FOI Request FA 18/08/00071

1. How does the Department of Home affairs confirm /validate "if an application by a company/institution/business organisation which has filled for a subclass 400 visa did not find the skill set in Australia and hence because of that the company/institution/business organisation is requesting subclass 400 visa for an applicant"

The Department of Home affairs assesses subclass 400 visa applications in-line with legislation and procedural policy instructions *(01/10/2017 - 20/10/2017 - PAM3 - MIGRATION REGULATIONS – SCHEDULES - Temporary Work (Short Stay Specialist) (subclass 400) visa)* – key points are summarised below.

Primary criteria - Highly Specialised Work stream (400.22)

Regulation 400.221 requires that the applicant will undertake work that is highly specialised. This stream encapsulates highly specialised skills, knowledge or experience that can assist Australian business and cannot reasonably be found in the Australian labour market.

Typically, applicants align with occupations in the Australian and New Zealand Standard Classification of Occupations (ANZSCO) Major Groups 1 to 3 (Managers, Professionals, Technicians and Trades Workers), but could also include otherwise highly specialised workers who cannot reasonably be sourced in Australia provided all other GA-400 criteria are satisfied (refer GA-400 Special cases).

To be satisfied that regulation 400.221 is met, delegates may decide to request and/or assess evidence presented concerning the highly specialised nature of the proposed work/employment, including:

- statements by the prospective employer; and
- where appropriate, an assessment by the relevant peak industry body; or evidence from a large reputable employment agency; or comment from the relevant union - that the employment skills cannot be found within Australia.

Additionally, if the work is in relation to a project, the following may be requested:

- statements from the prospective employer providing information about the size and duration of the project
- the schedule of work to be performed; and
- the number of Australians employed on the project (or future Australian positions the project is expected to generate).

No adverse consequences on Australian employment or training (400.224)

Regulation 400.224 requires that the applicant must not intend to engage in activities that will have adverse consequences for employment or training opportunities, or conditions of employment, for Australian citizens or Australian permanent residents.

Under policy, in the absence of contrary evidence, delegates may take this criterion to be satisfied if information provided as part of the application indicates:

- there are key aspects to the skill set required for the position that the applicant's proposed employer is unable to identify/access in the Australian labour market; and
- the work is highly skilled (that is, occupations in ANZSCO Major Groups 1 to 3 - Managers, Professionals, Technicians and Trades Workers) or otherwise highly specialised.

Scrutinising longer-term stays, large group applications

To be satisfied that regulation 400.224 is met, delegates may decide to request further information such as:

- evidence as to the nature, size, duration and importance of the project to the local community, and any potential impacts on the business/community should the project not be able to proceed, including employment opportunities for Australian workers
- the number of Australians being employed on the project and/or by the business
- evidence that specialist advice/expertise from overseas is required – this may include evidence from an employment agency of a shortage of similarly qualified persons in Australia
- whether there are contractual obligations relating to the installation/servicing of a piece of equipment (for example, whether the work must be installed or serviced by an overseas provider)
- evidence provided by the applicant's proposed employer that they have tried to hire an Australian to do the proposed work (for example, evidence of job advertisements, training programs, letter of support from relevant union)
- any arrangements for an Australian worker to be trained to do the proposed work over a longer period
- information that indicates there is no time for an Australian to be trained to do the proposed work (although over a longer period this would be expected)
- evidence that the applicant's employment conditions satisfy Australian workplace standards.

2. Has the Department of Home Affairs come across any "case" in the last 2 years: 2016-2017 and 2017-2018 where the department found that "application for Subclass 400 visa" was falsely certified by the requesting party "that they did not find the requesting skill set in Australia."

The relevant program management team in the Department has no evidence of falsely certified documents from Australian companies or organisations.