

OCCUPATIONAL TRAINEE VISA

INTRODUCTION

The following is an overview of the visa application process and how Migration Solutions can assist you, as well as any current or proposed employee, with an application to the Department of Immigration and Citizenship (DIAC) for a subclass 442 Occupational Trainee Visa (OTV).

The OTV has been designed so that applicants from overseas may improve their skills unique to their chosen occupation. The applicant will gain valuable on the job training through the sponsoring Australian company while making a genuine contribution to the sponsoring organisation.

The OTV program permits businesses to deliver a structured work based training program to an overseas applicant. The training program will teach the applicant a specific skill set so that they may become more proficient in an occupation and increase their knowledge of a particular industry.

While undergoing on the job training the applicant will also play an important role within the sponsoring business. Learning while they work the applicant will contribute to the businesses' day to day functions as well as assist in achieving organisational objectives.

An OTV is a temporary visa that is granted for the duration of the intended training program. The training program may be delivered over a maximum period of up to 2 years.

The OTV is not a permanent visa. Any applicant that wishes to remain in Australia after the conclusion of the training program will need to apply for a new temporary or permanent visa. Alternatively the applicant will be required to depart Australia.

OVERVIEW

The OTV program allows applicants from abroad to complete a structured and supervised workplace-based training program on a temporary basis. The training must provide applicants with additional or enhanced skills in their present occupations or fields of expertise. The program is to be predominately based on the job, however up to 30% of the training may be delivered in a classroom situation.

Generally, the training would be provided in the one location with the one employer, however, there is sufficient flexibility within this program for training to be provided in multiple locations or with multiple employers.

What this means is that the training program may be structured in a way that allows training to be provided in various ways, for example, a single outlet business, a business with multiple outlets, a group of businesses or by an industry association – similar to a group training scheme.

Example 1. A trainee may be sponsored by a business that owns and operates multiple sites. The training program may be delivered at any one site or across numerous sites that are owned by the nominating sponsor/employer.

Example 2. In the event that the trainee is sponsored by a franchised business (the franchisor) the trainee may undergo their training program at any of the sites that are party to the franchise agreement (the franchisee).

Example 3. Where the training program is established by an industry body and the trainee undergoes their training program at any number of participating sites that are party to the group training program.

To be eligible to sponsor overseas workers under the OTV program, businesses are required to address the following three stages:

1. The business lodges an application to become an occupational trainee sponsor
2. The business lodges an application to nominate an occupational training position, not required if the sponsor is a Commonwealth agency.
3. The Candidate lodges an application for the visa subclass 442 in response to the nomination made by the business.

Occupations that are suitable for the OTV program are similar to those that are listed on the visa 457 schedule of eligible occupations.

BENEFITS OF THE OTV PROGRAM

Benefits of the OTV program for both employers and trainees include:

- Assists in addressing staff and skills shortages,
- Offers pathways for international students,
- On the job training opportunities for students - post qualification,
- Access to staff for specific periods,
- Promotes retention of staff for period of training program,
- Available to most employers,
- Can lead to ongoing permanent employment,
- Win/Win situation for employer and visa holders,
- Restores integrity in Australia's international student and migration program.

STAGE ONE

To become an OTV Sponsor an organisation needs to demonstrate that they are a business of good standing and that they have complied substantially with all industrial relations and Australian migration laws. The organisation must also show that they have the financial means to maintain an employee from overseas.

When applying to become an OTV sponsor, the sponsoring business must ensure that the grant of the visa will not adversely affect the occupational training opportunities of Australian citizens or permanent residents. To meet this requirement the organisation will need to provide evidence that no current employee is being displaced by the training being offered to the overseas applicant. They will also need to ensure that there are similar opportunities available to current employees who are employed in similar positions.

Documents such as the organisations most recent annual report and a comprehensive overview of the business assist in demonstrating that the businesses may satisfy the requirements to become a sponsor of occupational trainees.

Once approved, the sponsorship agreement is valid for a period of 3 years and there is no limit to the number of nominations that may be lodged under the occupational trainee sponsorship agreement.

STAGE TWO

Once the organisation has been approved as an OTV sponsor the employer will be required to lodge a business nomination for each position that they wish to nominate under the new agreement.

The business nomination provides details of the businesses intended training program as well as identifying the occupational trainee that they intend to appoint.

