

Seminar:  
**"Moving Your Workforce between the U.S.  
 & Australia Today"**  
 September 2009

**Australian Visa Requirements**



1



**Stirling Henry Global Migration**

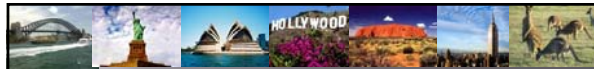
Established in 1991 and is regarded as one of Australia's leading boutique migration firms

Stirling Henry specialises in corporate migration and our lawyers and migration agents have a wealth of experience in delivering high level migration services to companies across all sectors of the Australian market. Stirling Henry clients include world leaders in IT, Construction, Resources and Manufacturing industries.

With a presence in Sydney, Melbourne, Perth and Los Angeles, Stirling Henry is able to provide personalised service wherever our client is located.



2



**Working in Australia**

- All overseas nationals require a visa with work permission to work in Australia (exception being a New Zealand citizen)
- Individuals granted permanent residence obviously have full work rights and are permitted to work for any firm
- In order to quickly obtain Australian work rights many individuals obtain an appropriate temporary resident visa. Visas require sponsorship by an appropriate Australian firm/entity.
- American citizens who are aged 18-30 and who are a high school graduate are also permitted to obtain a Work & Holiday Visa.
- It is illegal to employ overseas nationals without working rights (ignorance is not an excuse) and fines and/or jail terms may be imposed



3



**Employer Sanctions Act**

- Employer's Sanctions Act commenced on 15 August 2007. The Act introduced severe penalties for anyone who knowingly or recklessly employs or refers illegal workers (defined as workers without visa or in breach of visa conditions). Penalties range from fines of up to A\$66,000 for a company recklessly employing an illegal worker and fines for individuals of up to A\$13,200 and/or two years imprisonment.
- It is now more important than ever to ensure an individual is authorised to work in Australia
- Stirling Henry is able to check an overseas national's work rights on being provided with passport details



4



**14 September 2009 Changes**

- Substantial changes to the 457 visa commences on 14 September 2009
- Minimum Salary Levels
- Training Benchmarks
- Fines and possible jail terms for non-complying companies and directors of companies
- Increased scrutiny from other government departments – including Department of Employment, Australian Taxation Office
- Changes are outlined in detail later in the presentation
- Stirling Henry is monitoring the changes very closely



5



**Presentation Overview**

1. Business between the United States & Australia
2. Australian Visa System for Business:
  - i. Business Visitors
  - ii. Temporary Residents – working holidays, youth exchange (special programs), work assignments, entertainers, sportspeople and so on
  - iii. Permanent Residence – general skilled migration, employer sponsored migration, business skills, investors, distinguished talent, family, resident return visas
3. Citizenship



6



## 1. Business Between the United States & Australia

US is Australia's 5<sup>th</sup> largest merchandise export market and largest export market for services

US is Australia's largest import source for services and second largest import source for merchandise

US is the largest foreign investor in Australia

Australia is the 9<sup>th</sup> largest provider of foreign direct investment in the US

Australia-United States Free Trade Agreement entered into force on January 1 2005



7



## 2. Australian Visa System for Business

### i. Business Visitors

Everyone who visits Australia must have an appropriate visa

US nationals are eligible to obtain an electronic travel authority (ETA) on line at [www.eta.immi.gov.au](http://www.eta.immi.gov.au). Costs A\$20. Permits 3 month stay. Usually granted instantly if of good character and have never been illegally in Australia

Not intended for ongoing work activities – business meetings, business negotiations and the like accepted

Nationals not eligible for an electronic visitor visa may apply for a paper business visitor visa at an Australian Embassy/Consulate



8



## 2. Australian Visa System for Business

### ii) Temporary Residents

- Temporary Business 457 Visa (employment visa)
- US Work & Holiday 462 Visa
- Youth Exchange 416 Visa
- Entertainment Visas
- Sports Visa



9



## 2. Australian Visa System for Business

### Temporary Business 457 Visa (employment visa)

- Required for the vast majority of temporary assignments in Australia
- Appropriate for executives, professionals, semi-professionals and tradespeople
  - Visa valid from 4 months to 4 years
  - Requires sponsorship by eligible Australian or American company
  - Company must be approved as a sponsor by Immigration
  - Position must be an authorised occupation
  - Minimum base salary currently – A\$45,221.04 or A\$61,918.68 (IT) plus 9% superannuation/pension (change to market salaries 09/14/09)



10



- May only work for sponsoring company
- Spouses (married/defacto/same-sex) have full work rights for duration of visa
- Visa may be extended indefinitely (with company sponsorship)
- Visa may be converted to residency through company sponsorship
- US business without Australian presence files with Embassy in Canada (no longer filed in Washington D.C.)
- US business with Australian presence files with Immigration in Australia
- Numbers well down because of economic downturn
- 77,330 primary 457 visa holders in Australia at June 30, 2009 compared with 83,130 at February 28, 2009



