2009 (including a lower MSL - Minimum Salary Level). However, the Deegan Report (released November 2008) recommended regional concessions be removed from the program. Concessions were subsequently eliminated effective September 2009. The Deegan Report stated that regional concessions needed to be "carefully balanced against other government labour market mechanisms which encourage Australians, and in particular Indigenous Australians, into the workforce in these areas."

Correction

Senator Xenophon referred to an alternative proposal raised before the committee which is about a two stream process and indicated that ANU appeared to broadly support this.

The ANU does not support the concept of a two stream process for semi- and low-skilled workers on 457 visas.