



In this issue:

Australia: Changes to the Temporary Work (Short-Stay Activity) visa (subclass 400)..... 1

Australia: Changes to the Temporary Work (Short-Stay Activity) visa (subclass 400)

Background

The Temporary Work (Short-Stay Activity) visa is for people who want to travel to Australia for up to three months to do short-term, highly specialized, non-ongoing work, or participate in non-ongoing cultural or social activities at the invitation of an Australian organization, or in limited circumstances, participate in an activity or work relating to Australia's interests.

The Australian Government has announced changes to the Temporary Work (Short-Stay Activity) visa, which will extend the period of time the holder of a subclass 400 visa may perform highly specialized work in Australia in a non-ongoing role.

Changes

Currently, a subclass 400 visa holder may work in Australia for up to three months in any 12-month period. However, from 23 November 2014, individuals making an application for a subclass 400 visa may request a period of stay of up to six months in any 12 month period.

This change will provide greater flexibility to businesses requiring foreign nationals to work in Australia on short-term assignments of up to six months duration.

For the grant of a subclass 400 visa, it is important that the duties to be performed will be completed within the period of stay granted, which is normally up to three months. However, if there is a demonstrated need for the applicant to work in Australia for more than three months in any 12-month period and the case officer assessing the application determines that the purpose of stay warrants a longer period, a stay of up to six months may be approved.

Visa holders may travel to Australia within six months of the grant of the visa and remain in Australia for no more than six months cumulatively, after their first entry to Australia on the subclass 400 visa. Visas may be granted with single or multiple entry.

It is important to note that departure and re-entry to Australia on a multiple-entry subclass 400 visa does not trigger a new period of stay. The six months is a cumulative stay in Australia in any 12-month period.

The total period of stay in Australia will be determined by the initial date of entry following the grant of the subclass 400 visa. For example, if the subclass 400 visa was granted on 1 December 2014, for a stay of six months, and the initial date of entry to Australia was on 1 May 2015, the visa holder would be permitted to remain in Australia for six months from 1 May 2015, as long as the total cumulative period of stay does not exceed six months during the 12-month period from their initial date of entry to Australia.

A strong business case must be presented to show that the 457 visa program is not being circumvented and there is a need for a subclass 400 visa for more than three months. The following is the type of information, which should be provided in support of a request for a period of stay longer than three months:

- Activities undertaken by the visa holder will not adversely affect Australian workers;
- Nature, size, duration, and importance of the project;
- Evidence that specialist advice/expertise from overseas is required;
- The number of Australians being employed on the project and/or by the business;
- Time needed to train an Australian to do the proposed work over a longer period; and
- Evidence that a search for Australians to do the proposed work was unsuccessful.

The subclass 400 visa is neither an appropriate substitute to avoid the more stringent 457 visa requirements, including market salary requirements nor should it be used to allow someone awaiting a decision on another visa application to commence work in Australia. Visa holders must be paid in accordance with relevant Australian workplace legislation, including Awards, the Temporary Skilled Migration Income Threshold (TSMIT), etc.

Applications can be lodged electronically for qualifying passport holders, or alternatively must be lodged at an Australian Consulate or Embassy overseas. The visa applicant must be outside Australia at the time the subclass 400 visa application is lodged.

Deloitte's view

The introduction of greater flexibility for accommodating short-term business activity in Australia is welcomed by Deloitte. There are a number of businesses, which employ project-related labor in Australia where the skills are not available locally, and where the nature of the work is not ongoing. The changes to the subclass 400 visa will provide these businesses with greater flexibility to deploy their skilled foreign national workforce to meet local operational needs.

Given that the subclass 400 visa is not sponsored by the employer, it will be necessary for the visa holder to closely monitor their period of stay in Australia on a subclass 400 visa to ensure that the holder does not inadvertently overstay beyond the approved period. In this regard, Deloitte recommends that employers consider deploying systems to track and monitor immigration compliance of their business traveler population.

It will not be possible to identify precisely the extent of supporting documentation required by overseas missions until after the implementation of this change on 23 November 2014. Deloitte is concerned that Australian missions in certain locations may apply a higher threshold of supporting documentation required where the period of stay requested is greater than three months.

MARN:9793644

— Mark Wright (Sydney)
Partner
Deloitte Australia
mawright@deloitte.com.au

George Kyriakakis (Perth)
Partner
Deloitte Australia
gkyriakakis@deloitte.com.au

Fiona Webb (Melbourne)
Account Director
Deloitte Australia
fwebb@deloitte.com.au

Beth Fitzpatrick (Brisbane)
Account Director
Deloitte Australia
bfitzpatrick@deloitte.com.au

Have a question?

If you have needs specifically related to this newsletter's content, send us an email at clientsandmarketsdeloittetax@deloitte.com to have a Deloitte Tax professional contact you.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see <http://www.deloitte.com/about> for a more detailed description of DTTL and its member firms.

Disclaimer

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte network") is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.