

The Employer Nomination Scheme Visa allows foreign individuals who have been nominated (sponsored) by an employer to permanently live and work in Australia. This article will discuss how a foreign individual can obtain permanent residency in Australia through the Employer Nomination Scheme Visa.



## **A. INTRODUCTION**

The Employer Nomination Scheme Visa lets foreign skilled workers obtain Australian permanent residency provided that they have an Australian employer sponsoring them.

The purpose of this visa is to fill positions in the Australian workforce where there is a genuine need for a foreign person. In other words, a foreign person is needed by the sponsoring employer because Australian workers are unavailable or unsuitable for the position.

Under this visa, foreign applicants can permanently live and work in Australia; sponsor family members in their application; and apply for Australian citizenship later down the track.

- Foreign individuals can apply for the Employer Nomination Scheme Visa under one of the following streams:
- Direct entry stream;
- Temporary residence transition stream; or
- Labour agreement stream.

This article will discuss the direct entry stream and the temporary residence transition stream.

## **B. COMMON CRITERIA**

The direct entry stream and the temporary residence transition stream are similar with slight differences in eligibility requirements. Both streams require the applicant to:

- Have an occupation that is listed on the eligible skilled occupations<sup>1</sup>;
- Be licensed, registered or a member of a professional body (if required by the state or territory that the applicant wishes to live and work in);
- Be under the age of 45 (although both streams provide certain conditions under which an exemption to this requirement can apply);
- Have at least competent English<sup>2</sup>;
- Meet the health requirements – any family members being sponsored in the application must also meet the health requirements;

<sup>1</sup><https://immi.homeaffairs.gov.au/visas/working-in-australia/skill-occupation-list>.

<sup>2</sup><https://immi.homeaffairs.gov.au/help-support/meeting-our-requirements/english-language/competent->

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- Be nominated by an Australian employer;
- Meet the character requirements – any family members over the age of 16 being sponsored in the application must also meet the character requirements;<sup>3</sup> and
- Have paid back any debt that is owed to the Australian government.

### B.1. EMPLOYER NOMINATION

Both streams require the applicant to be nominated by an eligible Australian employer who is actively and legally operating in Australia. To be eligible, the employer's business must:

- Be able to offer a full-time position for at least two years in the applicant's skilled occupation;
- Pay at least the annual market salary rate to the applicant (ie sponsored employee);
- Not have any adverse information known about it or any person associated with the business;
- Genuinely need to hire an employee to fill the skilled position; and
- Comply with Australian workplace and immigration laws.

Once the employer's nomination has been approved by the Department of Home Affairs, the applicant must apply for the Employer Nomination Scheme Visa within six months from the date of approval.

- Applicants will not be eligible for the visa if:
- The employer withdraws his or her nomination; or
- The position that the applicant is being sponsored for is no longer available.

### C. ADDITIONAL CRITERIA FOR THE DIRECT ENTRY STREAM

In addition to the 'common criteria' mentioned above, applicants wishing to apply under the direct

entry stream need to also:

- Have a minimum of three years relevant work experience in their occupation; and
- Achieve a positive skills assessment result.

A skills assessment is required to show the Department of Home Affairs that the applicant possesses the skills required to work in the occupation that the employer is nominating them for. Skills assessments can only be issued by the relevant assessing authority<sup>4</sup> as they determine whether the applicant's skills meet the industry standards set for their occupation.

### D. ADDITIONAL CRITERIA FOR THE TEMPORARY TRANSITION STREAM

Together with the 'common criteria', applicants wishing to apply under the temporary residence transition stream need to also:

- Be the holder of a Temporary Skill Shortage (TSS) (subclass 482) Visa in the medium stream (holding a bridging visa A, B or C because the TSS visa expired may be acceptable);
- Be nominated by the employer who sponsored the applicant to work full time for at least three years under the TSS visa;
- Have worked full time for the employer sponsoring their TSS visa for at least three of the four years before applying for the visa; and
- Have the required skills and qualifications for the job that the applicant is being nominated for – in some circumstance, the Department of Home Affairs may ask the applicant to complete a skills assessment to show that he or she has the necessary skills and qualifications.

Under this stream, the legislative test is that the applicant work in the same position for the required period of three years.

<sup>3</sup><https://immi.homeaffairs.gov.au/help-support/meeting-our-requirements/character>.

<sup>4</sup><https://immi.homeaffairs.gov.au/visas/working-in-australia/skills-assessment/assessing-authorities>.

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Additionally, the applicant needs to work at least three years full time for same employer who sponsored their TSS visa. However, they can be exempted from this condition if one of the following apply:

- The applicant worked for an associated entity of the sponsor;
- The sponsor has changed (eg due to sale, restructure or takeover) but the applicant has continued to work for the same business; or
- The applicant was sponsored by an Overseas Business Sponsor (OBS) who became established in Australia and is now an Australian Business Sponsor (ABS).

### E. COST OF VISA AND PROCESSING TIME

The Employer Nomination Scheme Visa will cost the applicant AUD4,890 and an additional fee will be applied for each family member included in the visa application. If any family member over the age of 18 has less than functional English, applicants will also be required to pay a second charge of AUD4,890.

The processing time for the visa varies between the two streams. Generally, 90% of applications are processed within:

- Seven months if applying under the direct entry stream; and
- Ten months if applying under the temporary residence transition stream.

To avoid any delays with the processing time, applicants should ensure that they correctly fill in the long application form and upload all relevant documents.

### F. CONCLUSION

The Employer Nomination Scheme Visa is a pathway to Australian permanent residency for foreign individuals who have a skilled occupation and have been nominated by their employer.

Foreign individuals who do not have an employer sponsoring them may consider applying for one of the points tested skilled migration visas instead. For more information on point tested skilled migration, you may wish to read our [General Skilled Migration](#) article.

Comasters is able to prepare a comprehensive visa application to the Department of Home Affairs on behalf of clients.

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