

WHEN DOES THE APPLICANT NEED TO MEET THE PASSMARK?

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The Department of Immigration and Citizenship (DIAC) is the Australian government department which implements the Australian law regarding the grant of visas. Basic points to consider when applying for any visa to ensure visa grant include a determination of where the application must be lodged, where the applicant must be located, and whether the criteria at time of application criteria and at the time of decision are likely to be met.

One of the criteria for the grant of permanent visa, and for most temporary visas under General Skilled Migration (GSM), is that the applicant must pass the applicable passmark of the points test. Ideally the visa applicant should meet the passmark at the time of application. However, it must be noted that meeting the passmark is a “time of decision”, rather than a “time of application” criteria.

The projected three year visa processing period for visa applications where the nominated occupation is not eligible for priority processing may be beneficial for applicants who do not meet the passmark at the time of application but expect to achieve the passmark at the time of decision.

Options to gain additional points, after the lodgment the visa application, before decision, include:

1. Achieving a score of seven for each component of the International English Language Testing System (IELTS) general module, 10 points;
2. Completing one year of relevant Australian work experience, 10 points;
3. Completing one year of closely related work experience in a Migration Occupations in Demand List (MODL) occupation, where the nominated occupation is in the MODL, 15 points;
4. Offer of full-time employment where the nominated occupation is listed in the MODL, and the work experience component has been satisfied, 5 points;
5. Obtaining state or territory sponsorship or nomination, 10 points;
6. Completing a recognised “Professional Year” in Australia, closely related to nominated occupation, in the last 4 years, 10 points.

Time of decision in an Appeal to the Migration Review Tribunal (MRT)

The “time of decision” for a visa application which has been refused by DIAC and which has been appealed to the MRT is the time when the MRT decides the appeal. For the MRT appeal to succeed, the applicant must be able to provide evidence of being entitled to additional points before the appeal is decided upon.

In case appealed to the MRT, the visa application was refused by DIAC because the applicant was 5 points short of meeting the relevant passmark. The visa application was lodged at the time when the English threshold for the nominated occupation of

tradespersons was a score of five per component of the IELTS test and a score of six per component entitled the visa applicant to 15 points. The applicant's nominated occupation was an occupation listed in the MODL.

The Tribunal member required the applicant to provide evidence of one of the following in order to achieve the passmark:

1. Australian work experience;
2. Offer of full-time employment listed in the Migration Occupation in Demand List (MODL);
3. An IELTS score of six.

The applicant had submitted a job offer with the MRT appeal application. However, the date within which he was to accept the offer had lapsed at the time of the hearing and therefore it was not considered a valid offer of employment. This meant that unless a new offer of employment was submitted before a decision was made, the appeal would fail. Fortunately, the visa applicant was able to obtain and submit a new offer of full-time employment from the same employer, thus entitling the visa applicant to receive the additional five points needed to achieve the passmark.

On this basis, visa applicant, who was represented by us, won the MRT appeal. This demonstrates that meeting the relevant passmark in the points test is a "time of decision" criteria and in an MRT appeal, the time of decision is the time of the MRT decision.

This information is of a general nature and should not be taken as authoritative legal advice for specific cases. Australia has a scheme that requires persons who give immigration assistance to be registered as migration agent. The writer, Atty. Imelda Argel is a practising migration solicitor and a registered migration agent in Sydney, Australia. She is a Solicitor of the Supreme Court of New South Wales, the High Court of Australia, an Attorney at law in the Philippines and in the State of New York, USA. Her Registered Migration Agent no. is 9682957.

She is the author of TIPS on GSM visas(a publication for migration agents), the recipient of the inaugural NSW FAWAA (Filipino- Australian Women's Achievement Award) for her outstanding achievements in corporate practice and entrepreneurship, and the University of the Philippines Alumni Association (NSW Chapter) Achievement Award for law and community service. More information is available at www.iargel.com.au. You can contact the author by email at info@iargel.com.au or by fax at (+612) 9699 3210 or by appointment at Suite 41, Ground Floor, 61-89 Buckingham St. SURRY HILLS NSW 2010.