

GOING ONSHORE TO APPLY FOR A VISA – WHAT YOU NEED TO KNOW

Background

Australia's Immigration Ministers over the last few years have been steadily reducing the available visas under several of the family categories.

This has led to a significant increase in processing times for the following visa classes:

- Spouse/partner
- Child
- Remaining relative

For example, spouse visa applications lodged in London were processed in a few weeks little more than 4 years ago. Processing times are now some 6+ months.

Remaining relative visa applications lodged from the UK used to be processed to a decision in a few months. The Department of Immigration has indicated that processing times are now 12+ years.

The Aged Parent subclass 804 visa can be added to a list of visas where an onshore visa application can be advantageous compared to an offshore alternative: our separate factsheet discusses the 804 visa compared with a Contributory Parent subclass 143 application.

Consideration is therefore being given by many intending visa applicants to applying onshore for their visa – ie within Australia.

Strategy

The strategy which many contemplate is travelling to Australia using a visitor visa, such as an Electronic Travel Authority, or ETA.

Once in Australia the holder of the tourist visa decides to apply for an onshore permanent residency visa, and lodges an application before the expiry of their tourist visa/ETA, rather than leaving Australia and submitting an application for the offshore variant of the visa with an extended waiting time.

The primary reason for considering this is the visaholder's ability to remain in Australia as the holder of a Bridging Visa while the application is in train and awaiting a decision.

However, those who are contemplating this as a strategy should be aware that the purpose of a visitor visa/ETA is to holiday in Australia, and to visit family. Such a visa is not intended to enable the lodging of an application for a permanent residency visa while in Australia.

Care must therefore be exercised, as the Department of Immigration can refuse entry to Australia if it is suspected that the purpose of the arrival in Australia is not for a genuine holiday.

Condition 8503

It should also be noted that the Department of Immigration can grant visas with a No Further Stay, or Condition 8503 attaching.

An 8503 generally prevents the visaholder making an application in Australia for another visa.

It is our general experience that an 8503 Condition is not attached to an ETA issued to those travelling to Australia from the UK.

No Work Condition

A further Condition that will attach to a tourist visa is 8101.

An 8101 is a strict No Work in Australia Condition. This Condition will also apply to any Bridging Visa that is issued as a result of a subsequent onshore visa application (see the next section).

Application can be made by a BV holder for the no work condition to be waived, but it is not automatic, and a "genuine hardship" case must be made to the Department of Immigration.

A discussion of an application by a BV holder for the waiving of the No Work Condition is outside the scope of this factsheet.

Bridging Visas

When an individual applies while physically in Australia for an onshore visa what is called a Bridging Visa is issued to maintain the visa applicant's lawful status upon the expiry of the last substantive visa: technically the BV comes into effect at the expiry of the last visa.

Thus, an individual who travels to Australia on a tourist visa or an ETA and applies for an onshore visa of the types noted above before the expiry of the tourist visa/ETA will have a Bridging Visa come into effect upon the expiry of the tourist visa/ETA.

BV's come in several forms; the BV issued to an onshore applicant who last held a valid substantive visa is usually a BVA.

A BVA allows the holder to remain lawfully in Australia while awaiting a decision on the onshore visa application. However, it does not allow the individual to depart Australia and to return – if the individual wishes to do this a separate application must be made for a Bridging Visa B.

However, a BVB is not granted automatically: a case must be made to the Department of Immigration showing a "substantial reason" for travel.

Importantly, when the specified travel period of the BVB ends, if you are still outside Australia the BVB will cease and you will not be able to use it to return to Australia. If you do not also hold a substantive visa that allows you to return, you will have to apply for another visa before you can return to Australia – and there is no guarantee that you will be granted such a visa.

An intending visa applicant who has issues to resolve in his/her home country – such as selling a property - should bear the BVA and BVB issue in mind if s/he decides to apply for an onshore visa and has issues that require attention in his/her home country.

The shipment of personal possessions to Australia when holding a BV should also be discussed with a knowledgeable shipping company.

Ability to Appeal

Another major advantage of applying for one of the onshore visas noted above is the ability to lodge an appeal in the event that there is an adverse decision on the application. Clearly this is not a scenario one should be contemplating at the outset, but it provides a measure of comfort and the opportunity for the overturning of an unwelcome decision by a Department of Immigration case officer that is not available if an application is lodged offshore.

Onshore Spouse/Partner Applications

A few further words about applying for a spouse or partner visa onshore. Go Matilda's experience is that there is a fast tracking of applications that are submitted within Australia "decision ready." This is leading to spouse and partner visa decisions being decided within a week or two when lodged onshore.

Decision ready means that all documentation has been submitted with the application, and there is nothing outstanding, including health and penal clearances (police certificates).

It further appears that documents that are lodged with the Department of Immigration after a spouse/partner visa application has been lodged can lead to expedited processing, particularly where the "now decision ready" status is highlighted in a covering letter from a Registered Migration Agent.

Summary

As processing times for various types of family visas extend into a period of several years it is clear that many individuals will consider heading to Australia and applying onshore for a visa.

We encourage all who are contemplating this as a strategy to be mindful of the above, and particularly the purpose underpinning the issuing of a visitor visa or an ETA.

Go Matilda Visas is available to assist individuals who are in Australia with an application for an onshore visa. Our fees are discussed in advance of any commitment to us, are fixed in amount, and are payable in two stages.

Support is provided to visa applicant clients throughout the application process, even if the application takes several years to be processed to a decision.

If you are considering an onshore visa application of the type noted above please feel able to telephone us to discuss your visa options and how we might help.

If you telephone Go Matilda Visas there is no obligation to instruct us.

Our contact details are as follows:

Onshore

- Melbourne: 03 9935 2929
- Perth: 08 9261 7762
- Brisbane: 07 3112 2925

Offshore

- Southampton: 023 80 30 25 25
- Singapore and SE Asia: +65 6248 4739
- Spain: +34 952 76 83 62

Caveat

The above is necessarily an overview of several aspects of Australia's migration legislation. While we consider the contents are factually correct we take no responsibility for any reliance placed on them.

If you require advice on which you can rely we strongly recommend that formal instructions are given to a competent migration advisor that is regulated by Australia's Migration Agents Registration Authority (the MARA).