

Sharp, Jo

From: Sharp, Jo
Sent: Monday, 23 May 2011 10:09 AM
To: s45
Subject: RE: s45 - Application to Import Foreign Actor [SEC=UNCLASSIFIED]

Security Classification:
UNCLASSIFIED

Hi Helen

I have not received a letter from MEAA, so I will check with Drew now.

Thank you
Jo

s45

A large rectangular area of the document is completely blacked out, indicating redacted content. The redaction covers the majority of the page's body text.

s45

A second large rectangular area of the document is completely blacked out, indicating redacted content. This redaction covers the bottom half of the page's body text.

Sharp, Jo

From: Sharp, Jo
Sent: Monday, 23 May 2011 11:56 AM
To: s45
Cc: Fulton, Caroline; Kelly, Jessica
Subject: RE: s45 Application to Sponsor Foreign Actor [SEC=UNCLASSIFIED]

Security Classification: UNCLASSIFIED

Hi s45

As MEAA have indicated that they received the complete application on Thursday they are still within the response period of 14 days. I spoke to Drew this morning, and as per his email below, I understand that MEAA is moving on the issue.

We understand the need to process this within a short time frame, and we will finalise our assessment of the application as quickly as possible. If there is any further delay I will contact you straight away.

Thanks very much,
Jo

s45



s45



s45



Sharp, Jo

s45

On 26/05/2011, at 11:21 AM, Sharp, Jo wrote:

Hi s45

Please find attached the FACS certificate for s45, and its covering letter.

As requested, the certificate lists s45

Thank you

Jo

Jo Sharp

Assistant Director | Film Policy and Incentives | Office for the Arts

Department of the Prime Minister and Cabinet

Phone: 02 6275 9537 | Email: Jo.Sharp@pmc.gov.au

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<s45 scanned.pdf>

Carter, Jane

From: Richards, Stephen
Sent: Monday, 21 February 2011 10:07 AM
To: 'Christine King'
Cc: Carter, Jane; 'Catherine McDonnell'; 'Dave Newman'; 'Amanda Mitchell'
Subject: RE: Meeting - 2:30pm on 23 February [SEC=UNCLASSIFIED]
Categories: UNCLASSIFIED

Christine

Thanks for making the time to meet. 2:30pm would be perfect.

In terms of things we'd like to cover, as per my earlier e-mail we'd like to understand the approach you generally follow when initiating a casting exercise.

Some more specific questions include:

- Do you use casting exercises to fill all roles?
- When initiating a casting exercise do you circulate a character breakdown to actor agents and, if so, how extensively do you circulate character breakdowns (eg to all agents, to a cross section of agents, etc)?
- How and when do you decide if auditions are required – Do you audition for all roles? Do you audition all 'shortlisted' actors? Do actors do auditions in person, via video conference facilities and/or submit tapes?
- When auditions are undertaken is the director involved to provide actors with advice on the requirements of the role or does the casting agent pass on this information?
- Does your approach differ generally, or through specific stages of the casting process, depending on whether you are seeking to cast an A-list marquee actor or a less high profile/emerging actor? For instance, it's been suggested to us by some producers that it is not common practice for marquee actors to be auditioned for roles.
- In your experience, at what stage might a producer/director or a casting agent consider there is a need to consider foreign actors for certain roles?

Our interest is primarily in casting practices in relation to roles in feature films and television and other drama productions, although from time to time we also have an interest in how hosts/presenters for documentaries are selected. We are not concerned with actors appearing in TVCs.

Cheers

Stephen

From: Christine King [mailto:chris@christinekingcasting.com]
Sent: Sunday, 20 February 2011 3:35 PM
To: Richards, Stephen
Cc: Carter, Jane; Catherine McDonnell; Dave Newman; Amanda Mitchell
Subject: Re: Meeting [SEC=UNCLASSIFIED]

Dear Stephen,

Shall we say 2.30 on Wednesday 23rd.

My office address details below if it is convenient to meet there (please note we are on the corner of Greenknowe Avenue and Macleay Street).

Can you please let me know in advance if you have any specific questions, or points to clarify.

22/02/2011

Best wishes,

Christine

CHRISTINE KING CASTING

Suite 1.10

46A Macleay St,

Potts Point, Sydney, NSW 2011

s47F Cell: +61 438 331 663

Email: chris@christinekingcasting.com

Save trees...Print this email only if necessary.

On 17/02/2011, at 10:33 AM, Richards, Stephen wrote:

Christine

I am following up on Catherine McDonnell's e-mail of 8 February which introduced us electronically.

I'm not sure how much Catherine McDonnell may have told you prior to putting us in contact. So, by way of brief background, I work in the Office for the Arts and, among other things, administer the Foreign Actors Certification Scheme (FACS). The FACS Guidelines contain some 'casting guidelines' which we are aware have not been revised for some time. We're interested in hearing from casting agents about how they operate so that we are aware of current casting practices when applying the casting guidelines.

A colleague of mine, Jane Carter (who works with me on FACS applications), and I will in Sydney on 23 February for some meetings in the morning and early afternoon.

I wondered if you might have some time to talk with us on the afternoon of the 23rd about the arrangements Christine King Casting puts in place when conducting casting exercises for roles in films, television series and so on.

I'd be grateful if you could let me know if you could set aside 30-60 minutes for a chat from some time after 2pm?

Cheers

Stephen

From: Catherine McDonnell [mailto:catherine.mcdonnell@foxaus.com]

Sent: Tuesday, 8 February 2011 11:06 AM

To: Richards, Stephen

Cc: Christine King

Subject: Meeting

Hi Stephen

As discussed I am introducing you via email to Christine King of Christine King so that you may arrange to meet for Christine to explain the casting process.

Over to you both!

Thanks

Catherine

Catherine McDonnell

22/02/2011

Fox Production Services Pty Limited

PH: 61 2 9383 4035

FAX: 61 2 9383 4004

s47F

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Sircar, Sanjay

From: james.rea@immi.gov.au
Sent: Friday, 16 January 2009 3:28 PM
To: Richards, Stephen
Cc: Glenn, Raelene; Sircar, Sanjay; paul.murray@immi.gov.au;
 Colleen.Santinon@immi.gov.au; frank.donatiello@immi.gov.au;
 maria.szanto@immi.gov.au
Subject: Review of foreign actors certification guidelines [SEC=UNCLASSIFIED]

Hi Stephen

s22

Thanks for keeping is in the loop. I will forward this information to our policy section in National Office who may be interested in providing some input into your review process.

Regards

James Rea
 Manager Entertainment Processing Centre
 Department of Immigration and Citizenship Parramatta Office
 Phone: 02 8861 4356
 Fax: 02 8861 4301
 Email: james.rea@immi.gov.au

"Richards,
 Stephen"
 <Stephen.Richards
 @environment.gov.
 au>

16/01/2009 03:13
 PM

To
 james.rea@immi.gov.au
 cc
 "Glenn, Raelene"
 <Raelene.Glenn@environment.gov
 .au>, "Sircar, Sanjay"
 <Sanjay.Sircar@environment.gov
 .au>

Subject
 Review of foreign actors
 certification guidelines
 [SEC=UNCLASSIFIED]
 Protective Mark

James

s22

Following on from some discussions we had in the middle of last year and an e-mail I sent you on 20 August, I wanted to let you know that DEWHA has now gone a little further in the process of reviewing our "Guidelines for the entry into Australia of Foreign Actors for the purpose of employment in film and television productions" (the Guidelines), which give effect to sub-clauses 420.222 (2) and (3) of the Migration Regulations.

The impetus for this came in the latter half of 2008 when our Minister received correspondence from MEAA on a couple of occasions re the Department's application of the Guidelines. s22

s22. In response, the Minister indicated that there would be value in DEWHA and MEAA discussing their different interpretations of the Guidelines and considering potential amendments to improve their operation.

Consideration of amendments was suggested because the Guidelines have not been substantively revised since the mid 1990s. Since they were first drafted, the Australian film and television industry has experienced many significant economic and technological changes which has led to changes in the way in which films are financed and made, and the level of interest in using foreign actors. There have also been very significant changes to the nature of Government assistance to the industry including the introduction of the Producer Offset and the development of the 'significant Australian content' test, in which issues such as financing and copyright ownership are less significant factors than under the previous 10BA scheme.

In this changing global environment there is merit in reviewing the Guidelines and potentially amending them to provide greater clarity about their scope and application.

In particular, the Department believes the Guidelines should be reviewed, in consultation with relevant stakeholders, to:

- Provide greater clarity on the treatment of foreign actors seeking to enter Australia to perform or appear in film and television productions

- Provide greater clarity re what forms of direct and indirect government assistance are subsidies

- Provide greater clarity on the scope of the guidelines, which currently indicate they apply to feature films, telemovies and miniseries but are silent on their application or otherwise to a range of other production genres (eg documentaries, reality programs, variety programs, TVCs, etc)

- Determine the extent to which the "Australian content criteria" set out in the Guidelines should be consistent with the "significant Australian content" requirements of the Producer Offset

- Determine whether, for unsubsidised productions, requiring foreign investment to be greater than the level of funds expended on foreign actors while in Australia is a reasonable requirement

- Ensure consistency with the Migration Regulations which legally determine and limit the scope of the Guidelines

We initiated discussions with MEAA in October 2008, and have subsequently sought input from the Screen Producers Association of Australia (SPAA) and Screen Australia.

In terms of a process, we expect to receive comments from MEAA, SPAA, Screen Australia and other interested stakeholders by the end of February 2009 and we aim to prepare a revised draft of the Guidelines over the following 1-2 months, with stakeholders having the opportunity to comment further through the drafting process. Once a final draft is settled the Department would submit it to the Minister for consideration and approval.

Whatever amendments might be made, we recognise the Guidelines must continue to comply with the requirements of the Migration Regulations. We will therefore keep DIAC informed throughout this review process, pass on the comments provided by stakeholders (particularly if there are any suggesting possible amendments to the Migration Regulations themselves), and invite DIAC's input where necessary.

I would be happy to discuss any of the above in further detail if you wish.

DIAC on 15 May 2009
 To send to SPAR ??

Sircar, Sanjay

From: james.rea@immi.gov.au
Sent: Friday, 22 May 2009 11:03 AM
To: Richards, Stephen
Cc: Colleen.Santinon@immi.gov.au; Sircar, Sanjay
Subject: Review of foreign actor guidelines - meeting on 15 may 2009 [SEC=UNCLASSIFIED]

Attachments: FACS Review Discussion Paper-final-21april.doc



FACS Review
 Discussion Paper-1

Hi Stephen & Sanjay

Thanks for inviting us to the review of FACS last week. I think the meeting was very productive yet I think there is a way to go before all parties are in agreement about the final look of the FACS.

Below I provided the current DIAC policy regarding union consultation in relation to sc 420 visa's. Please be advised that 420 Entertainment policy is currently being reviewed.

While it is not specifically mentioned in the policy, officers will proceed to make a decision after considering the additional information (if any) provided by both the union and the sponsor.

Regards

James Rea
 Manager Entertainment Processing Centre
 Department of Immigration and Citizenship Parramatta Office
 Phone: 02 8861 4356
 Fax: 02 8861 4301
 Email: james.rea@immi.gov.au

29.6 Union consultation requirement

For 420.223(1)(d) union consultation is required for applicants under 420.222 (2), (3), and (4). For policy and procedures see PAM3: Div1.4 - Sponsorship: Non-business temporary entry visas.

See Contact details for relevant Australian unions for a list of the unions that, under policy, are considered relevant to this visa. Note that this is not a visa criterion (or sponsorship factor) if the applicant is to perform in engagements for non-commercial purposes, see 420.223(3).

If in doubt as to which is the relevant union, officers may seek advice from:

- (initially) the sponsor, as to which award applies to the proposed activities and which industrial union is respondent to that award or
- DEEWR.

For TV & film production applicants as per 420.222(2) and (3), officers may without further enquiry regard this visa criterion/sponsorship factor as satisfied provided the sponsorship is supported by the certificate given by the Arts Minister, see section 8 The Arts Minister's certificate.

This certificate should be provided by DEWHA to the sponsor within 10 working days.

In all other cases [420.222(4)], the sponsor should provide (preferably at time of lodging the sponsorship) evidence of:

- having consulted the relevant Australian unions in relation to the entry of the sponsored person and
- the union's response (if any).

The relevant union should provide this response to the sponsor within 5 working days.

If evidence of consultation has not been provided, the sponsor should, in accordance with the "Code of procedure" be asked to do so.

At all times, officers should be aware that clause 420.223(1)(d) requires only that the sponsor has consulted the relevant union/s. Legally, provided the sponsor demonstrates that they have consulted the union/s, this visa criterion/sponsorship factor is satisfied.

However, it is policy that:

- the union be given the opportunity (in accordance with the "Code of procedure") to respond to the sponsor's consultation and to comment on any matters arising from the proposed entry/stay of the applicant and
- if a response is made by the union and their comments are relevant, the decision-maker can take into account these comments when assessing sponsorship factors.

In assessing any visa criterion/sponsorship factor for which union comment is, under policy, a relevant factor, officers generally may without further enquiry regard the criterion/factor as satisfied provided the union's comment (if any) is to the effect that it has no objection to the applicant being granted a visa.

If the union's response (if any) suggests that it has a relevant objection (that is, relevant to any 420.222 criterion) both sponsor and union should be given the opportunity either to:

- (preferably) negotiate an agreed outcome or
- provide a statement to the department as to their respective positions on the matter.

If the sponsor has not provided evidence of a response from the union, officers should:

- in the first instance, contact the union to ascertain whether the union intends to respond; and if so:
- ask that written comment be provided in accordance with the time frames of the "Code of procedure".

"Richards,
Stephen"
<Stephen.Richards
@environment.gov.
au>

13/05/2009 11:59
AM

To
james.rea@immi.gov.au
cc
Colleen.Santimon@immi.gov.au
Subject
review of foreign actor
guidelines - meeting on 15 may
2009 [SEC=UNCLASSIFIED]
Protective Mark

James

As just discussed, attached is a copy of the discussion paper we will be working through at the meeting about the review of the guidelines for certification of foreign actors entering Australia to appear in film and television productions (the Guidelines) that DEWHA has organised for Friday 15 May.

<<FACS Review Discussion Paper-final-21april.doc>> The meeting will be held at the Screen Australia offices from 10:30am-12:30pm. Screen Australia is located at 150 William St (cnr Forbes St) Woolloomooloo. When you arrive, go to Screen Australia's reception area on Level 4 and you will be escorted to the meeting room.

The paper summarises the views of industry stakeholders provided in their submissions to the DEWHA identifying where they believe there might be merit in amending the Guidelines on the entry of foreign actors.

We propose to use the meeting to consider the key issues set out in the discussion paper with relevant stakeholders with a view to reaching consensus where possible.

Following the meeting DEWHA will prepare a revised draft of the Guidelines and circulate it for comment over the ensuing weeks. Depending on the response to the initial draft this process may involve the circulation of a number of successive drafts so there will be plenty of opportunity for further stakeholder comment.

In addition to yourself and Colleen Santinon, I understand Peter Bright may also be a possible attendee. We'd be happy for Peter to join the meeting if his schedule allows, and even if this is not possible, we look forward to meeting you and Colleen on Friday.

Give me a call if you need to discuss anything further prior to the meeting.

Cheers

Stephen

Stephen Richards
Manager - Film Incentives & International
tel: 61-2-62759645
fax: 61-2-62759659
s47F
e-mail: stephen.richards@environment.gov.au
web: www.arts.gov.au

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• main file
• review file

Sircar, Sanjay

From: paul.murray@immi.gov.au
Sent: Friday, 10 July 2009 5:27 PM
To: Richards, Stephen
Cc: Sircar, Sanjay; kathryn.wilkin@immi.gov.au; specialist.entry@immi.gov.au
Subject: Stage performers who also appear on television or film productions
[SEC=UNCLASSIFIED]

Stephen,

I have some answers in relation to your query regarding stage performers who, after arrival in Australia, perform a minor role in a television or film production.

The regulations that require an Arts Certificate are 420.222(2) and 420.222(3). If an entertainer is granted an Entertainment visa on the basis of reg 420.222(4) and then undertakes an activity that is consistent with activities permitted under regulations 420.222(2) and 420.222(3), an Arts Certificate is not necessary in the scenarios outlined below.

Before visa grant

If, prior to the grant of an Entertainment visa, an applicant states they will undertake activities that fall across numerous subclass 420 regulatory entry streams they will be required to satisfy the regulations that are most relevant to their primary purpose of stay.

This means that even if they appear in a very minor role in an Australian television production but their primary purpose of stay is to perform on a concert tour, they will be required to satisfy 420.222(4) and will not be assessed against either 420.222(2) or 420.222(3). However, all activities are considered when assessing visa applications.

After visa grant

If an Entertainment visa is granted (Not under 420.222(2) or 420.222(3)) and DIAC is then advised that the entertainer will take a minor role in a television or film production, approval from DIAC must be received prior to the activity taking place. This is because it is a condition on the visa that the holder must not change details of times and places of engagements specified in the application to be undertaken in Australia during the visa period, without the prior permission in writing of the Secretary. In making this decision DIAC will consider, amongst other things, whether the additional activity is consistent with the primary purpose for which the visa was granted. It is not a requirement that DIAC receive an Arts certificate as part of this process.

If you have any further questions - Kathryn Wilkin, A/g Director, Specialist Entry section is more than happy to discuss this information with you. She can be contacted on 02 6264 3598.

I trust this is of assistance.

Regards,

Paul Murray
Specialist Entry Section
Education and Tourism Branch
Migration and Visa Policy Division
Department of Immigration and Citizenship
Ph: 02 6264 3591
Fax: 02 6264 2632

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Sircar, Sanjay

From: Richards, Stephen
Sent: Wednesday, 29 July 2009 9:51 AM
To: Richards, Stephen
Cc: Glenn, Raelene; Sircar, Sanjay
Subject: DIAC advice on possible links between foreign actor review and s22
s22 SEC=UNCLASSIFIED]

Categories: UNCLASSIFIED

Note for file

Colleen Santinon & Paul Murray called this morning to respond to my 28 July e-mail (below).
They advised:

- DIAC officers attending the 3 August meeting will be Colleen Santinon & Christine McFall (Branch Head)
- 423.222(2) covers print and TV journalists, etc.
- 423.222(3) covers all classes of persons involved in the making of documentaries and TVCs that are not for broadcast in Australia. s22

s22

Cheers

Stephen

From: Richards, Stephen
Sent: Tuesday, 28 July 2009 1:58 PM
To: 'Colleen.Santinon@immi.gov.au'
Subject: Follow up re 3 august meeting [SEC=UNCLASSIFIED]
Importance: High

Colleen

I've contacted Minister Garrett's office. Our understanding is the meeting will be at 10am on Monday 3 August in Minister Evans' Parliament House office.

Mr Garrett's arts adviser, Andy Palfreyman, will be attending. My Branch Head, Stephen Arnott, and myself will also be attending.

From your side I understand one of Minister Evans' advisers, Anne Clarke, together with yourself and your Branch Head will be attending the meeting. Can you advise the name of your Branch Head?

In terms of doing a quick background brief for Mr Palfreyman, I've had a closer look at the 423 visa. s22

s22



Happy to discuss if that's easier than replay by e-mail.

Cheers

Stephen

Stephen Richards
Manager - Film Incentives & International
tel: 61-2-62759645
fax: 61-2-62759659

s47F

e-mail: stephen.richards@environment.gov.au
web: www.arts.gov.au

Sircar, Sanjay

From: Richards, Stephen
Sent: Tuesday, 4 August 2009 11:43 AM
To: Woolfe, Claudia; Glenn, Raelene; Sircar, Sanjay
Cc: Arnott, Stephen
Subject: Teleconference with DIAC s22 DEWHA's
foreign actor s22 [SEC=UNCLASSIFIED]

Categories: UNCLASSIFIED

Note for file

Earlier today, Claudia Woolfe, Raelene Glenn, Sanjay Sircar and I participated in a teleconference with DIAC (Colleen Santinon, Paul Murray, Christine Shipley) re next steps in cooperating to jointly progress:

s22

- DEWHA's review of its foreign actor certification guidelines s22

s22

s22

s22

DEWHA indicated:

- Expected consultation for foreign actor guidelines to be completed by late Nov/early Dec 2009. s22

s22

DEWHA expected to be able to discuss amendments with DIAC in detail from December 2009

s22

s22

s22



Action arising:

- s22



-



-



- DEWHA to involve DIAC in both the foreign actor and foreign musician industry consultation processes

Cheers

Stephen

From: Richards, Stephen **On Behalf Of** Colleen Santinon/ACT/IMMI/AU
Sent: Monday, 3 August 2009 4:49 PM
To: Woolfe, Claudia; Glenn, Raelene; Sircar, Sanjay
Subject: FW: Invitation: (4 Aug 10:00 AM ZE10 in teleconference with DEWHA - my office)
[SEC=UNCLASSIFIED]
When: Tuesday, 4 August 2009 10:00 AM-11:00 AM (GMT+10:00) Canberra, Melbourne, Sydney.
Where: teleconference with DEWHA - my office

Claudia - feel free to invite others to attend also
Sanjay/Raelene - happy for you to join as well

The teleconference follows a meeting at Parliament House at 2pm on 3 August b/w advisers from Evans' (Anne Clarke) & Garrett's (Andy Palfreyman) offices and Colleen, Christine Shipley, Stephen Arnott and myself.

s22



S22

From: Colleen Santinon/ACT/IMMI/AU [mailto:Colleen.Santinon@immi.gov.au]
Sent: Monday, 3 August 2009 4:32 PM
To: Colleen Santinon/ACT/IMMI/AU; christine.Shepley@immi.gov.au; paul.murray@immi.gov.au; Richards, Stephen
Subject: Invitation: (4 Aug 10:00 AM ZE10 in teleconference with DEWHA - my office) [SEC=UNCLASSIFIED]
When: Tuesday, 4 August 2009 10:00 AM-11:00 AM (GMT+10:00) Canberra, Melbourne, Sydney.
Where: teleconference with DEWHA - my office

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See: <http://www.immi.gov.au/functional/privacy.htm>

<< File: ATT384865.htm >> << File: c163208.ics >>

Sircar, Sanjay

From: Richards, Stephen
Sent: Wednesday, 21 October 2009 11:56 AM
To: 'maria.szanto@immi.gov.au'
Cc: Glenn, Raelene; Carter, Jane; james.rea@immi.gov.au; Sircar, Sanjay
Subject: RE: Alliance Letter of Non-Objection: s22 [REDACTED]
 [SEC=UNCLASSIFIED]

Categories: UNCLASSIFIED

Maria

In DEWHA's view the Foreign Actor Certification Guidelines do not apply to television commercials (TVCs). We have made this known to both DIAC and MEAA previously.

We are aware that MEAA has a strong view that TVCs are covered by the Guidelines and continues to require sponsors to consult with it to obtain no objection letters in respect of TVCs.

DEWHA is seeking to resolve this matter in its review of the Foreign Actor Guidelines in which MEAA and other stakeholders are actively engaged. We expect to finalise the review in the next few months.

In the meantime, it is DEWHA's position that TVCs do not require a Foreign Actor Certificate. DEWHA has never received an application for foreign actor entry relating to a TVC and would not expect to receive any such application.

Cheers

Stephen

-----Original Message-----

From: maria.szanto@immi.gov.au [mailto:maria.szanto@immi.gov.au]
Sent: Wednesday, 21 October 2009 11:23 AM
To: Richards, Stephen; Sircar, Sanjay
Cc: Glenn, Raelene; Carter, Jane; james.rea@immi.gov.au
Subject: Re: Alliance Letter of Non-Objection: s22 [REDACTED] SEC=IN-CONFIDENCE:CLIENT]

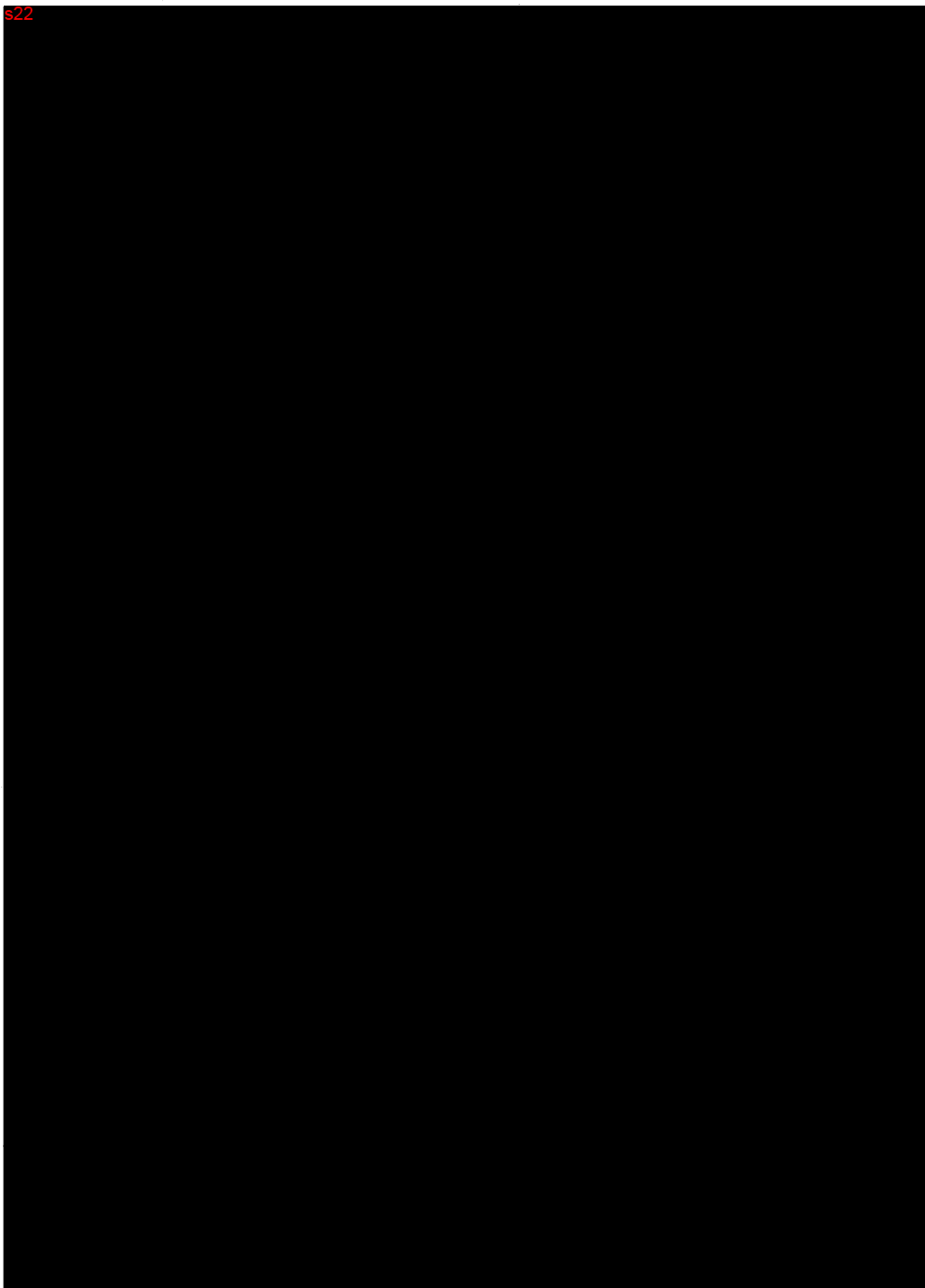
Stephen/Sanjay,

Please confirm whether the Foreign Actors Guidelines apply to foreign actors appearing in television commercials.

Yours sincerely,

Maria Szanto
 Team Leader, Sydney Entertainment Processing Centre (SEPC) Parramatta Business Centre
 Department of Immigration and Citizenship GPO Box 9984 Sydney NSW 2001

Phone: 02 8861 4358
 Fax: 02 8861 4301
 E-mail: maria.szanto@immi.gov.au



Sircar, Sanjay

From: Colleen.Santanon@immi.gov.au
Sent: Wednesday, 21 October 2009 5:27 PM
To: Richards, Stephen; paul.murray@immi.gov.au; Chris.Coghlan@immi.gov.au
Cc: Glenn, Raelene; Sircar, Sanjay; richard.maclean@immi.gov.au
Subject: Re: DIAC involvement in foreign actor certification process - request for assistance
 [SEC=UNCLASSIFIED]

Dear Stephen

Paul would be the first point of contact regarding this - he will liaise with the Sydney office (SEPC). Plus cc me into everything.

regards

Colleen Santanon

Director
 Specialist Entry Section
 Education and Tourism Branch
 Migration and Visa Policy Division
 Department of Immigration and Citizenship

Telephone: 02 6264 2781

Fax: 02 6264 1399

s47F
 Email: Colleen.Santanon@IMMI.gov.au

"Richards,
 Stephen"
 <Stephen.Richards
 @environment.gov.
 au>

21/10/2009 03:33
 PM

To
 Colleen.Santanon@immi.gov.au
 cc

"Glenn, Raelene"
 <Raelene.Glenn@environment.gov
 .au>, "Sircar, Sanjay"
 <Sanjay.Sircar@environment.gov
 .au>

Subject
 DIAC involvement in foreign
 actor certification process -
 request for assistance
 [SEC=UNCLASSIFIED]

Protective Mark

Colleen

As discussed earlier today, we would like to provide more clarity to sponsors of foreign actors about the process for assessing applications for foreign actor certification (FAC) and how it fits in with DIAC's visa process.

To do this, we intend to include a section in the revised FAC Guidelines that sets out in more detail what sponsors need to do through each step of our administrative process. We think it would be useful to include some brief information about DIAC's

involvement in the FAC process and the information DIAC requires from the sponsor to issue the Entertainer Visa for a foreign actor (i.e. at what stage DEWHA should direct the sponsor to DIAC, at what point in the DIAC process the FAC is required etc.).

Can you identify a contact within DIAC whom we can approach to discuss?
We'd like to finalise this section of the revised Guidelines over the next couple of weeks. We will clear the draft text with DIAC to ensure your Department's role is accurately reflected.

I'd be happy to discuss further if you wish.
Cheers

Stephen

Stephen Richards
Manager - Film Incentives & International
tel: 61-2-62759645
fax: 61-2-62759659
s47F
e-mail: stephen.richards@environment.gov.au
web: www.arts.gov.au

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Sircar, Sanjay

From: Sircar, Sanjay
Sent: Tuesday, 10 November 2009 10:01 AM
To: 'Colleen.Santinon@immi.gov.au'
Cc: 'paul.murray@immi.gov.au'; 'richard.maclean@immi.gov.au'; Richards, Stephen
Subject: DIAC involvement in foreign actor certification process [SEC=UNCLASSIFIED]

Categories: UNCLASSIFIED

Dear Colleen,

Thank you for DIAC's answers to the information we sought on DIAC involvement in the foreign actor certification process. We have taken all the DIAC comments on board, and they will be reflected in the revised draft Guidelines. We are still working on these, and will run the draft by you when it is ready.

Do you think it would be useful for all concerned if DEWHA, the MEAA and DIAC were to have a meeting focussed solely on the Arts Certificate process, so that there would be no ambiguity about any aspect of it?

In the advice you provided you say, "We would like further clarification of the Arts Certificate process, in particular around the involvement of the unions. Does DEWHA rely on the union consultations carried out for the purpose of satisfying DIAC decision makers or does DEWHA engage in its own union consultation covering a broader ranges of issues than those covered for the purposes of the 420 regs? [Discussed in meeting]

"If DEWHA relies on the DIAC union consultation process, when does it issue an Arts Certificate, before or after the union consultation has been completed? Do the unions have access the Arts Certificate assessment?"

After the sponsor consults with the MEAA, the MEAA provides a letter of opinion to the sponsor, which the MEAA copies to DEWHA and DIAC. This single letter separately covers (a) the MEAA's opinion on whether the application is in accordance with the criteria for an Arts Certificate laid out in the DEWHA Guidelines and (b) the MEAA's stipulation about working conditions and award issues (which is covered in a separate section of the Migration Regulations from those relating to the Arts Certificate).

DEWHA starts its consideration of an application for a Certificate only after it receives the MEAA letter to the sponsor. DEWHA takes into account only the portion of the MEAA letter which relates to the Arts Certificate. DEWHA provides a copy of its covering letter to the sponsor and the Certificate to the MEAA, but not the DEWHA assessment of the application. In certain cases when DEWHA provides a Certificate when the MEAA has objected, DEWHA has written to the MEAA providing a summary of the reasons for its decision.

I have cleared this email with my director Stephen Richards.

Thank you again for the information you provided.

Best wishes,

Sanjay

From: Colleen.Santinon@immi.gov.au [mailto:Colleen.Santinon@immi.gov.au]
Sent: Thursday, 5 November 2009 2:36 PM
To: Sircar, Sanjay
Cc: paul.murray@immi.gov.au; richard.maclean@immi.gov.au
Subject: Fw: DIAC involvement in foreign actor certification process - request for assistance [SEC=UNCLASSIFIED]

Dear Sanjay

Please see Paul's comments in 'blue' below - much of this was covered in our last meeting

regards

Colleen Santinon
Director
Specialist Entry Section
Education and Tourism Branch
Migration and Visa Policy Division
Department of Immigration and Citizenship

Telephone: 02 6264 2781
Fax: 02 6264 1399
Mobile: 0423 299 167
Email: Colleen.Santinon@IMMI.gov.au

----- Forwarded by Colleen Santinon/ACT/IMMI/AU on 05/11/2009 02:32 PM

Paul D
Murray/ACT/IMMI/A
U

05/11/2009 01:19
PM

To
Colleen
Santinon/ACT/IMMI/AU@IMMI
cc
Specialist Entry/IMMI/AU@IMMI
Subject
Fw: DIAC involvement in
foreign actor certification
process - request for
assistance
[SEC=UNCLASSIFIED]
Protective Mark
UNCLASSIFIED

i. Does this seem accurate and appropriate to you?

Under (2), we are not sure how the DIAC processing officer contact details can be provided if the application has not yet been lodged.

Under (3) a sponsorship application will only be required if the proposed sponsor has not already been approved as an entertainment sponsor. An approved entertainment sponsorship is valid for three years.

The nomination and visa applications must be lodged together.

There are separate fees/charges for sponsorship, nomination and visa application. An application will not be valid unless the fee/charge has been paid.

ii. Is there anything you would like added or omitted?

no

s22



iv. At what stage(s) would DIAC like to be contacted by the sponsor?
The current draft suggests this happens in stage 1 when sponsor commences FAC process

by consulting MEAA, again possibly at stage 2 when sponsor would contact DIAC to get details of a DIAC contact officer, and finally during stage 3 when the sponsor has Foreign Actor Certificate to submit to DIAC.

Informally, DIAC would like to be contacted early if large numbers of people are involved in a production. This can be done through the use of the email address: Entertainment.Visas@immi.gov.au

Formally, DIAC should be contacted when the sponsor has a complete application to lodge.

v. Does DIAC have any issue with the MEAA requirement for a copy of the 1379 form? Does DIAC think it necessary?

Is it up to the client to determine if they want to provide the 1379 form to the MEAA - it is not a legal requirement for the client to provide this. It is only necessary for the client to provide the MEAA with the information necessary for it to make its assessment. A completed form 1379 would include other information not directly related to this assessment. However, this is probably the most efficient way for the application to the union to be processed.

i. Any other DIAC comments?

