

Attachment C Options for Bonds on Certain Visitor Visa Applications

Option A. Maintain Current Policy (ie no Security Bonds)

This option would maintain existing entry policy in relation to the processing of the visitor visa subclasses.

The likely outcome, where no other policy changes are implemented in relation to visitor visa processing, would be that the existing issues (namely refusal rates, visa non-compliance and non-departure rates) and the associated costs would remain.

The effect of these rates continuing at similar levels would be that, with expected higher rates of applications, greater numbers of visas will be refused and it is probable greater numbers of persons will not comply with their visas. This would lead to greater costs to the Government in administering both activities.

Option B. Allow Imposition of Bonds on 676, 686, and 456 Applications in Certain Circumstances

Under this option, it would be possible to implement a requirement for a bond to be lodged by the applicant for a visitor visa. This could take the form of an additional regulatory criterion to be imposed at the discretion of a decision-maker, guided by policy.

This option could work as follows:

- Applicants who have genuine reasons for travel but would be refused normally on bona fides concerns may be advised of such and invited to lodge a bond (possibly a bank guarantee in favour of the Department of Immigration and Multicultural Affairs) in Australian dollars. The bond would be refundable upon verification of timely departure and no known breach of visa conditions.
- The level of the bond could be a set amount (say between AUD 5,000 and AUD 10,000) or at the discretion of the decision-maker taking into account personal circumstances of the applicant.
- All bonded applicants would have a no further stay condition attached to their visa. It would be necessary for the overseas office to fully explain the condition (as is the case now) and the consequences of not abiding by the conditions or making a further application, ie, forfeiture of the bond.
- The bond would be subject to forfeiture if any of the following events occurs:
 - the visitor is found to have breached any visa condition (eg no work); or
 - the visitor remains in Australia beyond the period of the visa; or
 - the visitor applies to change visa status in Australia or seeks to extend stay in Australia for any reason at all (the only exemption would be if something occurs after arrival that could not have been foreseen and was beyond the control of the visitor applicant, eg a car accident requiring hospitalisation, in which case the “no further stay” condition waiver could be applied).
 - where the visitor applied for a Protection Visa the bond would be forfeited, although refund would be possible if found to be a refugee *sur place*.

- Forfeited bonds would be used to fund enforcement activity – location and removal of the visitor.
- Despite the bond option, a large percentage of visitor visa applications would continue to be rejected on bona fides grounds. This would be the case where the applicant has presented fraudulent documentation, misrepresented themselves to the post or where the incentive to return is very weak. That is, the decision-maker considers that a bond would not be helpful in insuring compliance with visa requirements.

A number of issues have been raised earlier that may mitigate against this option. For tourists these issues primarily are perceptions that foreign nationals may view the bond as opportunity to “buy a visa”, the bond will compete with people smuggling operations. Also it would need to be set so high as to discourage illegal workers but low enough to be affordable for those with genuine reasons for stay to afford the bond. Issues relating to business visitors need to ensure protection for the Australian business community.

Option C. Bond with Sponsorship

Experience of other countries suggests that a bond option may work better if it is linked to some form of sponsorship from within Australia with the bond being paid by the Australian sponsor (ie, no bond would be applicable to unsponsored visitor visa applications). A sponsored bond option could work as follows:

- Create a new Sponsored Visitor Visa Class available to both tourist and business visitors. Sponsorship rights would need to be determined but could rest with close family in Australia and perhaps also with State/Territory Governments. Some State/Territory officials have suggested such a sponsorship option. Creation of a separate visa class would allow better monitoring of the caseload and tailoring of regulations to the specific class.
- Applications would continue to be lodged offshore by the visitor applicant but could be accompanied by a sponsorship form that has been completed by the Australian party. The sponsorship form would indicate (in addition to normal bio-data of the sponsor):
 - the links of the sponsor to the applicant;
 - whether the sponsor had sponsored before and the outcome of any previous visitor sponsorship;
 - an indication of whether or not the sponsor is prepared to pay a bond (if required); and
 - a signed undertaking by the sponsor that they understand the obligations of sponsorship (ie to check that the person they are sponsoring does indeed intend a genuine visit and to cooperate with Department of Immigration and Multicultural Affairs if the person they are sponsoring does not abide by visa conditions) and the implications of sponsorship (ie forfeiture of the bond if the sponsored visitor breaches visa conditions or does not depart before expiry of the visa and loss of sponsorship rights for some period, say, 3 years).
- The overseas post would process the sponsorship and visa application. The majority of sponsored visitor visa applications would continue to be approved without a bond as they are now (even if a bond is offered) but with the sponsorship undertaking in force.