11



- September 14 introduces some major changes including:
  - Introduction of market rate salaries
  - Requirement of the visa holder to maintain private health insurance
  - Training benchmarks for Australian sponsors introduced
  - Increased compliance and reporting obligations for sponsoring companies
  - Fines may be imposed on non-complying sponsors
  - Fines and/or jail terms may be imposed on non-complying company directors
  - Involvement of Australian Taxation Office, Department of Employment & Department of Immigration in future monitoring activities



12



### 457 Monitoring Requirements

- As part of a company's sponsorship undertaking a firm undertakes to comply with all monitoring requirements requested by the Department of Immigration
- Post 9/14 the Department of Employment with the cooperation of the Australian Taxation Office (ATO) will monitor market rate salaries
- ATO will use taxable salary information provided on tax returns as basis for investigations
- Monitoring should not be taken lightly and must be complied with
- If a breach is identified DIAC may cancel a sponsorship and prohibit further sponsorship applications for up to 5 years
- If a severe breach is identified fines and jail terms may be imposed
- Legal counsel should be sort to ensure 457 sponsorship compliance



13



### 2. Australian Visa System for Business

#### US Work & Holiday 462 Visa

- Commenced October 31 2007
- Available to US citizens aged 18-30
- Must be a high school graduate
- Visa valid for 12 months
- Permits employment with any one employer for 6 months
- May study for up to 4 months
- Must enter Australian within 3 months of visa approval
- Conversions to other visas must be filed offshore



14



- Multiple entry may travel in and out of Australia during visa validity
- Processing time 2-5 days (very quick processing)
- Sponsorship by an Australian or American company not required
- Great visa for young Americans
- Visa should also not be overlooked by companies in some situations to avoid scrutiny of some other visa categories



15



### 2. Australian Visa System for Business

#### Youth Exchange 416 Visa

- Available to US citizens aged 18-30. Valid for 4 months
- Traditional way a young US citizen obtained a working visa to Australia
- Requires the support of a sponsoring organisation under the Special Program Youth USA Program (details at [www.austemb.org](http://www.austemb.org)).
- Only beneficial if applicant not a graduate or undergraduate



16




### 2. Australian Visa System for Business

#### Entertainment 420/423 Visas


- Alberta Miculan is associated with Stirling Henry and is based permanently in Los Angeles
- Alberta is considered a leading practitioner involved in Australian Entertainment Visas
- Sponsorship by an appropriate Australian organisation or organisation is usually required (always required from 14 September)
- If the production is for a fully offshore financed documentary or commercial that will never be seen in Australia an application is more straightforward, does not require industry consultation and may be filed in the United States



17



- Any production that may be viewed in Australia must be filed in Australia and stricter industry consultation required
- Consultation with the appropriate Australian union is required
- Immigration has made it very clear that a 3 month business electronic authority may only be used in very limited circumstances including explore shooting options, hold meetings or undertake a location survey
- No production work or performing can be undertaken when in Australia on a business ETA
- Contact Alberta Miculan at [usa@stirlinghenry.com](mailto:usa@stirlinghenry.com) for further assistance regarding Entertainment visas



18



## 2. Australian Visa System for Business

### Sports 421/457 Visas

- Available to both professional and amateurs
- Intended for both individual sportspeople and team sportspeople
- May require sponsorship
- Period of stay length of sporting activity in Australia or maximum of 2 years
- Family may be included



19



## 2. Australian Visa System for Business

### iii) Permanent Residence

- a) Employer Sponsored Migration
- b) General Skilled Migration
- c) Business Skills/Investors/Business Talent
- d) Distinguished Talent
- e) Family

Australian Government is still encouraging residency applications during the current economic downturn.



20



## 2. Australian Visa System for Business

### Employer Sponsored – Eligible Australian Business

- i. Aged under 45 (unless exceptional appointment. Possible to apply to 54 in some situations)
- ii. Appropriate English language abilities
- iii. Sponsored by eligible business operating in Australia
- iv. 3 pathways
  - Base wage of over Aus\$165,000; or
  - 2 years immediate experience in Aust on an appropriate visa (usually 457) including 12 months for sponsoring company; or
  - Positive skill assessment and 3 years appropriate experience



21




## 3. Australian Visa System for Business

### General Skilled Migration

- Aged under 45, English speaking and skilled
- Points test – 120 Independent
- Points test – 100 Sponsored (eligible Australian relatives or sponsorship by state/territory government)
- Two step process – skill assessment & then visa application
- Independent application – does not require support of an Australian business



22



### General Skilled Migration – Points Test

• Skills:	40-60
• Age:	15-30
• English abilities:	15-25
• Australian qualifications:	5-25
• Work experience:	5-10
• Migration Occupation in Demand:	15-20
• Australian work experience:	10
• Partner skills	5



23



• Regional Australian study	5
• Sponsorship by State/Territory	10
• Community language	5

A Provisional 3 Year Visa is also exists for applicants unable to pass the points test. Requires sponsorship by state/territory and individual must reside in that state/territory for at least 2 years and working for 12 months. Straightforward to convert to residence after qualifying period.



