



TOP 10 REASONS



W H Y E M P L O Y E R
S P O N S O R E D V I S A S
G E T R E F U S E D

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EMPLOYER SPONSORED VISAS: REFUSAL PITFALLS

FOLLOW THIS 10-POINT CHECKLIST

- CHECK ALL DOCUMENTS ARE FINALISED
- BE MINDFUL OF KEY DATES
- WHAT PROOF DO YOU HAVE?
- DOUBLE CHECK YOUR ADVERTISING STAYS ACTIVE
- BEWARE OF "COPY/PASTE" WORK
- TOO MUCH INFORMATION
- NOT ENOUGH INFORMATION
- THE IMPORTANCE UPDATING PAPERWORK OVER LONG TIMELINES
- TAKING THE "SHE'LL BE RIGHT MATE" APPROACH
- NOT APPOINTING A REGISTERED MIGRATION AGENT TO HANDLE THE LODGEMENT

What if... my visa application gets refused?



Refusal of an employer sponsored visa can be quite damaging in many ways. Unfortunately, there's no "undo" button that you click.

So this is something one needs to be pro-active with rather reactive. Here's the 10-point checklist we developed that highlights the main pitfalls that you must avoid.

Read on and take notes! You are going to have to be very thorough if you do not want to waste thousands of your hard-earned dollars. This is a one-way street you plan to embark on, so this is no time to be lazy and expect results without putting in the work.

1 CHECK ALL DOCUMENTS ARE FINALISED

Sometimes, when reviewing my client's documents, I identify elements in that make them incomplete. The Assessing Officer will also pick these up and this can either delay the approval process or risk refusal altogether.

This could be drafted BAS and Profit Loss Statements, an unsigned lease agreement or unsigned employment contracts of equivalent workers.

Being meticulous is key, because they do not grant these visas lightly.

2 BE MINDFUL OF KEY DATES

For any sponsor visa that requires Labour Market Testing, if the visa applicant (the "nominee") is an existing employee, you cannot lodge with the existing employment contract for the nomination.

Seems crazy, right?

Here is the pitfall you are required to advertise for a minimum period of 4 weeks across certain platforms to meet the legislated requirement, and if your employee has an employment contract pre-dating the end of that Labour Market Testing period, then on paper this is screaming against the purpose of across certain platforms to meet the legislated requirement, and if your employee has an employment contract pre-dating the end of that Labour Market Testing period, then on paper this is screaming against the purpose of the [LMT requirement](#).

Aside from a new date, what else do you need? Well, you need to be mindful to specify the terms about the commencement and duration for the visa purposes.

The employment contract is a "time of application" requirement, and the smallest error can spell refusal.

3 WHAT PROOF DO YOU HAVE?

For every time you mention in the application, you need to ensure you have backed it up with evidence. Don't leave the online application to the last minute! Create an account and start drafting it early so that you get further insight into what evidential requirements you will be faced with.

If it's a newly created position due to growth, then provide financial forecasts, contracts and service orders, market research etc., to substantiate the growth. If it's replacing an existing staff member, then provide the resignation letter etc.

4 DOUBLE CHECK YOUR ADVERTISING STAYS ACTIVE

The [Labour Market Testing](#) requirement is taken very seriously, and rightfully so.

With the unemployment rate so high, you have a mountain of effort to prove that the nominated person is not displacing an Australian Citizen or Permanent Resident. Don't settle with just showing that advertising is underway.

I encourage you to go to the effort to show:

1. Email confirmations from the platforms of adverts going live
2. Screenshots and links of the roles live upon commencement
3. PDF printouts of the roles live
4. Screenshots of the roles towards the end of the advertising, and
5. Screenshots as well as PDF printouts of each of the portals showing how many people applied by the end of the advertising



5 BEWARE OF "COPY/PASTE" WORK

Employers find me and approach me **after** they have lodged without assistance and have experience a refusal.

When I review the [Position Description](#), I usually find that it is a direct "copy/paste" of the ANZSCO Code.

Whilst the requirement is to have 'a significant majority' of the ANZSCO Code included in the tasks and responsibilities for what the role entails, and whilst you think it's a safe option to copy and paste the same points from the ANZSCO Code, it's actually causing the opposite effect: it's lazy and the Assessing Officer will now have immense suspicion that the role has been created to achieve a migration outcome and therefore not genuine.

My warning of the pitfalls of 'copy/paste' work isn't just limited to the ANZSCO Code in the Position Description - be mindful across the entirety of your nomination and visa application processes.