- Like Option B, there would be a percentage of sponsored visitor visa applications that would continue to be rejected on bona fides grounds. This would particularly be the case where the applicant has presented fraudulent documentation, misrepresented themselves to the post or where the incentive to return is very weak. The application would also be rejected if the sponsor was not “qualified” or had lost his/her sponsorship rights.
- A further percentage of applications may be approved subject to payment of a bond (if so indicated by the sponsor). These would be only those applications where the bona fides of the applicant are not clear-cut (one way or the other). In these cases, the post would contact the applicant to ask their sponsor to pay the bond and provide evidence of the payment (although with Internet banking this could be checked directly by the overseas post).
- The level of the bond could be a set amount (say around \$5,000 to \$10,000) or determined by the delegated officer. It could be paid by the sponsor into a Department of Immigration and Multicultural Affairs controlled bank account in Australia (ie the payment would be in Australian dollars only). The bank would provide evidence of payment. This could be checked by the overseas post directly with the bank if necessary.
- Upon receipt of satisfactory evidence, the post would issue the visitor visa. The visa generally would be for a minimum period of 1 month or up to 6 months depending on the circumstances. The visa should have a mandatory “no further stay” condition attached to it. This should be fully explained in the information material on this visa class so that both sponsor and applicant understand the implications.
- The bond would be subject to forfeiture if any of the following events occurs:
 - the visitor is found to have breached any visa condition (eg no work); or
 - the visitor remains in Australia beyond the period of the visa; or
 - the visitor seeks to apply to change visa status in Australia or seeks to extend stay in Australia for any reason at all (the only exemption would be if something occurs after arrival that could not have been foreseen and was beyond the control of the visitor applicant, eg a car accident, in which case the “no further stay” condition waiver could be applied).
- If the conditions of forfeiture come into force, the sponsor would be advised and the forfeited bond monies used to fund location and removal of the visitor.
- If the visitor leaves Australia within the visa period and has not breached any visa conditions, the bond would be returned by the bank to the sponsor on authority from Department of Immigration and Multicultural Affairs. Another way would be for a unit in Department of Immigration and Multicultural Affairs to check the departure of bonded visitors centrally and authorise refunds of bonds on the visitor’s departure.

The overall number of visitor visa applicants that may be required to have a sponsor pay such a bond is likely to be relatively small (perhaps 1,000 to 2,000 persons per annum). Only a percentage of the above are likely to forfeit the bond.

Attachment B

Summary of submissions to the Review of Illegal Workers in Australia

The illegal work secretariat received submissions from the following parties:

1. Construction Forestry Mining and Energy Union
2. Australian Chamber of Commerce and Industry
3. The Northern Victoria Fruitgrowers' Association Ltd (Norm Mitchelmore)
4. Griffith City Council (R Behl)
5. The Griffith City Development Corporation (Steve Mars)
6. Pickers Plus Ltd (Ann Murray), Riverina Area Consultative Committee (Peta Beelan), Leeton Development Corporation (Andrew McKillop) and Employment National Griffith (Tony Maruskanic)
7. The Griffith International Hostel (Clive Kensett-Smith)
8. Apple & Pear Growers Association of S.A. Inc. (Trevor Ranford)
9. Gilton Business Consultants (J M Gillespie)
10. Austasia Enterprise Group (Jason Fang)
11. Mr A
12. Mr B
13. Mr C
14. Mr D
15. Mr E
16. Mr F
17. Mr G
18. Mr H
19. Mr I
20. Mr J
21. Mr K