We would like further clarification of the Arts Certificate process, in particular around the involvement of the unions. Does DEWHA rely on the union consultations carried out for the purpose of satisfying DIAC decision makers or does DEWHA engage in its own union consultation covering a broader ranges of issues than those covered for the purposes of the 420 regs? Discussed in meeting

If DEWHA relies on the DIAC union consultation process, when does it issue an Arts Certificate, before or after the union consultation has been completed? Do the unions have access the Arts Certificate assessment?

Once a sponsor has been approved the sponsorship is valid for 3 years.

Sponsors should be advised to lodge their documentation with DIAC at least 8-12 weeks prior to the nominated person's arrival date in Australia.

Paul Murray
Specialist Entry Section
Education and Tourism Branch
Migration and Visa Policy Division
Department of Immigration and Citizenship
Ph: 02 6264 3591
Fax: 02 6264 2632

----- Forwarded by Paul D Murray/ACT/IMMI/AU on 05/11/2009 11:18 AM -----

Colleen
Santinon/ACT/IMMI
/AU

29/10/2009 08:38
AM

To
"Sircar, Sanjay"
<Sanjay.Sircar@environment.gov.au>

cc

Paul D
Murray/ACT/IMMI/AU@IMMI,
Richard
MacLean/ACT/IMMI/AU@IMMI

Subject

Re: DIAC involvement in
foreign actor certification
process - request for
assistance
[SEC=UNCLASSIFIED] (Document
link: Paul D Murray)

Protective Mark

Dear Sanjay

Paul and Richard have looked at this and made some comments - are you coming over to the meeting this arvo??

Colleen Santinon

Director
Specialist Entry Section
Education and Tourism Branch
Migration and Visa Policy Division
Department of Immigration and Citizenship

Telephone: 02 6264 2781

Fax: 02 6264 1399

s47F

Email: Colleen.Santinon@IMMI.gov.au

"Sircar, Sanjay"
<Sanjay.Sircar@environment.gov.au>

23/10/2009 09:19
AM

To
paul.murray@immi.gov.au

cc
Colleen.Santinon@immi.gov.au,
"Richards, Stephen"
<Stephen.Richards@environment.gov.au>, "Glenn, Raelene"
<Raelene.Glenn@environment.gov.au>

Subject
DIAC involvement in foreign
actor certification process -
request for assistance
[SEC=UNCLASSIFIED]

Protective Mark

Paul,

As discussed, in the new Guidelines being drafted for the Foreign Actors Scheme, we thought we could spell out that the FAC process falls into three broad stages - initial contact with agencies (DEWHA, DIAC, MEAA); the FACS consultation and application process (involving MEAA and DEWHA); and the application for the Entertainer Visa to DIAC.

Here are the points in the current draft which mention DIAC.

1. Initial Contact: 3 Agencies

The sponsor should simultaneously make initial contact with the following agencies to advise them of the intention to obtain a Foreign Actor Certificate, to gather details

of various relevant application forms and information required, and to clarify any initial questions:

- the Department of the Environment, Water, Heritage and the Arts
[contact details omitted here]

- the Department of Immigration and Citizenship (DIAC)
Sydney Entertainment Processing Centre, Parramatta (GPO Box 9984 Sydney NSW 2001
tel.: 02-88614356, 02-88614358
email: entertainment.visas@immi.gov.au
fax: 02-88614301
<http://www.immi.gov.au/skilled/specialist-entry/420>

- the Media, Entertainment and Arts Alliance (MEAA)
[contact details omitted here]

2. Consultation and FACS Application Process

(a) The list of documentation required by the MEAA includes "a copy of the completed 1379 form that will be lodged with DIAC"

(b) The DEWHA application form currently requires the contact details (name and telephone number) for the DIAC officer handling the application.

Submitting information to DIAC for Entertainment Visa for Foreign Actors

DIAC will only consider applications for entertainment visas for foreign performers entering Australia to take part in a film or television productions if a Foreign Actor Certificate has been issued. To make an application, the sponsor should provide DIAC with the following:

- an application for sponsorship;
- an application for nomination;
- an application for the entertainment visa;
- the letter of opinion from the MEAA;
- the Foreign Actor Certificate from the Department; and
- any administration fee levied by DIAC.

DIAC makes a decision whether to issue the visa on receiving these materials.

Extract ends.

i. Does this seem accurate and appropriate to you?

ii. Is there anything you would like added or omitted?

s22

iv. At what stage(s) would DIAC like to be contacted by the sponsor?

The current draft suggests this happens in stage 1 when sponsor commences FAC process by consulting MEAA, again possibly at stage 2 when sponsor would contact DIAC to get details of a DIAC contact officer, and finally during stage 3 when the sponsor has Foreign Actor Certificate to submit to DIAC.

v. Does DIAC have any issue with the MEAA requirement for a copy of the 1379 form? Does DIAC think it necessary?

vi. Any other DIAC comments?

I know you and your group have a lot of competing priorities and pressures at the moment, so I apologise for adding to them with this demand on your time. My director has advised that he would like to see this progress relatively quickly if possible, and by end of next week hopefully we can have a clear understanding of when and how DIAC wants/needs to be involved in the FAC process, and a draft reflecting that. So, if you could manage to let us know sometime next week, that would be much appreciated.

Thank you for your help.

Sanjay

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<http://www.immi.gov.au/functional/privacy.htm>

Diac file
- dancers in Diac process -

Sircar, Sanjay

From: Sircar, Sanjay
Sent: Tuesday, 10 November 2009 9:57 AM
To: 'paul.murray@immi.gov.au'; 'maria.szanto@immi.gov.au'
Cc: 'christine.Shepley@immi.gov.au'; 'specialist.entry@immi.gov.au'; Richards, Stephen
Subject: FACs certificate for dancers in feature film and television drama productions only
 [SEC=UNCLASSIFIED]

Categories: UNCLASSIFIED

Paul and Maria,

Thank you for your answer about including a reference in the new Foreign Actor Guideline to DIAC wanting an informal email thumbs-up for large numbers of people intending to enter Australia.

In response to DIAC's question about whether the Foreign Actor Scheme applies to dancers: Foreign Actor Certificates have been issued so far for dancers in feature film and television drama productions only (but not talent quest programs, contests, celebrity-focussed programs etc. etc.) We believe that it is appropriate Foreign Actor Certificates should be issued in these circumstances. It is intended that the draft guidelines under preparation will clarify this.

I have cleared this email with my director Stephen Richards.

Best wishes,

Sanjay

 Sanjay,

Re our earlier telephone conversation - Maria has advised that she is happy for the email address to be included in your public document.

She has also sent the email below regarding TVCs and the Foreign Actor Certification Guidelines.

Regards,

Paul Murray
 Specialist Entry Section
 Education and Tourism Branch
 Migration and Visa Policy Division
 Department of Immigration and Citizenship
 Ph: 02 6264 3591
 Fax: 02 6264 2632

----- Forwarded by Paul D Murray/ACT/IMMI/AU on 06/11/2009 02:11 PM -----

Maria
 Szanto/NSW/IMMI/A
 U

06/11/2009 02:08
 PM

To
 Paul D Murray/ACT/IMMI/AU@IMMI
 cc
 James Rea/NSW/IMMI/AU@IMMI,
 Anupreet Bedi/NSW/IMMI/AU@IMMI
 Subject

MEAA Website
 [SEC=UNCLASSIFIED] (Document
 link: Paul D Murray)
 Protective Mark
 UNCLASSIFIED

Hi Paul

As discussed, DEWHA has made it very clear that Foreign Actor Certification Guidelines do not apply to television commercials (TVCs). s47F

s47F

DEWHA may have an issue with this. I don't know how accurate the rest of it is - (eg are dancers considered "actors"?)

Yours sincerely,

Maria Szanto
Team Leader, Sydney Entertainment Processing Centre (SEPC) Parramatta Business Centre
Department of Immigration and Citizenship GPO Box 9984 Sydney NSW 2001

Phone: 02 8861 4358

Fax: 02 8861 4301

E-mail: maria.szanto@immi.gov.au

"Richards,
Stephen"
<Stephen.Richards
@environment.gov.
au>

21/10/2009 11:55
AM

To
maria.szanto@immi.gov.au
cc

"Glenn, Raelene"
<Raelene.Glenn@environment.gov
.au>, "Carter, Jane"
<Jane.Carter@environment.gov.a
u>, james.rea@immi.gov.au,
"Sircar, Sanjay"
<Sanjay.Sircar@environment.gov
.au>

Subject
RE: Alliance Letter of

s22

[SEC=UNCLASSIFIED]

Protective Mark

Maria

In DEWHA's view the Foreign Actor Certification Guidelines do not apply to television commercials (TVCs). We have made this known to both DIAC and MEAA previously.

We are aware that MEAA has a strong view that TVCs are covered by the Guidelines and continues to require sponsors to consult with it to obtain no objection letters in respect of TVCs.

DEWHA is seeking to resolve this matter in its review of the Foreign Actor Guidelines in which MEAA and other stakeholders are actively engaged. We expect to finalise the review in the next few months.

In the meantime, it is DEWHA's position that TVCs do not require a Foreign Actor Certificate. DEWHA has never received an application for foreign actor entry relating to a TVC and would not expect to receive any such application.

Cheers

Stephen

-----Original Message-----

From: maria.szanto@immi.gov.au [mailto:maria.szanto@immi.gov.au]
Sent: Wednesday, 21 October 2009 11:23 AM
To: Richards, Stephen; Sircar, Sanjay
cc: Glenn, Raelene; Carter, Jane; james.rea@immi.gov.au
Subject: Re: Alliance Letter of [REDACTED] s22 s22
[SEC=IN-CONFIDENCE:CLIENT]

Stephen/Sanjay,

Please confirm whether the Foreign Actors Guidelines apply to foreign actors appearing in television commercials.

Yours sincerely,

Maria Szanto
Team Leader, Sydney Entertainment Processing Centre (SEPC) Parramatta Business Centre
Department of Immigration and Citizenship GPO Box 9984 Sydney NSW 2001

Phone: 02 8861 4358
Fax: 02 8861 4301
E-mail: maria.szanto@immi.gov.au

[REDACTED] s22

s22

s22

*DIAC on 'process' —
initial stage - DIAC cover*

Sircar, Sanjay

From: maria.szanto@immi.gov.au
Sent: Wednesday, 11 November 2009 10:40 AM
To: Sircar, Sanjay
Cc: paul.murray@immi.gov.au
Subject: Re: Query re "large" = more than ten [SEC=UNCLASSIFIED]

More than 10 personnel.

Yours sincerely,

Maria Szanto
 Team Leader, Sydney Entertainment Processing Centre (SEPC) Parramatta Business Centre
 Department of Immigration and Citizenship GPO Box 9984 Sydney NSW 2001

Phone: 02 8861 4358
 Fax: 02 8861 4301
 E-mail: maria.szanto@immi.gov.au

"Sircar, Sanjay"
 <Sanjay.Sircar@environment.gov.au>

10/11/2009 03:39
 PM

To
 paul.murray@immi.gov.au,
 maria.szanto@immi.gov.au
 cc

Subject
 Query re "large" = more than
 ten [SEC=UNCLASSIFIED]
 Protective Mark

Thanks for that - just checking, to make absolutely sure: do you mean 10 performers only, or ten personnel (cast and crew together)? I will amend the draft Guidelines accordingly.

Best wishes

Sanjay

-----Original Message-----

From: paul.murray@immi.gov.au [mailto:paul.murray@immi.gov.au]
 Sent: Tuesday, 10 November 2009 1:21 PM
 To: Sircar, Sanjay
 Cc: specialist.entry@immi.gov.au
 Subject: Fw: [SEC=UNCLASSIFIED]

fyi

Paul Murray
 Specialist Entry Section
 Education and Tourism Branch
 Migration and Visa Policy Division
 Department of Immigration and Citizenship
 Ph: 02 6264 3591

Fax: 02 6264 2632

----- Forwarded by Paul D Murray/ACT/IMMI/AU on 10/11/2009 01:20 PM

Maria
Szanto/NSW/IMMI/A
U
To
10/11/2009 12:05
cc
PM

Paul D Murray/ACT/IMMI/AU@IMMI

Subject

[SEC=UNCLASSIFIED]

Murray)

Re: Fw:

(Document link: Paul D

Protective Mark
UNCLASSIFIED

I'd say more than 10.

Maria

----- Forwarded by Paul D Murray/ACT/IMMI/AU on 06/11/2009 03:40 PM

"Sircar, Sanjay"
<Sanjay.Sircar@environment.gov.au>
To
06/11/2009 03:34
cc
PM

paul.murray@immi.gov.au

Subject

RE: [SEC=UNCLASSIFIED]

Protective Mark

:-) ... And it will be. Let me know how large a large group is (and I presume for DIAC's purposes, unlike ours, it is actors and crew), and I will put that in as well...

Sanjay

-----Original Message-----

From: paul.murray@immi.gov.au [mailto:paul.murray@immi.gov.au]

Sent: Friday, 6 November 2009 3:31 PM

To: Sircar, Sanjay

Cc: maria.szanto@immi.gov.au; christine.Shepley@immi.gov.au;

specialist.entry@immi.gov.au

Subject: Re: [SEC=UNCLASSIFIED]

Sanjay,

I should have been clearer. Yes, SEPC have advised that they would like the email address included with the advice re early informal contact advising of large groups.

Maria - What would you consider a large group?

Paul Murray

Specialist Entry Section

Education and Tourism Branch

Migration and Visa Policy Division

Department of Immigration and Citizenship

Ph: 02 6264 3591

Fax: 02 6264 2632

"Sircar, Sanjay"

<Sanjay.Sircar@en

vironment.gov.au>

To

paul.murray@immi.gov.au

06/11/2009 03:27

cc

PM

Subject

[SEC=UNCLASSIFIED]

Protective Mark

Thanks. But my question wasn't about including the email address, but about whether the DEWHA Guidelines should include the lines about when there is a large number of people included in a production, DIAC wanting early informal contact (via the email), as against the formal contact at the end. Could you let me know? Sorry to be a bother.

Sanjay

-----Original Message-----

From: paul.murray@immi.gov.au [mailto:paul.murray@immi.gov.au]
Sent: Friday, 6 November 2009 2:17 PM
To: Sircar, Sanjay
Cc: christine.Shepley@immi.gov.au; specialist.entry@immi.gov.au
Subject: SEPC Email Address [SEC=UNCLASSIFIED]

Sanjay,

Re our earlier telephone conversation - Maria has advised that she is happy for the email address to be included in your public document.

She has also sent the email below regarding TVCs and the Foreign Actor Certification Guidelines.

Regards,

Paul Murray
Specialist Entry Section
Education and Tourism Branch
Migration and Visa Policy Division
Department of Immigration and Citizenship
Ph: 02 6264 3591
Fax: 02 6264 2632

----- Forwarded by Paul D Murray/ACT/IMMI/AU on 06/11/2009 02:11 PM

Maria

Szanto/NSW/IMMI/A

U

To

06/11/2009 02:08

cc

PM

Subject

Paul D Murray/ACT/IMMI/AU@IMMI

James Rea/NSW/IMMI/AU@IMMI,

Anupreet Bedi/NSW/IMMI/AU@IMMI

MEAA Website

[SEC=UNCLASSIFIED] (Document

link: Paul D Murray)

Protective Mark

UNCLASSIFIED

Hi Paul

As discussed, DEWHA has made it very clear that Foreign Actor Certification Guidelines do not apply to television commercials (TVCs). s47F

DEWHA may have an issue with this. I don't know how accurate the rest of it is - (eg are dancers considered "actors"?)

Yours sincerely,

Maria Szanto
Team Leader, Sydney Entertainment Processing Centre (SEPC) Parramatta Business Centre
Department of Immigration and Citizenship GPO Box 9984 Sydney NSW 2001

Phone: 02 8861 4358

Fax: 02 8861 4301

E-mail: maria.szanto@immi.gov.au

"Richards,

Stephen"

To <Stephen.Richards

@environment.gov.

maria.szanto@immi.gov.au

cc au>

"Glenn, Raelene"

21/10/2009 11:55
<Raelene.Glenn@environment.gov
AM

.au>, "Carter, Jane"

<Jane.Carter@environment.gov.a

u>, james.rea@immi.gov.au,

"Sircar, Sanjay"

<Sanjay.Sircar@environment.gov

.au>

Subject

RE: Alliance Letter of

s22

[SEC=UNCLASSIFIED]

Protective Mark

Maria

In DEWHA's view the Foreign Actor Certification Guidelines do not apply to television commercials (TVCs). We have made this known to both DIAC and MEAA previously.

We are aware that MEAA has a strong view that TVCs are covered by the Guidelines and continues to require sponsors to consult with it to obtain no objection letters in respect of TVCs.

DEWHA is seeking to resolve this matter in its review of the Foreign Actor Guidelines in which MEAA and other stakeholders are actively engaged. We expect to finalise the review in the next few months.

In the meantime, it is DEWHA's position that TVCs do not require a Foreign Actor Certificate. DEWHA has never received an application for foreign actor entry relating to a TVC and would not expect to receive any such application.

Cheers

Stephen

-----Original Message-----

From: maria.szanto@immi.gov.au [mailto:maria.szanto@immi.gov.au]

Sent: Wednesday, 21 October 2009 11:23 AM

To: Richards, Stephen; Sircar, Sanjay

Cc: Glenn, Raelene; Carter, Jane; james.rea@immi.gov.au

Subject: Re: Alliance Letter of s22

[SEC=IN-CONFIDENCE:CLIENT]

Stephen/Sanjay,

Please confirm whether the Foreign Actors Guidelines apply to foreign actors appearing in television commercials.

Yours sincerely,

Maria Szanto

Team Leader, Sydney Entertainment Processing Centre (SEPC) Parramatta Business Centre
Department of Immigration and Citizenship GPO Box 9984 Sydney NSW 2001

Phone: 02 8861 4358

Fax: 02 8861 4301

E-mail: maria.szanto@immi.gov.au

s22



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<http://www.immi.gov.au/functional/privacy.htm>

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Sircar, Sanjay

From: Sircar, Sanjay
Sent: Wednesday, 2 December 2009 9:30 AM
To: Richards, Stephen
Subject: Query RE: DIAC modifications and Meeting: 7 December 2009 [SEC=UNCLASSIFIED]

Categories: UNCLASSIFIED

Shall I amend the draft as per Colleen's first two paras before the mtg.?

Shall I send amended DIAC and MEAA before the mtg?

If not, shall I forward her email to Drew before the mtg?

I think a flowchart an unnecessarily cumbersome addition to the Guidelines.

Sanjay


-----Original Message-----

From: Colleen.Santanon@immi.gov.au [mailto:Colleen.Santanon@immi.gov.au]
Sent: Tuesday, 1 December 2009 4:53 PM
To: Sircar, Sanjay
Cc: paul.murray@immi.gov.au; Richards, Stephen; christine.Shepley@immi.gov.au
Subject: Re: DEWHA, DIAC, MEAA Meeting: 7 December 2009 [SEC=UNCLASSIFIED]

Dear Sanjay

This is very useful. I have concerns, however that in para 4 and 15 there are references to DEWHA and MEAA making an assessment as to whether the performance complies with the Migration Regulations - only DIAC can legally make that assessment - I understand that the document is draft only, however this reference should be removed.

Also para 24 - mentions subsequent visa applications for re-entry which is not entirely accurate - this implies that a new visa application is required on each entry - but this is not the case. The visa is issued with multiple entry facility for the 'life' of the visa (eg a 3mth visa will allow the holder to re-enter as many times as they like within that 3mth period).

PS: A flow chart to reflect the process in the paper would also be very helpful. 

Kind regards

Colleen Santanon

Director
 Specialist Entry Section
 Education and Tourism Branch
 Migration and Visa Policy Division
 Department of Immigration and Citizenship

Telephone: 02 6264 2781

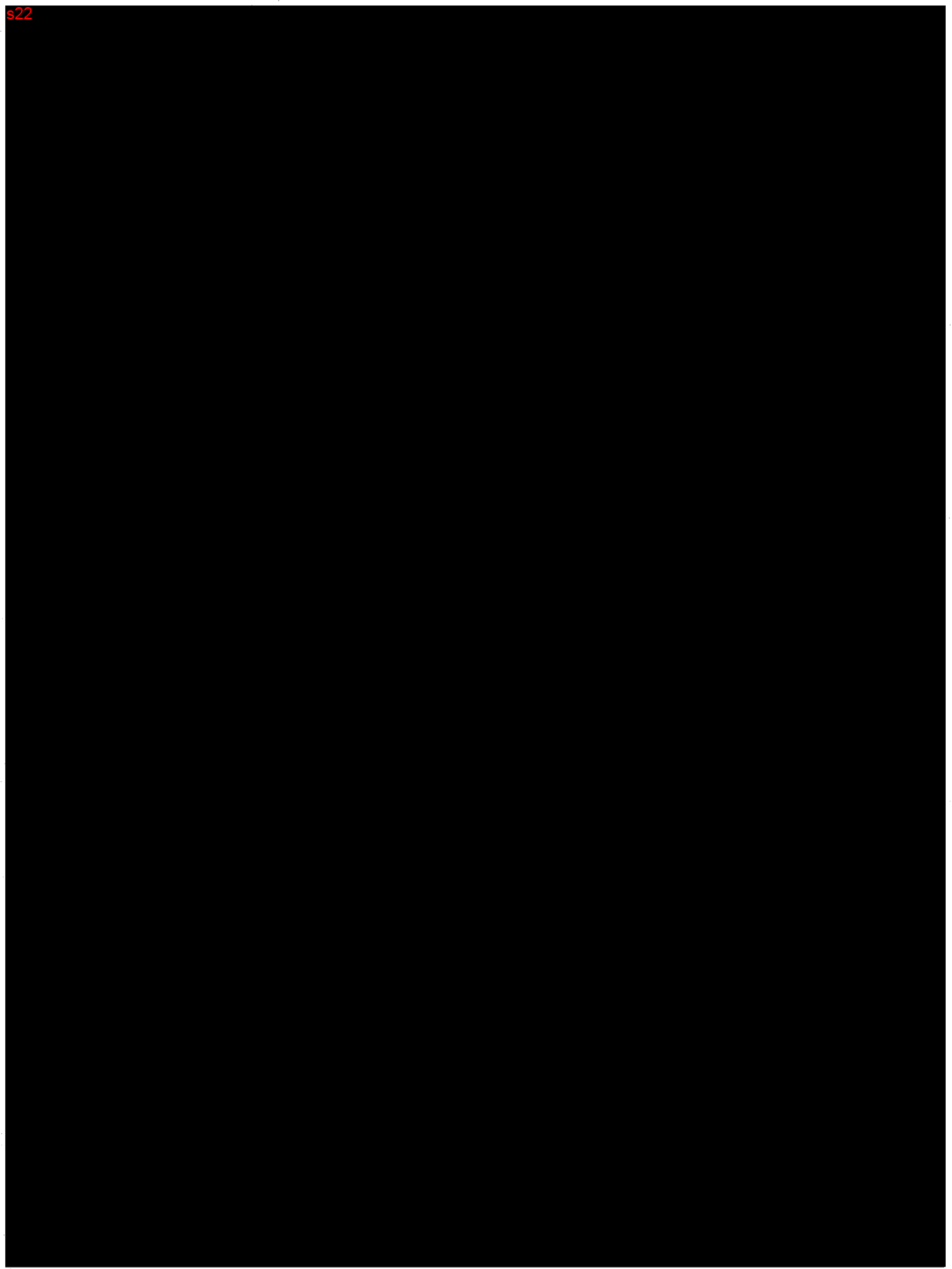
Fax: 02 6264 1399

s47F

Email: Colleen.Santanon@IMMI.gov.au

s22





Subject: Teleconference arrangements - 7 December 2009 Meeting

Colleen/Paul - Would you pass these details on to your Sydney DIAC colleague/s for the 7 December 2.00 meeting, please?

Drew - Here are the numbers you need.

Step 1: Inform participants of nominated dial-in number and the Guest Passcode

Dial in number: 1800 735 510

Guest Passcode: 28286164

Step 2: Dial-in five minutes prior to the conference start time and enter your Host Passcode followed by the # key. You will hear silence until your Guests arrive.

Dial in number: 1800 735 510

Host Passcode: 71270596 #

Step 3: At the time of the conference participants dial-in and enter the Guest Passcode followed by the # key.

Step 4: Participants are automatically connected to the conference call.

Thank you.

Sanjay

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Sircar, Sanjay

From: Colleen.Santinton@immi.gov.au
Sent: Friday, 4 December 2009 4:28 PM
To: Sircar, Sanjay; Richards, Stephen
Subject: Fw: Teleconference arrangements for DEWHA, DIAC, MEAA Meeting: 7 December 2009 [SEC=UNCLASSIFIED]

Colleen
Santinton/ACT/IMMI
/AU

04/12/2009 04:22
PM

To
"Sircar, Sanjay"
<Sanjay.Sircar@environment.gov.au>

cc
paul.murray@immi.gov.au
Subject

Re: Teleconference
arrangements for DEWHA, DIAC,
MEAA Meeting: 7 December 2009
[SEC=UNCLASSIFIED] (Document
link: Colleen Santinton)
Protective Mark

UNCLASSIFIED

Dear Stephen

when are in on Monday could we please chat re the meeting in the afternoon
- a couple a clarifications required

kind regards

Colleen Santinton

Director
Specialist Entry Section
Education and Tourism Branch
Migration and Visa Policy Division
Department of Immigration and Citizenship

Telephone: 02 6264 2781
Fax: 02 6264 1399

S47F

Email: Colleen.Santinton@IMMI.gov.au

"Sircar, Sanjay"
<Sanjay.Sircar@environment.gov.au>

"Drew MacRae"

To

Sircar, Sanjay

From: paul.murray@immi.gov.au
Sent: Tuesday, 1 December 2009 1:30 PM
To: Sircar, Sanjay
Subject: Fw: DIAC involvement in foreign actor certification process [SEC=UNCLASSIFIED]

fyi

Paul Murray
Specialist Entry Section
Education and Tourism Branch
Migration and Visa Policy Division
Department of Immigration and Citizenship
Ph: 02 6264 3591
Fax: 02 6264 2632

----- Forwarded by Paul D Murray/ACT/IMMI/AU on 01/12/2009 01:29 PM -----

Anupreet
Bedi/NSW/IMMI/AU

01/12/2009 01:01
PM

To
Paul D Murray/ACT/IMMI/AU@IMMI
cc

Joseph
Finianos/NSW/IMMI/AU@IMMI,
Maria Szanto/NSW/IMMI/AU@IMMI
Subject

Re: Fw: DIAC involvement in
foreign actor certification
process [SEC=UNCLASSIFIED]
(Document link: Paul D Murray)
Protective Mark
UNCLASSIFIED

Paul,

We will be available on 02 8861 4139.

s47F

Regards -AB-

Anu Bedi
Assistant Director
Entertainment and International Event visas Department of Immigration And Citizenship

Ph: 02 8861 4138
Fax: 02 8861 4301

s47F
(Mondays, Tuesdays & Fridays)

Paul D
Murray/ACT/IMMI/A
U

01/12/2009 11:41
AM

To
Anupreet Bedi/NSW/IMMI/AU@IMMI
cc

Subject
Re: Fw: DIAC involvement in
foreign actor certification
process [SEC=UNCLASSIFIED]
(Document link: Anupreet Bedi)
Protective Mark
UNCLASSIFIED

Anu,

DEWHA need to know what telephone no will you be using?

They are looking at around 2pm on the mon.

Paul Murray
Specialist Entry Section
Education and Tourism Branch
Migration and Visa Policy Division
Department of Immigration and Citizenship
Ph: 02 6264 3591
Fax: 02 6264 2632

Anupreet
Bedi/NSW/IMMI/AU

30/11/2009 11:54
AM

To
Paul D Murray/ACT/IMMI/AU@IMMI
cc

Christine
Shepley/ACT/IMMI/AU@IMMI,
Colleen
Santinon/ACT/IMMI/AU@IMMI,
Joseph
Finianos/NSW/IMMI/AU@IMMI,
Maria Szanto/NSW/IMMI/AU@IMMI,
Richard
MacLean/ACT/IMMI/AU@IMMI,
"Sanjay Sircar"
<Sanjay.Sircar@environment.gov
.au>, Specialist
Entry/IMMI/AU@IMMI

Subject
Re: Fw: DIAC involvement in
foreign actor certification
process [SEC=UNCLASSIFIED]
(Document link: Paul D Murray)
Protective Mark
UNCLASSIFIED

Hi Paul,

Monday, 7 Dec arvo is fine for us.
Please confirm time & details.

Thanks -AB-

Anu Bedi
Assistant Director
Entertainment and International Event visas Department of Immigration And Citizenship

Ph: 02 8861 4138
Fax 02 8861 4301

s47F
(Mondays, Tuesdays & Fridays)

Paul D
Murray/ACT/IMMI/A
U

27/11/2009 03:39
PM

To
Anupreet Bedi/NSW/IMMI/AU@IMMI
cc

Christine
Shepley/ACT/IMMI/AU@IMMI,
Colleen
Santinon/ACT/IMMI/AU@IMMI,
Joseph
Finianos/NSW/IMMI/AU@IMMI,
Maria Szanto/NSW/IMMI/AU@IMMI,
Richard
MacLean/ACT/IMMI/AU@IMMI,
"Sanjay Sircar"
<Sanjay.Sircar@environment.gov.au>, Specialist
Entry/IMMI/AU@IMMI

Subject
Fw: DIAC involvement in
foreign actor certification
process [SEC=UNCLASSIFIED]
Protective Mark
UNCLASSIFIED

I meant Monday 7 December.

sorry...

Paul Murray
Specialist Entry Section
Education and Tourism Branch
Migration and Visa Policy Division
Department of Immigration and Citizenship
Ph: 02 6264 3591
Fax: 02 6264 2632
----- Forwarded by Paul D Murray/ACT/IMMI/AU on 27/11/2009 03:39 PM -----

Paul D
Murray/ACT/IMMI/A
U

To
Anupreet Bedi/NSW/IMMI/AU@IMMI

27/11/2009 03:38
PM

cc

Christine
Shepley/ACT/IMMI/AU@IMMI,
Colleen
Santinon/ACT/IMMI/AU@IMMI,
Joseph
Finianos/NSW/IMMI/AU@IMMI,
Maria Szanto/NSW/IMMI/AU@IMMI,
Richard
MacLean/ACT/IMMI/AU@IMMI,
"Sanjay Sircar"
<Sanjay.Sircar@environment.gov
.au>, Specialist
Entry/IMMI/AU@IMMI

Subject

Re: DIAC involvement in
foreign actor certification
process [SEC=UNCLASSIFIED]
(Document link: Specialist
Entry)

Protective Mark

UNCLASSIFIED

Hi gang,

Is the afternoon of Tue 7 December ok?

Paul Murray
Specialist Entry Section
Education and Tourism Branch
Migration and Visa Policy Division
Department of Immigration and Citizenship
Ph: 02 6264 3591
Fax: 02 6264 2632

Anupreet
Bedi/NSW/IMMI/AU

12/11/2009 10:41
AM

To

Paul D
Murray/ACT/IMMI/AU@IMMI,
Joseph
Finianos/NSW/IMMI/AU@IMMI,
Maria Szanto/NSW/IMMI/AU@IMMI,
Richard
MacLean/ACT/IMMI/AU@IMMI,
Colleen
Santinon/ACT/IMMI/AU@IMMI

cc

"Sanjay Sircar"
<Sanjay.Sircar@environment.gov
.au>, Specialist
Entry/IMMI/AU@IMMI, Christine
Shepley/ACT/IMMI/AU@IMMI

Subject

Re: DIAC involvement in
foreign actor certification
process [SEC=UNCLASSIFIED]
(Document link: Paul D Murray)
Protective Mark

Hi Paul,

We would definately like to attend but as you know, I am at work on Mon and Tue only. Appreciate if the meeting could be scheduled on one of these days.

Thanks

----- Original Message -----

From: Paul D Murray

Sent: 12/11/2009 10:22 AM ZE10

To: Anupreet Bedi; Joseph Finianos; Maria Szanto; Richard MacLean; Colleen Santinon

Cc: Sanjay.Sircar@environment.gov.au; Specialist Entry; Christine Shepley

Subject: Fw: DIAC involvement in foreign actor certification process

[SEC=UNCLASSIFIED] Folks,

Please note email chain below.

We wish to meet/teleconference with DEWHA and MEAA regarding the administrative process for Arts Certificates.

Sanjay has proposed a meeting (around 1hr in duration) sometime after midday on 25 Nov or anytime on the 26 Nov. Colleen and I are free at these times.

Please advise if you are interested in participating and the most suitable time for you.

It is anticipated that Canberra based DIAC officers will travel across town to DEWHA for the meeting.

Regards,

Paul Murray

Specialist Entry Section

Education and Tourism Branch

Migration and Visa Policy Division

Department of Immigration and Citizenship

Ph: 02 6264 3591

Fax: 02 6264 2632

----- Forwarded by Paul D Murray/ACT/IMMI/AU on 12/11/2009 09:44 AM -----

Colleen

Santinon/ACT/IMMI

/AU

10/11/2009 04:53

PM

"Richards, Stephen"

<Stephen.Richards@environment.gov.au>

To

cc

paul.murray@immi.gov.au,

richard.maclean@immi.gov.au,

"Sircar, Sanjay"

<Sanjay.Sircar@environment.gov.au>

Subject

RE: DIAC involvement in foreign

actor certification process

[SEC=UNCLASSIFIED] (Document link:

Specialist Entry)

ok thanks - look forward to meeting/teleconference

Colleen Santinon

Director
Specialist Entry Section
Education and Tourism Branch
Migration and Visa Policy Division
Department of Immigration and Citizenship

Telephone: 02 6264 2781

Fax: 02 6264 1399

s47F

Email: Colleen.Santinon@IMMI.gov.au

"Richards,
Stephen"
<Stephen.Richards
@environment.gov.
au>

10/11/2009 03:43
PM

To
Colleen.Santinon@immi.gov.au
cc
paul.murray@immi.gov.au,
richard.maclean@immi.gov.au,
"Sircar, Sanjay"
<Sanjay.Sircar@environment.gov
.au>

Subject
RE: DIAC involvement in
foreign actor certification
process [SEC=UNCLASSIFIED]
Protective Mark

Colleen

As discussed this morning, the purpose of the proposed meeting is to get agreement on the administrative process for Arts Certificates (ie when sponsors approach MEAA & what they need to provide, when they approach DEWHA and what they need to do to get the certificate, when they approach DIAC & what they need to provide).

We'd like to do this either with a meeting or via teleconference and involve DEWHA, DIAC and MEAA - as MEAA is Sydney based, a teleconference might be the most practical mechanism.

Because the meeting would involve MEAA and there are other more contentious issues we are both addressing with MEAA re foreign actor entry, we'd like to keep this particular discussion limited to the administrative process only.

We propose to use the section of our draft revised guidelines (to which Paul has been providing advice to Sanjay re DIAC's preferences) as a basis for the discussion. We'll circulate a version of that prior to any meeting/teleconference. We don't see this as something that needs to be done urgently, but would like to do it in the next few weeks.

If you are OK with this, I'll ask Sanjay to organise a mutually convenient time.