Not sure what the ANZSCO Code is? [You might want to reach out for a chat.](#)

6 TOO MUCH INFORMATION

How much information (and provision of documents) is too much?

Well, if you provide too much on a minor element (*e.g 20 pages about the business premises which your Assessing Officer has unfortunately seen and yawned through*) then this might overshadow the more crucial elements of the process that form the crux of the argument and are elements that can actually make a difference.

Be clear and succinct.

Here are three words for you to remember: **Quality over Quantity.**

In a nomination application in the portal, you'll be limited to 60 attachments at 5MB file limits, so you may find yourself taking a lean approach when the time comes to lodge (*even more reason to not leave lodgement till the deadline*).

7 NOT ENOUGH INFORMATION

The Assessing Officer is required to consider everything provided to them, however they are most certainly not required to ask for more information or seek clarity. That is entirely your responsibility.

You don't want to overwhelm the Assessing Officer and drown them in paperwork. But if you end up with a refusal notice, you also don't want to be asking yourself "If only I had written that better or provided that evidential document?"

Don't assume anything. It is up to you to find the right balance in the information you provide.

8 THE IMPORTANCE OF UPDATING PAPERWORK OVER LONG TIMELINES

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9 TAKING THE "SHE'LL BE RIGHT MATE" APPROACH

Whilst the global pandemic results in many impracticalities (hard to book English testing, fingerprint scans for police checks, etc), the strong requirements of the visa framework are not going anywhere. Police Checks are valid for 12 months, so get it done early. English Language test results last for years, so get it done early.

Whispers and rumours are great for providing hope, but unless it's written in the law or Governmental policy then it just doesn't exist. Don't expect the Assessing Officer to be held to a news article.

Another one is the work experience requirement (for instance, 2 years of full time or equivalent experience within the last 5 years is the requirement for the TSS 482 Visa). If the visa applicant only has 22 months of experience at the time of lodgement then no, the 'she'll be right mate' approach will only result in you flushing your money down the toilet.

10

NOT APPOINTING A MIGRATION AGENT TO HANDLE THE LODGEMENT

As you have read above, there are so many variables and pitfalls that can cause refusal - most of the above is never even considered by applicants doing this by themselves.

Being able to identify these when working for my clients comes down to my experience and the fact that I specialise and focus in just these visa types.

Migration Law is the fastest changing law in Australia, and being a [Registered Migration Agent](#) in a highly regulated profession means you are getting your process lodged under the most up-to-date requirements.

Lawyers are also great to represent your file, but please just ensure they are an Immigration Lawyer. From March 2021, any lawyer will be allowed to practice migration law, but you do need someone with specialisation in migration law as experience plays the most important role.

I compare lodging a nomination or visa to that of lodging your tax: The Department of Home Affairs have an online portal and some vague information on their website so that individuals can lodge just the same as the ATO have, however if you want the maximum from your tax return then you engage a tax agent.

This is similar except worse: There is either approval or refusal. And you get ONE shot at it.

If the Assessing Officer has any doubt in their mind, then you have a battle on your hands.

Umm.. how much are the SAF charges?

For any of the above pitfalls, the SAF is non-refundable. If you don't know how much the SAF will cost for your business, then you definitely need to [book in for a free consultation.](#)

By the way, it starts from \$1200 but can be as high as \$7200.



So... is my fee really not refundable?

The Skilling Australians Fund (SAF) training levy is non-refundable unless:

- The sponsorship and visa applications are approved, but the overseas skilled worker (visa holder) does not arrive/commence employment with the employer
- The employer's sponsorship and nomination application for the overseas skilled worker is approved, but the associated visa application is refused on health or character grounds
- A TSS visa holder leaves the sponsoring employer within the first 12 months of employment where the visa period was for more than 12 months. Refunds will only be available in this scenario for unused full years of the SAF levy. Note: This does not apply to ENS or RSMS holders who leave their employer within the first 12 months of employment
- The nomination fee is refunded (*for example where a concurrent sponsor application is refused*).

Visa Applicant

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What's next?

I know you would have found this checklist of value. Even the most senior in the migration advice industry would have. This is exactly the value you can expect from an Employer Sponsored Visa Specialist who is both experienced and passionate.

I'm Evan Bishop (MARN 1679414), Owner and Primary Consultant at Worldly Migration and Recruitment Consultancy.

Don't forget to [book in a free consultation](#) by clicking on the above. Also do connect me with me on LinkedIn.