To lodge a business nomination the sponsoring business must elect an occupation from the list of eligible occupations. The business must then provide details of a structured and supervised training program. This means providing documentary evidence of:

1. A skills audit and/or a training needs analysis of the trainee,
2. Details of all supervisors including their qualifications and experience in your business as well as in the industry,
3. The training program syllabus, detailing the core objectives and targets as well as the additional skills the trainee will acquire having undertaken the program,
4. The duration of the training program,
5. Where the training will take place,
6. How learning outcomes will be assessed,
7. Details of the trainee; and
8. Evidence of the trainee's English language proficiency.

A separate nomination must be lodged for each applicant the business wishes to sponsor as an occupational trainee.

While there is no minimum rate of pay determined by the DIAC the nominating business must demonstrate that the applicant will receive a rate of pay that is commensurate with the relevant industry award rate of pay. Applicants may also be entitled to receive a *Living Away From Home Allowance*.

In the event that the trainee breaches the training contract or they are not deemed to be suitable to complete the program, the employer may *lawfully* terminate the contract and the trainee will be required to either return home or find an alternate sponsor. When terminating a trainee's training contract, an employer must be mindful of the relevant industrial award, particularly the conditions relevant to lawful termination and the minimum notice periods required.

STAGE THREE

To be considered as an eligible applicant the nominee must provide evidence that they have personal attributes and an employment and education background relevant to the nominated occupation. A copy of the applicant's curriculum vitae as well as Certificates of their relevant qualifications will assist in demonstrating that they are genuine in their intention to undertake the training program.

If the applicant is currently in Australia as the holder of a student visa then they must have completed a minimum of a diploma level qualification. The onshore applicant will only be entitled to apply for an OTV for a maximum of 12 months while the OTV program must be relevant to the course that they have completed.

The visa applicant will need to demonstrate that they are of good character and that they can satisfy the health requirements for entry to Australia. The applicant is also required to provide evidence that they have adequate private health insurance for the duration of their stay.

It is further required that the applicant submit a copy of the Contract or Agreement for the proposed training program. The contract is to specify the applicant's base rate of pay as well as make clear that they will receive all entitlements that have been prescribed under the relevant industry award.

ONGOING SPONSORSHIP OBLIGATIONS

Once the OTV sponsorship Agreement has been approved the sponsoring business must:

- Comply and cooperate with inspectors if/when audited by the Department of Immigration & Citizenship
- Not seek to recover from the sponsored candidate all or part of the costs associated with the visa (including migration agents costs)

- Ensure that the sponsored candidate does not work in an occupation, program or activity other than that for which a nomination has been approved in relation to the sponsored candidate.

PROCESSING TIMEFRAMES

With regard to how long the application may take, based on current processing time frames and our experience, we anticipate that the entire process, including each of the 3 stages will take approximately 2 to 3 months.

It is estimated that the first stage will take between 2 to 4 weeks, with the nomination and visa application taking approximately 1 to 2 months to process.

OUR SERVICE

In terms of the service that Migration Solutions will provide to you and any proposed employee(s), we will assist with every facet of the application process, including completing the relevant forms, advising of all documents required, compiling the application and writing a detailed covering submission.

We will then lodge the various stages of the application and act on behalf of all parties throughout the entire processing of the application.

FEES

The fees associated with the application process for the OTV process are as follows:

DIAC - Visa Application Charge	
Sponsorship Agreement Application Fee	\$350.00
Business Nomination Application Fee	\$145.00
Visa Application Fee	\$265.00

In addition to the above, there are other fees associated with the visa application process, which can vary depending on the composition of each application. Additional fees such as costs incurred for medical checks, police clearances, translations and other costs such as an incidental fee, which covers administration fees associated with each application will be payable.

CONCLUSION

If you have any questions regarding the visa application process, please do not hesitate to contact our office at anytime. Please remember, we are here to help.

Whilst it may appear as though there is a lot to consider and a large body of work is required for this process, Migration Solutions will work closely with you, assisting with the preparation of all paper work, including application forms and documents required in support of the application, providing our expertise and guidance along the way to help make this process simple, straight forward and easy.

For more information, please contact Mark Glazbrook on (08) 8211 8597 or at mark@migrationsolutions.com.au