Cheers

Stephen

-----Original Message-----

From: Colleen.Santinton@immi.gov.au [mailto:Colleen.Santinton@immi.gov.au]
Sent: Tuesday, 10 November 2009 10:37 AM
To: Sircar, Sanjay
Cc: paul.murray@immi.gov.au; richard.maclean@immi.gov.au; Richards, Stephen
Subject: Re: DIAC involvement in foreign actor certification process
[SEC=UNCLASSIFIED]

We would be happy to meet next week some time to go through these issues (and maybe some more) - how about Wednesday???

Colleen Santinton

Director
Specialist Entry Section
Education and Tourism Branch
Migration and Visa Policy Division
Department of Immigration and Citizenship

Telephone: 02 6264 2781

Fax: 02 6264 1399

S47F
mail: Colleen.Santinton@IMMI.gov.au

"Sircar, Sanjay"
<Sanjay.Sircar@environment.gov.au>

10/11/2009 10:01
AM

To
Colleen.Santinton@immi.gov.au
cc
paul.murray@immi.gov.au,
richard.maclean@immi.gov.au,
"Richards, Stephen"
<Stephen.Richards@environment.gov.au>

Subject
DIAC involvement in foreign
actor certification process
[SEC=UNCLASSIFIED]
Protective Mark

Dear Colleen,

Thank you for DIAC's answers to the information we sought on DIAC involvement in the foreign actor certification process. We have taken all the DIAC comments on board, and they will be reflected in the revised draft Guidelines. We are still working on these, and will run the draft by you when it is ready.

Do you think it would be useful for all concerned if DEWHA, the MEAA and DIAC were to have a meeting focussed solely on the Arts Certificate process, so that there would be no ambiguity about any aspect of it?

In the advice you provided you say, "We would like further clarification of the Arts Certificate process, in particular around the involvement of the unions. Does DEWHA rely on the union consultations carried out for the purpose of satisfying DIAC decision makers or does DEWHA engage in its own union consultation covering a broader ranges of issues than those covered for the purposes of the 420 regs? [Discussed in

meeting]

"If DEWHA relies on the DIAC union consultation process, when does it issue an Arts Certificate, before or after the union consultation has been completed? Do the unions have access the Arts Certificate assessment?"

After the sponsor consults with the MEAA, the MEAA provides a letter of opinion to the sponsor, which the MEAA copies to DEWHA and DIAC. This single letter separately covers (a) the MEAA's opinion on whether the application is in accordance with the criteria for an Arts Certificate laid out in the DEWHA Guidelines and (b) the MEAA's stipulation about working conditions and award issues (which is covered in a separate section of the Migration Regulations from those relating to the Arts Certificate).

DEWHA starts its consideration of an application for a Certificate only after it receives the MEAA letter to the sponsor. DEWHA takes into account only the portion of the MEAA letter which relates to the Arts Certificate.

DEWHA provides a copy of its covering letter to the sponsor and the Certificate to the MEAA, but not the DEWHA assessment of the application. In certain cases when DEWHA provides a Certificate when the MEAA has objected, DEWHA has written to the MEAA providing a summary of the reasons for its decision.

I have cleared this email with my director Stephen Richards.

Thank you again for the information you provided.

Best wishes,

Sanjay

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**DEWHA Guidelines – “Admin Process” Redraft: 4 December 2009, for meeting
 7 December 2009**

SECTION E - APPLICATION PROCESS

1. Applications for Foreign Performer Certificates should be made by Sponsors.
2. Applying for certification of the foreign performer through to the provision of the entertainment visa is a four part process as follows:
 - Initial contact with DEWHA and MEAA, and in cases which involve a large number of cast and crew DIAC, to indicate the Sponsor is commencing application for a Foreign Performers Certificate;
 - Consultation with MEAA to obtain a letter of opinion;
 - DEWHA assessment and decision on application for a Foreign Performers Certificate; and
 - DIAC processing of application for the entertainment visa.
3. To allow adequate time for consideration of applications, Sponsors should commence the application process at least 10-12 weeks prior to the proposed date of entry into Australia of the foreign performer. Processing times may be accelerated to accommodate one-off applications where the Sponsor has demonstrated a genuine need for urgency applies.

Deleted: y

Initial contact with relevant agencies

4. Sponsors must initially advise DEWHA and MEAA of their intention to apply for a Foreign Performer Certificate (as required to import a foreign performer into Australia). This will provide an opportunity for information exchange and to clarify any initial questions the Sponsor may have regarding the application process including relevant application forms and MEAA consultation requirements.
5. Sponsors should provide initial e-mail advice to:
 - (a) DEWHA (e-mail: foreignactors@environment.gov.au) and
 - (b) MEAA (e-mail: imports@alliance.org.au)
 which sets out:
 - (a) Name and contact details of the Sponsor;
 - (b) Name of the production;
 - (c) Number and nationalities of the foreign performers for whom entry is being sought; and
 - (d) Estimated arrival and departure dates.
2. Sponsors seeking to import 10 or more foreign personnel (including Performers and crew) in a single application should also provide the above advice to DIAC by e-mail (E-mail: entertainment.visas@immi.gov.au).
3. For full contact details for agencies see Section G.

Deleted: 1

Consultation with MEAA to obtain letter of opinion

4. Sponsors should consult with MEAA in advance of submitting their application for a Foreign Performers Certificate to DEWHA. MEAA considers the circumstances of each application and provides a letter of opinion to the Sponsor and DEWHA based on its assessment of whether the proposed foreign performer importation complies with the DEWHA Guidelines.
5. MEAA requires the Sponsor to provide a range of information in order to make this assessment including the following documentation (unless otherwise agreed with MEAA):
 - (a) script or synopsis;
 - (b) letter outlining the reasons for the proposed foreign performer import, including details of the production budget and level of Foreign Investment;
 - (c) evidence of compliance with the DEWHA Casting Guidelines when the basis of the application is an inability to cast the role with an Australian performer;
 - (d) details of the performer's itinerary;
 - (e) foreign performer's resume; and
 - (f) copy of the deal memo/contract with the foreign performer.
6. For further information and a comprehensive list of MEAA's requirements see: http://www.alliance.org.au/imports_information/1/
7. Where a Sponsor approaches MEAA well in advance of submitting its application to DEWHA for a Foreign Performer Certificate, MEAA may provide an 'in-principle no objection letter' in relation to the proposed import. Where an in-principle letter has been provided, the Sponsor must nevertheless make a formal application and receive a final no objection letter.
8. MEAA is required to provide a written response (letter of opinion) to the Sponsor, and copy to DEWHA, within 14 calendar days. The 14 day period commences from the date upon which all relevant documentation is submitted to MEAA for consideration.

Comment [c1]: In this the correct terminology? Maybe 'agreement' instead of 'deal'?

Comment [c2]: Should DIAC also be provided with a copy or will that be part of what the sponsor provides with the Nomination?

Deleted: in relation to their application

DEWHA assessment and decision on application for Foreign Performer Certificate

Submitting an application

9. The DEWHA Guidelines and Foreign Performer Certificate application form are available for download from <http://www.arts.gov.au/foreignactors>.
10. Applications should contain evidence of compliance with the requirements set out in Sections C and D of the Guidelines as necessary. DEWHA may also seek further information and/or statutory declarations in relation to supporting documentation provided by the Sponsor where appropriate.
11. In determining whether to issue a Foreign Performer Certificate, the Arts Minister or person authorised by the Arts Minister, will take comments provided by MEAA into consideration. A copy of the letter of opinion from MEAA should be provided by the Sponsor as part of the application submitted to DEWHA.

Comment [DEH3]: NB: we will update the webpage & generic e-mail addresses when we get agreement to text from our working group

Comment [c4]: delegate? Just would save some words.

12. Applications should be addressed and faxed or emailed as follows:

Assistant Secretary
Film and Creative Industries Branch
Department of the Environment, Water, Heritage and the Arts
Fax: +61 2 6275 9320
Email: foreignactors@environment.gov.au

13. Receipt of applications will be acknowledged and all enquiries regarding the application process should be directed to the Desk Officer at the above generic email address or by phone on Tel: +61 2 6275 9633.
14. Please note that a single application form may cover a number of Performers. Alternatively, applications may be made for Performers in a sequence as details become available.

Application assessment

15. DEWHA considers the circumstances of each application, taking into account the views of the Sponsor and MEAA's letter of opinion, and makes a decision based on its assessment of whether the proposed foreign performer importation complies with the Guidelines.
16. DEWHA commences its assessment of an application for a Foreign Performer Certificate once the completed application form and supporting documentation (including a letter of opinion from MEAA) has been received. DEWHA requires five working days to process an application, and may seek further information at any point in the application assessment process in order to establish whether certification should occur.
17. Where MEAA has been consulted but has not provided a written response to the Sponsor within the required 14 day period, DEWHA will seek to elicit the requested letter of opinion from MEAA. DEWHA will proceed with the assessment of the application based on the information provided by the Sponsor if MEAA is unable to meet this request within a reasonable timeframe.
18. Should MEAA object to the application, DEWHA will invite the Sponsor to make a written submission. This submission should address MEAA's objections and also provide evidence to support the application. The Sponsor's submission should be provided to DEWHA with a copy to within three working days of DEWHA's request. This can be done either by email or fax.
19. Upon receipt of the Sponsor's submission, MEAA will be invited to provide any additional comments it may wish to make in response in writing to DEWHA. These comments should be provided to DEWHA and copied to the Sponsor by email or fax within three working days of DEWHA's request.
20. The Sponsor will subsequently be invited to provide any final written comments in support of the application to DEWHA, again within three working days of DEWHA's request.

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Deleted: addressing the reasons for the objection set out in MEAA's letter of opinion, together with any additional relevant information in support of the application.

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Deleted: MEAA by email or fax

21. Every effort will be made to come to a determination as expeditiously as possible, and DEWHA takes the timeframe of the production and proposed arrival date of the Performer into consideration. Hence in some circumstances input from the Sponsor and MEAA may be required within a shorter timeframe than that indicated above.

Decision on certification

22. Upon completion of the assessment process, DEWHA makes its recommendations regarding the issuing of a Foreign Performer Certificate to the Arts Minister, or person authorised by the Arts Minister, for consideration and final decision.
23. DEWHA will notify the Sponsor, MEAA and DIAC regarding the certification decision, and where a certificate has been issued, provide signed copies to all three parties by email (or by fax upon request). The Sponsor will also be sent the original hard copy of the certificate by regular post.
24. Please note that a Foreign Performer Certificate is valid for the entire length of the production for which it is issued. A new certificate is not required in the case of subsequent visa applications for re-entry of the same Performer in the same production.

DIAC processing of application for entertainment visa

25. Applications for entertainment visas for foreign performers entering Australia to take part in productions which are covered by these Guidelines are only considered by DIAC if supported by a Foreign Performer Certificate.

26. The Foreign Performer Certificate should be lodged by the Sponsor with DIAC to initiate processing of the visa application, together with the following documentation:

- (a) the MEAA letter of opinion;
- (b) a completed sponsorship application form (if the proposed Sponsor has not already been approved as an entertainment Sponsor. Sponsorship is valid for three years);
- (c) a completed nomination application form;
- (d) a completed entertainment visa application form; and
- (e) the separate fees/charges (if applicable) for the sponsorship, nomination and visa applications, without which an entertainment visa application will not be valid.

27. For further information and a comprehensive list of DIAC's requirements, including where applications must be lodged, see:
<http://www.immi.gov.au/skilled/specialist-entry/420>

28. Sponsors should lodge their documentation with DIAC at least 8-12 weeks prior to the nominated person's arrival date in Australia.

29. Sponsors should make themselves aware of their obligations under the Entertainment visa program. More information can be found at:
<http://www.immi.gov.au/skilled/specialist-entry/420/obligations-sponsor.htm>

Comment [P5]: Details of SEPC?

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Comment [DEH6]: Confirm with DIAC

Comment [c7]: DIAC - OK

Deleted: [***TBC***] ¶

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Deleted: ¶

Kelly, Jessica

From: Sharp, Jo
Sent: Thursday, 14 July 2011 10:50 AM
To: Kelly, Jessica
Subject: FW: Foreign Actors Certification Scheme [SEC=IN-CONFIDENCE]
Attachments: FPCS Guidelines May 2011.docx

Security Classification: IN-CONFIDENCE

From: anupreet.bedi@immi.gov.au [mailto:anupreet.bedi@immi.gov.au]
Sent: Thursday, 2 June 2011 3:58 PM
To: Sharp, Jo
Cc: Fulton, Caroline; Kelly, Jessica; 'Joseph.finianos@immi.gov.au'; 'Shyamala.Wickramasinghe@immi.gov.au'; specialist.entry@immi.gov.au; Colleen.Santinon@immi.gov.au
Subject: Re: Foreign Actors Certification Scheme [SEC=IN-CONFIDENCE]

Hi Jo,

Thanks again for giving us an opportunity to respond. Please find the draft with our consolidated comments.

(See attached file: FPCS Guidelines May 2011.docx)

We would appreciate if you could please provide us with the final draft before distribution.

Regards -AB-

Anu Bedi
 Assistant Director
 Entertainment & Specialist Temporary Entry Visas &
 Events Facilitation - Parramatta, NSW
 Department of Immigration And Citizenship

Ph: 02 8861 4138
 Fax: 02 8861 4301

S47F

(Note: I am not at work on Wednesday)

▼ "Sharp, Jo" <Jo.Sharp@pmc.gov.au>

"Sharp, Jo" <Jo.Sharp@pmc.gov.au>

24/05/2011 02:53 PM

To: "anupreet.bedi@immi.gov.au" <anupreet.bedi@immi.gov.au>, "Joseph.finianos@immi.gov.au" <joseph.finianos@immi.gov.au>, "Shyamala.Wickramasinghe@immi.gov.au" <Shyamala.Wickramasinghe@immi.gov.au>

cc: "Fulton, Caroline" <Caroline.Fulton@pmc.gov.au>, "Kelly, Jessica" <Jessica.Kelly@pmc.gov.au>

Subject: Foreign Actors Certification Scheme [SEC=IN-CONFIDENCE]

Protective Mark

Hi Anu, Joseph and Shyamala

As discussed in our teleconference of early May, please find attached the draft revised Foreign Performers Certification Scheme

guidelines, which are related to the 420 visa.

Please note that these are a draft provided for DIAC's comment and are not to be distributed further.

We appreciate your comments on these draft guidelines. We are also currently consulting relevant stakeholders and have asked for their response by 3 June. If you are able to provide comment to us by COB of this date we would be very grateful.

Happy to discuss on 02 6275 9537.

Thank you
Jo

Jo Sharp
Assistant Director | Film Policy and Incentives | Office for the Arts
Department of the Prime Minister and Cabinet
Phone: 02 6275 9537 | Email: Jo.Sharp@pmc.gov.au

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Guidelines May 2011.docx" deleted by Anupreet Bedi/NSW/IMMI/AU] [attachment "FPCS

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Australian Government

**Department of the
Prime Minister and Cabinet
Office for the Arts**

Foreign Performers Certification Scheme Guidelines

Australian Government

[insert month] 2011

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INTRODUCTION

This revised version of the *Foreign Performers Certification Scheme (FPCS) Guidelines* was adopted on [?? 2011].

Purpose

The Scheme supports key Government objectives for the film and television industry including providing Australian industry personnel with a fair chance of securing employment in Film or Television Productions shot in Australia, ensuring Australian voices are heard in Australian productions, and building a commercially sustainable film and television industry.

Who needs to apply for a Foreign Performer Certificate (FPC)?

The Scheme deals exclusively with the employment of Foreign Performers entering Australia to take part in Film and Television Productions. The guidelines are the basis on which the Arts Minister, or a person authorised by the Arts Minister, determines whether to certify that the requirements identified in the Migration Regulations have been met. Please see Sections B, C and D for more information.

How do I apply?

The Guidelines are administered by the Office for the Arts (OFTA).

The Migration Regulations require that a Entertainment (Ssubclass 420) visa, which is assessed against the criteria in sub-paragraphs 2.72D(4) and (5), not be granted unless the visa application is supported by a Foreign Performer Certificate issued by the Arts Minister. Regulation 2.72D(4) and 2.72D(5) are included as an Appendix to this document.

In addition, under the Migration Regulations the Sponsor must consult the relevant Australian unions. For the purposes of this Scheme, the relevant union is the Media Entertainment and Arts Alliance (MEAA). This consultation process is undertaken as part of the process of applying for a FPC Foreign Performer Certificate from the Arts Minister.

More detailed information is contained in Section E.

Is there a cost when applying to OFTA?

No fee is charged by OFTA. Applicants may find current ~~must contact the~~ Department of Immigration and Citizenship (DIAC) fees and charges at <http://www.immi.gov.au/allforms/990i/specialist-entry.htm#e> for advice on their fees.

Field Code Changed

How long does OFTA take to assess an application?

OFTA requires five working days to process an application, and may seek further information at any point during ~~in the application-assessment~~ process in order to establish whether certification should occur. Further information is included in Section E.

Applicants should contact the ~~DIAC~~ Department of Immigration and Citizenship at entertainment.visas@immi.gov.au ~~xxxx~~ for advice on their processing timeframes.

Who do I contact for more information?

Contact details for OFTA, MEAA and DIAC contact details are provided can be found in Section G.

SECTION A – SCOPE

1. The Scheme applies to the import of Foreign Performers taking part in the following specified forms of Film or Television Production intended for distribution via platforms such as cinema exhibition, television broadcast, DVD, and Internet and mobile devices:

(a) Feature Films;

(b) Telemovies;

(c) Series, Serials and Sketch Comedy Programs

- (i) excluding Foreign Performers/celebrities who take part in Film or Television Productions as themselves, when this participation is incidental to their main purpose for entering Australia (which might include live performance concert tours and other promotional activities);

(d) Documentaries and dramatised Documentaries

- (i) excluding all Performers other than foreign Hosts and Foreign Performers in dramatic roles.

2. The Guidelines set out the circumstances under which applications can be considered for the import of Foreign Performers to take part in the Film or Television Productions and roles specified above.

3. The Guidelines do NOT apply to:

(a) Foreign Performers in roles or forms of Film or Television Production other than those specified above. Visa applications for such Performers will be considered by DIAC under the appropriate Migration Regulations; or

(b) Foreign Performers seeking visas to enter Australia under an agreement between Australia and another country, such as Australia's bilateral film co-production agreements. A person may lodge an application to be considered by DIAC for under the Government Agreement (Subclass 406) visa of the Migration Regulations. Screen Australia administers the Commonwealth Government's International Co-production Program and determines applications for projects to be approved as Official Co-productions.

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Comment [p1]: Is there any distinction here if the documentary was exclusively for Overseas use? Current DIAC regs allow for documentaries exclusively for overseas use to be exempt from getting into Union Consultation. Presume, they would not require the Certificate from OFTA either.

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SECTION B - TERMS AND DEFINITIONS

'Australian Content Criteria' or 'ACC' means the criteria required for Category 1, Category 2, and Category 3 Government Subsidised productions set out in Section C of these Guidelines.

'Cameo Actor Role' means a brief but important dramatic role in a Film or Television Production, usually performed by a well-known personality.

'DIAC' means the Department of Immigration and Citizenship.

'Documentary' means a program that is a creative treatment of actuality, other than a news, current affairs, sports coverage, magazine, infotainment, light entertainment or reality program.

'Feature Film' means a film, including an animated film, commonly screened as the main attraction in a commercial cinema that is no less than 60 minutes, or in the case of a larger format (IMAX) film no less than 45 minutes duration, and shot and processed to commercial standards for cinema exhibition, television broadcast or distribution via other platforms.

'Film or Television Production' means a production intended for cinema exhibition, television broadcast, or distribution via other platforms (such as DVD, and internet and mobile phone downloads) and includes a Feature Film, Telemovie, Series, Serial, Sketch Comedy Program, Documentary and dramatised Documentary but does not include computer games.

'Foreign Investment' includes overseas sourced funds where such investment is secured against returns from foreign markets, regardless of whether the funds are equity investment or not, including direct investment and revenue raised through pre-sales and distribution in overseas markets.

'Foreign Performer' means:

(a) a Performer in a Feature Film; Telemovie; drama Series, Serial or Sketch Comedy Program; or dramatised Documentary who is performing:

(i) a Leading, Supporting or Cameo Actor role;

(ii) as a Motion-capture Performer, Puppeteer, Stunt Performer or Voice-over Performer; or

(b) as a Host in a Documentary or dramatised Documentary.

'Government Subsidy' means and includes any form of government financial support other than developmental funding and includes:

(a) direct subsidies such as direct investment, loans (excluding loans to cashflow the Producer Offset), distribution guarantees and pre-sales; and sales; and

(b) indirect subsidies such as tax concessions (e.g. Producer Offset, Location Offset, Post, Digital and Visual Effects Offset in Division 376 of the *Income Tax Assessment Act 1997*).

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Comment [p3]: As per above note. Is there any distinction here if the documentary was exclusively for Overseas use? Current DIAC regs allow for documentaries exclusively for overseas use to be exempt from getting into Union Consultation. Presume, they would not require the Certificate from OFTA either.

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For the purposes of this definition 'government' includes Commonwealth and Australian state and territory governments, but excludes the Australian Broadcasting Corporation and the Special Broadcasting Service.

'Host' means the central scripted Performer in a Documentary or dramatised Documentary who introduces and presents the material to a viewing audience and who may also be referred to as "compere", "presenter", "commentator" or "narrator".

'Leading Actor Role' means the dramatic role of protagonist or one of the central or main characters in a Film or Television Production.

'MEAA' means the Media Entertainment and Arts Alliance, the union representing employees in the media, entertainment, sport and the arts.

'Motion-capture Performer' means a Performer in a computer animation production in a role which involves a performance from which points can be tracked on a moving face or body in order to get a simplified image of motion., e.g. the animation of the penguins in Happy Feet.

'OFTA' means the Office for the Arts, Department of the Prime Minister and Cabinet.

'Official Co-production' means a production for which a Foreign Performer seeks to enter Australia under an agreement between Australia and another country, under the International Co-production Program administered by Screen Australia, for which visa applications are considered by the Department of Immigration and Citizenship (DIAC) under subclass 406 of the Migration Regulations.

'Puppeteer' means a manipulator of any variety of puppet/puppets, whose work appears in a Film or Television Production.

'Serial' means a Film or Television Production which is a narrative series made up of two or more episodes that:

- (a) are produced wholly or principally for public exhibition under a single title, for either free-to-air (broadcast network) and subscription television (cable or satellite); and
- (b) comprise a potentially unlimited number of episodes, relating a number of equally important and overlapping plots, without an apparent single major plot necessarily moving towards a resolution and arranged into consecutive episodes for screening purposes.

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'Series' means a Film or Television Production which is a narrative series made up of two or more episodes that:

- (a) are produced wholly or principally for public exhibition under a single title, for either free-to-air (broadcast network) and subscription television (cable or satellite);
- (a)(b) have a common theme or themes that draws the episodes of the series into a cohesive whole;

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(c) contain dramatic elements that form a narrative structure; and

(d) are intended for exhibition together in a national market or markets.

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‘Sketch Comedy Program’ means a Film or Television Production comprising comedy and satirical sketches that are short, self-contained stories or plots; but does not include a stand-up comedy program or an incidental sketch that is a component in a program of another kind.

‘Sponsor’ means an Australian producer applying for a Foreign Performer Certificate or an Australian sponsor acting on behalf of a foreign producer in making this application.

Comment [P4]: Anu – need more here about sponsors?

‘Stunt Performer’ means a Performer engaged to perform dangerous scenes in a Film or Television Production and/or who doubles for one of the actors chosen for a particular role.

‘Supporting Actor Role’ means a dramatic role which is more than a Cameo but not a Leading Actor role in a Film or Television Production.

‘Telemovie’ means a drama program of a like nature to a Feature Film, which is not less than 60 minutes in length and shot and processed to commercial release standards for television broadcast or distribution via other platforms (such as DVD and internet and mobile phone downloads).

‘Traditional Australian Character’ means an Australian character that appears in Australian literature (e.g. *Man from Snowy River*, *The Shiralee*, etc) or is a recognised part of Australia's history and/or folklore (e.g. Dame Nellie Melba, Ned Kelly, etc).

‘Voice-over Performer’ means a Performer who provides recorded dialogue or narration, that narration that comes from an unseen, off-screen voice in a Film or Television Production.

SECTION C - TREATMENT OF SUBSIDISED AND UNSUBSIDISED PRODUCTIONS

In accordance with the requirements of the Migration Regulations, the Guidelines set different criteria for assessing the appropriateness of Foreign Performers taking part in a specified Film or Television Production in Australia based on whether or not the production has, or will receive, a Government Subsidy.

Subsidised Productions

1. A production is considered subsidised if it has, or will receive, a Government Subsidy.
- 1.2. For a Foreign Performer to take part in a subsidised Film or Television Production, the application for a Foreign Performer Certificate must satisfy the requirements set out in the Australian Content Criteria (ACC) detailed below.
- 1.3. The ACC requirements vary depending on whether or not the production in which the Foreign Performer is to appear:
 - (a) receives a direct Government Subsidy (Category 1); or
 - (a)(b) is likely to access the Producer Offset and is receiving no direct Government Subsidy (Category 2); or
 - (a)(c) is likely to access the Location or PDV Offset (Category 3).
4. Productions within all Categories must meet the Casting Guidelines, outlined in Section F.

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Category 1 - ACC for Film or Television Productions in receipt of a direct Government Subsidy

5. Reasonable opportunity must be given to employing Australian Performers at all levels of the production, demonstrated by:
 - (a) the casting of Leading and major Supporting Actor Roles must accurately reflect the Australian characters portrayed;
 - (a)(b) at least 50 per cent of Performers in Leading Actor roles and 75 per cent of Performers in major Supporting Actor Roles must be Australian; and
 - (a)(c) where applicable, an Australian Performer must be cast to play each Traditional Australian Character.
6. The level of Foreign Investment in a production's budget will be a factor considered in assessing applications for the importation of Foreign Performers on a case by case basis. As a general guidance, the greater the Foreign Investment in the production, the greater the possible opportunity for the employment of Foreign Performers in Leading, Supporting and Cameo Actor Roles within the above parameters. For example, where a minimum of:
 - (a) 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is less than \$4.0 million, in the case of a Telemovie less than \$2.0 million, or in the case of a Series or Serial less than

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\$0.75 million per commercial hour, the employment of one Foreign Performer may be appropriate;

(a)(b) 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is \$4.0-12.0 million, in the case of a Telemovie more than \$2.0 million, or in the case of a Series or Serial is \$0.75-1.0 million per commercial hour, the employment of one Foreign Performer in a Leading Actor Role and one Foreign Performer in a Supporting or Cameo Actor Role may be appropriate; or

(a)(c) 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is more than \$12.0 million, or in the case of a Series or Serial, more than \$1.0 million per commercial hour, the employment of one additional Foreign Performer may be appropriate to play a Cameo Actor Role.

7. Where a Sponsor seeks to import a Foreign Performer on the basis that a suitable Australian Performer cannot be found, the Sponsor must demonstrate that a genuine attempt has been made to locate a suitable Australian Performer. OFTA Casting Guidelines are at Section F.

8. When no Australian Performer can be cast to satisfy the requirements of a role, the employment of a Foreign Performer may be appropriate in the following circumstances:

(a) highly specialist/unusual roles

(a)(b) ethnicity

(a)(c) continuity

(a)(d) unexpected change in the level of Foreign Investment

(a)(e) private investment being dependent on the engagement of a Foreign Performer; or

(a)(f) overall benefit to the Australian film and television industry.

9. If a Sponsor seeks consideration on the basis of factors listed above, the Sponsor will be required to provide additional evidence in support of their application as detailed in Section D.

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Category 2 - ACC for Film or Television Productions NOT in receipt of direct Government Subsidy but eligible to access the Producer Offset

10. The Sponsor must provide evidence that the production has obtained provisional certification to access the Producer Offset. Evidence must include a copy of the Provisional Certificate and covering letter from Screen Australia.

Note: Further information regarding the Producer Offset application process is available on Screen Australia's website at

http://www.screenaustralia.gov.au/producer_offset/prov_certification.asp

Productions in receipt of direct Government Subsidy in addition to accessing the Producer Offset must apply for Foreign Performers Certification under Subsidised Productions 'Category 1' above.

Category 3 - ACC for Film or Television Productions eligible to access the Location or PDV Offsets

11. The Sponsor must provide evidence that the production intends to access the Location or PDV Offsets. Evidence may include a letter of intent from the relevant production company and/or demonstration that the production budget exceeds the Location or PDV Offset eligibility criteria for minimum expenditure thresholds.

Unsubsidised Productions

12. Unsubsidised productions, including those fully funded offshore, must satisfy the following criteria:

(a) Australian citizens/residents have been provided with a reasonable opportunity to participate in all levels of the production; and

(a)(b) the sum of Foreign Investment exceeds the amount to be expended on the Foreign Performers while they are in Australia to take part in the unsubsidised production.

13. In making an application to import Foreign Performers, the Sponsor must demonstrate that reasonable efforts have been made to cast Australian Performers at all levels of the production. OFTA Casting Guidelines are at Section F.

14. In relation to Foreign Investment, the Sponsor must demonstrate that the Foreign Investment component of the production's budget is greater than the salary of the proposed Foreign Performers while they are in Australia to take part in the unsubsidised production.

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SECTION D - FLEXIBILITY CIRCUMSTANCES AND EVIDENCE REQUIRED FOR SUBSIDISED PRODUCTIONS

1. Importation of a Foreign Performer may be considered in the circumstances outlined below on the basis of additional evidence provided by the Sponsor in support of the application.
2. Sponsors who intend to make an application for importation of a Foreign Performer in the circumstances outlined below must mount a convincing case supported by the documentary evidence. The simple assertion that Foreign Performer participation is critical will not be sufficient.
- 2.3. If a Sponsor believes that there are other compelling reasons to import a Foreign Performer beyond those circumstances detailed below they should contact OFTA to present a case. Such approaches will be considered on their merits on an individual basis.

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Highly specialist/unusual role

4. The Foreign Performer is necessary to perform a highly specialist or unusual role which requires specific or specialist attributes including, but not limited to, physical appearance, physical talent and linguistic or vocal skills. Please note that foreign language and accent requirements* for a particular role are not necessarily sufficient grounds for importing a Foreign Performer.
5. Evidence that may be required:
 - (a) script or synopsis demonstrating that the role requires certain highly specialist attributes;
 - (a)(b) documentation such as a listing of personal attributes or specialist skills from a resume or curriculum vitae that supports the claim that the proposed Foreign Performer possesses the attributes necessary to perform the role; and
 - (a)(c) that all reasonable efforts have been made to cast the role with an Australian Performer (see Casting Guidelines at Section F).

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* Australia is a multicultural country. Many Australian performers are competent in a variety of languages other than English, or can speak with an extensive range of accents.

Ethnicity

6. The Foreign Performer is necessary for reasons of ethnicity required by the role. Please note that foreign language and accent requirements* for a particular role are not necessarily sufficient grounds for importing a Foreign Performer.
7. Evidence that may be required:
 - (a) script or synopsis demonstrating that specific ethnic characteristics are required by the role; and
 - (a)(b) that all reasonable efforts have been made to cast the role with an Australian Performer (see Casting Guidelines at Section F).

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Continuity

8. The Foreign Performer is necessary for reasons of continuity.
9. Evidence that may be required:
 - (a) documentation, such as a Performer contract, cast list or press clippings, supporting the claim that the Foreign Performer has worked on, or will be working on, the same production outside Australia.

Unexpected change in the level of Foreign Investment

10. Where the initial level of Foreign Investment in a production's budget allows for the importation of Foreign Performers, but decreases unexpectedly, consideration will be given to approving the importation of Foreign Performers already attached to the production. For example, a foreign investor may withdraw support due to financial pressures and be replaced by an Australian investor at short notice.
11. Evidence that may be required:
 - (a) details of the production budget;
 - (a)(b) documentation from private investors committing to the production; and
 - (a)(c) reasons for and date of withdrawal of a foreign investor.

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Private investment being dependent on the engagement of a Foreign Performer

12. The Foreign Performer is commercially necessary to secure Australian and/or Foreign Investment in the production or overseas pre-sales and distribution deals.
13. Evidence that may be required:
 - (a) details of the production budget; and/or
 - (a)(b) one or more of the following documents:

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* Australia is a multicultural country. Many Australian performers are competent in a variety of languages other than English, or can speak with an extensive range of accents.

- (i) letter of confirmation or contract from the production's relevant investor that finance in the production is dependent on the Foreign Performer's participation;
- (ii) letter of confirmation or contract from the production's distributor that distribution is dependent on the Foreign Performer's participation;
- (iii) contracts indicating that overseas pre-sales are dependent on the Foreign Performer's participation;
- (iv) where the Foreign Performer is internationally known, documentary proof of their box office appeal through international box office figures for Film and Television Productions in which they have undertaken Leading or major Supporting Actor Roles; and/or
- (v) where the Foreign Performer is an emerging Performer, or cast to appeal to a particular overseas audience, documentation in support of their potential box office appeal such as resume/filmography details including previous work, reviews, awards/accolades, and/or other evidence of audience appeal.

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Overall benefit to the Australian film and television industry

14. The Foreign Performer is necessary to ensure that the production proceeds in Australia and the size of the production's budget is such that associated local employment opportunities constitute an overall net economic benefit for the Australian film and television industry. Net economic benefit could include employment opportunities for Australian Performers and crews, longer employment contracts as a consequence of a larger production budget and longer production schedules, and significant commercial opportunities for other film production service providers in Australia.
15. Where a Sponsor claims there is a financial imperative to engage a Foreign Performer which is not demonstrated by a higher level of Australian and/or Foreign Investment in the production budget, a detailed explanation of that financial imperative will be required.
- 15.16. Evidence that may be required to demonstrate that the scale of the production would be significantly diminished if the Foreign Performer is not attached to the production includes:
 - (a) details of the estimated production budget including estimated expenditure in Australia; and
 - (b) one or more of the following documents as necessary:
 - (i) letter of confirmation from the production's relevant investor that investment in the production is dependent on the Foreign Performer's participation;
 - (ii) letter of confirmation from the production's distributor that distribution is dependent on the Foreign Performer's participation;
 - (iii) contracts indicating that overseas pre-sales are dependent on the Foreign Performer's participation;

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(c) details of the number and description of the specific roles to be filled by Australian Performers and the positions to be filled by Australian crew, including employment contract details; and

SECTION E - APPLICATION PROCESS

1. Applications for Foreign Performer Certificates should be made by Sponsors of 420 visa applicants. Check DIAC website at <http://www.immi.gov.au/skilled/specialist-entry/420/> for advice on the correct visa to apply for.
- 1.2. Applying for certification of the Foreign Performer through to the provision of a the eEntertainment (Subclass 420) visa is a four three part process as follows:
 - Contact DIAC for advice on the correct visa to apply for;
 - If the 420 visa is suitable, contact OFTA to commence application process for certification under the FPCS, and consult with MEAA to obtain a letter of opinion;
 - OFTA assessment and decision on application for a Foreign Performer Certificate; and
 - DIAC processing of application for the entertainment visa.
3. To allow adequate time for consideration of applications, Sponsors should commence the application process as early as possible before the proposed date of entry into Australia of the Foreign Performer. Processing through all stages can take 8 to 12 weeks. will take at least four weeks. Processing times may be accelerated to accommodate one-off applications where the Sponsor has demonstrated a genuine need for urgency.

