

10<sup>th</sup> August, 2010

Dear Sir / Madam,

We the undersigned have read, understood and agree with the contents of this letter of complaint and authorise the Ombudsman to make all communications with the sender of this letter.

The following visa categories apply to this letter of complaint:

- 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)
- Skilled – Designated Area-sponsored (Provisional) (subclass 496)
- Skilled – Independent (Residence) visa (subclass 885)
- Skilled – Sponsored (Residence) visa (subclass 886)

## **Background**

The intention of this complaint is to highlight the gross injustices and financial roting perpetrated upon countless applicants for skilled migration by the Department of Immigration and Citizenship. Our complaint surrounds two key issues;

1. The extraordinarily long waiting times, constantly changing rules and lack of information provided to applicants
2. The unprecedented high cost, related poor service and complete absence of any kind of refund policy for the Visa Application Charge

## **The Visa Application Charge (VAC)**

According to DIAC the VAC *“is the amount of money, in Australian dollars (AUD) that must be paid for most visa applications to enter Australia. The VAC is generally not refundable even if the visa application is unsuccessful.”*(1)

The need for a VAC is necessary to meet the costs of the staffing and running of the Department. It does, however, follow that a minimum level of service and quality should be assured to all applicants and that this level of service should equate to the monies paid by applicants.

## **Waiting Time**

At the time of our applications the Department indicated a processing time of between three to six months. For many of us this three to six month wait has become a wait of, potentially, up to five years from the date of application.

The causes of this backlog will not be discussed here as they are not relevant to this letter of complaint. We must point out though that it is in no way, shape or form the fault of the applicants. DIAC may claim that it was circumstances outside of their control but this would be disingenuous and misleading, for the most part. DIAC were certainly aware of impending

problems several years ago yet instead of taking proactive measures it was only when the backlog of applications became untenable that reactive measures were taken. This type of conduct is not acceptable for a Governmental Department that deals with the lives and welfare of people.

The current waiting times are causing applicants a great deal of misery, especially for onshore applicants living in this visa limbo. As people with no real status in Australia it is very difficult to find employment (many jobs stipulate that the applicant must be a permanent resident), if applicants have children they must pay full International fees for their schooling, we are excluded from insurance, contracts and other services and there is no access to benefits. As applicants we understood these conditions yet we believed it would only be for a limited time of a few months, not a few years. We also find it unfair that those that are working have to pay the same tax as everyone else when we are not afforded the same rights.

## **Refunds**

As a result of the recent changes to the skilled migration program some applicants, particularly those offshore that have not yet paid for medicals and police checks, have expressed their desire to withdraw their applications.

DIAC will not refund VAC to any applicant who wishes to withdraw their application under any circumstances.

*"Please note: Applicants are not entitled to a refund of their Visa Application Charge or compensation for other costs incurred in making an application."* (3)

Most of these applications have had absolutely no actual work done of them whatsoever. How is it right that DIAC should receive up to \$2575 for doing no work? As you can see from Appendix A below all other countries offer refunds to applicants when a Case Officer has not been assigned. Why is Australia the only country to not refund VAC?

There are also many applicants who had a Case Officer assigned just before their applications were queued and thus no work has been done on their cases for many months, even years. If these people wish to withdraw their applications then they should also be entitled to a refund.

## **Transfers**

There are several reasons why an applicant may want to withdraw or transfer their existing application to a new category:

1. The applicant has found an employer willing to sponsor their visa
2. The applicant may find a State is willing to sponsor their visa
3. A new skills assessment would put the applicant in a higher category for processing
4. The applicant may apply under a different skill which would mean a faster processing time

DIAC has been encouraging applicants stuck in the processing pipeline to seek ENS or State sponsorship yet requires that a new application is lodged and VAC paid:

*“Applicants with a nominated occupation that is not on the SOL – Schedule 3 in effect at 1 July 2010 can only move into a higher priority group by lodging a new application with an employer sponsorship or a state or territory government nomination in an occupation specified under a state migration plan. Alternatively, applicants can only nominate a different occupation that is on the SOL – Schedule 3 by lodging a new application. It is not possible to change a nominated occupation or to change to an employer sponsored or state nominated visa category, unless a new application is lodged. A new application would require the payment of a new Visa Application Charge.” (3)*

The message here is that “we will change the rules and you will pay.” Any Department with even an ounce of integrity would accept some degree of responsibility for the situation and make suitable adjustments to policies and procedures. It is not unreasonable to ask that a VAC charge and related documents could be transferred to a new ENS/State sponsored application and the employer/State provide the remaining necessary documentation. In the case of online applications this should be particularly easy. To encourage applicants to make new applications, dispose of their existing application, on which no work has been done, and retain the application fee, then request further payment of over \$2500 is exploitative, immoral and tantamount to legalised bribery.

Queued applicants who have ENS and State sponsorship offers are also actually reluctant to go down this path not just because they will have to apply and pay again but they do not trust DIAC to change the rules and priority processing arrangements again.

