

Immigration Law Update

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Key Contacts

Maithri Panagoda

Partner
Phone 02 8226 7313
mpanagoda@codea.com.au



Jamie Quach

Solicitor
Phone 02 8226 7323
jqquach@codea.com.au



Christina Kwak

Solicitor
Phone 02 9291 7175
ckwak@codea.com.au



In this Immigration bulletin from the Immigration lawyers at Carroll & O'Dea, 2 areas of immigration on which you may have little knowledge are raised and discussed. These are immigration of carers for those injured at work and immigration issues as they affect religious orders.

As always, you are welcome to ring Maithri, Christina or Jamie to discuss any of these immigration issues in more detail.

1. MIGRATION AND PERSONAL INJURY

When a person is injured at work or in an accident they generally require care of a relative.

In circumstances where the injured person does not have a carer available in Australia, there are options of applying for short term or long term visas for overseas relatives to travel to Australia to provide care and domestic assistance to the injured person.

Short Term Visas

Visitor visas are available for 3 – 12 month stays in Australia. This visa would be suitable for people who require care and emotional support in the short term.

The processing time for visitor visa is approximately 2 – 4 weeks, but may be expedited in cases where urgent assistance is required.

Permanent Visas

A permanent carer visa will allow an overseas carer to remain in Australia indefinitely. However, to satisfy the requirement of this visa, the Australian resident in need of care will need to undertake an independent medical assessment to determine whether their injuries are severe enough to require a permanent carer.

In cases where the injured person has sustained serious permanent injuries such as a brain injury, there would be no difficulty in meeting the threshold for a carer.

The second criteria for this visa, is that there is no other suitable carer or government support available in Australia to provide the level of care required by the injured person.

The processing time for a permanent carer visa is approximately 10 – 12 months.

2. FAMILY MIGRATION

There are a number of migration visas available to overseas applicants to be reunited with family members in Australia.

- ▶ Visitor visas are available for overseas relatives to visit Australia for holidays, weddings, graduation ceremonies ect. The period of stay for allowed for visitor visas ranges from 3 – 12 months.
- ▶ Spouse visas are available for applicants who are in a genuine marital relationship with an Australian resident or citizen. Fiancé, defacto and same sex partners are also eligible to apply for partner migration.
- ▶ Child visas are available for biological or adopted children of Australian residents or Citizens. They are permanent visas available to children under 25 years of age however, if the child is over the age of 18 they will need to prove that they are dependent on their Australian parent for financial and emotional support.
- ▶ Parent visas are available to applicants who have at least half of their children living in Australia as citizens or permanent residents.
- ▶ Aged Dependent visas are available for elderly applicants who are being wholly supported by relatives in Australia and have no emotional or financial support in their home country.
- ▶ Last remaining relative visas are specifically available to applicants whose parents and siblings are all residing in Australia. The applicant will need to show that they are the only member of their immediate family who is not an Australian resident.

.. continued page 2

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3. RELIGIOUS VISAS

For the religious organisations wishing to bring overseas priests, ministers, monks, religious, lay workers, whether it be for work, study or training, there a number of visa subclasses which are available to suit each specific purpose.

Subclass 457 or Permanent Visas under the Labour Agreement:

If the religious institution is large in size, it may consult the Government about entering into a Labour Agreement to bring its religious workers on a periodic and ongoing basis. Generally, Labour Agreements enable Australian employers to recruit a specified number of workers from overseas in response to an identified or emerging labour market (or skill) shortages in the Australian Labour market. Employees may come to Australia on either a temporary or permanent basis.

Under the Agreement, overseas religious workers may apply for a subclass 457 - Temporary Business Long Stay Visa for temporary stay, whilst those who intend to stay in Australia on a permanent basis can apply for a subclass 120/855 - Migrant/Residence Labour Agreement Visa.

As an example, the Australian Catholic Church has a Labour Agreement with the Government and entrusted the Australian Catholic Migrant and Refugee Office ("ACMRO") with the job of administering such a Labour Agreement for the Church. This agreement provides temporary and permanent entry to, and stay in Australia for a specified number of Priests, Religious and qualified lay people and their dependents (where applicable) for service in the Catholic Church in Australia.

As the Labour Agreement works as a pre-approved sponsorship, each potential applicant can apply for her or his visa as long as they meet the requisite qualification and work experience requirements set by the respective Labour Agreement and other requirements such as health and character requirements.

Work Visas under Religious Worker Visa – Subclass 458

This visa is appropriate for relatively smaller religious organisations that would like to invite a religious worker as a one-off recruitment.

The visa holder must work full time and carry out work of a religious nature. The organisation that sponsors the applicant must be an established one and meet various sponsorship requirements which include having financial capacity to sponsor the worker, a standing in Australia as a religious organisation, and undertaking that they will meet the applicant's travel expenses at the expiry of the visa.

Student Visas (Subclass 570 – 574) and Trainee Visas (Subclass 442):

For the religious novices or trainees, student visas or trainee visas may be the most appropriate option.

Whether it is an English language program or a theology degree, the applicant needs to meet a number of complex visa requirements for a student visa. They often involve an assessment of English proficiency, minimum educational requirements and for an applicant to meet certain criteria relating to their finances and health for example. The level of proof and documentation requirement varies depending on the nationalities of the applicant. Nationalities are organized within five assessment categories with students from lower assessment level countries often facing stricter requirements with little access to discretion.

If the applicant has to go through formal training with the religious organisation other than academic studies, a subclass 442 – Occupational Trainee Visa may be most appropriate.

Other Immigration Issues:

There are other general criteria such as health and public interest requirements which the visa applicant must be aware of. Various complications and issues can arise during the visa process or while the applicant holds a temporary visa. Some examples may be:

- ▶ where the applicant has a prior history of being exposed to certain illnesses such as tuberculosis;
- ▶ where the applicant fails to renew their visa and unintentionally stays beyond expiration of their visa in Australia;
- ▶ the applicant fails to abide by the conditions imposed on their visas;

There are exemptions, discretion and a review process available under law which may rectify some issues that may arise if assistance is sought appropriately.

At Carroll & O'Dea Lawyers, we advise and assist a number of religious organisations in relation to various legal matters, including immigration and visa issues. Please do not hesitate to contact us if you have any queries

FURTHER INFORMATION

Carroll & O'Dea are able to provide advice and services on any of the above visas. We are experienced in all immigration law areas.

Please contact our office on 1800 816 559 for a consultation