

CHAPTER 12 – CULTURAL AND SOCIAL STREAM: SPORT VISA

BACKGROUND

Policy Objective

12.1 This visa is intended to permit the temporary entry of high calibre sports people from other countries to engage in competition with Australian residents, and to improve the quality of a sport in Australia through participation in high-level competition and training.

many overseas competitors who trained and participated in competitions in Australia in 1999-2000 in preparation for the Olympics in September 2000.

12.5 Most persons (over 90 per cent) using this visa stay in Australia less than three months, reflecting its use for by persons participating in sporting events and other relatively short-term activities. Very few stay in Australia over twelve months.

Current Arrangements

12.2 This visa covers a wide range of circumstances including:

- competing in a sporting event in Australia, individually or as a member of a team;
- for those who have an established reputation in their field of sport – being a player or coach for an Australian organisation;
- being a sports instructor to an Australian team or organisation;
- acting as a judge or adjudicator at shows or competitions in Australia;
- entering Australia under an agreement between Australia and another country.

Major Issues Raised

12.6 The main issues raised during the review in relation to arrangements for sports persons are:

- the large range of people using this visa who could be catered for by other visas;
- a need for greater policy clarification in relation to incidental work and other terms such as “established reputation”.

12.7 These issues are addressed in the context of the five policy parameters and client service and administrative efficiency. However there is first a threshold issue, which merits extensive discussion.

12.3 For stays over three months, sponsorship is generally required except for persons entering under a country-to-country agreement and internationally known competitors. For stays less than three months, sponsorship is not generally required, except for players, coaches and instructors. For those applicants seeking to enter as an instructor, labour market testing is also usually required.

Is a Separate Visa Needed?

12.4 Over 6,400 of these visas were granted in 2000-01 representing a decrease of almost 25 per cent from the previous year. The higher numbers in 1999-2000 reflect the

12.8 The Review considered whether the persons using this visa could be accommodated under any other visa, so that this visa for very specific activities could be abolished. This requires consideration of the various provisions in the visa under current arrangements. There are currently provisions for four groups of persons in the Sport visa:

- competitors (and their assistants), judges or adjudicators – these persons usually stay for less than three months;
- sponsored employed instructors who are employed on a full-time basis – these

persons are similar to other sponsored overseas employees in terms of their employment conditions (for example, it would be expected that they would be paid Australian wages and employed under standard Australian conditions);

- persons entering Australia under a country-to-country agreement that provides for streamlined visa arrangements for persons undertaking sporting activities; and
- elite players and elite coaches (such as an elite competitor in a triathlon series or a professional football player) – these persons are intended to raise the standard of competition in Australia. In some cases, the sponsor will not be the applicant's employer; and although there may be 'an agreement', it may not involve a full time position or a standard award wage.

12.9 The Sport visa could be simplified by ensuring the first three groups (that is, competitors, sponsored employees and persons entering under a country-to-country agreement) are processed under other, more appropriate, visa arrangements:

- competitors (and persons assisting a competitor), judges and adjudicators in a sports competition (a short-term project) could use a visitor visa or, where they obtain an appearance fee or some other one-off payment, the short stay business visa would be appropriate. These people usually stay in Australia for short periods less than three months. The visitor visa or business short stay provisions should also apply more broadly to players and coaches who seek entry to Australia for a period less than three months. This proposal would have the advantage of quick visa processing and the availability of ETAs in many cases. As there is currently no sponsorship requirement for competitors on a Sport visa who wish to stay less than three months, this would be consistent with the visitor visas and the

short stay business visas neither of which have a sponsorship requirement. This would be consistent with the recommended policy clarification (discussed in Chapter 6) on the use of the business visitor visa for short stays.

- sponsored employed coaches and instructors, judges and adjudicators who are employed could use the temporary business visa (subclass 457). This is further discussed in Chapter 5. These persons are very similar to other sponsored overseas employees in terms of their employment conditions (for example, they are expected to be skilled and to be paid Australian wages and employed under standard Australian conditions). In fact, non-elite instructors, especially ski instructors and martial arts instructors, already use subclass 457 visas.
- persons entering under a country-to-country agreement are further discussed in Chapter 13 – International Relations Stream. Under those proposals provisions for those people will be combined under one new visa, allowing the specific provisions in seven visas to be removed.

12.10 The review supports the use of these alternate visas for these three groups of sportspersons and the removal of provisions in the Sport visa for these groups.

12.11 *RECOMMENDATION:*

That persons who are entering Australia to work as coaches, instructors, judges or adjudicators as employees should use the arrangements for sponsored employees under the temporary business entry (subclass 457) visa, unless they are operating at the elite level of the sport.