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Comment [P6]: Web site?

Comment [P7]: When is SEPC advised/by sponsor or OFTA?

Comment [p8]: This occurs simultaneously with the OFTA process and should be reflected as such. This is critical as it could slow down DIAC processing where we miss critical deadlines on cases.

Initial contact with relevant agencies

4. After contacting DIAC for advice on the correct visa to apply for, Sponsors must advise must advise OFTA and MEAA of their intention to apply for a Foreign Performer Certificate and a 420 visa. This will provide an opportunity for information exchange and to clarify any initial questions the Sponsor may have regarding the application process including relevant application forms and MEAA consultation requirements.
- 4.5. Sponsors should provide initial e-mail advice to:
 - (a) OFTA (E-mail: foreignactors@pmc.gov.au) and
 - (a)(b) MEAA (E-mail: imports@alliance.org.au),
 which sets out:
 - (a) Name and contact details of the Sponsor;
 - (a)(b) Name of the production;
 - (c) Number and nationalities of the foreign performers for whom entry is being sought; and
 - (d) Estimated arrival and departure dates.
6. For full contact details of agencies see Section G.

Comment [p9]: Why do they need to inform of the intention to apply?? They should be able to apply directly.

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Consultation with MEAA

7. As a requirement of the Migration Regulations Sponsors are required to consult with MEAA in advance of submitting their application for a Foreign Performer Certificate to OFTA.
8. MEAA should respond with a letter of opinion to the Sponsor, with a copy provided to OFTA, in relation to their application within 14 calendar days. The 14 day period commences from the date upon which all relevant documentation is submitted to MEAA for consideration.

OFTA assessment and decision on application for Foreign Performer Certificate

Submitting an application

9. The OFTA Guidelines and Foreign Performer Certificate application form are available for download from <http://www.arts.gov.au/foreignactors>.
- 9.10. Applications should contain evidence of compliance with the requirements set out in Sections C and D of the Guidelines as necessary. OFTA may also seek further information and/or statutory declarations in relation to supporting documentation provided by the Sponsor where appropriate.
- 9.11. In determining whether to issue a Foreign Performer Certificate, the Arts Minister or person authorised by the Arts Minister, will take comments provided by MEAA into consideration. A copy of the letter of opinion from MEAA should be provided by the Sponsor as part of the application submitted to OFTA.
- 9.12. Applications should be addressed or emailed as follows:
 - Foreign Performer Certification Scheme
 - Office for the Arts
 - Department of the Prime Minister and Cabinet
 - Email: foreignactors@pmc.gov.au
13. Receipt of applications will be acknowledged and all enquiries regarding the application process should be directed to the Desk Officer at the above email address or by phone on +61 2 6275 9680.
14. Please note that a single application form may cover a number of performers. For large productions, certification may be granted as details become available.

Application assessment

15. OFTA considers the circumstances of each application, taking into account the views of the Sponsor and MEAA's letter of opinion, and makes a decision based on its assessment of whether the proposed Foreign Performer importation complies with the Migration Regulations (see Appendix).
- 15.16. OFTA requires five working days to process an application once all documentation is received, and may seek further information at any point in the application assessment process in order to establish whether certification should

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occur.

- | 15.17. Where MEAA has been consulted but has not provided a written response to the Sponsor within the required 14 day period, OFTA will seek to elicit the requested letter of opinion from MEAA. OFTA will proceed with the assessment of the application based on the information provided by the Sponsor if MEAA is unable to meet this request within a reasonable timeframe.
- 18. Should MEAA object to the application, OFTA will seek additional details from the Sponsor and MEAA to facilitate assessment of the application. Any request for information from OFTA should be responded to within three working days.
- 19. Every effort will be made to come to a determination as promptly as possible, and OFTA takes the timeframe of the production and proposed arrival date of the performer into consideration. Hence in some circumstances input from the Sponsor and MEAA may be required within a shorter timeframe than that indicated above.

Decision on certification

- 20. Upon completion of the assessment process, OFTA makes its recommendations regarding the issuing of a Foreign Performer Certificate to the Arts Minister, or person authorised by the Arts Minister, for consideration and final decision.
- | 20.21. OFTA will notify the Sponsor, MEAA and DIAC regarding the certification decision, and where a certificate has been issued, provide signed copies to all three parties by email (or by fax upon request). The Sponsor will also be sent the original hard copy of the certificate by regular post.
- 22. Please note that a Foreign Performer Certificate is valid for the entire length of the production for which it is issued. A new certificate is not required in the case of subsequent re-entry of the same Performer in the same production.

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DIAC processing of application for entertainment visa

- 23. DIAC requires that applications for entertainment visas for Foreign Performers entering Australia to take part in productions covered by Migration Regulations 2.72D (4) and (5) are supported by a Foreign Performer Certificate.
- | 23.24. Sponsors should lodge their documentation with DIAC as soon as possible prior to the nominated person's arrival date in Australia, noting that processing times can be up to 8 to 12 weeks.
- | 23.25. For further information and a comprehensive list of DIAC's requirements, including where applications must be lodged, see:
<http://www.immi.gov.au/skilled/specialist-entry/420>

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SECTION F - CASTING GUIDELINES

1. Where a Sponsor seeks to import a Foreign Performer on the basis that a suitable Australian Performer cannot be found, the Sponsor must demonstrate that a genuine attempt has been made to locate a suitable Australian Performer.

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- 1.2. Where the Arts Minister or person authorised by the Arts Minister is not satisfied that a genuine attempt has been made, the Sponsor will need to provide documentary evidence to demonstrate to OFTA that some or all of the following have been undertaken:

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 - (a) appointment of a recognised casting director in Australia;

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 - (a)(b) employment of recognised casting agents;

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 - (a)(c) appropriate advertising of the role in Australia;

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 - (a)(d) distribution of the character breakdown of the role to Performers' agents Australia-wide;

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 - (a)(e) professional auditions conducted in a conducive atmosphere where the Performer is given every opportunity to demonstrate their ability to play the nominated role including:

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 - (i) providing the Performer with a detailed character breakdown of the role and excerpts from the script in sufficient time to prepare for the role;

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 - (i)(ii) informing the Performer in advance if the role requires a particular accent, skills or attributes;

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 - (i)(iii) where appropriate, giving the Performer the opportunity to discuss the role with the director; and

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 - (i)(iv) providing make-up and costumes where recommended by the casting director.

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3. OFTA may also require evidence to establish that where recommended by the casting director, all Performers were auditioned and, where appropriate, short-listed Performers were screen-tested.

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- 3.4. Additional information regarding the Australian Performers who were considered, interviewed or auditioned for the role may be requested by OFTA as follows:

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 - (a) details of the Performers offered the role and an explanation of why they were unable to accept; and
 - (a)(b) details of the Performers considered unsuitable for the role and a statement of the reasons for the decision.

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5. Please note OFTA may seek further information and/or statutory declarations in relation to supporting documentation provided by the Sponsor where appropriate.

SECTION G - CONTACTS FOR FURTHER INFORMATION

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Office for the Arts (OFTA)

Desk officer, Foreign Performers Certification Scheme
Tel: +61 2 6275 9680
Fax: +61 2 6275 9320
Email: foreignactors@pmc.gov.au
<http://www.arts.gov.au/foreignactors>

Department of Immigration and Citizenship (DIAC)

Entertainment Processing Centre
Tel: +61 2 8861 4356 or +61 2 8861 4358
Fax: +61 2 8861 4301
Email: entertainment.visas@immi.gov.au
<http://www.immi.gov.au/skilled/specialist-entry/420>

Media, Entertainment and Arts Alliance (MEAA)

Federal Policy Officer
Tel: +61 2 7 3846 0044 9333 0958
Fax: +61 7 3846 0153 9333 09333
Email: imports@alliance.org.au contact form at:
http://www.alliance.org.au/contacts/import_applications/
<http://www.alliance.org.au/imports>

Comment [A10]: The contact details have changed.

**APPENDIX: MIGRATION REGULATION 2.72D, SUB-PARAGRAPHS (4)
AND (5)**

2.72D Criteria for approval of nomination — Subclass 420 (Entertainment) visa

Performing in film or television production subsidised by government

- (4) The Minister is satisfied that:
- (a) the identified visa holder or applicant will be:
 - (i) performing as an entertainer under a performing contract for 1 or more specific engagements (other than non-profit engagements) in Australia; and
 - (ii) performing in a film or television production that is subsidised, in whole or in part, by a government in Australia; and
 - (iii) performing:
 - (A) in a leading role, major supporting role or cameo role; or
 - (A)(B) to satisfy ethnic or other special requirements; and
 - (b) the nomination is supported by a certificate given by the Arts Minister, or a person authorised by the Arts Minister, confirming that the relevant Australian content criteria have been met; and
 - (c) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and
 - (e)(d) the entertainment sponsor has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia.

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Performing in film or television production not subsidised by government

- (5) The Minister is satisfied that:
- (a) the identified visa holder or applicant will be:
 - (i) performing as an entertainer under a performing contract for 1 or more specific engagements (other than non-profit engagements) in Australia; and
 - (ii) performing in a film or television production that is not subsidised in any way by a government in Australia; and
 - (iii) performing:
 - (A) in a leading role, major supporting role or cameo role; or
 - (B) to satisfy ethnic or other special requirements; and
 - (b) the nomination is supported by a certificate given by the Arts Minister, or a person authorised by the Arts Minister, confirming that:
 - (i) citizens or residents of Australia have been afforded a reasonable opportunity to participate in all levels of the production; and
 - (ii) the foreign investment, or the private investment guaranteed against the foreign returns by a distributor, in the production is greater than the amount to be expended on entertainers sponsored for entry; and

- (c) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and
- (d) the entertainment sponsor has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia.

DRAFT

Kelly, Jessica

From: Sharp, Jo
Sent: Thursday, 14 July 2011 10:50 AM
To: Kelly, Jessica
Subject: FW: Foreign Actors Certificate Scheme [SEC=UNCLASSIFIED]
Attachments: FPCS Guidelines May 2011 (sent to OFTA).docx; 2.72D mock new regs.doc

Security Classification:
 UNCLASSIFIED

From: christine.sawa@immi.gov.au [mailto:christine.sawa@immi.gov.au]
Sent: Tuesday, 21 June 2011 2:59 PM
To: Sharp, Jo
Cc: Colleen.Santinon@immi.gov.au; marianne.bowman@immi.gov.au; Fulton, Caroline; Kelly, Jessica
Subject: Fw: Foreign Actors Certificate Scheme [SEC=UNCLASSIFIED]

Hi Jo

Thank you for the opportunity to comment on your draft Foreign Actors Certificate Scheme guidelines. Please see the attached document with our comments and suggestions.

(See attached file: FPCS Guidelines May 2011 (sent to OFTA).docx)

We would also be grateful for your comments/response to the following questions:

1. Union consultation

The MEAA is the only union mentioned in the guidelines which clients are directed to consult with as part of process of applying for a certificate. We are wondering if there would ever be a circumstance where the client would need to consult with the Musicians' Union of Australia. As an example, DIAC guidelines indicate that performing musicians and/or conductors should be consulting with the MUA and we assume it may be possible for a musician to be performing in a TV or film production.

How does OFTA use the MEAA/union letter? Would consultation with another union meet OFTA guidelines? If MEAA does object, will OFTA refuse to issue the Certificate? Will a certificate be issued without MEAA consultation?

2. Documentaries

We note that the scope of the Foreign Actors Certificate guidelines now includes internet and mobile devises, sketch comedy programs, documentaries and dramatised documentaries. We currently process Documentaries and Commercials which are "exclusively for overseas use" against reg 2.72F(6) Criteria for Nomination - Subclass 423 (Media and Film staff) visa.

In OFTA's view, should sponsors be seeking a Foreign Actors Certificate and undertaking union consultations for such productions? If so, will they will need to be assessed against regulation 2.72D Criteria for approval of Nomination - Subclass 420 (Entertainment) visa, which requires an Arts certificate and union consultation?

s22

3. Application assessment (Page 14, Para 15 of the guidelines refers)

The draft guidelines indicate that "OFTA considers the circumstances of each application, taking into account the views of the Sponsor and MEAA's letter of opinion, and makes a decision based on its assessment of whether the

proposed Foreign Performer importation ***complies with the Migration Regulations***. We believe this should be changed to "complies with the Guidelines" **s42** Grateful for your comments.

4. Review Rights

The guidelines are currently silent about refusal to issue certificates and options for review of decisions. Has OFTA given any consideration to review rights where a nomination and/or visa application is refused because OFTA refuses to issue a certificate?

s22



Looking forward to your response to the above questions/comments.

Christine Sawa
Specialist Entry Section
Department of Immigration and Citizenship
Telephone: (02) 6264 2486
Email: christine.sawa@immi.gov.au

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Australian Government

**Department of the
Prime Minister and Cabinet
Office for the Arts**

Foreign Performers Certification Scheme Guidelines

**Australian Government
[insert month] 2011**

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INTRODUCTION

This revised version of the *Foreign Performers Certification Scheme (FPCS) Guidelines* was adopted on [?? 2011].

Purpose

The Scheme supports key Government objectives for the film and television industry including providing Australian industry personnel with a fair chance of securing employment in Film or Television Productions shot in Australia, ensuring Australian voices are heard in Australian productions, and building a commercially sustainable film and television industry.

Who needs to apply for a Foreign Performer Certificate (FPC)?

The Scheme deals exclusively with the employment of Foreign Performers entering Australia to take part in Film and Television Productions. The guidelines are the basis on which the Arts Minister, or a person authorised by the Arts Minister, determines whether to certify that the requirements identified in subregulations 2.72D(4)(b) and 2.72(5)(b) of the *Migration Regulations 1994* (the Regulations) have been met. Please see Sections B, C and D for more information.

How do I apply?

The Guidelines are administered by the Office for the Arts (OFTA).

The Migration Regulations require that in order to be granted an Entertainment (Subclass 420) visa, an applicant must be identified in an approved nomination by an Entertainment sponsor for an occupation, program or activity. In relation to foreign performers participating in film and television productions, the nomination can not be approved unless it is accompanied by an Arts certificate issued by the Arts Minister (or delegate) confirming that the requirements in subparagraphs 2.72D(4)(b) or 2.72(5)(b) of the Regulations are met.

~~that a Entertainment (Subclass 420) visa, which is assessed against the criteria in subparagraphs 2.72D(4) and (5), not be granted approved unless the visa application is supported by a Foreign Performer Certificate issued by the Arts Minister. Regulation 2.72D(4) and 2.72D(5) are included as an Appendix to this document.~~

In addition, under the Migration Regulations the Sponsor must consult the relevant Australian unions. For the purposes of this Scheme, the relevant union is the Media Entertainment and Arts Alliance (MEAA). This consultation process is undertaken as part of the process of applying for a FPC Foreign Performer Certificate from the Arts Minister.

More detailed information is contained in Section E.

Is there a cost when applying to OFTA?

No fee is charged by OFTA. Applicants may find current ~~must contact the~~ Department of Immigration and Citizenship (DIAC) fees and charges at <http://www.immi.gov.au/allforms/990i/specialist-entry.htm#e> for advice on their fees.

How long does OFTA take to assess an application?

s42

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Comment [p2]: Sub paras 2.72D(4) and (5) are nomination criteria not visa application criteria. However, a 420 visa application cannot be approved without an approved nomination by an Entertainment sponsor. This paragraph will need careful rewording (see suggested wording).

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Comment [p4]: Is there ever a circumstance where the MUA would be consulted instead or in addition to the MEAA?

OFTA requires five working days to process an application, and may seek further information at any point during the application assessment process in order to establish whether certification should occur. Further information is included in Section E.

Applicants should contact the DIAC Department of Immigration and Citizenship at nsw.entertainment@immi.gov.au for advice on their processing timeframes.

Who do I contact for more information?

Contact details for OFTA, MEAA and DIAC contact details are provided can be found in Section G.

SECTION A – SCOPE

1. The Scheme applies to the import of Foreign Performers taking part in the following specified forms of Film or Television Production intended for distribution via platforms such as cinema exhibition, television broadcast, DVD, and Internet and mobile devices:
 - (a) Feature Films;
 - (b) Telemovies;
 - (b)(c) Series, Serials and Sketch Comedy Programs
 - (i) excluding Foreign Performers/celebrities who take part in Film or Television Productions as themselves, when this participation is incidental to their main purpose for entering Australia (which might include live performance concert tours and other promotional activities);
 - (d) Documentaries and dramatised Documentaries
 - (i) excluding all Performers other than foreign Hosts and Foreign Performers in dramatic roles.
2. The Guidelines set out the circumstances under which applications can be considered for the import of Foreign Performers to take part in the Film or Television Productions and roles specified above.
3. The Guidelines do NOT apply to:
 - (a) Foreign Performers in roles or forms of Film or Television Production other than those specified above. Visa applications for such Performers will be considered by DIAC under the appropriate Migration Regulations; or
 - (a)(b) Foreign Performers seeking visas to enter Australia under an agreement between Australia and another country, such as Australia's bilateral film co-production agreements. A person may lodge an application to be considered by DIAC for under the Government Agreement (Ssubclass 406) visa. of the Migration Regulations. Screen Australia administers the Commonwealth Government's International Co-production Program and determines applications for projects to be approved as Official Co-productions.

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SECTION B - TERMS AND DEFINITIONS

‘Australian Content Criteria’ or ‘ACC’ means the criteria required for Category 1, Category 2, and Category 3 Government Subsidised productions set out in Section C of these Guidelines.

‘Cameo Actor Role’ means a brief but important dramatic role in a Film or Television Production, usually performed by a well-known personality.

‘DIAC’ means the Department of Immigration and Citizenship.

‘Documentary’ means a program that is a creative treatment of actuality, other than a news, current affairs, sports coverage, magazine, infotainment, light entertainment or reality program.

‘Feature Film’ means a film, including an animated film, commonly screened as the main attraction in a commercial cinema that is no less than 60 minutes, or in the case of a larger format (IMAX) film no less than 45 minutes duration, and shot and processed to commercial standards for cinema exhibition, television broadcast or distribution via other platforms.

‘Film or Television Production’ means a production intended for cinema exhibition, television broadcast, or distribution via other platforms (such as DVD, and internet and mobile phone downloads) and includes a Feature Film, Telemovie, Series, Serial, Sketch Comedy Program, Documentary and dramatised Documentary but does not include computer games.

‘Foreign Investment’ includes overseas sourced funds where such investment is secured against returns from foreign markets, regardless of whether the funds are equity investment or not, including direct investment and revenue raised through pre-sales and distribution in overseas markets.

‘Foreign Performer’ means:

(a) a Performer in a Feature Film; Telemovie; drama Series, Serial or Sketch Comedy Program; or dramatised Documentary who is performing:

(i) a Leading, Supporting or Cameo Actor role;

(ii) as a Motion-capture Performer, Puppeteer, Stunt Performer or Voice-over Performer; or

(b) as a Host in a Documentary or dramatised Documentary.

‘Government Subsidy’ means and includes any form of government financial support other than developmental funding and includes:

(a) direct subsidies such as direct investment, loans (excluding loans to cashflow the Producer Offset), distribution guarantees and pre-sales; and

(a)(b) indirect subsidies such as tax concessions (e.g. Producer Offset, Location Offset, Post, Digital and Visual Effects Offset in Division 376 of the *Income Tax Assessment Act 1997*).

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Comment [p6]: As per above note. Is there any distinction here if the documentary was exclusively for Overseas use? Current DIAC regs allow for documentaries exclusively for overseas use to be exempt from requirement to consult union or obtain Certificate from OFTA.

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For the purposes of this definition 'government' includes Commonwealth and Australian state and territory governments, but excludes the Australian Broadcasting Corporation and the Special Broadcasting Service.

'Host' means the central scripted Performer in a Documentary or dramatised Documentary who introduces and presents the material to a viewing audience and who may also be referred to as "compere", "presenter", "commentator" or "narrator".

'Leading Actor Role' means the dramatic role of protagonist or one of the central or main characters in a Film or Television Production.

'MEAA' means the Media Entertainment and Arts Alliance, the union representing employees in the media, entertainment, sport and the arts.

'Motion-capture Performer' means a Performer in a computer animation production in a role which involves a performance from which points can be tracked on a moving face or body in order to get a simplified image of motion., e.g. the animation of the penguins in Happy Feet.

'OFTA' means the Office for the Arts, Department of the Prime Minister and Cabinet.

'Official Co-production' means a production for which a Foreign Performer seeks to enter Australia under an agreement between Australia and another country, under the International Co-production Program administered by Screen Australia, for which visa applications are considered by the Department of Immigration and Citizenship (DIAC) under subclass 406 of the Migration Regulations.

'Puppeteer' means a manipulator of any variety of puppetpuppets, whose work appears in a Film or Television Production.

'Serial' means a Film or Television Production which is a narrative series made up of two or more episodes that:

- (a) are produced wholly or principally for public exhibition under a single title, for either free-to-air (broadcast network) and subscription television (cable or satellite); and
- (b) comprise a potentially unlimited number of episodes, relating a number of equally important and overlapping plots, without an apparent single major plot necessarily moving towards a resolution and arranged into consecutive episodes for screening purposes.

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'Series' means a Film or Television Production which is a narrative series made up of two or more episodes that:

- (a) are produced wholly or principally for public exhibition under a single title, for either free-to-air (broadcast network) and subscription television (cable or satellite);
- (a)(b) have a common theme or themes that draws the episodes of the series into a cohesive whole;

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(c) contain dramatic elements that form a narrative structure; and

(e)(d) are intended for exhibition together in a national market or markets.

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‘Sketch Comedy Program’ means a Film or Television Production comprising comedy and satirical sketches that are short, self-contained stories or plots; but does not include a stand-up comedy program or an incidental sketch that is a component in a program of another kind.

‘Sponsor’ means an Australian producer applying for a Foreign Performer Certificate or an Australian sponsor acting on behalf of a foreign producer in making this application. For DIAC purposes, in relation to a Subclass 420 (Entertainment) visa or a Subclass 423 (Media and Film Staff) visa, -the sponsor has been approved as an “entertainment sponsor” under *Migration Act 1958* and the *Migration Regulations 1994*.

Comment [P7]: Anu – need more here about sponsors?

Comment [p8]: For DIAC purposes, the sponsor is approved as a sponsor in relation to the entertainment visa under migration legislation (ie subsection 140E(1) of the Act and Regs 2.60A and 2.60F (CS))

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‘Stunt Performer’ means a Performer engaged to perform dangerous scenes in a Film or Television Production and/or who doubles for one of the actors chosen for a particular role.

‘Supporting Actor Role’ means a dramatic role which is more than a Cameo but not a Leading Actor role in a Film or Television Production.

‘Telemovie’ means a drama program of a like nature to a Feature Film, which is not less than 60 minutes in length and shot and processed to commercial release standards for television broadcast or distribution via other platforms (such as DVD and internet and mobile phone downloads).

‘Traditional Australian Character’ means an Australian character that appears in Australian literature (e.g. *Man from Snowy River*, *The Shiralee*, etc) or is a recognised part of Australia's history and/or folklore (e.g. Dame Nellie Melba, Ned Kelly, etc).

‘Voice-over Performer’ means a Performer who provides recorded dialogue or narration, that narration that comes from an unseen, off-screen voice in a Film or Television Production.

SECTION C - TREATMENT OF SUBSIDISED AND UNSUBSIDISED PRODUCTIONS

In accordance with the requirements of the Migration Regulations, the Guidelines set different criteria for assessing the appropriateness of Foreign Performers taking part in a specified Film or Television Production in Australia based on whether or not the production has, or will receive, a Government Subsidy.

Subsidised Productions

Comment [p9]: Currently Reg 2.72D(4) refers

1. A production is considered subsidised if it has, or will receive, a Government Subsidy.
- 1.2. For a Foreign Performer to take part in a subsidised Film or Television Production, the application for a Foreign Performer Certificate must satisfy the requirements set out in the Australian Content Criteria (ACC) detailed below.
- 1.3. The ACC requirements vary depending on whether or not the production in which the Foreign Performer is to appear:
 - (a) receives a direct Government Subsidy (Category 1); or
 - (a)(b) is likely to access the Producer Offset and is receiving no direct Government Subsidy (Category 2); or
 - (a)(c) is likely to access the Location or PDV Offset (Category 3).
4. Productions within all Categories must meet the Casting Guidelines, outlined in Section F.

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Category 1 - ACC for Film or Television Productions in receipt of a direct Government Subsidy

5. Reasonable opportunity must be given to employing Australian Performers at all levels of the production, demonstrated by:
 - (a) the casting of Leading and major Supporting Actor Roles must accurately reflect the Australian characters portrayed;
 - (a)(b) at least 50 per cent of Performers in Leading Actor roles and 75 per cent of Performers in major Supporting Actor Roles must be Australian; and
 - (a)(c) where applicable, an Australian Performer must be cast to play each Traditional Australian Character.
6. The level of Foreign Investment in a production's budget will be a factor considered in assessing applications for the importation of Foreign Performers on a case by case basis. As a general guidance, the greater the Foreign Investment in the production, the greater the possible opportunity for the employment of Foreign Performers in Leading, Supporting and Cameo Actor Roles within the above parameters. For example, where a minimum of:
 - (a) 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is less than \$4.0 million, in the case of a Telemovie less than \$2.0 million, or in the case of a Series or Serial less than

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\$0.75 million per commercial hour, the employment of one Foreign Performer may be appropriate;

(a)(b) 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is \$4.0-12.0 million, in the case of a Telemovie more than \$2.0 million, or in the case of a Series or Serial is \$0.75-1.0 million per commercial hour, the employment of one Foreign Performer in a Leading Actor Role and one Foreign Performer in a Supporting or Cameo Actor Role may be appropriate; or

(a)(c) 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is more than \$12.0 million, or in the case of a Series or Serial, more than \$1.0 million per commercial hour, the employment of one additional Foreign Performer may be appropriate to play a Cameo Actor Role.

7. Where a Sponsor seeks to import a Foreign Performer on the basis that a suitable Australian Performer cannot be found, the Sponsor must demonstrate that a genuine attempt has been made to locate a suitable Australian Performer. OFTA Casting Guidelines are at Section F.

8. When no Australian Performer can be cast to satisfy the requirements of a role, the employment of a Foreign Performer may be appropriate in the following circumstances:

(a) highly specialist/unusual roles

(a)(b) ethnicity

(a)(c) continuity

(a)(d) unexpected change in the level of Foreign Investment

(a)(e) private investment being dependent on the engagement of a Foreign Performer; or

(a)(f) overall benefit to the Australian film and television industry.

9. If a Sponsor seeks consideration on the basis of factors listed above, the Sponsor will be required to provide additional evidence in support of their application as detailed in Section D.

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Category 2 - ACC for Film or Television Productions NOT in receipt of direct Government Subsidy but eligible to access the Producer Offset

10. The Sponsor must provide evidence that the production has obtained provisional certification to access the Producer Offset. Evidence must include a copy of the Provisional Certificate and covering letter from Screen Australia.

Note: Further information regarding the Producer Offset application process is available on Screen Australia's website at

http://www.screenaustralia.gov.au/producer_offset/prov_certification.asp

Productions in receipt of direct Government Subsidy in addition to accessing the Producer Offset must apply for Foreign Performers Certification under Subsidised Productions 'Category 1' above.

Category 3 - ACC for Film or Television Productions eligible to access the Location or PDV Offsets

11. The Sponsor must provide evidence that the production intends to access the Location or PDV Offsets. Evidence may include a letter of intent from the relevant production company and/or demonstration that the production budget exceeds the Location or PDV Offset eligibility criteria for minimum expenditure thresholds.

Unsubsidised Productions

Comment [p10]: Currently Reg 2.72D(5) refers

12. Unsubsidised productions, including those fully funded offshore, must satisfy the following criteria:

(a) Australian citizens/residents have been provided with a reasonable opportunity to participate in all levels of the production; and

(a)(b) the sum of Foreign Investment exceeds the amount to be expended on the Foreign Performers while they are in Australia to take part in the unsubsidised production.

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13. In making an application to import Foreign Performers, the Sponsor must demonstrate that reasonable efforts have been made to cast Australian Performers at all levels of the production. OFTA Casting Guidelines are at Section F.

14. In relation to Foreign Investment, the Sponsor must demonstrate that the Foreign Investment component of the production's budget is greater than the salary of the proposed Foreign Performers while they are in Australia to take part in the unsubsidised production.

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SECTION D - FLEXIBILITY CIRCUMSTANCES AND EVIDENCE REQUIRED FOR SUBSIDISED PRODUCTIONS

1. Importation of a Foreign Performer may be considered in the circumstances outlined below on the basis of additional evidence provided by the Sponsor in support of the application.
2. Sponsors who intend to make an application for importation of a Foreign Performer in the circumstances outlined below must mount a convincing case supported by the documentary evidence. The simple assertion that Foreign Performer participation is critical will not be sufficient.
- 2.3. If a Sponsor believes that there are other compelling reasons to import a Foreign Performer beyond those circumstances detailed below they should contact OFTA to present a case. Such approaches will be considered on their merits on an individual basis.

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Highly specialist/unusual role

4. The Foreign Performer is necessary to perform a highly specialist or unusual role which requires specific or specialist attributes including, but not limited to, physical appearance, physical talent and linguistic or vocal skills. Please note that foreign language and accent requirements* for a particular role are not necessarily sufficient grounds for importing a Foreign Performer.
5. Evidence that may be required:
 - (a) script or synopsis demonstrating that the role requires certain highly specialist attributes;
 - (a)(b) documentation such as a listing of personal attributes or specialist skills from a resume or curriculum vitae that supports the claim that the proposed Foreign Performer possesses the attributes necessary to perform the role; and
 - (a)(c) that all reasonable efforts have been made to cast the role with an Australian Performer (see Casting Guidelines at Section F).

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* Australia is a multicultural country. Many Australian performers are competent in a variety of languages other than English, or can speak with an extensive range of accents.

Ethnicity

6. The Foreign Performer is necessary for reasons of ethnicity required by the role. Please note that foreign language and accent requirements* for a particular role are not necessarily sufficient grounds for importing a Foreign Performer.
7. Evidence that may be required:
 - (a) script or synopsis demonstrating that specific ethnic characteristics are required by the role; and
 - (a)(b) that all reasonable efforts have been made to cast the role with an Australian Performer (see Casting Guidelines at Section F).

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Continuity

8. The Foreign Performer is necessary for reasons of continuity.
9. Evidence that may be required:
 - (a) documentation, such as a Performer contract, cast list or press clippings, supporting the claim that the Foreign Performer has worked on, or will be working on, the same production outside Australia.

Unexpected change in the level of Foreign Investment

10. Where the initial level of Foreign Investment in a production's budget allows for the importation of Foreign Performers, but decreases unexpectedly, consideration will be given to approving the importation of Foreign Performers already attached to the production. For example, a foreign investor may withdraw support due to financial pressures and be replaced by an Australian investor at short notice.
11. Evidence that may be required:
 - (a) details of the production budget;
 - (a)(b) documentation from private investors committing to the production; and
 - (a)(c) reasons for and date of withdrawal of a foreign investor.

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Private investment being dependent on the engagement of a Foreign Performer

12. The Foreign Performer is commercially necessary to secure Australian and/or Foreign Investment in the production or overseas pre-sales and distribution deals.
13. Evidence that may be required:
 - (a) details of the production budget; and/or
 - (a)(b) one or more of the following documents:

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* Australia is a multicultural country. Many Australian performers are competent in a variety of languages other than English, or can speak with an extensive range of accents.

- (i) letter of confirmation or contract from the production's relevant investor that finance in the production is dependent on the Foreign Performer's participation;
- (ii) letter of confirmation or contract from the production's distributor that distribution is dependent on the Foreign Performer's participation;
- (iii) contracts indicating that overseas pre-sales are dependent on the Foreign Performer's participation;
- (iv) where the Foreign Performer is internationally known, documentary proof of their box office appeal through international box office figures for Film and Television Productions in which they have undertaken Leading or major Supporting Actor Roles; and/or
- (v) where the Foreign Performer is an emerging Performer, or cast to appeal to a particular overseas audience, documentation in support of their potential box office appeal such as resume/filmography details including previous work, reviews, awards/accolades, and/or other evidence of audience appeal.

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Overall benefit to the Australian film and television industry

14. The Foreign Performer is necessary to ensure that the production proceeds in Australia and the size of the production's budget is such that associated local employment opportunities constitute an overall net economic benefit for the Australian film and television industry. Net economic benefit could include employment opportunities for Australian Performers and crews, longer employment contracts as a consequence of a larger production budget and longer production schedules, and significant commercial opportunities for other film production service providers in Australia.
15. Where a Sponsor claims there is a financial imperative to engage a Foreign Performer which is not demonstrated by a higher level of Australian and/or Foreign Investment in the production budget, a detailed explanation of that financial imperative will be required.
- 15.16. Evidence that may be required to demonstrate that the scale of the production would be significantly diminished- if the Foreign Performer is not attached to the production includes:
 - (a) details of the estimated production budget including estimated expenditure in Australia; and
 - (b) one or more of the following documents as necessary:
 - (i) letter of confirmation from the production's relevant investor that investment in the production is dependent on the Foreign Performer's participation;
 - (ii) letter of confirmation from the production's distributor that distribution is dependent on the Foreign Performer's participation;
 - (iii) contracts indicating that overseas pre-sales are dependent on the Foreign Performer's participation;

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(c) details of the number and description of the specific roles to be filled by Australian Performers and the positions to be filled by Australian crew, including employment contract details.

and

SECTION E - APPLICATION PROCESS

1. Applications for Foreign Performer Certificates should be made by Sponsors of 420 visa applicants. Check DIAC website at <http://www.immi.gov.au/skilled/specialist-entry/420/> for advice on the correct visa to apply for.

Comment [P11]: Web site?

- 1.2. Applying for certification of the Foreign Performer through to the provision of an the eEntertainment (Subclass 420) visa is a ~~four~~ three part process as follows:

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- ~~Contact DIAC for advice on the correct visa to apply for:-~~

Comment [P12]: Web site?

- If the 420 visa is suitable, contact OFTA to commence application process for certification under the FPCS, and consult with MEAA to obtain a letter of opinion;
- OFTA assessment and decision on application for a Foreign Performer Certificate; and
- DIAC processing of application for the entertainment visa.

Comment [p13]: This occurs simultaneously with the OFTA process and should be reflected as such. This is critical as it could slow down DIAC processing where we miss critical deadlines on cases.

3. To allow adequate time for consideration of applications, Sponsors should commence the application process as early as possible before the proposed date of entry into Australia of the Foreign Performer. Processing through all stages can take 8 to 12 weeks. ~~will take at least four weeks.~~ Processing times may be accelerated to accommodate one-off applications where the Sponsor has demonstrated a genuine need for urgency.

Initial contact with relevant agencies

4. ~~After contacting DIAC for advice on the correct visa to apply for,~~ Sponsors must ~~advise~~ must advise OFTA and MEAA of their intention to apply for a Foreign Performer Certificate and a 420 visa. This will provide an opportunity for information exchange and to clarify any initial questions the Sponsor may have regarding the application process including relevant application forms and MEAA consultation requirements.

