

Business Skills Visas: From 1 March 2003

From 1 March 2003, the Government has introduced the new business skills migration program which replaces the old categories of business visas.

Most business visas are now based on a *two-stage assessment*. Applicants must first apply for the provisional visa, where they must satisfy the *2 of 4 year fiscal rule* and other requirements of that subclass before they become eligible to apply for permanent residence in Australia.

The only visa that applicants can apply directly for permanent residence is that of the *high calibre* category, the *Business Talent Visa (subclass 132)*.

Sponsorship from a State or Territory government lowers the criteria level for applicants whereby the requirements in each category are less stringent than those who are unsponsored.

The available visas are as follows.

(1) Provisional Visas

The provisional visas include the following categories:

- subclass 160 (Business Owner);
- subclass 161 (Senior Executive);
- subclass 162 (Investor);
- subclass 163 (State/Territory Sponsored Business Owner);
- subclass 164 (State/Territory Sponsored Senior Executive); and
- subclass 165 (State/Territory Sponsored Investor).

These visas can be applied for offshore or onshore but need to be lodged with the Department of Immigration's office in Perth with exception to applicants whose residential address is in People's Republic of China (Hong Kong and Macau included) and Taiwan. Those applications are to be lodged at the office in Hong Kong and Taiwan respectively.

(2) Permanent Visas

Applicants who wish to apply for permanent residence under the business skills category must hold the relevant provisional visa, i.e. a visa under subclasses 160-165. If the applicant does not hold a provisional visa, they can only apply directly for the Business Talent visa (subclass 132).

Permanent visas include:

- subclass 890 (Business Owner);
- subclass 891 (Investor);
- subclass 892 (State/Territory Sponsored Business Owner);
- subclass 893 (State/Territory Sponsored Investor);
- subclass 845 (Established Business in Australia); and
- subclass 846 (State/Territory Sponsored Regional Established Business in Australia).

(A) Business Owner (Subclass 890/892)

Applicants under this category need to demonstrate that they have enjoyed a successful business career as a business owner or participated in senior management, with significant assets and annual turnover. They also need to show that they are

committed to this venture and are subject to a monitoring survey 24 months following initial entry into Australia before the permanent residence category may be applied for.

In applying for the permanent visa under *subclass 890 or 892*, the applicant must hold a provisional visa under *subclass 160-165*.

(B) Senior Executive (Subclass 845/846)

This type of visa relate to applicants who hold a senior position in overseas corporations or major businesses. Applicants must establish the requisite past experience that has significantly affected the business they worked in. On top of this, they must also satisfy the required net assets and annual turnover. Similar to the Business Owner category, visa holders will be subject at 24 months after initial entry to complete a monitoring survey in order to establish the realistic commitment to an Australian business.

Holders of the provisional visa under *subclass 161/164* (after 2 years or so) may apply for the permanent visas under *subclass 845 or 846*.

(C) Investor (Subclass 891)

This category applies to applicants who are skilled in investment management. The applicant is required to participate in a government approved designated investment. They need to satisfy other requirements such as proving significant assets with a proven successful career in business or investment activities. They must demonstrate vocational English and if unsponsored, be under the age of 45 years. Provisional visa holders are *not subject to monitoring surveys* but the applicant must still show that they are committed to continue the investment activity (of A\$1,500,000) for 4 years.

To apply for the permanent visa, *subclass 891/893*, the applicant must hold a visa under *subclass 162/165*.

(D) Business Talent (Subclass 132)

This is the only direct method of applying for permanent residence (the rest have a two step arrangement). This visa is recommended for business migrants that have an overall successful business career and is sponsored by a State or Territory government. When applying for this visa, the applicant will need to prove that they have achieved significant turnover in a business(es) of at least

A\$3,000,000, significant personal and business assets, for at least 2 of the 4 fiscal years immediately before the application to prove commitment.

(3) Visas prior to 1 March 2003

The *Independent Executive* category under the Long-stay visa, subclass 457 has been amended and **is only available** to existing visa holders of the same subclass who have been conducting business in Australia for at least 15 months. If the 15 months criterion is not met, then the applicant must have the endorsement of the State or Territory government to say the business is beneficial to that area. Applicants currently holding a visa *subclass 457* (Independent Executive) may choose to either renew that visa, apply for visa *subclasses 845 or 846, 132, 892* (Permanent visas) or *160-165* (Temporary visas). *Subclasses 845 and 846* remain the same and applications need to be made in Australia.

(4) English Language Requirement

Unsponsored applicants are required to have vocational English. This means that the applicant needs to be able to *read, write, understand and speak English well enough to communicate effectively for most purposes in your own field of business.*¹

Sponsored applicants do not necessarily need to satisfy this criteria. However, applicants over the age of 18 at the time of application who do not satisfy the vocational English requirement will need to pay a second instalment of \$4,980 for primary applicants and \$2,485 for secondary applicants.

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Important: This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

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¹ Department of Immigration, *Business Skills Entry (Booklet 7)* p.27