

## Do You Qualify for a Temporary Working Visa?

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A temporary working visa (subclass 457) entitles the employee to work in Australia for a period between three months to four years. To qualify for this working visa, the employee must have an eligible sponsoring employer. The nominated position must be in the gazetted list of qualifying occupations for business long stay visa and approved by the Department of Immigration and Citizenship (DIAC) and the minimum gazetted salary applicable to the position must be met by the employer.

The application for the Temporary Business (Long Stay) visa requires both the employer and the employee to meet the criteria and the specified obligations under the visa. The application process involves three components which DIAC must approve:

1. Sponsorship by the employer
2. Nominated position by the employer
3. Visa application by the employee

An **employer** is eligible to sponsor an overseas employee if:

- It is lawfully and actively operating a business
- It is the direct employer of the visa applicant
- It can show that the sponsorship can add benefit to the business
- It can show that new or improved technology and/or skills are likely to result from the sponsorship, or it is committed or has a record of training of Australian citizens and permanent residents
- It is able to meet sponsorship undertakings

A **nominated position** is eligible for approval if it meets:

- The occupation and minimum salary gazetted in the Minimum Salary Levels and Occupations for the Temporary Business Long Stay Visa Notice which is current at the time of application.
- The job description for the position and entry level as defined in the ASCO (Australian Standard Classification of Occupation).

An **employee** is eligible for the grant of the working visa if he or she:

- Obtains the relevant licenses or registrations required for the nominated occupation, if any, before lodgment of the visa application.
- Meets the applicable band score in all four components of the International Language Testing System (IELTS). Normally a band score of 4.5 in all four components will satisfy this criterion, unless a higher score is required in relation to the license or registration for the nominated occupation.
- Satisfies all health and character tests before a decision on the visa application is made.
- Will be assigned to work in the nominated position as defined in the ASCO.
- Has a letter of appointment or employment contract detailing the job description, weekly working hours, period of employment and remuneration package.

The basic salary must not be less than the minimum gazetted remuneration applicable to the nominated position. The terms and conditions included in the employment contract, other than the gazetted minimum salary, such as airfare and accommodation, are subject to negotiations between employer and employee, on a case to case basis. Likewise, payments for professional fees to registered migration agents and DIAC charges are negotiable, and may be payable by the visa applicant without violating any Australian legislation.

Applicants who are contemplating to pursue this visa are advised to consult a competent Registered Migration Agent before doing so to ensure that the job offer is likely to result in a visa grant and Migration policy on this visa often changes.

*This information is of a general nature and should not be taken as authoritative legal advice for specific cases. The writer, Atty. Imelda Argel is a practising Filipino lawyer 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, Attorney at law in the Philippines and in the State of New York, USA. Her Registered Migration Agent no. is 9682957. More information is available at [www.iargel.com.au](http://www.iargel.com.au)*