12.12 The remaining group of people who use the Sports visa are elite players and coaches. The generic provisions of other visas are

not appropriate for these people. The long stay business visa has a strong economic focus and anticipates full-time positions, regular working conditions, highly skilled positions and commencement salaries. These requirements do not fit the activities undertaken by both professional and amateur elite sports people. The current arrangements for these people recognise the special nature of these activities and the need to have specific provisions in recognition of this. The specific arrangements for elite sportspeople and coaches of elite players and teams need to be retained, in recognition of particular nature of these activities. The removal of provisions for the other three groups of people would allow the Sport visa to focus on the elite players and coaches, allowing for specific arrangements reflecting the particular nature of their activities and would be much clearer for clients with its emphasis on elite level sport.

- 12.13 Notwithstanding its emphasis on elite players and coaches, in similarly limited circumstances the visa could also continue to provide for judges and adjudicators at the elite level. Generally a guest basketball referee from the American National Basketball Association, for example, could use the short stay business visa for a stay under three months, and the temporary business visa (457) for a stay over three months. Where this is not appropriate due to the special nature of the proposed arrangements the Sport visa may be appropriate.
- 12.14 In summary, a separate Sport visa should be retained for elite sports people who cannot be adequately catered for by other visas and the original policy intention of the Sport visa to provide specific provisions for elite sportspeople should be re-affirmed. Applications for a sport visa are to be accompanied by expert third party support (see 3.14) from the relevant national or state sporting body in Australia. This

support needs to attest that the applicant is operating at the Australian national competition level or higher and would therefore make a significant contribution to the particular sport.

EMPLOYMENT OPPORTUNITIES FOR AUSTRALIANS

- 12.15 Under the proposals in this Review, the main users of the Sport visa in future would be players and coaches etc operating at the elite level of a sport. These people are not employed workers in the usual sense, who could be taking the place of an Australian worker. Normal labour market testing mechanisms, which seek to identify a suitable Australian worker before allowing for the entry of an overseas worker, are not appropriate. Nevertheless, there is a need to ensure that the entry of overseas sportspeople and associated professionals does not impact on opportunities for Australians in the same field. By retaining the Sport visa essentially for elite sports people, it is expected that the visa would not only meet its primary purpose, which is to provide a high standard of elite competition for Australian sports people, but also ensure that employment opportunities for Australians are not compromised.
- 12.16 In this context, this Review highlighted a misunderstanding that the Sport visa could be used by second or third grade sports people from overseas. As sports people of this calibre would not be professional, this could have an impact on the Australian labour market if they needed to undertake additional work in Australia to meet their living expenses.

This visas has been misused over a number of years to enable the entry of sportspeople who do not have an established reputation ... It is apparent that a number of sponsors see this visa as providing training opportunities for

overseas sportspeople...this is not the policy intention of this visa. (Submission from DIMIA Central Office)

12.17 However, the re-clarification of the purpose of the Sport visa, as outlined above, ensures this does not occur. Nevertheless, the number of requests for visas for lower level players highlights the need for client information to be much more explicit about the policy intention in relation to these sportspeople.

12.18 The policy intention that the Sports visa only applies to elite-level sportspeople should be clear in client information and policy documents about the Sports visa.

12.19 The Sport visa has allowed an element of 'incidental work' by the visa holder, providing flexibility in cases where a sponsor may want that sports person to undertake some incidental activity related to their sporting activity. For example, a rugby league player may participate in some promotional work for the club even though the player may have been contracted on the basis of playing rugby league. As this has no significant effect, if any effect at all, on the employment opportunities for Australian workers, this arrangement should continue. However, the scope and nature of incidental work allowed could be clarified. This issue was raised in the review:

Some sponsors pay minimal salary, so that entrants are obliged to take on incidental work which can:

- *outweigh the primary purpose of entry (sport); and*
- *be unskilled (eg in a supermarket) and therefore have an adverse impact on the local labour market. (Submission from DIMIA Central Office)*

12.20 Holders of a Sport visa should continue to be allowed to undertake incidental work for their sponsor, in line with current policy intentions; the limitations of incidental work should be explicit in client information.