22. Mr L
23. Mr M
24. Mr N
25. Anonymous Submission
26. The Australian United Fresh Fruit and Vegetable Association Ltd (AUF) (Rod Hall)
27. Queensland Fruit & Vegetable Growers (Averil Scott)
28. Kimberley Produce (Lachlan Dobson)
29. Tourism Council Australia (Philip A Young)
30. The National Farmers' Federation (Richard Calver)
31. Mr O
32. The Tourism Task Force (Christopher Brown)
33. Strawberries Australia (Margaret Zorin)
34. The Housing Industry Association (Ron Silberberg)
35. The Victorian Peach and Apricot Growers' Association (Angela Coonan)
36. The New South Wales Cherry Growers' Association (Ian Hay)
37. The Australian Chamber of Fruit and Vegetable Industries Ltd (Greg Lennon)
38. The Northern Victorian Fresh Tomato Growers' Association (Ray Holland)
39. Mr P
40. The Australian Apple & Pear Growers Association Inc (Alma J Reynolds)
41. Deciduous Fruit Australia (W.J. Hatton)
42. Department of Industry, Science and Resources (Keith Maxted)
43. Department of Employment, Workplace Relations and Small Business (Ian Campbell)

Construction Forestry Mining and Energy Union

1. Author of submission

This is the major union in Australia's building and construction industry, which employs over 620,000 people.

2. Main Arguments

2.1 Data on Illegal Workers in the Construction Industry

- Anecdotal evidence suggests that there is a large number of illegal overseas workers in Australia's construction industry.
- Illegal workers limit access to the labour market for Australian workers and places reliance on workers who have no long term commitment to the industry and are willing to accept lower pay and conditions.
- There is a real connection between the use of overseas labour and labour hire companies. For instance, some organisations, such as the Backpacker's Resource Centre, promise that simply by registering with the Centre, a holiday maker is assured work. The Centre does not provide warnings to say that some visa categories have work restrictions.
- There is anecdotal evidence to indicate that many builders employ backpackers for a low flat hourly rate on a cash in hand basis. No payments are made for superannuation, redundancy or workers' compensation.
- Due to lack of statistical data, it is difficult to quantify the numbers of illegal workers in the construction industry.

2.2 Adequacy of Current Compliance Measures

- The current compliance measures are not adequate to prevent visitors to Australia from breaching their visa work conditions.
- The current provisions of the Crimes Act are not adequate to deter employers from employing people without work rights, as they can be avoided by employers if they simply do not check whether or not a person has a right to work.

3. Recommendations

- That greater volumes of data-gathering takes place, to measure the impact of the granting of Working Holiday Maker visas on the Australian labour market. It is suggested that all employment taken by Working Holiday Makers is tracked by the Department in conjunction with the Australian Taxation Office.

- That the amount of work which can be done by a Working Holiday Maker is limited and strictly monitored.
- That sanctions against employers who engage overseas workers illegally are strengthened, by amending the Crimes Act to include mandatory fines for these employers. It is suggested that the fines start at \$500 for a first offence, and increase for subsequent offences. It should be clearly spelled out by the Department that the onus lies on employers to check prospective employees' work rights.
- That a specialist unit to target the construction industry's compliance with immigration law is created; and that the Department regularly consults with industry representatives.
- That the Department focuses on labour hire companies and the role they play in perpetuating illegal work; and that sanctions are introduced against those companies which repeatedly flout immigration law.
- That the total number of Working Holiday Maker visas should be reduced.

Submission of the Australian Chamber of Commerce and Industry

1. Author of submission

Mr Reg Hamilton, Manager, Labour Relations of the ACCI. The ACCI represents, through its member organisations, thousands of businesses of all sizes, in all states and territories and across all types of industries.

2. Main Arguments

- The review should be sensitive to the needs of business and the ACCI welcomes the opportunity to present the views of employers.
- Employers cannot operate as defacto immigration or police and should not be expected to more than act in good faith when looking at the usual documents of identity used in the community.
- Placing excessive and onerous obligations on employers would be unreasonable and not in the public interest. It would not bring about any immigration related benefits. It would place an economic burden on business and provide a disincentive for employing labour, particularly if the checking processes are burdensome in order to avoid prosecution.
- The ACCI welcomes the idea of visitor bonds and an assessment of the Employer Awareness Campaign, given that it has been seven years since it commenced.
- Any initiative should be linked with strategies that would provide employers with better information and support concerning their obligations and responsibilities with respect to migrant workers.