Comment [p14]: Why do they need to inform of the intention to apply?? They should be able to apply directly.

- 4.5. Sponsors should provide initial e-mail advice to:

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(a) OFTA (E-mail: foreignactors@pmc.gov.au) and

(a)(b) MEAA (E-mail: imports@alliance.org.au)

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which sets out:

(a) Name and contact details of the Sponsor;

(a)(b) Name of the production;

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(c) Number and nationalities of the foreign performers for whom entry is being sought; and

(d) Estimated arrival and departure dates.

6. For full contact details of agencies see Section G.

Consultation with MEAA

7. ~~As a requirement of the Migration Regulations~~ Sponsors are require to consult with MEAA in advance of submitting their application for a Foreign Performer Certificate to OFTA.
8. MEAA should respond with a letter of opinion to the Sponsor, with a copy provided to OFTA, in relation to their application within 14 calendar days. The 14 day period commences from the date upon which all relevant documentation is submitted to MEAA for consideration.

Comment [p15]: It is not a requirement of the Migration Regulations that sponsors consult with the MEAA before lodging their application for a Certificate. However, it may be useful to expedite processing. Presume this is an OFTA requirement??

OFTA assessment and decision on application for Foreign Performer Certificate

Submitting an application

9. The OFTA Guidelines and Foreign Performer Certificate application form are available for download from <http://www.arts.gov.au/foreignactors>.
- 9.10. Applications should contain evidence of compliance with the requirements set out in Sections C and D of the Guidelines as necessary. OFTA may also seek further information and/or statutory declarations in relation to supporting documentation provided by the Sponsor where appropriate.
- 9.11. In determining whether to issue a Foreign Performer Certificate, the Arts Minister or person authorised by the Arts Minister, will take comments provided by MEAA into consideration. A copy of the letter of opinion from MEAA should be provided by the Sponsor as part of the application submitted to OFTA.
- 9.12. Applications should be addressed or emailed as follows:
 - Foreign Performer Certification Scheme
 - Office for the Arts
 - Department of the Prime Minister and Cabinet
 - Email: foreignactors@pmc.gov.au
13. Receipt of applications will be acknowledged and all enquiries regarding the application process should be directed to the Desk Officer at the above email address or by phone on +61 2 6275 9680.
14. Please note that a single application form may cover a number of performers. For large productions, certification may be granted as details become available.

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Application assessment

15. OFTA considers the circumstances of each application, taking into account the views of the Sponsor and MEAA's letter of opinion, and makes a decision based on its assessment of whether the proposed Foreign Performer importation complies with the Foreign Performers Certification Scheme Guidelines. Migration Regulations (see Appendix).
- 15.16. OFTA requires five working days to process an application once all documentation is received, and may seek further information at any point in the

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application assessment process in order to establish whether certification should occur.

- 15.17. Where MEAA has been consulted but has not provided a written response to the Sponsor within the required 14 day period, OFTA will seek to elicit the requested letter of opinion from MEAA. OFTA will proceed with the assessment of the application based on the information provided by the Sponsor if MEAA is unable to meet this request within a reasonable timeframe.
- 18. Should MEAA object to the application, OFTA will seek additional details from the Sponsor and MEAA to facilitate assessment of the application. Any request for information from OFTA should be responded to within three working days.
- 19. Every effort will be made to come to a determination as promptly as possible, and OFTA takes the timeframe of the production and proposed arrival date of the performer into consideration. Hence in some circumstances input from the Sponsor and MEAA may be required within a shorter timeframe than that indicated above.

Decision on certification

- 20. Upon completion of the assessment process, OFTA makes its recommendations regarding the issuing of a Foreign Performer Certificate to the Arts Minister, or person authorised by the Arts Minister, for consideration and final decision.
- 20.21. OFTA will notify the Sponsor, MEAA and DIAC regarding the certification decision, and where a certificate has been issued, provide signed copies to all three parties by email (or by fax upon request). The Sponsor will also be sent the original hard copy of the certificate by regular post.
- 22. Please note that a Foreign Performer Certificate is valid for the entire length of the production for which it is issued. A new certificate is not required in the case of subsequent re-entry of the same Performer in the same production.

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DIAC processing of application for entertainment visa

- 23. DIAC requires that applications for entertainment visas for Foreign Performers entering Australia to take part in productions covered by Migration Regulations 2.72D (4) and (5) are supported by a Foreign Performer Certificate.
- 23.24. Sponsors should lodge their documentation with DIAC as soon as possible prior to the nominated person's arrival date in Australia, noting that processing times can be up to 8 to 12 weeks.
- 23.25. For further information and a comprehensive list of DIAC's requirements, including where applications must be lodged, see:
<http://www.immi.gov.au/skilled/specialist-entry/420>

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SECTION F - CASTING GUIDELINES

1. Where a Sponsor seeks to import a Foreign Performer on the basis that a suitable Australian Performer cannot be found, the Sponsor must demonstrate that a genuine attempt has been made to locate a suitable Australian Performer.

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- 1.2. Where the Arts Minister or person authorised by the Arts Minister is not satisfied that a genuine attempt has been made, the Sponsor will need to provide documentary evidence to demonstrate to OFTA that some or all of the following have been undertaken:

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 - (a) appointment of a recognised casting director in Australia;

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 - (a)(b) employment of recognised casting agents;

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 - (a)(c) appropriate advertising of the role in Australia;

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 - (a)(d) distribution of the character breakdown of the role to Performers' agents Australia-wide;

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 - (a)(e) professional auditions conducted in a conducive atmosphere where the Performer is given every opportunity to demonstrate their ability to play the nominated role including:

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 - (i) providing the Performer with a detailed character breakdown of the role and excerpts from the script in sufficient time to prepare for the role;

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 - (i)(ii) informing the Performer in advance if the role requires a particular accent, skills or attributes;

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 - (i)(iii) where appropriate, giving the Performer the opportunity to discuss the role with the director; and

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 - (i)(iv) providing make-up and costumes where recommended by the casting director.

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3. OFTA may also require evidence to establish that where recommended by the casting director, all Performers were auditioned and, where appropriate, short-listed Performers were screen-tested.

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- 3.4. Additional information regarding the Australian Performers who were considered, interviewed or auditioned for the role may be requested by OFTA as follows:

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 - (a) details of the Performers offered the role and an explanation of why they were unable to accept; and
 - (a)(b) details of the Performers considered unsuitable for the role and a statement of the reasons for the decision.

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5. Please note OFTA may seek further information and/or statutory declarations in relation to supporting documentation provided by the Sponsor where appropriate.

SECTION G - CONTACTS FOR FURTHER INFORMATION

Office for the Arts (OFTA)

Desk officer, Foreign Performers Certification Scheme
Tel: +61 2 6275 9680
Fax: +61 2 6275 9320
Email: foreignactors@pmc.gov.au
<http://www.arts.gov.au/foreignactors>

Department of Immigration and Citizenship (DIAC)

Entertainment Processing Centre
Tel: +61 2 8861 4356 or +61 2 8861 4358
Fax: +61 2 8861 4301
Email: entertainment.visas@immi.gov.au
<http://www.immi.gov.au/skilled/specialist-entry/420>

Media, Entertainment and Arts Alliance (MEAA)

Federal Policy Officer
Tel: +61 2-7 3846 00449333-0958
Fax: +61 7 3846 01532-9333-09333
Email: imports@alliance.org.au contact form at:
http://www.alliance.org.au/contacts/import_applications/
<http://www.alliance.org.au/imports>

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Comment [A17]: The contact details have changed.

**APPENDIX: MIGRATION REGULATION 2.72D, SUB-PARAGRAPHS (4)
AND (5)**

s22

2.72D Criteria for approval of nomination — Subclass 420 (Entertainment) visa

Performing in film or television production subsidised by government

- (4) The Minister is satisfied that:
- (a) the identified visa holder or applicant will be:
 - (i) performing as an entertainer under a performing contract for 1 or more specific engagements (other than non-profit engagements) in Australia; and
 - (ii) performing in a film or television production that is subsidised, in whole or in part, by a government in Australia; and
 - (iii) performing:
 - (A) in a leading role, major supporting role or cameo role; or
 - (A)(B) to satisfy ethnic or other special requirements; and
 - (b) the nomination is supported by a certificate given by the Arts Minister, or a person authorised by the Arts Minister, confirming that the relevant Australian content criteria have been met; and
 - (c) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and
 - (d) the entertainment sponsor has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia.

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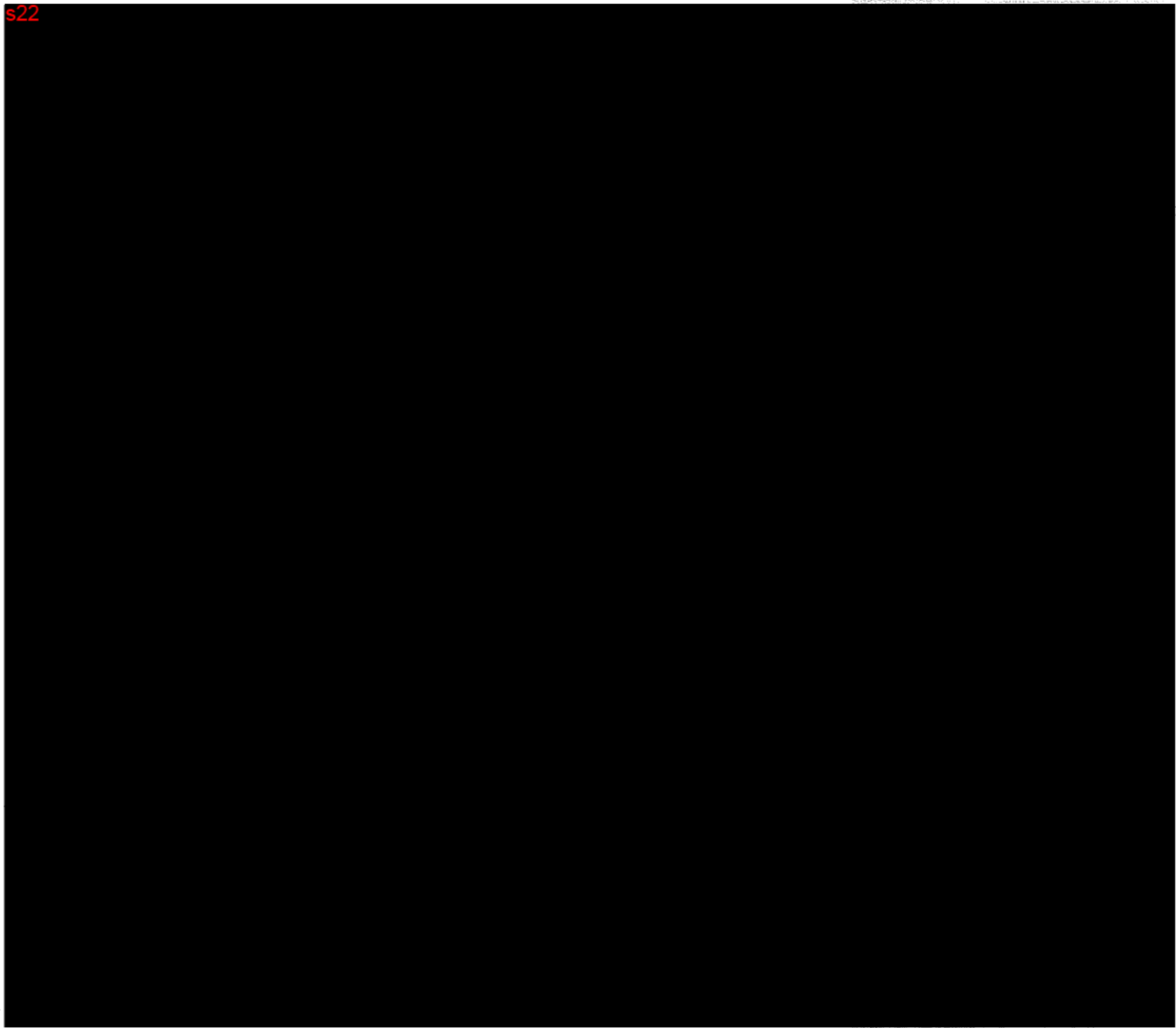
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Performing in film or television production not subsidised by government

- (5) The Minister is satisfied that:
- (a) the identified visa holder or applicant will be:
 - (i) performing as an entertainer under a performing contract for 1 or more specific engagements (other than non-profit engagements) in Australia; and
 - (ii) performing in a film or television production that is not subsidised in any way by a government in Australia; and
 - (iii) performing:
 - (A) in a leading role, major supporting role or cameo role; or
 - (B) to satisfy ethnic or other special requirements; and
 - (b) the nomination is supported by a certificate given by the Arts Minister, or a person authorised by the Arts Minister, confirming that:
 - (i) citizens or residents of Australia have been afforded a reasonable opportunity to participate in all levels of the production; and
 - (ii) the foreign investment, or the private investment guaranteed against the foreign returns by a distributor, in the production is greater than the amount to be expended on entertainers sponsored for entry; and

- (c) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and
- (d) the entertainment sponsor has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia.

DRAFT



Kelly, Jessica

From: Sharp, Jo
Sent: Thursday, 14 July 2011 10:51 AM
To: Kelly, Jessica
Subject: FW: Foreign Performers Certificate Scheme [SEC=UNCLASSIFIED]
Attachments: FPCS Guidelines May 2011 (sent to OFTA x 2).docx; FPCS Guidelines May 2011 (sent to OFTA).docx; s22 [REDACTED]

Security Classification: UNCLASSIFIED

From: marianne.bowman@immi.gov.au [mailto:marianne.bowman@immi.gov.au]
Sent: Thursday, 23 June 2011 10:01 AM
To: Sharp, Jo
Cc: christine.sawa@immi.gov.au; Colleen.Santinon@immi.gov.au
Subject: Foreign Performers Certificate Scheme [SEC=UNCLASSIFIED]

Dear Jo

Below is an email drafted by Christine Sawa to update you regarding our comments on FPC. s47F [REDACTED]

s47F [REDACTED]
Regards

Marianne Bowman
Specialist Entry Section
Department of Immigration and Citizenship
(I am in the office from Monday to Thursday)

Telephone: 02 6264 1017
Email: marianne.bowman@immi.gov.au

Hi Jo

s42 [REDACTED]

s22 [REDACTED]

I have amended our comments on the draft guidelines accordingly. Please see attached.

I apologise for any inconvenience this may have caused.

(See attached file: FPCS Guidelines May 2011 (sent to OFTA x 2).docx)

Christine Sawa
Specialist Entry Section

Christine Sawa/ACT/IMMI/AU

21/06/2011 02:59 PM

To jo.sharp@pmc.gov.au

cc Colleen Santinon/ACT/IMMI/AU@IMMI, Marianne Bowman/ACT/IMMI/AU@IMMI, caroline.fulton@pmc.gov.au, Jessica.Kelly@pmc.gov.au

Subject Fw: Foreign Actors Certificate Scheme [SEC=UNCLASSIFIED]

Protective Mark UNCLASSIFIED

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We would also be grateful for your comments/response to the following questions:

1. Union consultation

The MEAA is the only union mentioned in the guidelines which clients are directed to consult with as part of process of applying for a certificate. We are wondering if there would ever be a circumstance where the client would need to consult with the Musicians' Union of Australia. As an example, DIAC guidelines indicate that performing musicians and/or conductors should be consulting with the MUA and we assume it may be possible for a musician to be performing in a TV or film production.

How does OFTA use the MEAA/union letter? Would consultation with another union meet OFTA guidelines? If MEAA does object, will OFTA refuse to issue the Certificate? Will a certificate be issued without MEAA consultation?

2. Documentaries

We note that the scope of the Foreign Actors Certificate guidelines now includes internet and mobile devices, sketch comedy programs, documentaries and dramatised documentaries. We currently process Documentaries and Commercials which are "exclusively for overseas use" against reg 2.72F(6) Criteria for Nomination - Subclass 423 (Media and Film staff) visa.

In OFTA's view, should sponsors be seeking a Foreign Actors Certificate and undertaking union consultations for such productions? If so, will they will need to be assessed against regulation 2.72D Criteria for approval of Nomination - Subclass 420 (Entertainment) visa, which requires an Arts certificate and union consultation?


s22

3. Application assessment (Page 14, Para 15 of the guidelines refers)

The draft guidelines indicate that "OFTA considers the circumstances of each application, taking into account the views of the Sponsor and MEAA's letter of opinion, and makes a decision based on its assessment of whether the proposed Foreign Performer importation **complies with the Migration Regulations**. We believe this should be changed to "complies with the Guidelines" and s42 Grateful for your comments.

4. Review Rights

The guidelines are currently silent about refusal to issue certificates and options for review of decisions. Has OFTA given any consideration to review rights where a nomination and/or visa application is refused because OFTA refuses to issue a certificate?



Looking forward to your response to the above questions/comments.

Christine Sawa
Specialist Entry Section
Department of Immigration and Citizenship
Telephone: (02) 6264 2486
Email: christine.sawa@immi.gov.au

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Specialist Entry Section
Department of Immigration and Citizenship
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Telephone: 02 6264 1017
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Christine Sawa/ACT/IMMI/AU

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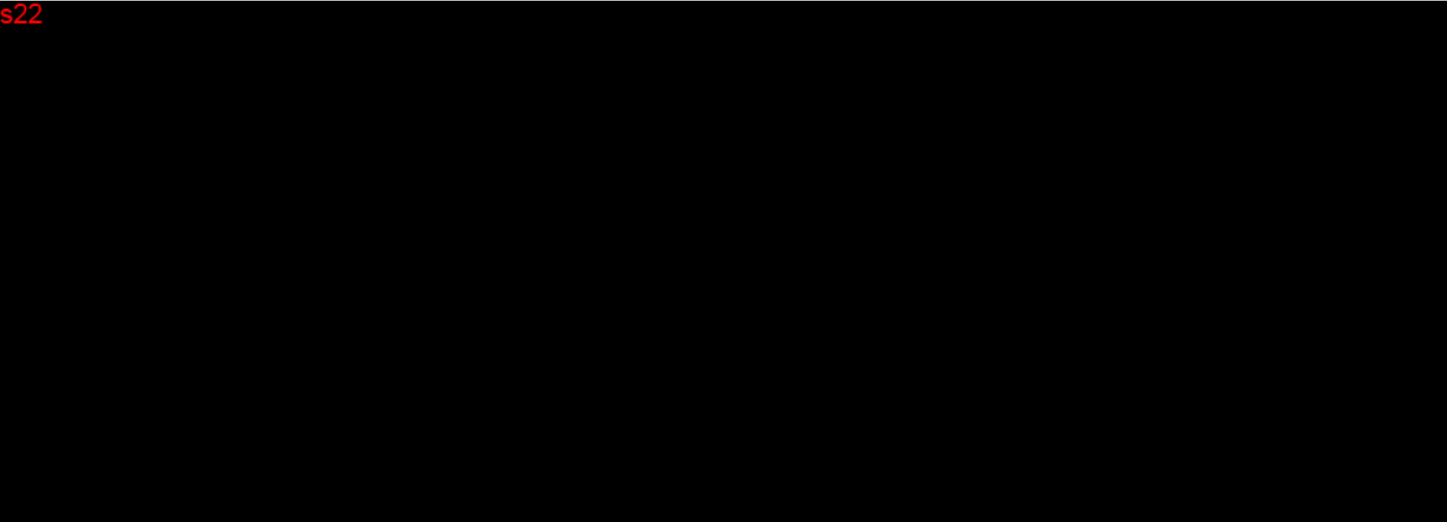
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Looking forward to your response to the above questions/comments.

Christine Sawa
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Department of Immigration and Citizenship
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Email: christine.sawa@immi.gov.au

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Australian Government

**Department of the
Prime Minister and Cabinet
Office for the Arts**

Foreign Performers Certification Scheme Guidelines

**Australian Government
[insert month] 2011**

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INTRODUCTION

This revised version of the *Foreign Performers Certification Scheme (FPCS) Guidelines* was adopted on [?? 2011].

Purpose

The Scheme supports key Government objectives for the film and television industry including providing Australian industry personnel with a fair chance of securing employment in Film or Television Productions shot in Australia, ensuring Australian voices are heard in Australian productions, and building a commercially sustainable film and television industry.

Who needs to apply for a Foreign Performer Certificate (FPC)?

The Scheme deals exclusively with the employment of Foreign Performers entering Australia to take part in Film and Television Productions. The guidelines are the basis on which the Arts Minister, or a person authorised by the Arts Minister, determines whether to certify that the requirements identified in subregulations 2.72D(4)(b) and 2.72(5)(b) of the *Migration Regulations 1994* (the Regulations) have been met. Please see Sections B, C and D for more information.

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How do I apply?

The Guidelines are administered by the Office for the Arts (OFTA).

The Migration Regulations require that in order to be granted an Entertainment (Subclass 420) visa, an applicant must be identified in an approved nomination by an Entertainment sponsor for an occupation, program or activity. In relation to foreign performers participating in film and television productions, the nomination can not be approved unless it is accompanied by an Arts certificate issued by the Arts Minister (or delegate) confirming that the requirements in subparagraphs 2.72D(4)(b) or 2.72(5)(b) of the Regulations are met.

Comment [p1]: Sub paras 2.72D(4) and (5) are nomination criteria not visa application criteria. However, a 420 visa application cannot be approved without an approved nomination by an Entertainment sponsor. This paragraph will need careful rewording (see suggested wording).

~~that a Entertainment (Subclass 420) visa, which is assessed against the criteria in subparagraphs 2.72D(4) and (5), not be granted unless the visa application is supported by a Foreign Performer Certificate issued by the Arts Minister. Regulation 2.72D(4) and 2.72D(5) are included as an Appendix to this document.~~

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In addition, under the Migration Regulations the Sponsor must consult the relevant Australian unions. For the purposes of this Scheme, the relevant union is the Media Entertainment and Arts Alliance (MEAA). This consultation process is undertaken as part of the process of applying for a FPC Foreign Performer Certificate from the Arts Minister.

Comment [p2]: Is there ever a circumstance where the MUA would be consulted instead or in addition to the MEAA?

More detailed information is contained in Section E.

Is there a cost when applying to OFTA?

No fee is charged by OFTA. Applicants may find current ~~must contact the~~ Department of Immigration and Citizenship (DIAC) fees and charges at <http://www.immi.gov.au/allforms/990i/specialist-entry.htm#e> for advice on their fees.

How long does OFTA take to assess an application?

OFTA requires five working days to process an application, and may seek further information at any point during the application assessment process in order to establish whether certification should occur. Further information is included in Section E.

Applicants should contact the DIAC Department of Immigration and Citizenship at nsw.entertainment@immi.gov.au for advice on their processing timeframes.

Who do I contact for more information?

Contact details for OFTA, MEAA and DIAC contact details are provided can be found in Section G.

SECTION A – SCOPE

1. The Scheme applies to the import of Foreign Performers taking part in the following specified forms of Film or Television Production intended for distribution via platforms such as cinema exhibition, television broadcast, DVD, and Internet and mobile devices:
 - (a) Feature Films;
 - (b) Telemovies;
 - (b)(c) Series, Serials and Sketch Comedy Programs
 - (i) excluding Foreign Performers/celebrities who take part in Film or Television Productions as themselves, when this participation is incidental to their main purpose for entering Australia (which might include live performance concert tours and other promotional activities);
 - (d) Documentaries and dramatised Documentaries
 - (i) excluding all Performers other than foreign Hosts and Foreign Performers in dramatic roles.
2. The Guidelines set out the circumstances under which applications can be considered for the import of Foreign Performers to take part in the Film or Television Productions and roles specified above.
3. The Guidelines do NOT apply to:
 - (a) Foreign Performers in roles or forms of Film or Television Production other than those specified above. Visa applications for such Performers will be considered by DIAC under the appropriate Migration Regulations; or
 - (a)(b) Foreign Performers seeking visas to enter Australia under an agreement between Australia and another country, such as Australia's bilateral film co-production agreements. A person may lodge an application to be considered by DIAC for under the Government Agreement (Ssubclass 406) visa. ~~of the Migration Regulations~~. Screen Australia administers the Commonwealth Government's International Co-production Program and determines applications for projects to be approved as Official Co-productions.

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Comment [p3]: Is there any distinction here if the documentary was exclusively for Overseas use? Current the Media and Film staff (Subclass 423) visa allows for documentaries "exclusively for overseas use" to be granted without need to consult union or obtain Foreign Arts certificate.

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SECTION B - TERMS AND DEFINITIONS

‘Australian Content Criteria’ or ‘ACC’ means the criteria required for Category 1, Category 2, and Category 3 Government Subsidised productions set out in Section C of these Guidelines.

‘Cameo Actor Role’ means a brief but important dramatic role in a Film or Television Production, usually performed by a well-known personality.

‘DIAC’ means the Department of Immigration and Citizenship.

‘Documentary’ means a program that is a creative treatment of actuality, other than a news, current affairs, sports coverage, magazine, infotainment, light entertainment or reality program.

‘Feature Film’ means a film, including an animated film, commonly screened as the main attraction in a commercial cinema that is no less than 60 minutes, or in the case of a larger format (IMAX) film no less than 45 minutes duration, and shot and processed to commercial standards for cinema exhibition, television broadcast or distribution via other platforms.

‘Film or Television Production’ means a production intended for cinema exhibition, television broadcast, or distribution via other platforms (such as DVD, and internet and mobile phone downloads) and includes a Feature Film, Telemovie, Series, Serial, Sketch Comedy Program, Documentary and dramatised Documentary but does not include computer games.

‘Foreign Investment’ includes overseas sourced funds where such investment is secured against returns from foreign markets, regardless of whether the funds are equity investment or not, including direct investment and revenue raised through pre-sales and distribution in overseas markets.

‘Foreign Performer’ means:

- (a) a Performer in a Feature Film; Telemovie; drama Series, Serial or Sketch Comedy Program; or dramatised Documentary who is performing:
 - (i) a Leading, Supporting or Cameo Actor role;
 - (ii) as a Motion-capture Performer, Puppeteer, Stunt Performer or Voice-over Performer; or
- (b) as a Host in a Documentary or dramatised Documentary.

‘Government Subsidy’ means and includes any form of government financial support other than developmental funding and includes:

- (a) direct subsidies such as direct investment, loans (excluding loans to cashflow the Producer Offset), distribution guarantees and pre-sales; and
- (b) indirect subsidies such as tax concessions (e.g. Producer Offset, Location Offset, Post, Digital and Visual Effects Offset in Division 376 of the *Income Tax Assessment Act 1997*).

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Comment [p4]: As per above note. Is there any distinction here if the documentary was exclusively for Overseas use? Current DIAC regs allow for documentaries exclusively for overseas use to be exempt from requirement to consult union or obtain Certificate from OFTA.

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For the purposes of this definition 'government' includes Commonwealth and Australian state and territory governments, but excludes the Australian Broadcasting Corporation and the Special Broadcasting Service.

'Host' means the central scripted Performer in a Documentary or dramatised Documentary who introduces and presents the material to a viewing audience and who may also be referred to as "compere", "presenter", "commentator" or "narrator".

'Leading Actor Role' means the dramatic role of protagonist or one of the central or main characters in a Film or Television Production.

'MEAA' means the Media Entertainment and Arts Alliance, the union representing employees in the media, entertainment, sport and the arts.

'Motion-capture Performer' means a Performer in a computer animation production in a role which involves a performance from which points can be tracked on a moving face or body in order to get a simplified image of motion., e.g. the animation of the penguins in Happy Feet.

'OFTA' means the Office for the Arts, Department of the Prime Minister and Cabinet.

'Official Co-production' means a production for which a Foreign Performer seeks to enter Australia under an agreement between Australia and another country, under the International Co-production Program administered by Screen Australia, for which visa applications are considered by the Department of Immigration and Citizenship (DIAC) under subclass 406 of the Migration Regulations.

'Puppeteer' means a manipulator of any variety of puppetpuppets, whose work appears in a Film or Television Production.

'Serial' means a Film or Television Production which is a narrative series made up of two or more episodes that:

- (a) are produced wholly or principally for public exhibition under a single title, for either free-to-air (broadcast network) and subscription television (cable or satellite); and
- (b) comprise a potentially unlimited number of episodes, relating a number of equally important and overlapping plots, without an apparent single major plot necessarily moving towards a resolution and arranged into consecutive episodes for screening purposes.

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'Series' means a Film or Television Production which is a narrative series made up of two or more episodes that:

- (a) are produced wholly or principally for public exhibition under a single title, for either free-to-air (broadcast network) and subscription television (cable or satellite);

- (a)(b) have a common theme or themes that draws the episodes of the series into a cohesive whole;

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(c) contain dramatic elements that form a narrative structure; and

(e)(d) are intended for exhibition together in a national market or markets.

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‘Sketch Comedy Program’ means a Film or Television Production comprising comedy and satirical sketches that are short, self-contained stories or plots; but does not include a stand-up comedy program or an incidental sketch that is a component in a program of another kind.

‘Sponsor’ means an Australian producer applying for a Foreign Performer Certificate or an Australian sponsor acting on behalf of a foreign producer in making this application. For DIAC purposes, in relation to a Subclass 420 (Entertainment) visa or a Subclass 423 (Media and Film Staff) visa, -the sponsor has been approved as an “entertainment sponsor” under *Migration Act 1958* and the *Migration Regulations 1994*.

Comment [P5]: Anu -- need more here about sponsors?

Comment [p6]: For DIAC purposes, the sponsor is approved as a sponsor in relation to the entertainment visa under migration legislation (ie subsection 140E(1) of the Act and Regs 2.60A and 2.60F (CS)

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‘Stunt Performer’ means a Performer engaged to perform dangerous scenes in a Film or Television Production and/or who doubles for one of the actors chosen for a particular role.

‘Supporting Actor Role’ means a dramatic role which is more than a Cameo but not a Leading Actor role in a Film or Television Production.

‘Telemovie’ means a drama program of a like nature to a Feature Film, which is not less than 60 minutes in length and shot and processed to commercial release standards for television broadcast or distribution via other platforms (such as DVD and internet and mobile phone downloads).

‘Traditional Australian Character’ means an Australian character that appears in Australian literature (e.g. *Man from Snowy River*, *The Shiralee*, etc) or is a recognised part of Australia's history and/or folklore (e.g. Dame Nellie Melba, Ned Kelly, etc).

‘Voice-over Performer’ means a Performer who provides recorded dialogue or narration, that narration that comes from an unseen, off-screen voice in a Film or Television Production.

SECTION C - TREATMENT OF SUBSIDISED AND UNSUBSIDISED PRODUCTIONS

In accordance with the requirements of the Migration Regulations, the Guidelines set different criteria for assessing the appropriateness of Foreign Performers taking part in a specified Film or Television Production in Australia based on whether or not the production has, or will receive, a Government Subsidy.

Subsidised Productions

1. A production is considered subsidised if it has, or will receive, a Government Subsidy.
- 1.2. For a Foreign Performer to take part in a subsidised Film or Television Production, the application for a Foreign Performer Certificate must satisfy the requirements set out in the Australian Content Criteria (ACC) detailed below.
- 1.3. The ACC requirements vary depending on whether or not the production in which the Foreign Performer is to appear:
 - (a) receives a direct Government Subsidy (Category 1); or
 - (a)(b) is likely to access the Producer Offset and is receiving no direct Government Subsidy (Category 2); or
 - (a)(c) is likely to access the Location or PDV Offset (Category 3).
4. Productions within all Categories must meet the Casting Guidelines, outlined in Section F.

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Category 1 - ACC for Film or Television Productions in receipt of a direct Government Subsidy

5. Reasonable opportunity must be given to employing Australian Performers at all levels of the production, demonstrated by:
 - (a) the casting of Leading and major Supporting Actor Roles must accurately reflect the Australian characters portrayed;
 - (a)(b) at least 50 per cent of Performers in Leading Actor roles and 75 per cent of Performers in major Supporting Actor Roles must be Australian; and
 - (a)(c) where applicable, an Australian Performer must be cast to play each Traditional Australian Character.
6. The level of Foreign Investment in a production's budget will be a factor considered in assessing applications for the importation of Foreign Performers on a case by case basis. As a general guidance, the greater the Foreign Investment in the production, the greater the possible opportunity for the employment of Foreign Performers in Leading, Supporting and Cameo Actor Roles within the above parameters. For example, where a minimum of:
 - (a) 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is less than \$4.0 million, in the case of a Telemovie less than \$2.0 million, or in the case of a Series or Serial less than

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\$0.75 million per commercial hour, the employment of one Foreign Performer may be appropriate;

(a)(b) 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is \$4.0-12.0 million, in the case of a Telemovie more than \$2.0 million, or in the case of a Series or Serial is \$0.75-1.0 million per commercial hour, the employment of one Foreign Performer in a Leading Actor Role and one Foreign Performer in a Supporting or Cameo Actor Role may be appropriate; or

(a)(c) 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is more than \$12.0 million, or in the case of a Series or Serial, more than \$1.0 million per commercial hour, the employment of one additional Foreign Performer may be appropriate to play a Cameo Actor Role.

7. Where a Sponsor seeks to import a Foreign Performer on the basis that a suitable Australian Performer cannot be found, the Sponsor must demonstrate that a genuine attempt has been made to locate a suitable Australian Performer. OFTA Casting Guidelines are at Section F.

8. When no Australian Performer can be cast to satisfy the requirements of a role, the employment of a Foreign Performer may be appropriate in the following circumstances:

(a) highly specialist/unusual roles

(a)(b) ethnicity

(a)(c) continuity

(a)(d) unexpected change in the level of Foreign Investment

(a)(e) private investment being dependent on the engagement of a Foreign Performer; or

(a)(f) overall benefit to the Australian film and television industry.

9. If a Sponsor seeks consideration on the basis of factors listed above, the Sponsor will be required to provide additional evidence in support of their application as detailed in Section D.

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Category 2 - ACC for Film or Television Productions NOT in receipt of direct Government Subsidy but eligible to access the Producer Offset

10. The Sponsor must provide evidence that the production has obtained provisional certification to access the Producer Offset. Evidence must include a copy of the Provisional Certificate and covering letter from Screen Australia.

Note: Further information regarding the Producer Offset application process is available on Screen Australia's website at

http://www.screenaustralia.gov.au/producer_offset/prov_certification.asp

Productions in receipt of direct Government Subsidy in addition to accessing the Producer Offset must apply for Foreign Performers Certification under Subsidised Productions 'Category 1' above.

Category 3 - ACC for Film or Television Productions eligible to access the Location or PDV Offsets

11. The Sponsor must provide evidence that the production intends to access the Location or PDV Offsets. Evidence may include a letter of intent from the relevant production company and/or demonstration that the production budget exceeds the Location or PDV Offset eligibility criteria for minimum expenditure thresholds.

Unsubsidised Productions

12. Unsubsidised productions, including those fully funded offshore, must satisfy the following criteria:

(a) Australian citizens/residents have been provided with a reasonable opportunity to participate in all levels of the production; and

(b) the sum of Foreign Investment exceeds the amount to be expended on the Foreign Performers while they are in Australia to take part in the unsubsidised production.

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13. In making an application to import Foreign Performers, the Sponsor must demonstrate that reasonable efforts have been made to cast Australian Performers at all levels of the production. OFTA Casting Guidelines are at Section F.