Work Rights for Family Members

12.21 Under current arrangements, family members of 'main' applicants are given full permission to work under this visa. Under the current usage of this visa, where sportspeople who are not at the elite level are using this visa, there may be concerns about family members needing to work to meet family expenses:

This visa has been misused...to enable the entry of sportspeople who do not have an established reputation...but rather operate at the second or third rate level of teams...Some sponsors pay minimal salary...Because of these low salaries, family members...may seek employment, also frequently unskilled. This can result in a situation where the entry of a sportsperson who is not at elite level and not paid at elite level leads to both the unskilled employment of that person and the unskilled employment of one or more family members. The availability of full work rights for family members should be reconsidered. (Submission from DIMIA Central Office)

12.22 Chapter 3 discussed a new approach for work rights for family members accompanying temporary residents to Australia. Under the proposed approach, family members of Sport visa holders will retain access to work rights where the 'main' visa holder is approved for a period of stay longer than 12 months. This policy balances the potential impact on the unskilled labour market of providing unrestricted work rights to family members

against the legitimate aspirations of long-term temporary residents and the benefit these visa holders bring to Australia.

- 12.23 Users of this visa mostly depart Australia within three months (and many would stay for a much shorter period) reflecting the nature of elite sporting activities. It is therefore expected that few family members would accompany the 'main' applicant and where they do so, it would not be with the expectation that they would be able to work for a short period. Where the period of stay is less than 12 months and family members wish to undertake work they will be able to do so if they meet the requirements for an appropriate temporary residence visa in their own right. For example, those family members remaining less than three months who wish to undertake work that would not impact on employment opportunities for Australians would be able to use the short stay business visa (subclass 456). On this visa they could undertake business or work-related activities as well as work that could not otherwise be done by an Australian. Opportunities for dependants to undertake study, as long as it is not at tax-payers' expense, are not affected.

TRAINING OPPORTUNITIES FOR AUSTRALIANS

- 12.24 Unlike sponsored employees, this visa provides explicitly for temporary residents to enter Australia in order to provide sports training opportunities for Australians. The proposed arrangements for this visa are consistent with the policy objectives and proposed processing arrangements in relation to the Government's training objectives.
- 12.25 Furthermore, as it is recommended that the Sport visa provide only for elite level sportspeople, this will continue to ensure that the potential for opportunities for

Australians in a sport will not be compromised.

PAY AND CONDITIONS FOR AUSTRALIAN WORKERS

- 12.26 It is proposed that, with the use of visitor visas and the temporary business (subclass 457) visa for a number of people entering Australia for sports purposes, the Sport visa itself would only need to cater for elite level sportspeople. In line with current policy, unless the sports person is an elite level amateur who would tend to be self-funded through sponsorships or a scholarship, the elite level of a professional sport person may be demonstrated, among other factors, by the level of remuneration that a sponsor intends to pay the sports person. This level of remuneration, particularly in the absence of any specific awards and conditions for professional sport people, can be assessed against typical pay levels indicated to DIMIA by the governing body or peak association for a particular sport in Australia. This offers a general assurance that the levels of remuneration for professional sporting activities in Australia will not be diminished.

CLIENT SERVICE AND ADMINISTRATIVE EFFICIENCY

- 12.27 The wide range of circumstances the visa currently provides for, and the resulting complexities, received some comment. Attention was called to the diversity of provisions within the Sport visa and the array of different requirements applicants must meet, depending on their circumstances. In particular it was noted that in several instances the provisions within this visa are very similar to those of other visas within the temporary entry stream. For example, the situation of instructors who are subject to a "business arrangement" closely resemble that of other sponsored employees), and until 1 July 2001, ski instructors and martial arts

instructors were already using the 457 visas to enter Australia. If sports instructors and coaches were to be placed on the list of skilled occupations for the temporary business visas, they could all use that visa. This would make the purpose of the remaining provisions and the requirements for the remaining visa applicants much clearer.

Simplifying the Sponsorship Requirement

12.28 The diverse nature of the provisions within the existing Sport visa also results in some complexity regarding when sponsorship is required. Exemptions exist for competitors for less than three months stay, internationally known competitors for longer stays, judges and adjudicators for stays of less than three months and persons entering under country to country agreements. The use of other visas for some of these people and standardisation of the sponsorship requirement for all remaining applicants (as discussed below) would result in simpler requirements for clients.

Fee Exemption for Certain Visa Applicants

12.29 Under current arrangements, there is no visa application charge for the Sport visa where the applicant is an amateur participant (ie does not receive payment or remuneration for his or her participation) in a sporting event or an assistant to such a person. It is estimated that an exemption from the visa application charge is being granted in around 50 per cent of Sport visa applications. There is also a group discount available (discussed below).

12.30 Under the principles of user charging outlined in Chapter 3, fee exemptions should be provided only where the organisation granted the exemption delivers a corresponding benefit to the organisation granting the exemption in terms of greater efficiency. Thus it is proposed that such exemptions should apply only where all

sponsorship and visa applications made under the exemption are lodged at the same time and with all relevant documentation (recommendation at paragraph 3.114 refers). This will allow DIMIA to obtain some benefit in terms of greater efficiency from the ability to deal with a fee-exempt organisation in a speedy manner.