3. Recommendations

- Review the Employer Awareness Campaign.
- Provide employers with better information and support concerning their obligations and responsibilities

Submission of the Northern Victoria Fruitgrowers' Association Ltd

Written by Mr Norm Mitchelmore

1. Author of submission

The author is the Executive Officer of the Association, which represents 220 orchard enterprises in the Goulburn Valley region of Northern Victoria. Towns and districts within the Association's membership area include Shepparton, Tatura, Kyabram and Beechworth.

2. Main Arguments

- During the harvest period (November to May each year) approximately 8,000 casual workers are employed. It is estimated that 80% of these are Australian.
- Approximately 1,600 are backpackers participating pursuant to the Working Holiday Maker scheme. The author is supportive of schemes such as the National Harvest Trail, which, it considers, will promote increased involvement by the Australian workforce.
- In 1987, compliance action by the Department resulted in the loss of a large number of the workforce due to an exodus of the workers, prompted by fear of being located. This caused a significant disruption to the harvest.
- The members of the Association do not view the problem of illegal workers in Australia with the same degree of seriousness as the Department does.
- The members of the Association do not understand the difference between visitors allowed to work in Australia pursuant to the Working Holiday Maker Scheme, and other young tourists without work rights.
- A major impediment to employers checking for work rights is the pressure under which these employers find themselves at peak harvest times, having to recruit large numbers of staff in a relatively short period.

3. Recommendations

- That the same taxation rate applies to all casual workers in the horticulture industry. This would encourage people not to conceal their residency, and would facilitate the checking of work rights status.
- That the Working Holiday Maker Scheme is examined to see if it is appropriate for current visitor and work requirements, for instance, to see whether eligible countries are actually represented among the people seeking work as backpackers etc in Australia. Further, the total number of eligible Working Holiday Makers should also be revised.

- That a simpler system is implemented, to allow employers to check whether the visitor has a right to work. For instance, the concept of an “Australia Card” would solve some of these problems. Alternatively, the Canadian model, using coded social security numbers to identify non-residents, is a possibility.
 - That there should not be rigorous surveillance of all applicants for work in the horticulture industry, due to the potential discrimination this would impose against Australian citizens and residents applying.
 - That there should be no system of employer penalties or sanctions.
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Submission of Griffith City Council **Written by Mr R Behl**

1. Author of submission

The author is the General Manager of a City Council in a horticultural area in the western Riverina, incorporating the Murrumbidgee and Coleambally Irrigation Areas.

2. Main Arguments

- Labour shortages are often experienced by fruit growers in the area, particularly during peak harvest seasons.
- Many Australians are not willing to relocate to rural areas to work. (Perhaps this can change, depending on the success of the National Harvest Trail.)

3. Recommendations

- That overseas workers who are lawfully in Australia are provided with a work permit to work during the picking season in the major growing areas of the region.
- That the period that visitors are allowed to stay in Australia is extended to include the time they are employed as harvest labourers.
- That there should be no age limit imposed on the granting of the Working Holiday Maker visas.
- That a simpler system is implemented, to allow employers to check whether the visitor has a right to work. It is suggested that everyone who enters Australia receives an unambiguous permit to be attached to their passports, indicating the geographical areas and the period of time for which the work permit applies.

Submission of the Griffith City Development Corporation

1. Author of submission

The author is Mr Steve Mars, Chief Executive Officer, Griffith City Development Corporation.

2. Main Arguments

- Primary producers in Griffith are reliant on backpackers to meet labour demands during harvest.
- Australians are not an available/adequate source of labour to meet harvest needs.
- In a usual harvest season (late February through March) there is a regional labour shortfall of approximately 500.
- There would be a detrimental impact on the Griffith economy and labour market if employers could not recruit overseas visitors with work permits.
- Because of the existing shortfall farmers are desperate to employ whoever turns up if it is the only way a crop can be picked.
- Working holiday makers are an integral part of the regional economy.
- Where jobs may be of less than a week's duration any complex system of checking an employee's immigration status would put an undue burden on the employer.

3. Recommendations

- The existing migrant worker permits should only apply in major urban centres.
- A more liberal working permit, which is not restricted to citizens of countries with reciprocal working holiday rights or to people under the age of 25, should be made available to meet labour shortages in specified regions.
- A permit specifying the location and duration where a person can work should be attached to the passport and form the documentation required to be checked prior to employment.
- Only when there is an unambiguous and simple means by which the legal status of a worker can be checked should an employer become responsible for checking their status.
- Immigration officers are required in regional centres to meet the needs of those communities. There may be some justification in providing this resource on a seasonal harvest basis.
- If employment service providers are required to check the legal status of job seeker they should be compensated.