14. In relation to Foreign Investment, the Sponsor must demonstrate that the Foreign Investment component of the production's budget is greater than the salary of the proposed Foreign Performers while they are in Australia to take part in the unsubsidised production.

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SECTION D - FLEXIBILITY CIRCUMSTANCES AND EVIDENCE REQUIRED FOR SUBSIDISED PRODUCTIONS

1. Importation of a Foreign Performer may be considered in the circumstances outlined below on the basis of additional evidence provided by the Sponsor in support of the application.
2. Sponsors who intend to make an application for importation of a Foreign Performer in the circumstances outlined below must mount a convincing case supported by the documentary evidence. The simple assertion that Foreign Performer participation is critical will not be sufficient.
- 2.3. If a Sponsor believes that there are other compelling reasons to import a Foreign Performer beyond those circumstances detailed below they should contact OFTA to present a case. Such approaches will be considered on their merits on an individual basis.

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Highly specialist/unusual role

4. The Foreign Performer is necessary to perform a highly specialist or unusual role which requires specific or specialist attributes including, but not limited to, physical appearance, physical talent and linguistic or vocal skills. Please note that foreign language and accent requirements* for a particular role are not necessarily sufficient grounds for importing a Foreign Performer.
5. Evidence that may be required:
 - (a) script or synopsis demonstrating that the role requires certain highly specialist attributes;
 - (a)(b) documentation such as a listing of personal attributes or specialist skills from a resume or curriculum vitae that supports the claim that the proposed Foreign Performer possesses the attributes necessary to perform the role; and
 - (a)(c) that all reasonable efforts have been made to cast the role with an Australian Performer (see Casting Guidelines at Section F).

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* Australia is a multicultural country. Many Australian performers are competent in a variety of languages other than English, or can speak with an extensive range of accents.

Ethnicity

6. The Foreign Performer is necessary for reasons of ethnicity required by the role. Please note that foreign language and accent requirements* for a particular role are not necessarily sufficient grounds for importing a Foreign Performer.
7. Evidence that may be required:
 - (a) script or synopsis demonstrating that specific ethnic characteristics are required by the role; and
 - (a)(b) that all reasonable efforts have been made to cast the role with an Australian Performer (see Casting Guidelines at Section F).

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Continuity

8. The Foreign Performer is necessary for reasons of continuity.
9. Evidence that may be required:
 - (a) documentation, such as a Performer contract, cast list or press clippings, supporting the claim that the Foreign Performer has worked on, or will be working on, the same production outside Australia.

Unexpected change in the level of Foreign Investment

10. Where the initial level of Foreign Investment in a production's budget allows for the importation of Foreign Performers, but decreases unexpectedly, consideration will be given to approving the importation of Foreign Performers already attached to the production. For example, a foreign investor may withdraw support due to financial pressures and be replaced by an Australian investor at short notice.
11. Evidence that may be required:
 - (a) details of the production budget;
 - (a)(b) documentation from private investors committing to the production; and
 - (a)(c) reasons for and date of withdrawal of a foreign investor.

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Private investment being dependent on the engagement of a Foreign Performer

12. The Foreign Performer is commercially necessary to secure Australian and/or Foreign Investment in the production or overseas pre-sales and distribution deals.
13. Evidence that may be required:
 - (a) details of the production budget; and/or
 - (a)(b) one or more of the following documents:

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* Australia is a multicultural country. Many Australian performers are competent in a variety of languages other than English, or can speak with an extensive range of accents.

- (i) letter of confirmation or contract from the production's relevant investor that finance in the production is dependent on the Foreign Performer's participation;
- (ii) letter of confirmation or contract from the production's distributor that distribution is dependent on the Foreign Performer's participation;
- (iii) contracts indicating that overseas pre-sales are dependent on the Foreign Performer's participation;
- (iv) where the Foreign Performer is internationally known, documentary proof of their box office appeal through international box office figures for Film and Television Productions in which they have undertaken Leading or major Supporting Actor Roles; and/or
- (v) where the Foreign Performer is an emerging Performer, or cast to appeal to a particular overseas audience, documentation in support of their potential box office appeal such as resume/filmography details including previous work, reviews, awards/accolades, and/or other evidence of audience appeal.

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Overall benefit to the Australian film and television industry

14. The Foreign Performer is necessary to ensure that the production proceeds in Australia and the size of the production's budget is such that associated local employment opportunities constitute an overall net economic benefit for the Australian film and television industry. Net economic benefit could include employment opportunities for Australian Performers and crews, longer employment contracts as a consequence of a larger production budget and longer production schedules, and significant commercial opportunities for other film production service providers in Australia.
15. Where a Sponsor claims there is a financial imperative to engage a Foreign Performer which is not demonstrated by a higher level of Australian and/or Foreign Investment in the production budget, a detailed explanation of that financial imperative will be required.
- 15.16. Evidence that may be required to demonstrate that the scale of the production would be significantly diminished if the Foreign Performer is not attached to the production includes:
 - (a) details of the estimated production budget including estimated expenditure in Australia; and
 - (b) one or more of the following documents as necessary:
 - (i) letter of confirmation from the production's relevant investor that investment in the production is dependent on the Foreign Performer's participation;
 - (ii) letter of confirmation from the production's distributor that distribution is dependent on the Foreign Performer's participation;
 - (iii) contracts indicating that overseas pre-sales are dependent on the Foreign Performer's participation;

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(c) details of the number and description of the specific roles to be filled by Australian Performers and the positions to be filled by Australian crew, including employment contract details.

; and

SECTION E - APPLICATION PROCESS

1. Applications for Foreign Performer Certificates should be made by Sponsors of 420 visa applicants. Check DIAC website at <http://www.immi.gov.au/skilled/specialist-entry/420/> for advice on the correct visa to apply for.
2. Applying for certification of the Foreign Performer through to the provision of an Entertainment (Subclass 420) visa is a four-three part process as follows:
 - Contact DIAC for advice on the correct visa to apply for;
 - If the 420 visa is suitable, contact OFTA to commence application process for certification under the FPCS, and consult with MEAA to obtain a letter of opinion;
 - OFTA assessment and decision on application for a Foreign Performer Certificate; and
 - DIAC processing of application for the entertainment visa.
3. To allow adequate time for consideration of applications, Sponsors should commence the application process as early as possible before the proposed date of entry into Australia of the Foreign Performer. Processing through all stages can take 8 to 12 weeks. Processing times may be accelerated to accommodate one-off applications where the Sponsor has demonstrated a genuine need for urgency.

Initial contact with relevant agencies

4. After contacting DIAC for advice on the correct visa to apply for, Sponsors must advise OFTA and MEAA of their intention to apply for a Foreign Performer Certificate and a 420 visa. This will provide an opportunity for information exchange and to clarify any initial questions the Sponsor may have regarding the application process including relevant application forms and MEAA consultation requirements.
- 4.5. Sponsors should provide initial e-mail advice to:
 - (a) OFTA (E-mail: foreignactors@pmc.gov.au) and
 - (a)(b) MEAA (E-mail: imports@alliance.org.au)which sets out:
 - (a) Name and contact details of the Sponsor;
 - (a)(b) Name of the production;
 - (c) Number and nationalities of the foreign performers for whom entry is being sought; and
 - (d) Estimated arrival and departure dates.
6. For full contact details of agencies see Section G.

Comment [P7]: Web site?

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Comment [P8]: Web site?

Comment [p9]: This occurs simultaneously with the OFTA process and should be reflected as such. This is critical as it could slow down DIAC processing where we miss critical deadlines on cases.

Comment [p10]: Why do they need to inform of the intention to apply?? They should be able to apply directly.

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Consultation with MEAA

7. ~~As a requirement of the Migration Regulations~~ Sponsors are required to consult with MEAA in advance of submitting their application for a Foreign Performer Certificate to OFTA.
8. MEAA should respond with a letter of opinion to the Sponsor, with a copy provided to OFTA, in relation to their application within 14 calendar days. The 14 day period commences from the date upon which all relevant documentation is submitted to MEAA for consideration.

Comment [p11]: It is not a requirement of the Migration Regulations that sponsors consult with the MEAA before lodging their application for a Certificate. However, it may be useful to expedite processing. Presume this is an OFTA requirement??

OFTA assessment and decision on application for Foreign Performer Certificate

Submitting an application

9. The OFTA Guidelines and Foreign Performer Certificate application form are available for download from <http://www.arts.gov.au/foreignactors>.
- 9.10. Applications should contain evidence of compliance with the requirements set out in Sections C and D of the Guidelines as necessary. OFTA may also seek further information and/or statutory declarations in relation to supporting documentation provided by the Sponsor where appropriate.
- 9.11. In determining whether to issue a Foreign Performer Certificate, the Arts Minister or person authorised by the Arts Minister, will take comments provided by MEAA into consideration. A copy of the letter of opinion from MEAA should be provided by the Sponsor as part of the application submitted to OFTA.
- 9.12. Applications should be addressed or emailed as follows:
 - Foreign Performer Certification Scheme
 - Office for the Arts
 - Department of the Prime Minister and Cabinet
 - Email: foreignactors@pmc.gov.au
13. Receipt of applications will be acknowledged and all enquiries regarding the application process should be directed to the Desk Officer at the above email address or by phone on +61 2 6275 9680.
14. Please note that a single application form may cover a number of performers. For large productions, certification may be granted as details become available.

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Application assessment

15. OFTA considers the circumstances of each application, taking into account the views of the Sponsor and MEAA's letter of opinion, and makes a decision based on its assessment of whether the proposed Foreign Performer importation complies with the Migration Regulations (see Appendix).
- 15.16. OFTA requires five working days to process an application once all documentation is received, and may seek further information at any point in the application assessment process in order to establish whether certification should

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occur.

- 15.17. Where MEAA has been consulted but has not provided a written response to the Sponsor within the required 14 day period, OFTA will seek to elicit the requested letter of opinion from MEAA. OFTA will proceed with the assessment of the application based on the information provided by the Sponsor if MEAA is unable to meet this request within a reasonable timeframe.
18. Should MEAA object to the application, OFTA will seek additional details from the Sponsor and MEAA to facilitate assessment of the application. Any request for information from OFTA should be responded to within three working days.
19. Every effort will be made to come to a determination as promptly as possible, and OFTA takes the timeframe of the production and proposed arrival date of the performer into consideration. Hence in some circumstances input from the Sponsor and MEAA may be required within a shorter timeframe than that indicated above.

Decision on certification

20. Upon completion of the assessment process, OFTA makes its recommendations regarding the issuing of a Foreign Performer Certificate to the Arts Minister, or person authorised by the Arts Minister, for consideration and final decision.
- 20.21. OFTA will notify the Sponsor, MEAA and DIAC regarding the certification decision, and where a certificate has been issued, provide signed copies to all three parties by email (or by fax upon request). The Sponsor will also be sent the original hard copy of the certificate by regular post.
22. Please note that a Foreign Performer Certificate is valid for the entire length of the production for which it is issued. A new certificate is not required in the case of subsequent re-entry of the same Performer in the same production.

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DIAC processing of application for entertainment visa

23. DIAC requires that applications for entertainment visas for Foreign Performers entering Australia to take part in productions covered by Migration Regulations 2.72D (4) and (5) are supported by a Foreign Performer Certificate.
- 23.24. Sponsors should lodge their documentation with DIAC as soon as possible prior to the nominated person's arrival date in Australia, noting that processing times can be up to 8 to 12 weeks.
- 23.25. For further information and a comprehensive list of DIAC's requirements, including where applications must be lodged, see:
<http://www.immi.gov.au/skilled/specialist-entry/420>

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SECTION F - CASTING GUIDELINES

1. Where a Sponsor seeks to import a Foreign Performer on the basis that a suitable Australian Performer cannot be found, the Sponsor must demonstrate that a genuine attempt has been made to locate a suitable Australian Performer.

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4.2. Where the Arts Minister or person authorised by the Arts Minister is not satisfied that a genuine attempt has been made, the Sponsor will need to provide documentary evidence to demonstrate to OFTA that some or all of the following have been undertaken:

(a) appointment of a recognised casting director in Australia;

(a)(b) employment of recognised casting agents;

(a)(c) appropriate advertising of the role in Australia;

(a)(d) distribution of the character breakdown of the role to Performers' agents Australia-wide;

(a)(e) professional auditions conducted in a conducive atmosphere where the Performer is given every opportunity to demonstrate their ability to play the nominated role including:

(i) providing the Performer with a detailed character breakdown of the role and excerpts from the script in sufficient time to prepare for the role;

(i)(ii) informing the Performer in advance if the role requires a particular accent, skills or attributes;

(i)(iii) where appropriate, giving the Performer the opportunity to discuss the role with the director; and

(i)(iv) providing make-up and costumes where recommended by the casting director.

3. OFTA may also require evidence to establish that where recommended by the casting director, all Performers were auditioned and, where appropriate, short-listed Performers were screen-tested.

3.4. Additional information regarding the Australian Performers who were considered, interviewed or auditioned for the role may be requested by OFTA as follows:

(a) details of the Performers offered the role and an explanation of why they were unable to accept; and

(a)(b) details of the Performers considered unsuitable for the role and a statement of the reasons for the decision.

5. Please note OFTA may seek further information and/or statutory declarations in relation to supporting documentation provided by the Sponsor where appropriate.

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SECTION G - CONTACTS FOR FURTHER INFORMATION

Office for the Arts (OFTA)

Desk officer, Foreign Performers Certification Scheme

Tel: +61 2 6275 9680

Fax: +61 2 6275 9320

Email: foreignactors@pmc.gov.au

<http://www.arts.gov.au/foreignactors>

Department of Immigration and Citizenship (DIAC)

Entertainment Processing Centre

Tel: +61 2 8861 4356 or +61 2 8861 4358

Fax: +61 2 8861 4301

Email: entertainment.visas@immi.gov.au

<http://www.immi.gov.au/skilled/specialist-entry/420>

Media, Entertainment and Arts Alliance (MEAA)

Federal Policy Officer

Tel: +61 2-7 3846 0044/9333 0958

Fax: +61 7 3846 01532-9333 09333

Email: imports@alliance.org.au contact form at:

http://www.alliance.org.au/contacts/import_applications/

<http://www.alliance.org.au/imports>

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Comment [A12]: The contact details have changed.

**APPENDIX: MIGRATION REGULATION 2.72D, SUB-PARAGRAPHS (4)
AND (5)**

2.72D Criteria for approval of nomination — Subclass 420 (Entertainment) visa

Performing in film or television production subsidised by government

(4) The Minister is satisfied that:

- (a) the identified visa holder or applicant will be:
 - (i) performing as an entertainer under a performing contract for 1 or more specific engagements (other than non-profit engagements) in Australia; and
 - (ii) performing in a film or television production that is subsidised, in whole or in part, by a government in Australia; and
 - (iii) performing:
 - (A) in a leading role, major supporting role or cameo role; or
 - (A)(B) to satisfy ethnic or other special requirements; and
- (b) the nomination is supported by a certificate given by the Arts Minister, or a person authorised by the Arts Minister, confirming that the relevant Australian content criteria have been met; and
- (c) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and
- (e)(d) the entertainment sponsor has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia.

Performing in film or television production not subsidised by government

(5) The Minister is satisfied that:

- (a) the identified visa holder or applicant will be:
 - (i) performing as an entertainer under a performing contract for 1 or more specific engagements (other than non-profit engagements) in Australia; and
 - (ii) performing in a film or television production that is not subsidised in any way by a government in Australia; and
 - (iii) performing:
 - (A) in a leading role, major supporting role or cameo role; or
 - (B) to satisfy ethnic or other special requirements; and
- (b) the nomination is supported by a certificate given by the Arts Minister, or a person authorised by the Arts Minister, confirming that:
 - (i) citizens or residents of Australia have been afforded a reasonable opportunity to participate in all levels of the production; and
 - (ii) the foreign investment, or the private investment guaranteed against the foreign returns by a distributor, in the production is greater than the amount to be expended on entertainers sponsored for entry; and

s22

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- (c) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and
- (d) the entertainment sponsor has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia.

DRAFT

s22

Sharp, Jo

From: anupreet.bedi@immi.gov.au
Sent: Friday, 3 June 2011 2:02 PM
To: Sharp, Jo
Cc: 'Colleen.Santinon@immi.gov.au'
Subject: Re: Urgent advice on right of appeal under Migration Regulations sought [SEC=UNCLASSIFIED]

Hi Jo,

Apologies, I somehow seemed to have missed this email

If we receive an application for a performer in a film or television production, the nomination is assessed against the criteria set out in Migration Regulations 2.72D(4) or 2.72D(5).

If the production will be subsidised in whole or in part by a government in Australia the nomination must be assessed against Regulation 2.72D(4).

If the film or television production is not subsidised in whole or in part by a government in Australia the application must be assessed under Regulation 2.72D(5).

Regulations 2.72D(4) and 2.72D(5) require applications to be supported by a certificate given by the Arts Minister confirming that:

- Australian residents have been afforded a reasonable opportunity to participate in all levels of production
- the foreign investment in the production (or the private investment guaranteed against the foreign returns by a distributor) is greater than the amount to be expended on the entertainer/s sponsored for a visa 420 and
- indicates whether the production is subsidised or not.

If this certificate is not forthcoming, this requirement cannot be satisfied.

If a decision is made to refuse the nomination on the basis that this requirement is not met, the sponsor is entitled to apply for a review of this decision to the Migration Review Tribunal (MRT). These review rights are covered by subsection 338(9) of the Migration Act and Migration Regulations 4.02(4) and 4.02(5).

Applications for review can be lodged in person, faxed or posted to any registry of the Migration Review Tribunal (MRT). Certain registries of the Administrative Appeals Tribunal (AAT) also accept applications for review on behalf of the MRT.

Colleen - Would you agree with the above?

Regards -AB-

Anu Bedi
 Assistant Director
 Entertainment & Specialist Temporary Entry Visas &
 Events Facilitation - Parramatta, NSW
 Department of Immigration And Citizenship

Ph: 02 8861 4138

Fax: 02 8861 4301

S47F

(Note: I am not at work on Wednesday)

"Sharp, Jo" <Jo.Sharp@pmc.gov.au>

"Sharp, Jo" <Jo.Sharp@pmc.gov.au>

30/05/2011 09:58 AM

To

"anupreet.bedi@immi.gov.au"
 <anupreet.bedi@immi.gov.au>,
 "Colleen.Santinon@immi.gov.au"
 <Colleen.Santinon@immi.gov.au>

cc

Subject

Urgent advice on right of appeal under Migration Regulations sought [SEC=UNCLASSIFIED]

Protective Mark

Hi Anu and Colleen

We have a question about the right of appeal to the Administrative Appeals Tribunal (AAT) under Migration legislation and regulations. I am unsure who to ask about this and thought that you might know, or be able to point me in the right direction.

Specifically we would like to check whether there is a right of appeal by anyone to the AAT in relation to decisions of our Minister under the Migration Regulations (2.72D (4) and (5) being the regulations relating to the Foreign Actor Certification Scheme).

I would be grateful for your help with this – or your direction to another area that could help.

Happy to discuss on 02 6275 9537.

Thank you

Jo

Jo Sharp

Assistant Director | Film Policy and Incentives | Office for the Arts
Department of the Prime Minister and Cabinet
Phone: 02 6275 9537 | Email: Jo.Sharp@pmc.gov.au

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Sharp, Jo

From: Sharp, Jo
Sent: Monday, 30 May 2011 12:46 PM
To: 'marianne.bowman@immi.gov.au'
Cc: Colleen.Santiron@immi.gov.au; Felicity.Ayliffe@immi.gov.au
Subject: RE: Urgent advice on right of appeal under Migration Regulations sought [SEC=UNCLASSIFIED]

Hi Marianne

Thank you very much for this. We really appreciate your speedy response, and

s42

Thank you
 Jo

From: marianne.bowman@immi.gov.au [mailto:marianne.bowman@immi.gov.au]
Sent: Monday, 30 May 2011 12:03 PM
To: Sharp, Jo
Cc: Colleen.Santiron@immi.gov.au; Felicity.Ayliffe@immi.gov.au
Subject: Fw: Urgent advice on right of appeal under Migration Regulations sought [SEC=UNCLASSIFIED]

Dear Jo

My reading of the relevant parts of the Migration Act 1958 is that the Principal member of the Migration Review Tribunal (MRT) can refer a case to the AAT where it is MRT reviewable. I've copied the relevant sections of the Act below referring to the AAT. As a basic rule of thumb, visa decisions that are MRT reviewable are those where a visa application has been made onshore, or has an Australian sponsor. Under reg. 4.02 the MRT can also review decision to refuse or cancel sponsorships or nominations in certain circumstances.

However, the AAT has limitations as to what it can review. See
<http://www.aat.gov.au/docs/JurisdictionList31March2010.pdf>

It provides limitations to what visa decisions it will review - such as visa cancellations, character assessments and humanitarian. In regards to other visa applications it states: "*if an MRT-reviewable decision involves an important principle or an issue of general application, the Principal Member of the Migration Review Tribunal may refer the decision to the President of the Administrative Appeals Tribunal pursuant to subs 381(1) of the Act.*"

Therefore an entertainment visa applicant (onshore) or their sponsor would have review rights with the AAT and this could involve an examination of the issuance of the Foreign actors certification.

I would encourage that you consider obtaining further advice from the A/an govt solicitor to confirm this interpretation. I've only searched the AAT doc in regards to visa issues, there may be other limitations that has bearing on your question.

I hope this is helpful.

Regards

Marianne Bowman
 Specialist Entry Section
 Department of Immigration and Citizenship
 (I am in the office from Monday to Thursday)

Telephone: 02 6264 1017

Email: marianne.bowman@immi.gov.au

Section 381 Referral of decisions to Administrative Appeals Tribunal

381 (1) The Principal Member of the Migration Review Tribunal may, if the Principal Member considers that an MRT-reviewable decision involves an important principle, or issue, of general application, refer the decision to the President of the Administrative Appeals Tribunal.

(2) A referral under subsection (1) may be made at any time:

- (a) after the receipt by the Migration Review Tribunal of an application for a review of the decisions; and
- (b) before that Tribunal makes a decision on the application.

(3) Subject to paragraph 375A(2)(b), the following material must be sent with the referral:

- (a) a request for a review by the Administrative Appeals Tribunal of that decision;
- (b) a statement of the Principal Member's reasons for concluding that the decision involves an important principle, or issue, of general application;
- (c) any documents or other records that the Principal Member considers relevant.

(4) The Principal Member must give written notice of the making of a referral under subsection (1) to the applicant and the Secretary.

(5) The Migration Review Tribunal must not commence any action in relation to the proceeding before it with respect to the decision, or, if it has commenced such action, must cease that action until notified by the President of the Administrative Appeals Tribunal in accordance with section 382.

(6) If the President of the Administrative Appeals Tribunal directs that the Administrative Appeals Tribunal will accept the referral, the review by the Migration Review Tribunal is taken to be closed.

Section 382 Administrative Appeals Tribunal may accept or decline referral

382 (1) The President of the Administrative Appeals Tribunal must consider a request under section 381 and either:

- (a) direct that the Administrative Appeals Tribunal will accept the referral of the decision; or
- (b) direct that the Administrative Appeals Tribunal will decline the referral of the decision.

(2) The President must notify the Principal Member of the direction made under subsection (1).

(3) If the President accepts the referral of an MRT-reviewable decision:

- (a) the application to the Migration Review Tribunal is taken to have been properly made to the Administrative Appeals Tribunal by the applicant to the Migration Review Tribunal; and
- (b) the AAT Act applies to the review of the MRT-reviewable decision subject to the modifications in this Division.

----- Forwarded by Marianne Bowman/ACT/IMMI/AU on 30/05/2011 11:17 AM -----

Felicity Ayliffe/ACT/IMMI/AU

30/05/2011 10:07 AM

To Marianne Bowman/ACT/IMMI/AU@IMMI

cc

Subject Fw: Urgent advice on right of appeal under Migration Regulations sought [SEC=UNCLASSIFIED]

Protective Mark UNCLASSIFIED

Felicity Ayliffe
Director
Specialist Entry (Major Events and Int. Relations Visas)
Education and Tourism Branch
Department of Immigration and Citizenship

Phone: 02 6264 2120
Mobile: 0403 222 617

Email: felicity.ayliffe@immi.gov.au

----- Forwarded by Felicity Ayliffe/ACT/IMMI/AU on 30/05/2011 10:07 AM -----

"Sharp, Jo" <Jo.Sharp@pmc.gov.au>

30/05/2011 10:06 AM

To

"Felicity.Ayliffe@immi.gov.au"
<Felicity.Ayliffe@immi.gov.au>,
"Marianne.Bowman@immi.gov.au"
<Marianne.Bowman@immi.gov.au>

cc

Subject

FW: Urgent advice on right of appeal under Migration
Regulations sought [SEC=UNCLASSIFIED]

Protective Mark

Hi Felicity, Marianne

I was hoping you might be able to help with the below request in the absence of Colleen.

Thank you
Jo

From: Sharp, Jo
Sent: Monday, 30 May 2011 9:59 AM
To: 'anupreet.bedi@immi.gov.au'; 'Colleen.Santinon@immi.gov.au'
Subject: Urgent advice on right of appeal under Migration Regulations sought [SEC=UNCLASSIFIED]
Importance: High

Hi Anu and Colleen

We have a question about the right of appeal to the Administrative Appeals Tribunal (AAT) under Migration legislation and regulations. I am unsure who to ask about this and thought that you might know, or be able to point me in the right direction.

Specifically we would like to check whether there is a right of appeal by anyone to the AAT in relation to decisions of our Minister under the Migration Regulations (2.72D (4) and (5) being the regulations relating to the Foreign Actor Certification Scheme).

I would be grateful for your help with this – or your direction to another area that could help.

Happy to discuss on 02 6275 9537.

Thank you
Jo

Jo Sharp
Assistant Director | Film Policy and Incentives | Office for the Arts
Department of the Prime Minister and Cabinet
Phone: 02 6275 9537 | Email: Jo.Sharp@pmc.gov.au

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Sircar, Sanjay

From: Richards, Stephen
Sent: Wednesday, 8 April 2009 3:29 PM
To: 'james.rea@immi.gov.au'
Cc: peter.bright@immi.gov.au; Sircar, Sanjay; Glenn, Raelene
Subject: s22 [SEC=UNCLASSIFIED]

Categories: UNCLASSIFIED

James

No input from DIAC as yet, but we hadn't necessarily expected any until you see stakeholder views and if they raise things that have potential implications for the Migration Regulations.

We are putting together a "summary" paper covering the main issues raised by stakeholders that I hope to circulate in the next couple of weeks. This is to stimulate a bit more conversation and be a precursor to us starting to do some re-drafting.

I was going to cc you into that and am happy to cc it to anyone within DIAC structure you think appropriate - let me know. I'd also be pleased to talk with anyone from DIAC at anytime re what's happening, ideas your department might want to contribute, etc.

Cheers

Stephen

s22

-----Original Message-----

From: james.rea@immi.gov.au [mailto:james.rea@immi.gov.au]
Sent: Wednesday, 8 April 2009 2:15 PM
To: Richards, Stephen
Cc: peter.bright@immi.gov.au
Subject: RE: s22 [SEC=UNCLASSIFIED]

Stephen

I concur with your response to MEAA with respect to current thinking on VC's.

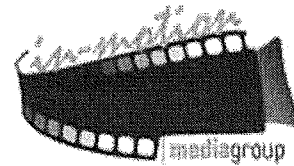
In terms of the review of FACS have you had any input or feedback from DIAC National office ?

Regards

James Rea
 Manager Entertainment Processing Centre
 Department of Immigration and Citizenship
 Parramatta Office
 Phone: 02 8861 4356
 Fax: 02 8861 4301
 Email: james.rea@immi.gov.au

Creative Thinking....

Effective Solutions....



Film and Creative Industries
 Department of the Environment, Water, Heritage and the Arts
 GPO Box 787
 Canberra ACT 2601

1 March 2009

Attention: Stephen Richards
 Manager - Film Incentives & International

RE: Guideline Review

Dear Stephen

Thank you for the opportunity to comment on the review that is currently taking place at present as the guidelines have not been substantively revised since they were first drafted back in the mid 1990's.

As you have mentioned, the Australian film and television industry has experienced many significant economic and technological changes which have led to changes in the way in which films are financed, produced and the level of interest in using foreign actors.

Our situation is very different from the standard productions as we only provide facilitation services to the offshore production companies that are only interested in coming to Australia just for its locations.

90% of our business is based on productions that come to film the song and dance portion of their film, not much different than a Music Video. Under these circumstances they do not produce their entire production in Australia due to their budget constraints.

The main problem that we face is the time it takes to procure all approvals to get the production into the country, unfortunately the middle east is very disorganized and everything is left to the last minute as they are dictated by the hero actors availability, as these countries film approximately 800 films per year, time frames are very crucial and with the current systems that are in place we just cannot compete with other countries.

To solve this problem I would recommend that a new visa category be added to resolve these issues. As all these productions are fully financed offshore, contain no local government subsidy and are ethnic specificity, they should fall in a separate category that caters for these productions. None of the foreign crew and entertainers are employed or paid by In-Motion Media Group; they are all contracted to the offshore production company.

1

Mail: P.O. Box 887
 Southport Business Centre,
 Queensland Australia 4215

Office: 8 Hudson Court
 Benowa Queensland
 Australia 4217

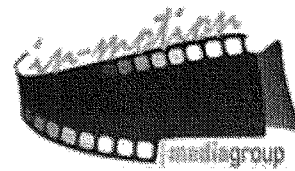
ABN: 36 096 096 356
 ACN: 096 096 356

Telephone: +617 5539 5436

Facsimile: +617 5539 5735

Creative Thinking....

Effective Solutions....



IMMIGRATION:

The current system of a Sub Class 420 or Sub Class 423 visa does not sufficiently cover these productions. With the present system Australia is not competitive on an international level due to the process, time requirement and additional costs involved.

At present for these productions we have to apply for and incur the following expenses;

• Immigration 420 Visa (Processed within 8 - 10 Weeks)	\$ 5,250.00
• Obtain Union approval	\$ 5,800.00
• Obtain permission from DEWHA for all entertainers	\$ 0.00
	<u>\$ 11,050.00</u>

It costs the offshore production company on average of \$30,000.00 just to be able to obtain all the required approvals. This is a non cost effective situation and if we were to bring these productions under a 423 visa, we would look at the following scenario.

• Immigration 423 Visa (Processed within 10 Days)	\$ 2,500.00
• No Union approval required	\$ 0.00
• No DEWHA approval required	\$ 0.00
	<u>\$ 2,500.00</u>

If we had a mixture of the sub class 420 & 423, this would resolve a great deal of problems. We would still sponsor the offshore production company, but at a minimal expense and within a time frame of 10 to 15 days of all paperwork being lodged.

Indian productions have been coming to Australia for the past 8 years, Pakistan is just starting and Dubai is enquiring. As we continue to market to the Middle East with the assistance of Austrade and the Queensland Government, we will have more countries looking to come to Australia to film their ethnic specificity productions were they may be Song & Dance, TV Drama, Documentaries, a few scenes of a film, etc. Let's not penalize them as at present the industry requires all the foreign production it can obtain to survive.

I fully agree that whatever amendments may be made to the Guidelines, must continue to comply with the requirements of the Migration Regulations. DIAC needs to be informed throughout this review process, and should strongly look at possible amendments to the Migration Regulations themselves which cover matters beyond the scope of the foreign actor guidelines such as visa processing arrangements for foreign crew. This is the perfect opportunity to resolve a great deal of issues and get the industry moving forward and being more competitive on the world stage. I would like the opportunity to meet and discuss this process with the people involved to see how we can fast track this process.

2

Mail: P.O. Box 887
Southport Business Centre,
Queensland Australia 4215

Telephone: +617 5539 5436

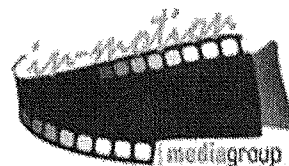
Office: 8 Hudson Court
Benowa Queensland
Australia 4217

Facsimile: +617 5539 5735

ABN: 36 096 096 356
ACN: 096 096 356

Creative Thinking....

Effective Solutions....



DEWAH:

The DEWAH requirements do not have a big impact on the offshore productions as their projects are all 100% funded off shore and require their foreign actors for ethnic specificity.

The only comment I would make is that a separate form be used for these productions as they are all the same.

On the current form, the following statement provides no relevance to our situation as the production is 100% funded off shore.

- Determine whether, for unsubsidised productions, requiring foreign investment to be greater than the level of funds expended on foreign actors while in Australia is a reasonable requirement

MEAA:

MEAA only represents local entertainers, not any of the technical crew.

Why do they require that all entertainers and crew of the offshore production be paid the minimum Australian rates, when the crew is contracted for a fixed fee to provide their services for the entire film? This requirement creates an additional expense for the production which in turn makes Australia non competitive.

MEAA insists that a local 1st Assistant Director be employed for the production. Unfortunately this does not work due to the language barrier and ethnic specificity. This request for an American or English speaking production is fine, but in our case it does not work as the director and his 1st Assistant Director work as a team, it just becomes another additional expense.

If you should have any questions, please do not hesitate to contact me at your earliest convenience.

Yours Sincerely

George Vasiliadis
Managing Director
In-Motion Media Group Pty Ltd

Sircar, Sanjay

From: Richards, Stephen
Sent: Tuesday, 3 February 2009 4:07 PM
To: Sircar, Sanjay
Subject: RE: Facs review - meeting with george vasiliadis (in-motion media group) [SEC=UNCLASSIFIED]

Categories: UNCLASSIFIED

thanks

From: Sircar, Sanjay
Sent: Tuesday, 3 February 2009 2:47 PM
To: Richards, Stephen; Glenn, Raelene
Subject: Facs review - meeting with george vasiliadis (in-motion media group) [SEC=UNCLASSIFIED]

He said to me, however, that he had been involved previously with s45 and s45 from India. This may have been under some other company name, but it is not his first experience of the process.

Sanjay

From: Richards, Stephen
Sent: Tuesday, 3 February 2009 2:44 PM
To: Sircar, Sanjay
Cc: Glenn, Raelene
Subject: Facs review - meeting with george vasiliadis (in-motion media group) [SEC=UNCLASSIFIED]

Note for file

Sally Basser, Stephen Arnott and I met George Vasiliadis of In-Motion Media Group yesterday (2 February). Vasiliadis' company has started to get involved in supporting the entry of film crews from India and Pakistan into Australia to enable them to undertake work on productions focussed on domestic release within India and Pakistan. Vasiliadis wanted to outline some concerns he had with the current visa entry procedures and outline some suggested changes for our consideration.

Vasiliadis began the meeting by outlining his company's involvement in facilitating entry of Indian and Pakistani film makers, actors and crews, and giving some background on the reasons these film makers were seeking to enter Australia.