### **Additional Associated Costs**

In addition to the VAC there are a number of additional costs that applicants must bear. These include police checks, health checks, qualification checks and IELTS tests. For those who chose there is also the cost of using a migration agent or migration lawyer.

For applicants who wish to withdraw their application altogether these associated costs cannot be returned. To have fruitlessly spent their time and money only to have the rules changed through no fault of their own is painful enough. For the Government to neither apologise for their errors nor return the VAC fee is reprehensible.

### **VAC Charges and VAC Refunds in other Countries**

Last July the VAC fees increased from around \$2100 to over \$2500. Why did charges increase 20% at a time when processing for certain categories had all but stopped? How can this increase be justified when service most certainly has not improved?

Looking at Appendix A below it is clear that charges for skilled migration applications are highest in Australia by a considerable margin. In other countries VAC are refundable if the applicant withdraws before a Case Officer is assigned and in some cases, if the applicant is ineligible, the fee will also be refunded.

Why is Australia so much more expensive, so much stricter on refunds and so much poorer in service?

### **Conclusion and Recommendations**

The Skilled Migration Program has undergone significant changes recently and DIAC have introduced changes that have affected many applicants both onshore and offshore.

A large proportion of applicants are current and former International Students who have gained qualifications in Australia. There is already a very strong perception amongst the International Student community that Australia treats them as “cash cows”, milking them for every cent in return for sub-standard education and then sending them home. The Government routinely denies this yet the chief Governmental Department responsible for these International Students (DIAC), in demanding large sums of money for a sub-standard service with no chance of refund, does exactly this! If this is the example that the Government is setting is it any wonder that higher education is rife with exploitation, scams and dodgy operators?

There is also a growing perception amongst potential offshore migrants that Australia does not act fairly or properly in its conduct regarding Immigration. In the age of the internet, forums, blogs and social networking this message has spread around the globe at remarkable speed. The notion that Australia is the country of a “fair-go” is now greeted with cynicism and outright derision within these groups, anyone presented with the table in Appendix A would be hard pushed not to agree.

It is also fair to say that such appalling treatment and service would not be accepted by ordinary Australians and that the contempt and indifference shown by DIAC towards applicants borders on discrimination at best, racism at worst.

*“Australia’s reputation as the country of opportunity, where governments act reasonably and fairly, has been considerably tarnished.” (2)*

The signatories of this letter have put forward various recommendations including the following:

- Oversight that the VAC fees collected are spent on resourcing the Department for ONLY the purposes of processing visa applications.
- Annual published reviews of DIAC spending to be carried out by the Ombudsman
- VAC are not levied until the visa has been granted
  - OR
- VAC are refundable to any applicant (with no case officer or no work done on their case for more than 6 months) who wishes to withdraw their application and that this be applied retrospectively to all applicants
- DIAC to provide processing time information on the website including how many visas of each category have been granted each month
- For applicants who have sought Employer Nominated Sponsorship the VAC should be transferred to the ENS application and any medicals, IELTS or police checks that have expired will not be required again

Thankyou for your time,

## References

1 Visa Application Charges

<http://www.immi.gov.au/allforms/990i/vac.htm>

2 Migration Institute of Australia, Submission to the Minister – General Skilled Migration, 13<sup>th</sup> November 2009

[http://mia.org.au/media/File/091113\\_GSM\\_Submission\\_to\\_Minister\\_final.pdf](http://mia.org.au/media/File/091113_GSM_Submission_to_Minister_final.pdf)

3 Updated Priority Processing Arrangements for Skilled Migration Visas - Effective from 14 July 2010

<http://www.immi.gov.au/skilled/general-skilled-migration/pdf/priority-processing-14-july-2010.pdf>

## Appendix A: Comparison of Skilled Permanent Residency Application in various countries

Country	Average Cost of skilled permanent residency application (exchange rates as of July, 2010)	Cancellation / Refund policy	Maximum Processing Time	Source
Germany	\$90	n/a	Up to 3 months	<a href="http://www.auswaertiges-amt.de">http://www.auswaertiges-amt.de</a>
United Kingdom	\$1,100	Application fee fully refunded upon cancellation by applicant if processing has not commenced	Up to 3 months	<a href="http://www.ukvisas.gov.uk/">http://www.ukvisas.gov.uk/</a>
Canada	\$590 (Application fee)  + \$530 (Right of Permanent Residence Fee - RPRF - upon granting of PR)	Application fee fully refunded if applicant not eligible.  Application fee fully refunded upon cancellation by applicant if processing has not commenced  RPRF fully refundable if application cancelled	Up to 6 months	<a href="http://www.cic.gc.ca/">http://www.cic.gc.ca/</a>
New Zealand	\$325 (Expression of Interest)  \$1465 (Application fee, if invited to apply)  +\$300 (Migrant Levy upon granting of PR)	n/a	Up to one year	<a href="http://www.immigration.govt.nz/">http://www.immigration.govt.nz/</a>
Australia	\$2,575	No refunds for ineligible applicants  No refunds for withdrawn applications	Up to five years (at current DIAC estimates)	