**Submission of Pickers Plus Ltd, Riverina Area Consultative Committee, Leeton
Development Corporation and Employment National Griffith
Written by Ms Ann Murray, Ms Peta Beelan, Mr Andrew McKillop and Mr Tony
Maruskanic, of the above organisations**

1. Authors of submission

The authors are members of community groups within the Murrumbidgee Irrigation Area (MIA) in New South Wales.

2. Main Arguments

- Because the MIA is a farming area, producing a large volume of horticultural crops, businesses in the area are in need of seasonal, unskilled or semi-skilled labour. At peak harvest times the area experiences a shortage of labour.
- Illegal workers form a part of the group of workers who are willing to work during peak harvest times, and thus contribute to the viability of the farming community in the MIA.
- Many Australians, even if they are unskilled and unemployed, are not willing to relocate to rural areas to work.

3. Recommendations

- That greater numbers of visitors with working rights are available in harvest labour areas. It is submitted that more farmers would be willing to check whether their employees have work rights if there were more legal workers available.
- That a new visa system is implemented, whereby visitors would have a right to work in harvest areas, but nowhere else.
- That a simpler system is implemented, to allow employers to check whether the visitor has a right to work. It is suggested that everyone who enters Australia receives a stamp in their passport, indicating whether or not they have work rights, and in which areas they can work.
- That there should not be a cap on the number of Working Holiday Maker visas issued.
- That the age limit for granting of the Working Holiday Visa is raised, to include people in their forties.
- That Compliance Officers from DIMA are stationed in the MIA during Harvest Season,

Submission of the Griffith International Hostel

Written by Mr Clive Kensett-Smith

1. Author of submission

The author is the Manager of Griffith International Hostel, which provides accommodation for Working Holiday Makers and some students in Griffith, NSW.

2. Main Arguments

The Griffith International Hostel has provided information concerning its own practices, which include:

- Where backpackers arrive at the hostel without their original travel documents, they are questioned about their location, and their accommodation is denied, should they wish to work in the Griffith area.
- The Hostel investigates (through the Department) the status of alleged students who seek accommodation with the intention to work during University and college terms.
- Where Hostel guests indicate the intention to return to the Hostel and have work arranged for them by the Hostel, Hostel staff confirm immigration status.

The Hostel has also provided details of its own experiences:

- It is submitted that the number of persons travelling and intending to work without work rights has been increasing.
- In particular, many rural employers and employment agencies are seen to be disregarding immigration protocol.
- The submission particularly highlights the professional work of the International Exchange Program, which is seen as a responsible organisation, organising work for working holiday makers and complying with immigration laws.
- The Department's compliance activities are seen as "sporadic" and are often predicted before the arrival of Immigration Officials.

3. Recommendations

- That a greater volume of immigration information and guidance is available in the media prior to the commencement of, and during, the harvest season.

Submission of Apple & Pear Growers Association of S.A. Inc.

Written by Mr Trevor Ranford

1. Author of submission

The author is the General Manager of the Association, which represents apple and pear growers in three regions of South Australia – Adelaide Hills, Riverland and the South East.

2. Main Arguments

- The author does not perceive the problem of illegal workers as a major issue; however, given the estimated number of unauthorised arrivals, it is submitted that Australia is seen as being “soft” in dealing with illegal immigrants.
- At peak harvest times the area represented by the author experiences a shortage of casual and part time labour. It is submitted that often positions cannot be filled by Australian residents. If appropriate and sufficient harvest labour could be found from people with work rights, the use of illegal workers would be minimised.
- Most employers believe that the supply of a Tax File Number is sufficient to establish a person’s right to work. Employers need simple and inexpensive methods to check for additional evidence of work rights.
- The use of penalties and sanctions against employers is not an appropriate approach to dealing with the problem until the process of checking for work rights is simplified.