Re his company, he indicated

- It was just starting out; currently completing first application as a sponsor for Foreign Actor Certification
- Was facilitating entry of Indian and Pakistani film makers, actors and crew; wasn't a co-producer of films as such but more a provider of services to support these film makers (eg organise appropriate visa; liaise with local governments & unions re permits, etc; hire cinematographic equipment; etc)

Re the characteristics of Indian and Pakistani film makers, he indicated:

- They were primarily making films for domestic markets with the films often being scripted in local dialects (eg Urdu)
- Were seeking to use Australian locations for a few days - the locations being used for "dream sequences", etc
- Tended to make decisions about filming in Australia quite late in the production process - a complete production timetable might 12-14 weeks with decisions on travelling to Australia being made 1 week before travel might be undertaken therefore requiring very quick turnaround for visa processing; actual time for filming in Australia might only be for a few days
- Most productions do not of large production budgets but would tend to bring in their own crew because limited cost for short stay and language requirements of film makers
- Foreign film makers expectations on production costs based on their own experiences in India and Pakistan where costs for equipment (eg day hire of Panavision camera in Australia reported to be \$6,000 per day/comparable hire cost in India/Pakistan may be \$200-\$300 per day, etc) and crew (eg lower wages, lesser living allowances, etc) where less than in Australia
- Foreign film makers did not have an understanding of Australian local government and union permit requirements, which could lead to inadvertent oversights in not obtaining some permits, insurances, etc

Vasiliadis then outlined his concerns and suggested changes to visa processing arrangements for temporary entry of

these film makers and crews.

- Visa processing was too slow - while DEWHA processing of FACS applications was speedy (within 5 days after all necessary information provided and usually much quicker), DIAC proposing of visa applications could take weeks/months. Vasiliadis acknowledged that this was likely to be due to the general volume of visa applications DIAC was processing but it created a problem for him and Indian/Pakistani film makers seeking to arrive with one week's notice.
 - He asked whether it might be possible to replace the 420 visa requirement with a 423 visa for these sorts of productions - he indicated 423 visas are for TVCs and documentaries that are not to be shown in Australia and he understands can be more quickly processed by DIAC; he maintained that as most of these films were using scripts with local dialects then it was highly unlikely they would ever be shown in Australia.
 - We noted this was more a matter for DIAC than DEWHA
 - He indicated a number of foreign film crews have entered the country using 456 and 457 visas - in part because they were not aware of the appropriate visa requirements - and were out of the country again before their presence was really noticed by government officials - and could lead to instances of film makers "skipping off" after completion of filming but before they had honoured all their financial commitments.
 - We noted MEAA's concerns with such entries, and DIAC's efforts to raise awareness in DFAT posts
- MEAA expectations re level of Australian involvement in these productions can be too high
 - Cast and crew often spoke local dialects and little if any English meaning integration of Australian crew into a foreign film crew for a couple of days was not easy and may be counterproductive
 - That said, some of the Australian union required roles/functions (eg OH&S officers) were useful and accepted

I indicated DEWHA was reviewing its guidelines on the entry of foreign actors to Australia and invited him to contribute to that

- To the extent any concerns related to DEWHA administration of the foreign actor certification process we could consider those concerns and take action as appropriate
- To the extent the concerns related to broader DIAC administration of visa arrangements or the Migration Regulations, we would pass on review findings to DIAC for its consideration

I indicated I would e-mail Vasiliadis to invite his written comments including provision of examples of the concerns he had raised during our meeting which could be considered as part of the foreign actor guidelines review. Vasiliadis indicated he would provide some input.

Stephen Richards
Manager - Film Incentives & International
tel: 61-2-62759645
fax: 61-2-62759659
s47F
e-mail: stephen.richards@environment.gov.au
web: www.arts.gov.au

Carter, Jane

From: Richards, Stephen
Sent: Tuesday, 22 February 2011 12:24 PM
To: 'Leigh Pickford'
Cc: 'Ann Fay'; 'Catherine McDonnell'; Carter, Jane
Subject: RE: Meeting [SEC=UNCLASSIFIED]
Categories: UNCLASSIFIED

Leigh

Thanks for fitting us in. We'll see you tomorrow afternoon.

As per my earlier e-mail we'd like to understand the approach your company generally follow when initiating a casting exercise.

More specific things we'd like to cover include:

- Do you use casting exercises to fill all roles?
- When initiating a casting exercise do you circulate a character breakdown to actor agents and, if so, how extensively do you circulate character breakdowns (eg to all agents, to a cross section of agents, etc)?
- How and when do you decide if auditions are required – Do you audition for all roles? Do you audition all 'shortlisted' actors? Do actors do auditions in person, via video conference facilities and/or submit tapes?
- When auditions are undertaken is the director involved to provide actors with advice on the requirements of the role or does the casting agent pass on this information?
- Does your approach differ generally, or through specific stages of the casting process, depending on whether you are seeking to cast an A-list marquee actor or a less high profile/emerging actor? For instance, it's been suggested to us by some producers that it is not common practice for marquee actors to be auditioned for roles.
- In your experience, at what stage might a producer/director or a casting agent consider there is a need to consider foreign actors for certain roles?

Our interest is primarily in casting practices in relation to roles in feature films and television and other drama productions, although from time to time we also have an interest in how hosts/presenters for documentaries are selected. We are not concerned with actors appearing in TVCs.

Cheers

Stephen

From: Leigh Pickford [mailto:leigh@maurafay.com.au]
Sent: Tuesday, 22 February 2011 12:16 PM
To: Richards, Stephen
Cc: Ann Fay; Catherine McDonnell
Subject: RE: Meeting [SEC=UNCLASSIFIED]

Hi Stephen

Apologies for the delay we've a busy week on and I've been waiting to ascertain if I had to be in auditions or not. As it turns out I'm free, so 3.45pm would suit perfectly. We're at 1-7 Bellevue Street (corner of St Johns Road) in Glebe. Should you have any problems our number is 9566 4455.

I look forward to meeting you and Jane tomorrow.

22/02/2011

Kind regards

Leigh

From: Richards, Stephen [mailto:Stephen.Richards@environment.gov.au]
Sent: Tuesday, 22 February 2011 9:48 AM
To: Leigh Pickford
Cc: Ann Fay; Catherine McDonnell
Subject: RE: Meeting [SEC=UNCLASSIFIED]

Leigh

I've just locked in a meeting with Christine King from 2:30-3:30pm for the 23rd. Would you be free from around 3:45pm?

Cheers

Stephen

From: Richards, Stephen
Sent: Thursday, 17 February 2011 10:34 AM
To: 'Leigh Pickford'
Cc: 'Ann Fay'; 'Catherine McDonnell'; Carter, Jane
Subject: RE: Meeting [SEC=UNCLASSIFIED]

Leigh

Thanks for getting in touch and my apologies for the delay in getting back to you. A colleague of mine, Jane Carter, and I will be in Sydney on 23 February for some meetings in the morning and early afternoon.

I wondered if you might have some time to talk with us on the afternoon of the 23rd about the arrangements Maura Fay Casting puts in place when conducting casting exercises for roles in films, television series and so on.

I'm not sure how much Catherine McDonnell may have told you prior to putting us in contact with one another. So, by way of brief background, Jane and I work in the Office for the Arts and, among other things, administer the Foreign Actors Certification Scheme (FACS). The FACS Guidelines contain some 'casting guidelines' which we are aware have not been revised for some time. We're interested in hearing from casting agents about how they operate so that we are aware of current casting practices when applying the casting guidelines.

I'd be grateful if you could let me know if you could set aside 30-60 minutes for a chat from some time after 2pm?

Cheers

Stephen

From: Leigh Pickford [mailto:leigh@maurafay.com.au]
Sent: Tuesday, 8 February 2011 11:23 AM
To: Catherine McDonnell; Richards, Stephen
Cc: Ann Fay
Subject: RE: Meeting

Hi Stephen

We're looking forward to seeing you in the near future. Let me know when is convenient and we will set a date and time.

22/02/2011

Leigh

From: Catherine McDonnell [mailto:catherine.mcdonnell@foxaus.com]
Sent: Tuesday, 8 February 2011 11:11 AM
To: Richards, Stephen; Leigh Pickford
Subject: Meeting

Hi Stephen

As discussed I am reintroducing you via email to Leigh Pickford of Maura Fay Casting so that you may arrange to meet for Leigh to explain the casting process.

Over to you both!

Thanks

Catherine

Catherine McDonnell
Fox Production Services Pty Limited

PH: 61 2 9383 4035
FAX: 61 2 9383 4004

s47F

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22/02/2011

- Stephen discussed with Catherine by phone. No need to amend 'outcomes' - Catherine to follow up re. Stephen's suggestions below.
2/6/09.

Glenn, Raelene

From: Richards, Stephen
Sent: Tuesday, 2 June 2009 1:55 PM
To: 'Catherine Griff'
Cc: armitagegordon@bigpond.com; Rebecca Mostyn; Glenn, Raelene; Sircar, Sanjay
Subject: RE: Review of foreign actor guidelines - draft outcomes from 15 may meeting [SEC=UNCLASSIFIED]
Categories: UNCLASSIFIED

Catherine

Thanks for raising this issue.

We understand SA's constraints re provision of budgetary and other information re specific productions seeking to access the Producer Offset. We are similarly constrained re information about productions accessing the Location and PDV Offsets.

As discussed, our thinking re the discussion that led to this action arising is that stakeholders were interested in getting some general idea about the level of foreign investment that Australian producers are now needing to secure in order to finance their films. You might recall MEAA indicated it thought 30% foreign investment was still fairly common while SPAA s45 were indicating that a number of production budgets were now more fully financed within Australia but still needed 10-15% of foreign investment to fill the final gap in their production budgets.

Could you ask relevant SA officers if they have access to any aggregated data from Producer Offset applications or applications for direct production investment that might indicate what proportion of local films is either fully financed within Australia, or plans to raise 10-15% or 15-30% or greater than 30% of foreign investment (eg there might be 25 production applications - X% of these might require no foreign investment, Y% might require 10-15% foreign investment, and so on)?.

If SA does not have this sort of aggregated data, perhaps you could just seek the general impressions of relevant SA officers about the importance of foreign investment in local production budgets or trends in the importance of foreign investment over time (eg has foreign investment become more important? do more local films need foreign investment? etc). Any general comments SA might be able to make would inform the discussion we've started on foreign actors.

However, if after making these inquiries you believe SA is not in a position to provide any advice re foreign investment trends, we can advise other stakeholders in the foreign actor review process that it is not possible to provide further information on this issue for the privacy reasons you've outlined below.

Give me a call if you need to discuss further.

Cheers

Stephen

From: Catherine Griff [mailto:catherine.griff@screenaustralia.gov.au]
Sent: Tuesday, 2 June 2009 11:09 AM
To: Richards, Stephen
Cc: armitagegordon@bigpond.com; Rebecca Mostyn
Subject: Re: Review of foreign actor guidelines - draft outcomes from 15 may meeting [SEC=UNCLASSIFIED]

Hi Stephen

Thankyou for the summary. I would like to clarify one of the action points on page 4, which states that Screen Australia will 'prepare an analysis of the impact of the producer offset on the levels of foreign investment in production budgets'. Given the privacy restrictions pertaining to the offset, it is not possible to provide such a specific analysis. SA is investigating the legalities of Offset data use for research purposes but currently data cannot be divulged. SA will be participating in the review of the Offset scheduled for next year. Our regular National Drama Survey, due to be published in September, will

2/06/2009

provide data on levels of foreign production so that may assist in the debate about foreign actor guidelines. Meanwhile, it would be appreciated if you circulated an amendment when sending out your draft text.

Thankyou in advance

Catherine Griff

Policy Manager

Screen Australia

02 81135809; 0405 452696

☞ "Richards, Stephen" <Stephen.Richards@environment.gov.au>

s22



Sircar, Sanjay

From: Richards, Stephen
Sent: Thursday, 6 August 2009 2:09 PM
To: Sircar, Sanjay; Glenn, Raelene
Subject: FW: Foreign Actor certification query [SEC=UNCLASSIFIED]
Categories: UNCLASSIFIED

opps - I'd still appreciate your comments and a chat

Sanjay
Raelene

When you are both free and sufficiently energised this afternoon, could we discuss where to next re foreign actors?

I'd also appreciate your thoughts on Elizabeth's comments and my proposed response.

Cheers

Stephen

Elizabeth

Thank you for providing Screen Australia's comments.

In response, please note:

- We have accepted Screen Australia's suggested edits - thanks
- Re your question about the meaning of the the wording "use of foreign actors may be considered appropriate", this wording retains discretion for the Minister or his delegate. We believe it is useful to retain that flexibility.
- We think it is useful to show members of our working group reviewing the foreign actor guidelines that we are responding positively to their suggestions wherever possible. As such, once the Screen Australia Board considers the revised SAC guidance, we would like to let the working group members know that Screen Australia will be updating its Producer Offset guidelines to include a form of words that makes it clear to producers considering casting foreign actors that they should be aware of the requirements of the foreign actor guidelines and provides them with a link to the relevant DEWHA webpage: http://www.arts.gov.au/film/film_foreign_actors_for_film_or_television
- On a related point, and I appreciate this is one DEWHA may need to take up with the section of Screen Australia which handles production investment, we think it would be useful if any Screen Australia production investment guidelines made similar reference to the foreign actor entry requirements and DEWHA's webpage.
- Finally, we would like to discuss your concerns re including consideration of whether foreign actor certification as one of the other matters Screen Australia may consider relevant in its assessment of SAC.

Re the next steps on review of the foreign actor guidelines, DEWHA will be circulating a number of draft texts including the one you have just provided comments on either later today or tomorrow to our working group members for consideration and comment. We have a 2-week consultation period and would welcome any further comments Screen Australia may wish to make.

And with respect of us speaking by phone tomorrow, that would be great. I'm generally free throughout the day so please give me a call when you have a spare 15 minutes or so. Apart from a quick reprise of the above, I wanted to let you know where things were at re our tax secrecy inquiries.

Cheers

6/08/2009

Stephen

From: Elizabeth Grinston [mailto:elizabeth.grinston@screenaustralia.gov.au]
Sent: Thursday, 6 August 2009 1:00 PM
To: Richards, Stephen
Cc: Alex Sangston; Michele McDonald; Catherine Griff; Richard Cohen
Subject: Foreign Actor certification query

Dear Stephen

I must first, and once again, sincerely apologise for the very lengthy delay on our part in responding to your email requesting our response on various issues relating to foreign actor certification. The need to involve various staff, annual leave arrangements, the end of financial year crunch and sheer day to day busy-ness conspired to slow things down unacceptably.

I realise you tried to reach me a couple of days ago, no doubt in part about this, although we have at least one other matter to discuss! Is there a convenient time tomorrow for me to call you (this afternoon I am unfortunately in back to back meetings once again).

Turning back to the foreign actor issues, I have set out below what we understand to be your questions and our responses (the latter in CAPS). I would be happy to discuss this over the phone with you also. I also attach a copy of the draft revised Australian Content Criteria which you sent us, in which we have marked up some very minor suggested edits. Apart from those edits, I had a query as to whether the wording "use of foreign actors may be considered appropriate" means use (in the relevant circumstances) will be approved, and a certificate issued, or that the Minister reserves a discretion in such circumstances to decline certification?

Questions and responses

1. A draft revised ACC is attached for your consideration and comment. Following our discussions this morning, we'd be particularly interested in any comments you may have as to whether you believe inclusion of reference to the SAC test in the ACC may impose some additional obligations or constraints on Screen Australia's own assessment processes in respect of the Producer Offset. **WE ARE NOT CONCERNED AS TO ANY IMPACT ON OUR PROCESSES ARISING FROM THESE REFERENCES.**
2. Would it be possible for Screen Australia to include consideration of whether foreign actor certification has been obtained as one of the many factors that will be considered in making a determination that the SAC test has been satisfied? (we are asking whether Screen Australia could consider whether FACs have been obtained for any foreign actors attached to the production as a factor, just as you already consider subject matter of the film, place film is made and so on when determining if the SAC test has been met. FAC may even be a subset of evidence you consider when assessing the nationalities of persons taking part in the film). **FOR REASONS OF BOTH PRINCIPLE AND PRACTICALITY, WE DO NOT CONSIDER THAT WE CAN TAKE THIS INTO ACCOUNT IN DETERMINING WHETHER THE SAC TEST IS SATISFIED. THE ONLY POSSIBLE BASIS FOR DOING SO WOULD BE UNDER THE "ANY OTHER MATTER...CONSIDERS.. RELEVANT" HEADING (S 376-70(1)(e) ITAA) AND OUR VIEW IS THAT FOREIGN ACTOR CERTIFICATION IS NOT A MATTER WHICH WE CAN PROPERLY REGARD AS RELEVANT IN THIS CONTEXT.**
3. Also, would it be possible for Screen Australia to include in its Producer Offset guidelines some reminder for producers that any production which intends to import



SCREEN
AUSTRALIA

**Submission to the Department of
Environment, Water, Heritage and the Arts
on the *Guidelines for entry into Australia of
foreign actors for the purpose of
employment in film and television
productions***

Screen Australia

March 2009

Screen Australia (SA) welcomes the opportunity to offer comment to the Department of Environment, Water, Heritage and the Arts on the Guidelines for entry into Australia of foreign actors for the purpose of employment in film and television productions (the Guidelines).

SA is the Australian Federal Government agency responsible for supporting the development of a highly creative and commercially sustainable Australian screen production industry. It supports the development, production and promotion of Australian programs; as well as fostering screen culture in Australia.

SA commenced operations in July 2008, operating the programs of its three predecessor organisations: the Australian Film Commission (AFC), the Film Finance Corporation and Film Australia. Following extensive industry consultation, new program guidelines for Screen Australia's Development, Production Financing and Indigenous Programs took effect from 1 January 2009. A re-structure of Screen Australia's remaining programs is currently being undertaken.

Introduction

Screen Australia believes that the Guidelines have played a major part in fostering an industry whose performers are internationally renowned.

For a country with a small population, there is a remarkable and expanding list of Australian actors who have won international acclaim: Cate Blanchett, Russell Crowe, Hugh Jackman, Naomi Watts, Nicole Kidman, Heath Ledger are among those whose names are known worldwide. Their careers all began on small-scale Australian productions and they have been welcomed in Hollywood, where there are few barriers to the participation of great talent.

The Guidelines are in keeping with the Government objective to foster a strong Australian voice and Australian participation in the industry. SA supports the intention: *'to achieve key government cultural objectives by ensuring that Australian industry personnel are given a fair chance in securing employment in film and television productions shot in Australia, and that Australian voices are heard in Australian productions.'*

Australian audiovisual content plays a central role in creating community cohesion and promoting a sense of national identity. Delivering cultural outcomes and supporting the development of a healthy audiovisual industry are key objectives of SA policy.

SA is positively inclined towards any measure that advances the position of Australian film and television. However it is vital that the number of films made by Australians increases. Casting is a fraught process often tied closely to the capacity to raise finance. SA is keen to see the process of employing foreign cast where appropriate, being made as straightforward as possible.

SA contends that the Guidelines would benefit from some revision to ensure that they do not inhibit film and television production, while continuing to safeguard opportunities for Australian actors.

Foreign actor data

It would be extremely beneficial for SA Research to access the specific information collected in the process of foreign actor applications. This would avoid duplication in data collection, reducing respondent burden and also enhance efficiency. It would mean that the sourcing of official statistics from DEWHA would allow SA to produce more robust data and lead to better tracking of trends.

The submission to the current review of Guidelines from the Media Entertainment and Arts Alliance contains useful figures on imported artists employed on features, TV productions and TVCs in Australia, comparing the four years 1991/92 to the last four years (2005-2008). SA has analysed this data to consider averages and actors employed per production.

Overall, the average number of feature film and TV drama titles made in Australia employing imported artists has increased from 22 per year in the early 90s to 43 per year over the last four years, and the total number of imported artists employed per year on these titles has increased from 80 to 168. But the average number of imported artists per title has decreased from six to four.

This is mainly due to a greater number of offshore productions employing fewer foreign artists per title.

The number of offshore productions has increased from an average of nine titles employing 61 imported artists per year, to 28 titles employing 134 imported artists. The average number of foreign artists per title has decreased from eight to five.

The incidence of Australian productions employing imported artists has decreased slightly, but with a slightly higher number of imported artists per title: an average of 23 titles employing 32 imported artists in the 90s compared to 15 titles employing 29 imported artists per year, with the average number of imported artists per title increasing from one to two.

Film and television industry climate

The film and television industries are increasingly global, with international investment, production teams, crews, as well as cast. Financing feature film and television projects is challenging at the best of times. The global financial crisis will impact heavily on film and television production.

Numerous articles from Screen International and other trade publications attest to the harshness of the film financing landscape.¹

Casting international actors is fundamental to attracting finance. The reality of Australian production in an international context is that most Australian actors are not well known outside of their home territory.

The marketplace is crowded and highly competitive. Australian films must compete with the US independent sector, which can assemble a cast of marquee actors, despite relatively modest budgets.

Foreign actors can bring to Australian productions a level of promotional clout, prestige, and marketability along with their talent. The process for allowing Australian producers to bring foreign actors to productions should be transparent and easy to assess. In the current economic climate SA believes there is merit in reviewing the current threshold requirements for investment from foreign sources.

International comparisons

The entry of foreign actors is regulated in other countries including the UK, Canada and New Zealand. Responsibility for determining whether foreign actors may be engaged is shared between the relevant government immigration agency and the relevant actors' industrial representative.

Foreign actors wishing to work in the UK must apply for a work visa under the 'creative and sporting category'². Sponsorship of foreign actors must also comply with a Code of Practice³ that specifies the circumstances under which a foreign actor may be engaged.⁴ The categories do not consider the levels of British content of a project.

These categories recognise a range of circumstances where entry of foreign actors is appropriate: to assist filmmakers to complete their films (the work is for continuity); to assist filmmakers to finance their films (performers who are tied to the finance of the production); as well as the range of commercial

¹ See for instance:

'Taking Stock of the Wall Street Shock', *Screen International*, September 26 October 2008

'Is the Slate Deal Going up in Flames?', *Screen International*, August 15-21 2008

'The Calm After the Storm', *Screen International*, February 13-19 2009

² <http://www.bia.homeoffice.gov.uk/workingintheuk/tier5/creativeandsporting/>

³ *Resident Labour Market Test – Code of practice for performers in film & television under the skilled migrant tier and the temporary worker tier.*

⁴ In the UK, work permits are granted where the sponsor can demonstrate that the actor falls into one of the following categories:

- the work is for continuity;
- the performer has international status;
- Highly specialist or unusual roles;
- featured guest in an entertainment programme, or subject of a factual programme;
- Performers who are tied to the finance of the production;
- Performers who do not meet the criteria but who are commercially important;
- International co-productions; and
- Roles cast after a genuine labour market search in the European Economic Area.

interests that impact on the international industry (performers who do not meet the criteria but who are commercially important).

Importantly, these categories represent a qualitative assessment of the contribution that a particular foreign actor may make to a film production rather than a threshold test.

In Canada, approval from the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) must be sought before applying for a work visa. Canadian regulations require consideration of such factors as wages and working conditions, and reasonable steps to hire Canadians. However, factors such as the ratio of Canadian to foreign actors, or the nationality of roles are outside the scope of the assessment criteria.⁵

ACTRA states that work permits for 'stars' are provided upon request, but 'generally any requests for other roles are subject to greater scrutiny and proof that reasonable efforts have been made to engage local personnel' ACTRA emphasises that it 'expects that producers will make genuine efforts to hire here prior to signing a contract in another country'

In New Zealand, foreign actors must obtain approval from NZ Equity prior to applying for a work visa. NZ equity must be satisfied that the engagement of the actor satisfies a number of conditions to protect opportunities for New Zealand performers⁶.

Details of the opportunities for locals must be provided if the importation of an actor will result in 'overall benefit to the New Zealand industry'. Also, if an application is made on the basis of inability to cast the role with a New Zealander, details of the casting process must be provided.

The above overseas examples illustrate the variety of ways in which entry of foreign cast is regulated.

ISSUES TO BE REVIEWED

Provide greater clarity on the treatment of foreign actors seeking to enter Australia to perform or appear in film and television productions

⁵ http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/entertainment.shtml,
http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/temp_assessment.shtml,
http://www.actra.ca/actra/control/working_with#three

⁶ NZ Equity must be satisfied that:

- the actor is of international distinction or merit, or particular ethnic significance, or is manifestly essential to the presentation or production; and
- the actor's employment does not put at risk the employment of New Zealand entertainers or professionals in equivalent work unless the wider benefits to be obtained from the applicant's employment outweigh the loss of job opportunities for New Zealanders; and
- appropriate consideration to employing available New Zealand entertainers or professionals;

Production in Australia is starting to slow, particularly foreign product. Crews for feature film, television drama and television commercials have all experienced a significant slow down.⁷ No foreign features or TV drama started production in the sixth months to December 2008, and none are so far confirmed to start in the second half of this financial year. Since data collection on this topic began in 1990 (by the AFC), this will be the first time when no foreign features have been filmed in Australia.

SA contends that the current Guidelines could be simplified and modified to take into account the contemporary realities of financing film and TV production. The 'relevant Australian content criteria' remains appropriate for both government subsidised and non-subsidised production. However SA suggests removal of the second set of criteria that stipulates the number of foreign performers permissible according to the level of foreign investment.

The Guidelines set out minimum levels of financial investment that determine the number of foreign actors a project may engage. SA believes that these levels are no longer realistic in the current economic climate.

Failure to achieve the minimum threshold of 30 per cent minimum foreign investment in order to engage a foreign lead actor⁸ has in some circumstances resulted in MEAA withholding approval.

These days, the ability to attract 30 per cent of the budget via foreign investment is rare. Setting such figures imposes an artificial rigidity that can also be quickly out dated. SA is not in favour of an increase in foreign actors in Australian productions. Nevertheless, it should be simple and acceptable to make an exceptional case, regardless of foreign investment - when the project may be in danger of not proceeding without overseas cast.

There are several recent examples of films foundering on the 30 per cent foreign investment requirement. s45

s45 But the foreign financing fell through and the producers were unable to meet the 30 per cent requirement. Though the film was refused MEAA approval, it proceeded with Department consent.

The 30 per cent was also a barrier for s45 The producers wanted an all-Australian cast, but after an unsuccessful decade seeking finance, they engaged s45 last year. Despite not achieving 30 per cent foreign investment, the Alliance gave approval because s45 was fundamental to the film going ahead.

The Alliance has played a positive role in advising productions on legitimate use of foreign actors. Consultation with the Alliance is a useful step that should continue. The Alliance agrees that a review of the budget thresholds prescribed in the Guidelines is long overdue, especially as they have remained unchanged for 18 years. SA supports this.

⁷ 'Parlous times for technical crews', The Australian, Monday 16 February 2009

⁸ Regulation 420.222(2) - 2

The provision for 'exceptional cases' in the Guidelines is already a useful mechanism to assist in the equitable employment of foreign actors.

Provide greater clarity re what forms of direct and indirect government assistance are subsidies

The existing Guidelines distinguish between government subsidy such as 'loans, distribution, guarantees, pre-sale and tax concessions' and non-government subsidy 'tax concessions ordinarily available to any business enterprise, Division 10B of the Income Tax Assessment Act 1936'. In practice, the tax concession provided by the repealed 10BA was treated as a government subsidy.

Screen Australia understands that the Department's legal advice states that the Producer Offset is considered to be a non-government subsidy in relation to the Guidelines. SA accepts this judgement, especially given that the Offset's 'heritage' is more akin to the former Regional Film Tax Offset than to 10BA.

The establishment of the Producer Offset was intended to boost the number of Australian productions and also to enhance the sustainability of the production sector. Both objectives are taken into account in certification.

SA is acutely aware, of the degree that producers are struggling to finance films in the current economic climate. Any additional regulations or restrictions applying to Offset projects will make financing harder. Clearly, if fewer films are made, employment is less available to Australians (and foreigners).

Provide greater clarity on the scope of the guidelines, which currently indicate they apply to feature films, telemovies and miniseries but are silent on their application or otherwise to a range of other production genres (eg documentaries, reality programs, variety programs, TVCs etc)

Specific consultation with relevant sectors of the industry would be of value before the Department considers any expansion of the genres encompassed by the Guidelines. Most genres raised by the Department would already meet the criteria of the Guidelines but the benefit from their formal application may not outweigh the transaction costs involved.

SA strongly supports the current regulation to broadcast 80 per cent of Australian TVCs. This regulation effectively supports the employment of Australian actors. Advertising and marketing are important elements of contemporary culture and TVCs are cultural artefacts. The creative talent who make top feature films often make TVCs as well.⁹ There is a high crossover

⁹ Ray Lawrence who directed *Bliss* worked on ads in the ten years before he made his next hit feature film, *Lantana*. Chris Noonan, director of *Babe*, often works on TVCs while developing feature films.

between TVCs and other production sectors. TVCs provide crucial employment and experience for emerging performers.

Documentaries with performers and presenters are also an important vehicle for local talent. Many documentaries have large budgets and make extensive use of actors (such as historical re-enactments). The majority of documentaries are cast according to subject matter and location and as such should remain free of regulation in relation to foreign cast.

Determine the extent to which the "Australian content criteria" set out in the Guidelines should be consistent with the "significant Australian content" requirements of the Producer Offset

Establishing the Australian identity of a project can be complex in this country, as it is in many others. There are various tests of 'Australianness', which differ according to the context. The Australian Content Standard is a regulation open to public scrutiny under the *Broadcasting Services Act*. SA operates both the Significant Australian Content (SAC) test for the Producer Offset plus a research test for inclusion in the annual National Drama Survey.

Significant Australian Content means just that, and does not define a film as Australian. It is possible to have *both* significant amounts of Australian and foreign content. The criteria used to determine whether a film has significant Australian content for the purposes of the producer offset include:

- (a) *subject matter of the film;*
- (b) *place where the film was made;*
- (c) *nationalities and places of residence of the persons who took part in the making of the film;*
- (d) *details of the production expenditure incurred in respect of the film;*
- (e) *any other matters that the film authority considers to be relevant.*¹⁰

In comparison, the criteria set out in the Guidelines establish whether a project's Australian characters are appropriately cast and whether a project has a minimum level of Australian casting.

- the casting of leading and major supporting roles accurately reflects the Australian characters portrayed;
- at least 50 per cent of performers in leading roles and 75 per cent of performers in major supporting roles are Australian;
- where applicable, an Australian actor has been cast to play a 'traditional Australian character'.

These criteria only apply to the third limb of the SAC criteria: 'nationalities and places of residence of the persons who took part in the making of the film', but are not concerned with other aspects of Australian content. They are effectively in place to determine whether the Guidelines apply.

¹⁰ Section 376 of the *Income Tax Assessment Act 1997*. The SAC test criteria are based on the test previously applied internally by the Department to determine whether a project would qualify for the 10BA tax incentive.

The SAC test on its own would not fulfil the government's objective for minimum levels of Australian content, in relation to foreign actors. It takes account of the *totality* of elements. For instance, sufficient Australian content to qualify for the Offset could be achieved with a higher number of foreign actors, if balanced by more Australian elements as per the SAC test.

The Australian content criteria in the Guidelines and the SAC test fulfil quite different objectives and are not inconsistent.

Determine whether, for unsubsidised productions, requiring foreign investment to be greater than the level of funds expended on foreign actors while in Australia is a reasonable requirement

SA considers the current regulation that requires the amount spent on foreign fees to be no greater than the foreign investment, to be a reasonable measure. This ensures that Australian Government support does not subsidise foreign actors.

Summary of Screen Australia's key points

- The Guidelines have played a vital part in nurturing the many internationally renowned Australian actors by safeguarding their employment on local production.
- International comparisons indicate that regulation that governs importation of foreign actors tends to focus on principles but is not tied to specific thresholds.
- SA concurs with the legal advice from the Department that the Producer Offset is not a government subsidy in relation to the Guidelines.
- The three criteria that establish Australian Content in the Guidelines should remain as they are (see page 7).
- The various budget thresholds governing the employment of foreign actors should be removed.
- The amount of the budget allocated to foreign actors should be covered by the foreign investment component.

Sircar, Sanjay

From: Alastair McKinnon [alastair.mckinnon@screenaustralia.gov.au]
Sent: Wednesday, 6 May 2009 3:50 PM
To: Sircar, Sanjay
Cc: Catherine Griff
Subject: Foreign Actor Guidelines

Sanjay,

Further to our telephone conversation this afternoon I have included some information below. It is summarised but may still be too long for your purposes.

Essentially there is only one specific visa for actors, the O-1 Visa, but this is only available to actors of "extraordinary ability" - ie. the Cate Blanchetts and Russell Crowes.

Other than that, actors must seek a H-2 work visa and are treated the same as for any industry. The threshold being that no local person could fill the job proposed to be done by the foreign person. This is extremely difficult for actors who are not "known" in the US to overcome, with the following conditions required to be met:

- the position to be filled is only a temporary need of the employer; and
- certification is sought from the US Department of Labor that US unemployed persons capable of performing the work are not available and that the employment of a foreign national will not adversely affect the wages and working conditions of workers similarly employed in the US.

SAG, the relevant union governing actors in the US, must also be consulted in the process of acquiring either the O-1 or the H-2 visas.

I spoke to Drew Macrae at MEAA about this also and their information is the same. He also said he was sending you some information and was waiting for additional clarification from SAG so he may be able to expand on what I have here.

Further details for the O-1 Visa are as follows:

Eligibility Criteria

The O-1 category is available to foreign nationals who have extraordinary ability in science, art, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. Extraordinary ability is a high level of expertise and indicates that the person is one of a small percentage who has risen to the very top of the field. The foreign national must seek to enter the United States to continue work in the area in which he or she is extraordinary.

The O-1 visa category has the following key features:

- * U-M must file the O-1 petition; prospective employees cannot obtain O-1 visas on their own.
- * An offer of employment is required, along with supporting evidence of extraordinary ability.
- * Employment under the O-1 category is limited to the specific department who sponsored the O-1 and to the employment specified in the I-129 petition. It is possible to have multiple concurrent O-1 petitions.

7/05/2009

- * U-M can file an O-1 petition up to 6 months before the intended start date.
- * Foreign nationals subject to the 212(e) Two-Year Foreign Residency Requirement are eligible for the O-1 classification, but they cannot change from J-1 to O-1 status within the U.S. They must apply for the O-1 visa abroad and re-enter the U.S.
- * The hiring department is responsible for the return cost of transportation if the foreign national is dismissed before the petition period expires.

Length of Stay in the U.S.

- * An O-1 petition has an initial period of stay of up to 3 years.
- * Subsequent extensions may last for no more than one year at a time. There is no limit to the number of extensions.
- * Extensions may be granted indefinitely if the need for the continued employment remains.
- * An O-1 employee for whom an extension petition has been filed can continue working for the department while the extension request is pending with U.S. Citizenship and Immigration Services (USCIS) for up to 240 days beyond the expiration of the previously authorized stay.

Processing Times

The O-1 petition and approval process takes approximately 3 to 4 months.

The following documentation is needed to petition for an O-1 visa:

- * Formal job offer letter. The offer letter must specify the dates for which work authorization is requested.
- * Documentation to support evidence of extraordinary ability in science, art, education, business, or athletics. U.S. Citizenship and Immigration Services (USCIS) regulations provide two bases (Basis A and B, described below) for showing evidence of extraordinary ability.

Basis A: Receipt of a Nobel Prize Caliber Award

Basis B: Documentation Showing Extraordinary Ability

The individual must demonstrate at least three of the following:

- * Receipt of nationally or internationally recognized awards or prizes for excellence in his/her field.
- * Membership in associations in the field of extraordinary ability, which require outstanding achievement for membership, as judged by national or international experts.
- * Citations in professional publications, written by others about the individual's work in the field. Include the title, date, and author and any translation, if necessary.
- * Participation on a panel or as a judge of the work of others in the same or an allied field.
- * Original scientific, scholarly or business contributions of major significance to the field.
- * Authorship of scholarly articles in the field in professional journals or major media.
- * Previous employment in a critical capacity for organizations and/or establishments that have a distinguished reputation.
- * Evidence of high salary or other significantly high remuneration for services in relation to others in the field, as proven by contracts or other evidence.