24



### 3. Australian Visa System for Business

#### Business Skills/Investors

- Provisional 4 year visa and then convert to residence after meeting qualifying criteria (criteria not-onerous for genuine business people/investors)
- Under 45 no sponsorship required
- 45-55 state/territory sponsorship required
- Business owners, Senior executives, Investors

#### Business Talent

High flying business owners may qualify for residence up front with state government support



25



### 3. Australian Visa System for Business

#### Distinguished Talent

- Internationally recognised in the arts, in sport, academia/research or in a profession

This category is often ignored but provides an excellent opportunity for very successful business people to immediately qualify for permanent residence without a qualifying period

Provides an opportunity for individuals aged over 55 to also qualify for residency if they will provide exceptional benefit to the Australian community



26



### 3. Australian Visa System for Business

#### Family

- Spouses – prospective (fiancé), provisional spouse and spouse
- Parents (aged, working aged, contributory and non-contributory)
- Last Remaining Relatives
- Carers



27



### 3. Australian Visa System for Business

#### Resident Return Visa

- Permanent residency is the Australian equivalent of a 'Greencard'
- Residency allows you to remain in the country indefinitely
- Travel facility is valid for 5 years
- If you have not obtained Australian citizenship during this 5 year period you must apply to obtain a further 5 year Resident Return Visa (RRV) if you intend to travel in and out of Australia
- If you are outside of Australia and your 5 year RRV expires you will lose your Australian residency status
- Possible to apply for RRV on residential grounds or concessional grounds



28



- Residential grounds – resided in Australia as permanent resident for 2 out of the last 5 years (straightforward application)
- Concessional grounds – requires evidence of substantial business, cultural, employment or personal ties of benefit to Australia, and; if you have been absent for more than five (5) years, you are able to provide evidence of compelling reasons for your absence.

It is possible to apply for a further RRV even if you allowed your residency status to expire.

If you believe it will be necessary to apply for a RRV on concessional grounds advanced planning must be made to ensure compliance with Immigration policy.



29



### 3. Australian Citizenship

Citizenship legislation was changed dramatically on 1 July 2007.

General rule to now obtain Australian citizenship is:

"4 years lawful residence in Australia immediately prior to making an application for Australian citizenship with at least 12 months as a permanent resident, and absences from Australia of no more than 12 months in total in the four (4) years prior to application, and no more than three (3) months in the 12 month permanent residency period prior to application."



30




It is now also very easy to resume Australian citizenship. This may be the case for some Australians who obtained US citizenship before dual citizenship was permitted. The only requirement to resume Australian citizenship is now to be of good character. Resuming citizenship may also permit citizenship being available to children.

Australia and the United States now recognize dual citizenship




31




From an Australian perspective there are only advantages for an American national applying for and being granted Australian citizenship. Advantages may include:

- No need for a resident return visa. No danger in losing your right to reside in Australia
- Children and/or future children may be eligible for dual citizenship
- Eligible to apply for Australian jobs reserved for Australian citizens
- Eligible for subsidised higher education costs



32



- Eligible to participate in Australian elections, jury duty
- Taxation does not differ between being a resident or citizen

As is common knowledge, the American tax authorities tax Greencard holders and US citizens on worldwide income. The Australian authorities generally will not tax Australian residents/citizens on worldwide income. An Australian 'tax resident' is different to an 'immigration resident'.



33




**Stirling Henry Global Migration**

Head Office  
 Level 1, 350 Kent Street  
 Sydney NSW 2000  
 Tel: 011 61 2 9279 0202 or 011 61 438 018 800 (cell)  
 Fax: 011 61 2 9279 0203  
 visas@stirlinghenry.com  
 www.stirlinghenry.com

350 N. Crescent Dr. #107  
 Beverly Hills CA 90210  
 Tel: (310) 278 2574 or (310) 717 1459 (Cell)  
 Fax: (480) 287 9508  
 usa@stirlinghenry.com



34




**Legal Information:**

Presentation prepared by Tim Denney  
 Migration Agent Registration Number: 9683856

Disclaimer

As there are frequent changes to Australian and American immigration laws, regulations and procedures, no person should rely on the contents of this presentation without obtaining further verification from Stirling Henry Migration Services. The information contained in this presentation is made available on the understanding that Stirling Henry Migration Services and its directors and consultants are not responsible for the results of any actions taken on the basis of the information supplied, nor for any errors or omissions.

© 2009 Copyright Stirling Henry Migration Services.  
 All rights reserved



35