3. Recommendations

- That the Australian Government works closely with regional industry organisations in order to deal with the labour shortages.
- That the Employer Awareness Campaign is made more user-friendly, in particular to include a “hands on” approach by the Department. Alternatively, staff from industry organisations should be trained to assist in implementing the Campaign.
- That a single and simple system is implemented to allow employers to check whether the visitor has a right to work. It is suggested that a Tax File Number or something similarly simple ought to be sufficient evidence of a person’s right to work.
- That a greater emphasis is placed on informing each visitor of their rights and responsibilities while in Australia, including whether or not they have a right to work. Greater responsibility should be placed on visitors, rather than employers.
- That a flexible bond system is introduced, providing for payments by the Australian sponsors of visitors at the discretion of the visa approving authority.

Submission of Gilton Business Consultants

Written by J M Gillespie

1. Author of submission

The author is Registered Migration Agent in a company of Migration Agents based in Sydney, NSW.

2. Main Arguments

- Neither the Information Kit nor the telephone inquiry service provided by the Department is likely to be used by smaller employers. Further, it is likely that smaller employers will have neither the capacity nor the inclination to check whether their employees have work rights.
- The visa labels are not easy to follow, and employers are often confused as to the meaning of the conditions written on the visas.
- The use of bonds is not likely to deter all over-stayers, but may be seen as simply “price of entry”. However, it may be of merit if it is used to fund ongoing compliance actions.

3. Recommendations

- That employer penalties are introduced where employers are found to be employing an illegal worker.
- That the Employer Awareness Campaign is reviewed to assess its effectiveness.
- That a simpler system is implemented, to allow employers to check whether the visitor has a right to work. It is suggested that everyone who enters Australia have their passport stamped to indicate whether or not they have work rights, and in which areas they can work.
- Alternatively, that the visa label is modified to be clearer and descriptive of work restrictions imposed on the visitor.
- That a bond system is introduced, providing for payments of up to \$10,000 by the Australian sponsors of visitors at the discretion of the visa approving authority.

Submission of Mr Jason Fang of Austasia Enterprise Group

1. Main Arguments

- A visitor bond should be introduced to tackle the problem of unemployment in Australia and overstayers.
- We should try to attract more visitors to Australia as this creates more jobs for Australians.
- Private companies overseas could promote travel to Australia which would mean that the government would not have to bear such costs.
- If those who enter with a bond overstay they should be quickly located and removed, with the bond being used to cover the associated costs.
- DIMA should negotiate with the media to ensure that they publicise positive news stories about visitors.
- The increase in visitors would improve our exports of goods overseas, would help attract more overseas students to Australia and attract investment in Australia.

2. Recommendations

- Introduce visitor bonds.
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Submission of Mr A

1. Author of submission

The author is a former employee of the Department of Immigration (1984 to 1992), who had worked in Enforcement during his employment.

2. Main Points

The author has provided information concerning his own experiences during his time with the Department.

- The commercial competitive viability of Australian companies and the employment of Australian workers is jeopardised when workers are brought in from overseas as a source of cheap labour for foreign companies in Australia.
- Illegal workers are often exploited, being paid low wages and working in sub-standard conditions, in particular in the restaurant and clothing industries.
- The recruitment of workers overseas reflects poorly on Australian national reputation, exacerbates unemployment and consequently increases the reliance on Social Security.

- The author submits that Ethnic groups and Unions condone illegal work.
- Young Asian women are deceived into coming to Australia and made to work in brothels.
- Many people get entry to Australia on false documentation alleging that they are in a profession in demand in Australia.
- A significant number of overseas students come to Australia with the intention to work, and are supported in those endeavours by their educational institutions.

3. Recommendations

- That employers and unions are made to check whether or not employees have work rights.
- That a coordinated effort is made to target brothels in a wide a varied area.
- That there is closer supervision of educational institutions to ensure that overseas students are genuinely studying.
- That regulations are introduced, imposing harsher penalties on illegal workers, employers and scheme organisations.
- That illegal workers' earnings are confiscated.
- That aggressive publicity programs are conducted in overseas countries and at home.
- That a planning and consultation group is set up, with representatives from the Department, business and industry, unions etc.
- That clear guidelines relating to agreements on workers between countries are established.
- That a greater emphasis is placed on informing each visitor of their rights and responsibilities while in Australia, including whether or not they have a right to work. Greater responsibility should be placed on visitors, rather than employers.
- That a flexible bond system is introduced, providing for payments by the Australian sponsors of visitors at the discretion of the visa approving authority.