

## DO YOU NEED TO PROVE YOUR ENGLISH SKILLS?

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When applying for a visa under general skilled migration, you are generally required to submit a suitable skills assessment together with English test results showing that you have competent English at the time you lodge your visa application, unless exemptions apply.

Generally, the skills assessing authority for most occupations do not require evidence of English skills. However, assessing authorities for most health related occupations may require you to achieve a score of 7 per component in the IELTS academic module before you apply for skills assessment.

The Department of Immigration and Citizenship (DIAC) generally requires you to pass a minimum score in the English test to prove that you have competent English at the time you lodge your visa application. You are exempted from the English test if you are a passport holder AND a citizen of the United Kingdom, Republic of Ireland, United States of America, Canada or New Zealand. The instrument specifies that the passport must be held by a person who is a citizen of one of the specified countries. However, if you are required by the skills assessing authority to achieve a score of 7 per component in IELTS or score B+ in OET score in order to obtain a suitable skills assessment, or you need 25 points for English language skills in order to meet the passmark in the points test, then you need to sit the examination, even if you are a passport holder of the above countries.

If you are required to prove competent English, the Migration Regulations state that “*you must have achieved, in a test conducted not more than 2 years before the day on which the application was lodged*”, an IELTS test score of “6” per component, or a score of at least “B” in each of the four components of the Occupational English Test (OET), unless exempted from the test.

The High Court of Australia on 1 March 2010, in the case of *Berenguel*, interpreted the above provision to mean that the “*test must be not more than 2 years before*” the date of lodgment of the application and therefore, evidence for English language skills may be submitted to DIAC even *after lodgment* of visa application, provided the test was no earlier than 2 years before the lodgment of application.

The effect of the decision is that now, applicants have until the time of decision to provide evidence of their English language ability, in the following GSM subclasses:

- Skilled – Independent (Residence) visa (subclass 885)
- Skilled – Sponsored (Residence) visa (subclass 886)
- Skilled – Independent (Migrant) visa (subclass 175)
- Skilled – Sponsored (Migrant) visa (subclass 176)
- Skilled – Provisional (Regional Sponsored) visa (subclass 475)
- Skilled – Provisional (Recognised Graduate) visa (subclass 476)
- Skilled – Provisional (Graduate) visa (subclass 485), where the application was made on or after 27 October 2008.

The changes are effective and are confirmed on the Department of Immigration and Citizenship website. However, you are still expected to have the required level of English at the time you apply for a visa and decisions will not be delayed to allow you to take further tests. Once a case officer is assigned to process your visa application, you may only have 28 days to provide your English language results if you

did not provide them at time of application. If you do not evidence within this time your visa application may be refused.

*This information is of a general nature and should not be taken as authoritative legal advice for specific cases. Australia has a scheme that requires persons who give immigration assistance to be registered as migration agent. The writer, Atty. Imelda Argel is a practising migration solicitor and a registered migration agent in Sydney, Australia. She is a Solicitor of the Supreme Court of New South Wales, the High Court of Australia, an Attorney at law in the Philippines and in the State of New York, USA. Her Registered Migration Agent no. is 9682957.*

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