E-3 Professionals from Australia

I. Explanation and terms

The E-3 Australian Specialty Occupation Workers category resulted from the Australian-United States Free Trade Agreement (AUSFTA) to facilitate the entry of Australian citizens to work in the U.S. in “specialty occupations.”

II. Conditions and limitations

The E-3 category allows a maximum of 10,500 Australian citizens per fiscal year (October 1 to September 30) to work in the U.S. in E-3 status. E-3 applicants may apply for up to 2 years at one time, and extensions may also be granted for up to 24 months at one time. One advantage of E-3 status is that there is no upper limit on the length of time that an individual may remain working in E-3 status, although non-immigrant intent is meant to be maintained.

For Australians who are outside of the U.S. at the time of the E-3 visa application, the application process is relatively quick compared to the H-1B process, but requires slightly more documentation and time than applying for the J-1 professor or researcher visa.

Demonstrating “specialty occupation” is a requirement for both E-3 and H-1B work categories. The definition of "specialty occupation" is one that requires: (1) A theoretical and practical application of a body of specialized knowledge, and (2) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. In fact, for most academic positions within a University and for many types of positions that are secured by Carnegie Mellon graduates, the definition of “specialty occupation” is not difficult to meet as long as the academic preparation (at the bachelor’s lever or above) is clearly connected to the job and that the job requires a bachelor’s degree or above in a specific field of study. In determining whether an occupation qualifies as a "specialty occupation", use the definition in INA 214 (i)(1) for H-1B non-immigrants and applicable standards and criteria determined by the Department of Homeland Security (DHS) and US Citizenship and Immigration Services (USCIS.)

III. Application Process

Acquiring E-3 status from outside the U.S. In order to enter the U.S. for employment in the U.S. as an E-3 worker, an Australian worker who meets the specialty occupation criteria will prepare and present the following documents to a U.S. embassy or consulate: (1) copy of the employer’s LCA certified by the U.S. Department of Labor, (2) documentation of eligibility for employment in a specialty occupation as well as documentation that the position qualifies as a specialty occupation, (3) proof of a legitimate offer of employment in the U.S., (4) proof of Australian citizenship, (5) proof that the stay will be temporary (intent to return to home country following employment), (6) proof of payment of the Machine Readable Visa fee. For more information, see the U.S. embassy in Canberra’s website at http://canberra.usembassy.gov.

Acquiring E-3 status if already in the U.S. If an Australian citizen is already in the U.S. in another nonimmigrant category, he or she can apply to change to E-3 if otherwise eligible. To apply for a change of status, forms and materials are submitted to the USCIS Vermont Service Center (regardless where the employee will be working.) The following materials should be prepared and submitted by the employer: (1) Form I-129 with accompanying I-129 fee, (2) copy of the employer’s LCA certified by the U.S. Department of Labor, (3) proof of Australian nationality, (4) a letter from the prospective employer describing the alien’s occupation, the length of stay and compensation, and verification that the position meets the specialty occupation criteria, and (5) evidence that the employee meets the educational requirements for the position to be filled.

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Extension of E-3 status. Extension of E-3 status can be obtained through exit and re-entry to the U.S. (see “Acquiring E-3 status from outside the U.S.” above.) and by application to the USCIS in a process that largely mirrors the process written above in “Acquiring E-3 status if already in the U.S.” NOTE: the extension must be approved prior to the expiration date of the current E-3 status in order to continue employment. There is no option for expediting the extension request with USCIS. In many cases, travel and re-entry (acquiring E-3 status again from outside the US) may be the better option than to request an extension within the US. Processing times for extension applications can range from 3-6 months.

Note: For employment and payroll purposes, E-3 workers present to the employer an I-94 card marked with “E3” and an expiration date, the passport, and U.S. social security card. The name of the employer should be written on the I-94 card and/or in the passport. If the employee will work for two or more employers, there must be an I-94 record for each employer.

IV. Details for CMU employees

Prospective and current employees are welcome to discuss related issues with a Foreign Scholar Advisor in OIE. OIE can provide the academic department with a sample E-3 letter for general reference.

V. Other information

E-3 and H1B compared. Should the H-1B cap be reached (as it has been since the fiscal year 2006), E-3 may provide a good alternative for Australian professionals working in specialty occupations within private industry. Furthermore, for a professional Australian who has utilized the maximum number of years (6) in H-1B, the E-3 might provide additional legal work authorization in the U.S. beyond the H-1B eligibility. Finally, for an Australian who is overseas at the time of visa application, the required documentation for E-3 is considerably less time-consuming than for H-1B processing.

E-3 and J-1 compared. For an Australian who is overseas at the time of visa application, J-1 and E-3 paperwork at the University are comparable and will take about the same amount of time for internal processing. Both allow for dependants to apply for legal work authorization while in the US. There is a cap on the number of new E-3s, whereas there is no numerical limit on the number of J-1s. Private companies, on the other hand, generally can not offer J-1 as an option.

Non-immigrant intent. Like other U.S. “non-immigrant” visas, this visa type is not intended for a person to permanently reside and work in the U.S. Those who hold E-3 status are expected by U.S. law and government officials to return home upon completion of the employment in the U.S. However, an application for initial admission, change of status or extension of stay in E-3 class may not be denied solely on the basis of an approved request for permanent labor certification or a filed or approved immigration visa preference petition.

Dependants. Dependants of E-3 workers may be employed after applying for and receiving the EAD work authorization card using the USCIS form I-765. An OIE advisor can advise E-3s and their dependants about how to request this type of work authorization.

US Social Security Number (SSN). The SSN is required for employment in the U.S. If an employee does not already have an SSN, s/he will need to apply for the number after entering the U.S. in E-3 status. OIE has SSN applications and complete instructions. See an OIE Advisor with any questions.

VI. Additional Resources

For Dept. of State Q&A: http://canberra.usembassy.gov/e3visa.html

For USCIS Information: https://www.uscis.gov/working-united-states/temporary-workers/e-3-certain-specialty-occupation-professionals-australia

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