Group Discounts

12.31 Under current arrangements, group discounts are available for applicants for the Sport visa (subclass 421) – if there are eleven or more applicants in a sporting group or team, the total application charge is capped at \$1,475, that is the group pays no more than about ten application fees. This discount is only available if the applicants apply for their visas offshore. This 'capped' fee arrangement means that after the first eleven applications, all subsequent applications are effectively processed without a charge to the clients.

12.32 Again it is proposed that, as such a discount can involve a significant subsidy from the Australian community in the case of large groups, it should apply only where DIMIA is able to offset this cost by obtaining a benefit through increased efficiency.

12.33 This review therefore recommends that group discounts should apply only for those visa and sponsorship applications which are lodged together and complete with all necessary supporting documentation (recommendation at paragraph 3.123 refers).

NO NET COST TO THE AUSTRALIAN COMMUNITY

12.34 Under the proposals in this Review, many current users of this visa would use alternative visas more suitable for their purposes. The main applicants using this visa under the remaining provisions would be elite sports persons and elite level

coaches and instructors. The proposals discussed in Chapter 4 that applicants for temporary residents generally be required to be sponsored would mean that all remaining applicants for Sport visas should be required to be sponsored, thereby committing sponsors to protect the Australian community from costs associated with a person's stay in Australia. Most of these persons are required to be sponsored under current arrangements. The exceptions are persons who intend to stay less than 3 months and persons who are internationally known competitors who have a record of participation in international events:

- under the arrangements proposed in this Review for short periods of stay, most applicants who intend to stay less than 3 months could use the Short stay business visa (subclass 456) and as a result there should be few applicants for the Sport visa who would intend a period of stay less than three months.
- internationally known competitors persons are currently exempted from sponsorship requirement, regardless of the period of intended stay. Most would only be staying in Australia for very short periods, and would therefore be eligible for the short stay business visa. The occasional person who intends to stay more than 3 months would need to be sponsored under the proposed sponsorship arrangements. This requirement is seen as an appropriate mechanism to ensure that persons have suitable arrangements for their stay in Australia. The proposal to allow reputable international persons or organisations to sponsor persons who have no links with a person or organisation in Australia who could be their sponsor may be relevant to this group.

12.35 The standardisation of the sponsorship requirement for users of the Sport visa would make the requirements clearer for

clients, and it would also ensure appropriate integrity for those persons who cannot meet the more streamlined requirements for other short stay visas. A letter of support from the relevant Australian national sporting body would attest to the fact that the person seeking entry is operating at an elite level and their entry will be of benefit to the relevant Australian sport. Consistent with the recommendation in Chapter 4, all Sport visa applicants should be sponsored and supported by the relevant national sports body.

12.36 **RECOMMENDATION:**

That persons who are entering Australia as elite sports persons and elite level coaches and instructors should have a letter of support from the relevant Australian national sporting body to attest to the fact that the person seeking entry is operating at an elite level and their entry will be of benefit to the relevant Australian sport.

IMMIGRATION INTEGRITY

12.37 Available departmental statistics do not suggest any issues of concern with this visa.

- In 2000-01, 300 of these visa holders applied for a further temporary entry visa while in Australia - these were mostly for another Sport visa or a tourist visa. (The issue of people extending their stay on another temporary resident visa of the same kind was discussed in Chapter 2 at paragraphs 2.88–2.96). This pattern raises no issues of concern.
- Only a small proportion of Sport visa holders applied to remain in Australia permanently - many on the basis of Distinguished Talent and some on the basis of a spouse relationship. There are no concerns with this.
- A small proportion of sports visa holders applied Protection visas in 2000-01 – while the rate is small, it is higher than

for other Temporary Resident visas. This may reflect the ease of meeting the requirements for this visa (such as demonstrating an association with a sporting club) relative to meeting the requirements for other temporary resident visas (which may require a professional qualification of some sort). However the rate is not sufficiently high to be of concern. Moreover, the proposed changes to this visa should reduce scope for persons to use this visa where they have other intentions. Those applying for the Sport visa will need to demonstrate that they are operating at the elite level of their sport and will need to be sponsored regardless of period of stay. Non-elite level sportspersons will need to apply for the long stay business visa and be subject to the skill and salary thresholds.

- Very few of these visas were cancelled in 2000-01.
- Statistics regarding overstayers indicate that only a very small proportion of sport visa holders remain in Australia beyond the validity of their visa, for example less than 0.7 per cent in 2000-01.