Merely providing three sources of evidence does not establish that the foreign national possesses extraordinary ability. USCIS considers the quality of the evidence provided and not just whether the minimum amount of documentation has been submitted.

Spouse and dependents (unmarried children under 21 years of age) of O-1 workers are eligible for O-3 status. No employment is permitted for O-3 dependents. Individuals in O-3 status may attend academic institutions as long as the educational program does not include paid employment (e.g., co-

op or research assistantship).

Let me know if you'd like further or different information.

Best regards,

Alastair McKinnon
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REVIEW FILE

Sircar, Sanjay

From: Richards, Stephen
Sent: Friday, 5 February 2010 1:36 PM
To: 'Matthew Deaner'
Cc: Fiona.cameron@screenaustralia.gov.au; Alex Sangston; Carter, Jane; Sircar, Sanjay
Subject: foreign actor guidelines review - response to SA comments [SEC=UNCLASSIFIED]
Importance: High
Categories: UNCLASSIFIED
Attachments: Guidelines - Draft to SA - 5 Feb 2010.doc

Matthew

Thank you for Screen Australia's comments of 21 December 2009 on the draft Guidelines. Herewith our comments on the points you raise. All references are to the draft attached. Where we have made amendments in accordance with your suggestions, these have been marked in 'track changes'

1. Documentary definition

s45
s45 we intend to amend the definition of 'Documentary' in line with SA's and ACMA's but with the addition of "reality television" to the list of formats not covered by "Documentary", since this is particularly relevant to the scope of the scheme (Section B, page 5).

2. Simplifying the Guidelines further

s45 set of criteria (Section 8 pages 8-9) on the level of foreign investment proportionate to the number of foreign actors. s45 we propose to retain this set of criteria in the interests of continuity with previous Guidelines. We feel that this set of criteria provides useful guidance on the number of foreign actors that might be employed in particular productions, and also that it does not limit the discretion of the delegate in making a decision that deviates from the criteria. s45

3. Involvement of the union in category 2 decisions

s45
s45 under the current arrangements MEAA is consulted in respect of all applications, and we believe it is appropriate to continue that practice under the proposed new arrangements.

s45
s45 Also, producers need to consult with MEAA about a range of matters associated with a production whether or not a foreign actor is attached (eg award rates, etc.), so there will already be ongoing discussion between the sponsor/producer and MEAA on aspects of the production.

s45
s45 it is possible MEAA may seek additional information - the MEAA website certainly seeks more documentation - and that will be a matter for the sponsor and MEAA to resolve among themselves. We believe it is unlikely that MEAA will be able to raise issues in respect of applications for category 2 subsidised productions that would lead to an application for a production with provisional offset certification being refused. However, requiring consultation with MEAA allows for consideration of any matters it may choose to raise with either the sponsor or with DEWHA.

s45

6. The Role of MEAA

s45

- we feel that para 2 (page 15) adequately indicates that MEAA's part in the process is consultative only;
- the draft Guidelines only summarise MEAA's requirements, and direct the applicant to the relevant MEAA webpage, and these requirements seem to us to be reasonable (page 16); and
- we feel the process(es) when a MEAA letter of opinion is not forthcoming are adequately covered in the

draft Guidelines (para 9 on page 16 and para 20 on p17).

s45

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Thank you again for your comments. Should you wish to discuss any of the above in further detail, please give me a call.

Cheers

Stephen

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Director, Film Incentives & International Section
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s47F
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s45

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5/02/2010



Australian Government

**Department of the Environment,
Water, Heritage and the Arts**

Foreign Performers Certification Scheme

Guidelines for the entry into Australia of foreign performers for the purpose of performing in film and television productions

Australian Government

[insert month] 2010

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FOREIGN PERFORMERS CERTIFICATION SCHEME

Guidelines on the entry into Australia of foreign performers for the purpose of performing in film and television productions

INTRODUCTION

1. This revised version of the *Guidelines on the entry into Australia of foreign performers for the purpose of performing in film and television productions* was adopted on [?? 2010].
2. The Guidelines deal exclusively with the employment of specified On-screen Performers entering Australia to take part in specified Film and Television Productions. They are the basis on which the Arts Minister, or a person authorised by the Arts Minister, determines whether to certify that specified requirements identified in the Migration Regulations have been met.
3. The Migration Regulations require that a subclass 420 visa, which is assessed against the criteria in sub-paragraphs 2.72D(4) and (5), not be approved unless the visa application is supported by a Foreign Performer Certificate issued by the Arts Minister.
4. In addition, the Migration Regulations require that the sponsorship of the proposed visa applicant cannot be approved unless the Sponsor has consulted the relevant Australian unions. For the purposes of these Guidelines, the relevant union is the Media Entertainment and Arts Alliance (MEAA). This consultation process is undertaken as part of the process of applying for a Foreign Performer Certificate from the Arts Minister.
5. The Guidelines support key Government objectives for the film and television industry including providing Australian industry personnel with a fair chance of securing employment in Film or Television Productions shot in Australia, ensuring Australian voices are heard in Australian productions, and building a commercially sustainable film and television industry.
6. The Guidelines are administered by the Department of the Environment, Water, Heritage and the Arts (DEWHA).

SECTION A - SCOPE

1. The Foreign Performers Certification Scheme applies to the import of foreign On-screen Performers taking part in the following specified forms of Film or Television Production intended for distribution via platforms such as cinema, television broadcast, DVD, and Internet and mobile devices:
 - (a) Feature Films;
 - (b) Telemovies;
 - (c) Series, Serials and Sketch Comedy Programs
 - (i) excluding foreign Performers/celebrities who take part or make brief, one-off appearances as themselves in Film or Television Productions, when this participation is incidental to their main purpose for entering Australia (which might include live performance concert tours and other promotional activities);
 - (d) Documentaries and dramatised Documentaries
 - (i) excluding all On-screen Performers other than foreign Hosts and foreign Performers in dramatic roles.
2. The Guidelines set out the circumstances under which applications can be considered for the import of foreign Performers to take part in the Film or Television Productions and roles specified above.
3. The Guidelines do NOT apply to:
 - (a) foreign Performers in roles or forms of Film or Television Production other than those specified above. Visa applications for such Performers will be considered by the Department of Immigration and Citizenship (DIAC) under sub-paragraph 2.72D(7) of the Migration Regulations; or
 - (b) foreign Performers seeking visas to enter Australia under an agreement between Australia and another country, such as Australia's bilateral film co-production agreements. In such cases, the application will be considered by DIAC under sub-paragraph [***TBC***] of the Migration Regulations. Screen Australia administers the Commonwealth Government's International Co-production Program and determines applications for projects to be approved as Official Co-productions.

SECTION B - TERMS AND DEFINITIONS

‘Australian Content Criteria’ or ‘ACC’ means the criteria describing Category 1, Category 2, and Category 3 Government Subsidised productions set out in Section C of these guidelines.

‘Cameo Actor Role’ means a brief but important role in a Film or Television Production, usually performed by a well-known On-screen Performer.

‘DEWHA’ means the Department of the Environment, Water, Heritage and the Arts.

‘DIAC’ means the Department of Immigration and Citizenship.

‘Documentary’ means a program that is a creative treatment of actuality, other than a news, current affairs, sports coverage, magazine, infotainment, light entertainment or reality program.

‘Feature Film’ means a film, including animations, commonly screened as the main attraction in commercial cinemas that is no less than 60 minutes, or in the case of a larger format (IMAX) film no less than 45 minutes, and shot and processed to commercial standards for cinema exhibition, television broadcast or distribution via other platforms.

‘Film or Television Production’ means a production intended for cinema exhibition, television broadcast, or distribution via other platforms (such as DVD, and internet and mobile phone downloads) and includes a Feature Film, Telemovie, Series, Serial, Sketch Comedy Program, Documentary and dramatised Documentary but does not include computer games.

‘Foreign Investment’ includes overseas sourced funds where such investment is secured against returns from foreign markets, regardless of whether the funds are equity investment or not, including direct investment and revenue raised through pre-sales and distribution in overseas markets.

‘Government Subsidy’ means and includes any form of government financial support other than developmental funding and includes:

- (a) direct subsidies such as direct investment, loans (excluding loans to cashflow the Producer Offset), distribution guarantees and pre-sales;
- (b) indirect subsidies such as tax concessions (e.g. Producer Offset, Location Offset, Post, Digital and Visual Effects Offset in Division 376 of the *Income Tax Assessment Act 1997*).

For the purposes of this definition ‘government’ includes Commonwealth and state and territory government film and television agencies, but excludes the Australian Broadcasting Corporation and the Special Broadcasting Service.

‘Host’ means the central Performer in a Documentary or dramatised Documentary who introduces and presents the material to a viewing audience and who may also be referred to as “comper”, “presenter”, “commentator” or “narrator”.

Deleted: a program which is a creative interpretation of actuality, provides a detailed study of real people and/or events, presenting an issue, subject or theme of social, political or general interest, and often deals with travel, science, and historical subjects but excludes news or current affairs, sports coverage, magazine, infotainment, light entertainment, and reality programs.

Comment [A1]:

http://www.screenaustralia.gov.au/industry_support/Production/Documentary.asp says “[Note: For the purposes of these funding guidelines, Screen Australia will apply its definition of ‘documentary’ from the guidelines compiled by the Australian Communications and Media Authority (ACMA). These guidelines are available on the ACMA website.]”

The ACMA definition is from <http://www.acma.gov.au/webwr/ab/tv/content/requirements/australian/documents/documentaryguidelines.pdf>

Deleted: [include definition entries for these if retained]

‘Leading Actor Role’ means the role of protagonist or one of the central or main roles in a Film or Television Production.

‘Media Entertainment and Arts Alliance’ or **‘MEAA’** means the union representing employees in the media, entertainment, sport and the arts.

‘Motion-capture Performer’ means a Performer in a computer animation production in a role which involves a performance from which points can be tracked on a moving face or body in order to get a simplified image of motion, e.g. the animation of the penguins in Happy Feet.

‘Official Co-production’ means a production for which a Performer seeks to enter Australia under an agreement between Australia and another country, under the International Co-production Program administered by Screen Australia, for which visa applications are considered by the Department of Immigration and Citizenship (DIAC) under sub-paragraph [***CHECK***] of the Migration Regulations.

‘On-screen Performer’ means:

- (a) a Performer in a Feature Film; Telemovie; drama Series, Serial or Sketch Comedy Program; or dramatised Documentary who is performing:
 - (i) a Leading, Supporting or Cameo Actor role;
 - (ii) as a dancer, Motion-capture Performer, Puppeteer, Stunt Performer or Voice-over Performer; or
- (b) as a Host in a Documentary or dramatised Documentary.

‘Puppeteer’ means a manipulator of any variety of puppet, whose work appears in a Film or Television Production.

‘Serial’ means a Film or Television Production which is a narrative series made up of two or more episodes that:

- (a) are produced wholly or principally for public exhibition under a single title, for both free-to-air (broadcast network) and subscription television (cable or satellite); and
- (b) comprise a potentially unlimited number of episodes, relating a number of equally important and overlapping plots, without an apparent single major plot necessarily moving towards a resolution and arranged into consecutive episodes for screening purposes.

‘Series’ means a Film or Television Production which is a narrative series made up of two or more episodes that:

- (a) are produced wholly or principally for public exhibition under a single title, for both free-to-air (broadcast network) and subscription television (cable or satellite);
- (b) have a common theme or themes that draws the episodes of the series into a cohesive whole;
- (c) contain dramatic elements that form a narrative structure; and

(d) are intended for exhibition together in a national market or markets.

‘Sketch Comedy Program’ means a Film or Television Production comprising comedy and satirical sketches that are short, self-contained stories or plots; but does not include a stand-up comedy program or an incidental sketch that is a component in a program of another kind.

‘Sponsor’ means an Australian producer applying for a Foreign Performer Certificate or an Australian sponsor acting on behalf of a foreign producer in making this application.

‘Stunt Performer’ means a Performer engaged to perform dangerous scenes in a Film or Television Production and/or who doubles for one of the actors chosen for a particular role.

‘Supporting Actor Role’ means a role which is more than a Cameo but not a central role in a Film or Television Production.

‘Telemovie’ means a drama program of a like nature to a Feature Film, which is not less than one commercial television hour in length and shot and processed to commercial release standards for television broadcast or distribution via other platforms (such as DVD and internet and mobile phone downloads).

‘Traditional Australian Character’ means an Australian character that appears in Australian literature (e.g. *Man from Snowy River*, *The Shiralee*, etc) or is part of Australia's history and/or folklore (e.g. Dame Nellie Melba, Ned Kelly, etc).

‘Voice-over Performer’ means a Performer who provides recorded dialogue or narration, that comes from an unseen, off-screen voice in a Film or Television Production.

SECTION C - TREATMENT OF SUBSIDISED AND UNSUBSIDISED PRODUCTIONS

1. In accordance with the requirements of the Migration Regulations, the Guidelines set different criteria for assessing the appropriateness of foreign Performers taking part in a specified Film or Television Production in Australia based on whether or not the production has, or will receive, a Government Subsidy.
2. Sponsors are required by the Migration Regulations to consult with the MEAA in relation to each application for a Foreign Performer Certificate before submitting the application to DEWHA. Details of the application process, including consultation requirements, are at Section E.
3. In seeking to import foreign Performers, Sponsors will need to identify the type of production proposed and satisfy the corresponding criteria as outlined below. Since every production that proceeds in Australia provides at least some benefit to the Australian screen industry through employment opportunities for Performers, crews and other film production service providers, a Sponsor must present a convincing case in its application to DEWHA which demonstrates that the import of a foreign Performer is necessary for a particular production and consistent with the Government's cultural and commercial film policy objectives.

SUBSIDISED PRODUCTIONS

4. A production is subsidised if it has, or will receive, a Government Subsidy.
5. For a foreign Performer to take part in a subsidised Film or Television Production, the application for a Foreign Performer Certificate must satisfy the requirements set out in the Australian Content Criteria (ACC) detailed below.
6. However, please note the ACC requirements vary depending on whether or not the production in which the foreign Performer is to appear:
 - (a) receives a direct Government Subsidy- see Category 1 below; or
 - (b) is likely to access the Producer Offset and is receiving no direct Government Subsidy – see Category 2 below; or
 - (c) is likely to access the Location or PDV Offset – see Category 3 below.

Category 1 - ACC for Film or Television Productions in receipt of a direct Government Subsidy

7. Reasonable opportunity must be given to employing Australian Performers at all levels of the production, and:
 - (a) the casting of Leading and major Supporting Actor Roles must accurately reflect the Australian characters portrayed;
 - (b) at least 50 per cent of Performers in Leading Actor roles and 75 per cent of Performers in major Supporting Actor Roles must be Australian; and
 - (c) where applicable, an Australian Performer must be cast to play each Traditional Australian Character.
8. The level of Foreign Investment in a production's budget will be a factor considered in assessing applications for the importation of foreign Performers on a

case by case basis. As a general guidance, the greater the level of Foreign Investment in the production over 20 per cent, the greater the possible opportunity for the employment of foreign Performers in Leading, Supporting and Cameo Actor Roles within the above parameters. For example, where a minimum of:

- (a) 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is less than \$4.0 million, in the case of a Telemovie less than \$2.0 million, or in the case of a Series or Serial less than \$0.75 million per commercial hour, the employment of one foreign Performer may be appropriate;
 - (b) 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is \$4.0-12.0 million, in the case of a Telemovie more than \$2.0 million, or in the case of a Series or Serial is \$0.75-1.0 million per commercial hour, the employment of one foreign Performer in a Leading Actor Role and one foreign Performer in a Supporting or Cameo Actor Role may be appropriate;
 - (c) 20 per cent of a production's budget is Foreign Investment and the budget in the case of a Feature Film is more than \$12.0 million, or in the case of a Series or Serial, more than \$1.0 million per commercial hour, the employment of one additional foreign Performer may be appropriate to play a Cameo Actor Role.
9. Where a Sponsor seeks to import a foreign Performer on the basis that a suitable Australian Performer cannot be found, the Sponsor must demonstrate that a genuine attempt has been made to locate a suitable Australian Performer. DEWHA Casting Guidelines are at Section F.
10. When no Australian Performer can be cast to satisfy the requirements of a role, the employment of a foreign Performer may be appropriate in the following circumstances:
- (a) highly specialist/unusual roles; or
 - (b) ethnicity; or
 - (c) continuity; or
 - (d) unexpected change in the level of Foreign Investment; or
 - (e) private investment being dependent on the engagement of a foreign Performer; or
 - (f) overall benefit to the Australian film and television industry.
11. If a Sponsor seeks consideration on the basis of factors listed in paragraph 10 above, the Sponsor will be required to provide additional evidence in support of their application as detailed in Section D.

Category 2 - ACC for Film or Television Productions NOT in receipt of direct Government Subsidy but eligible to access the Producer Offset

12. The Sponsor must provide evidence that the production has obtained provisional certification to access the Producer Offset. Evidence must include a copy of the Provisional Certificate and covering letter from Screen Australia.

Note: Further information regarding the Producer Offset application process is available on Screen Australia's website at

http://www.screenaustralia.gov.au/producer_offset/prov_certification.asp

Note: Productions in receipt of direct Government Subsidy in addition to accessing the Producer Offset must apply for Foreign Performers Certification under Subsidised Productions 'Category 1' above.

Category 3 - ACC for Film or Television Productions eligible to access the Location or PDV Offsets

13. The Sponsor must provide evidence that the production intends to access the Location or PDV Offsets. Evidence may include a letter of intent from the relevant production company and/or demonstration that the production budget exceeds the Location or PDV Offset eligibility criteria for minimum expenditure thresholds.

Note: The fact that a production eligible to access the Location or PDV Offset may also be in receipt of direct Government Subsidy does not impose any additional requirements in this instance. Such a production is only required to satisfy the Category 3 requirement set out in paragraph 13 and does not have to satisfy any of the Category 1 requirements set out in paragraphs 7-11.

UNSUBSIDISED PRODUCTIONS

14. Unsubsidised productions, including those fully funded offshore, must satisfy the following criteria:
- (a) Australian citizens/residents have been provided with a reasonable opportunity to participate in all levels of the production; and
 - (b) the sum of Foreign Investment exceeds the amount to be expended on the foreign Performers while they are in Australia to take part in the unsubsidised production.
15. In making an application to import foreign Performers, the Sponsor must demonstrate that reasonable efforts have been made to cast Australian Performers at all levels of the production. DEWHA Casting Guidelines are at Section F.
16. In relation to Foreign Investment, the Sponsor must provide DEWHA with documentation demonstrating that the Foreign Investment component of the production's budget is greater than that expended on the proposed foreign Performers while they are in Australia to take part in the unsubsidised production. Expenditure on foreign Performers in Australia includes salary, living allowances, travel and other expenditure associated with their stay in Australia.

**SECTION D - FLEXIBILITY CIRCUMSTANCES AND EVIDENCE
REQUIRED FOR SUBSIDISED PRODUCTIONS: CATEGORY 1**

1. As noted in Section C, where the Sponsor demonstrates that an Australian Performer cannot be found to fill a role for a production in receipt of direct Government Subsidy (Subsidised Productions 'Category 1'), importation of a foreign Performer may be considered in the circumstances outlined below on the basis of additional evidence provided by the Sponsor in support of the application.
2. Please note that proof of a genuine search of the Australian labour market to fill the role with an appropriately qualified or experienced Australian Performer will be required in the first instance. The evidence required is set out in the DEWHA Casting Guidelines at Section F.
3. Sponsors who intend to make an application for importation of a foreign Performer in the following circumstances must mount a convincing case supported by the documentary evidence. The simple assertion that foreign Performer participation is critical will not be sufficient.
4. Please also note that the circumstances detailed below are not intended to lead to exploitation as a minimum standard applied to all productions.
5. If a Sponsor believes there are other compelling reasons to import a foreign Performer beyond those circumstances detailed below they should contact both MEAA and DEWHA to present a case. Such approaches will be considered on their merits on an individual basis.

Highly specialist/unusual roles

6. The foreign Performer is necessary to perform a highly specialist or unusual role which requires specific or specialist attributes including, but not limited to, physical appearance, physical talent and linguistic or vocal skills. Please note that foreign language and accent requirements* for a particular role are not necessarily sufficient grounds for importing a foreign Performer.
7. Evidence:
 - (a) script or synopsis demonstrating that the role requires certain highly specialist attributes; and
 - (b) documentation such as a listing of personal attributes or specialist skills from a resume or curriculum vitae that supports the claim that the proposed foreign Performer possesses the attributes necessary to perform the role.

Ethnicity

8. The foreign Performer is necessary for reasons of ethnicity required by the role. Please note that foreign language and accent requirements* for a particular role are not necessarily sufficient grounds for importing a foreign Performer.

* Australia is a multicultural country. Many Australian performers are competent in a variety of languages other than English, and can speak an extensive range of English language and non-English language accents.

9. Evidence:

- (a) script or synopsis demonstrating that specific ethnic characteristics are required by the role; and
- (b) documentation verifying that the proposed foreign Performer is of the ethnicity required.

Continuity

10. The foreign Performer is necessary for reasons of continuity.

11. Evidence:

- (a) documentation, such as a Performer contract, cast list or press clippings, supporting the claim that the foreign Performer has worked on, or will be working on, the same production outside Australia for at least one month.

Unexpected change in the level of Foreign Investment

12. Where the initial level of Foreign Investment in a production's budget allows for the importation of foreign Performers, but decreases unexpectedly, consideration will be given to approving the importation of foreign Performers already attached to the production. For example, if a foreign investor withdraws support due to financial pressures and is replaced by an Australian investor at short notice.

13. Evidence:

- (a) details of the production budget;
- (b) documentation from private investors committing to the production;
- (c) documentation verifying the genuine withdrawal of a foreign investor and the reasons for the withdrawal; and
- (d) documentary proof that a genuine attempt has been made to secure replacement foreign investors.

Private investment being dependent on the engagement of a foreign Performer

14. The foreign Performer is commercially necessary to secure Australian and/or Foreign Investment in the production or overseas pre-sales and distribution deals.

15. Evidence:

- (a) details of the production budget;
- (b) one or more of the following documents as necessary:
 - (i) letter of confirmation from the production's principal private investor that finance in the production is dependent on the foreign Performer's participation;
 - (ii) letter of confirmation from the production's distributor that distribution is dependent on the foreign Performer's participation;
 - (iii) contracts indicating that overseas pre-sales are dependent on the foreign Performer's participation;

16. where the foreign Performer is internationally known, documentary proof of their box office appeal through international box office figures for Film or Television Productions in which they have undertaken Leading or major Supporting Actor Roles; and/or
17. where the foreign Performer is an emerging On-screen Performer, or cast to appeal to a particular overseas audience, documentation in support of their potential box office appeal such as resume/filmography details including previous work, reviews, awards/accolades, and/or other evidence of audience appeal.

Overall benefit to the Australian film and television industry

18. The foreign Performer is necessary to ensure that the production proceeds in Australia, and proceeds on the scale originally envisaged rather than being significantly diminished, and the size of the production's budget is such that associated local employment opportunities constitute an overall net economic benefit for the Australian film and television industry. Net economic benefit could include additional employment opportunities for Australian Performers and crews, longer employment contracts as a consequence of a larger production budget and longer production schedules, and significant commercial opportunities for other film production service providers in Australia.
19. Please note that where a Sponsor claims there is a financial imperative to engage a foreign Performer which is not demonstrated by a higher level of Australian and/or Foreign Investment in the production budget a detailed explanation of that financial imperative will be required.
20. Evidence to demonstrate the significantly diminished scale of the production if the foreign Performer for whom certification is being sought is not attached to the production, including:

If production were to proceed with foreign Performer

- (a) details of the estimated production budget including estimated expenditure in Australia;
- (b) one or more of the following documents as necessary:
 - (i) letter of confirmation from the production's principal private investor that investment in the production is dependent on the foreign Performer's participation;
 - (ii) letter of confirmation from the production's distributor that distribution is dependent on the foreign Performer's participation;
 - (iii) contracts indicating that overseas pre-sales are dependent on the foreign Performer's participation;
- (c) details of the number and description of the specific roles to be filled by Australian Performers and the positions to be filled by Australian crew, all including employment contract details; and

If production were to proceed without foreign Performer

- (d) details of the estimated production budget including estimated expenditure in Australia;
- (e) details of the number and description of the specific roles to be filled by Australian Performers and the positions to be filled by Australian crew, all including employment contract details.

DRAFT

SECTION E - APPLICATION PROCESS

1. Applications for Foreign Performer Certificates should be made by Sponsors.
2. Applying for certification of the foreign performer through to the provision of the entertainment visa is a four part process as follows:
 - Initial contact with DEWHA and MEAA, and in cases which involve a large number of cast and crew DIAC, to indicate the Sponsor is commencing application for a Foreign Performer Certificate;
 - Consultation with MEAA to obtain a letter of opinion;
 - DEWHA assessment and decision on application for a Foreign Performer Certificate; and
 - DIAC processing of application for the entertainment visa.
3. To allow adequate time for consideration of applications, Sponsors should commence the application process at least 10-12 weeks prior to the proposed date of entry into Australia of the foreign performer. Processing times may be accelerated to accommodate one-off applications where the Sponsor has demonstrated a genuine need for urgency applies.

Initial contact with relevant agencies

4. Sponsors must initially advise DEWHA and MEAA of their intention to apply for a Foreign Performer Certificate. This will provide an opportunity for information exchange and to clarify any initial questions the Sponsor may have regarding the application process including relevant application forms and MEAA consultation requirements.
5. Sponsors should provide initial e-mail advice to:
 - (a) DEWHA (E-mail: foreignactors@environment.gov.au) and
 - (b) MEAA (E-mail: imports@alliance.org.au)which sets out:
 - (a) Name and contact details of the Sponsor;
 - (b) Name of the production;
 - (c) Number and nationalities of the foreign performers for whom entry is being sought; and
 - (d) Estimated arrival and departure dates.
6. Sponsors seeking to import 10 or more foreign personnel (including performers and crew) in a single application should also provide the above advice to DIAC by e-mail (E-mail: entertainment.visas@immi.gov.au).
7. For full contact details for agencies see Section G.

Consultation with MEAA to obtain letter of opinion

8. Sponsors should consult with MEAA in advance of submitting their application for a Foreign Performer Certificate to DEWHA. MEAA may provide a letter of opinion to the Sponsor and DEWHA based on its assessment of whether the proposed foreign performer importation complies with the DEWHA Guidelines.
9. MEAA is required to provide a letter of opinion to the Sponsor and DEWHA in relation to their application within 14 calendar days. The 14 day period commences from the date upon which all relevant documentation is submitted to MEAA for consideration (see also paragraph 20 below).
10. MEAA requires the Sponsor to provide a range of information in order to make this assessment including the following documentation (unless otherwise agreed with MEAA):
 - (a) script or synopsis;
 - (b) letter outlining the reasons for the proposed foreign performer import, including details of the production budget and level of Foreign Investment;
 - (c) evidence of compliance with the DEWHA Casting Guidelines when the basis of the application is an inability to cast the role with an Australian Performer;
 - (d) details of the performer's itinerary;
 - (e) foreign performer's resume; and
 - (f) copy of the deal memo/contract with the foreign performer.

For further information and a comprehensive list of MEAA's requirements see:
<http://www.alliance.org.au/imports>

11. Where a Sponsor approaches MEAA well in advance of submitting its application to DEWHA for a Foreign Performer Certificate, MEAA may provide a letter of opinion indicating 'in-principle' support for the proposed import. Where an in-principle letter has been provided, the Sponsor must nevertheless consult formally and receive a final letter of opinion.

DEWHA assessment and decision on application for Foreign Performer Certificate

Submitting an application

12. The DEWHA Guidelines and Foreign Performer Certificate application form are available for download from <http://www.arts.gov.au/foreignactors>.
13. Applications should contain evidence of compliance with the requirements set out in Sections C and D of the Guidelines as necessary. DEWHA may also seek further information and/or statutory declarations in relation to supporting documentation provided by the Sponsor where appropriate.
14. In determining whether to issue a Foreign Performer Certificate, the Arts Minister or person authorised by the Arts Minister, will take comments provided by MEAA into consideration. A copy of the letter of opinion from MEAA should be provided by the Sponsor as part of the application submitted to DEWHA.

Deleted: considers the circumstances of each application and

Deleted: a no objection letter, or

Deleted: written response

Deleted: (letter of opinion)

Deleted: n

Deleted: no objection letter' in relation

Deleted: to

Deleted: no objection

Comment [DEH2]: NB: we will update the webpage & get e-mail addresses when we get agreement to text from our working group

15. Applications should be addressed and faxed or emailed as follows:

Assistant Secretary
Film and Creative Industries Branch
Department of the Environment, Water, Heritage and the Arts
Fax: +61 2 6275 9320
Email: foreignactors@environment.gov.au

16. Receipt of applications will be acknowledged and all enquiries regarding the application process should be directed to the Desk Officer at the above generic email address or by phone on Tel: +61 2 6275 9633.
17. Please note that a single application form may cover a number of performers. Alternatively, applications may be made for performers in a sequence as details become available.

Application assessment

18. DEWHA considers the circumstances of each application, taking into account the views of the Sponsor and MEAA's letter of opinion, and makes a decision based on its assessment of whether the proposed foreign performer importation complies with the Guidelines.
19. DEWHA commences its assessment of an application for a Foreign Performer Certificate once the completed application form and supporting documentation (including a letter of opinion from MEAA) has been received. DEWHA requires five working days to process an application, and may seek further information at any point in the application assessment process in order to establish whether certification should occur.
20. Where MEAA has been consulted but has not provided a written response to the Sponsor within the required 14 day period, DEWHA will seek to elicit the requested letter of opinion from MEAA. DEWHA will proceed with the assessment of the application based on the information provided by the Sponsor if MEAA is unable to meet this request within a reasonable timeframe.
21. Should MEAA object to the application, DEWHA will invite the Sponsor to make a written submission. This submission should address MEAA's objections and also provide any additional relevant information in support of the application. The Sponsor's submission should be provided to DEWHA and copied to MEAA within three working days of DEWHA's request. This may be done by email or fax.
22. Upon receipt of the Sponsor's submission, MEAA will be invited to provide any additional comments it may wish to make in response in writing to DEWHA. These comments should be provided to DEWHA and copied to the Sponsor within three working days of DEWHA's request. This may be done by email or fax.
23. The Sponsor will subsequently be invited to provide any final written comments in support of the application to DEWHA, again within three working days of DEWHA's request.
24. Every effort will be made to come to a determination as expeditiously as possible, and DEWHA takes the timeframe of the production and proposed arrival date of the performer into consideration. Hence in some circumstances input from the Sponsor and MEAA may be required within a shorter timeframe than that

indicated above.

Decision on certification

25. Upon completion of the assessment process, DEWHA makes its recommendations regarding the issuing of a Foreign Performer Certificate to the Arts Minister, or person authorised by the Arts Minister, for consideration and final decision.
26. DEWHA will notify the Sponsor, MEAA and DIAC regarding the certification decision, and where a certificate has been issued, provide signed copies to all three parties by email (or by fax upon request). The Sponsor will also be sent the original hard copy of the certificate by regular post.
27. Please note that a Foreign Performer Certificate is valid for the entire length of the production for which it is issued. A new certificate is not required in the case of subsequent re-entry of the same performer in the same production.

DIAC processing of application for entertainment visa

28. Applications for entertainment visas for foreign performers entering Australia to take part in productions covered by these Guidelines are only considered by DIAC if supported by a Foreign Performer Certificate.
29. Sponsors should lodge their documentation with DIAC at least 8-12 weeks prior to the nominated person's arrival date in Australia.
30. The Foreign Performer Certificate should be lodged by the Sponsor with DIAC to initiate processing of the visa application, together with the following documentation:
 - (a) the MEAA letter of opinion;
 - (b) a completed sponsorship application form (if the proposed Sponsor has not already been approved as an entertainment Sponsor. Sponsorship is valid for three years);
 - (c) a completed nomination application form;
 - (d) a completed entertainment visa application form; and
 - (e) the separate fees/charges (if applicable) for the sponsorship, nomination and visa applications, without which an entertainment visa application will not be valid.
31. For further information and a comprehensive list of DIAC's requirements, including where applications must be lodged, see:
<http://www.immi.gov.au/skilled/specialist-entry/420> [***TBC***]
32. Sponsors should also make themselves aware of the obligations under the Entertainment visa program. More information can be found at:
<http://www.immi.gov.au/skilled/specialist-entry/420/obligations-sponsor.htm>

SECTION F - CASTING GUIDELINES

1. Where a Sponsor seeks to import a foreign Performer on the basis that a suitable Australian Performer cannot be found, the Sponsor must demonstrate that a genuine attempt has been made to locate a suitable Australian Performer.
2. Where the Arts Minister or person authorised by the Arts Minister is not satisfied that a genuine attempt has been made, the Sponsor will need to provide documentary evidence to demonstrate to DEWHA that some or all of the following have been undertaken:
 - (a) appointment of a recognised casting director;
 - (b) employment of recognised casting agents;
 - (c) appropriate advertising of the role;
 - (d) distribution of the character breakdown of the role to Performers' agents Australia-wide;
 - (e) professional auditions conducted in a conducive atmosphere where the Performer is given every opportunity to demonstrate their ability to play the nominated role including:
 - (i) providing the Performer with a detailed character breakdown of the role and excerpts from the script in sufficient time to prepare for the role;
 - (ii) informing the Performer in advance if the role requires a particular accent;
 - (iii) giving the Performer the opportunity to discuss the role with the director; and
 - (iv) providing make-up and costumes where recommended by the casting director.
3. DEHWA may also require evidence to establish that where recommended by the casting director, all Performers were auditioned and, where appropriate, short-listed Performers were screen-tested.
4. Additional information regarding the Australian Performers who were considered, interviewed or auditioned for the role may be requested by DEWHA as follows:
 - (a) details of the Performers offered the role and an explanation of why they were unable to accept; and
 - (b) details of the Performers considered unsuitable for the role and a statement of the reasons for the decision.
5. Please note DEWHA may seek further information and/or statutory declarations in relation to supporting documentation provided by the Sponsor where appropriate.

SECTION G - CONTACTS FOR FURTHER INFORMATION

Department of the Environment, Water, Heritage and the Arts (DEWHA)

Desk Officer, Foreign Performers Certification Scheme

Tel: +61 2 6275 9633

Fax: +61 2 6275 9320

Email: foreignactors@environment.gov.au

<http://www.arts.gov.au/foreignactors>

Department of Immigration and Citizenship (DIAC)

Entertainment Processing Centre

Tel: +61 2 8861 4356 or +61 2 8861 4358

Fax: +61 2 8861 4301

Email: entertainment.visas@immi.gov.au

<http://www.immi.gov.au/skilled/specialist-entry/420> [***TBC***]

Media, Entertainment and Arts Alliance (MEAA)

Federal Policy Officer

Tel: +61 2 9333 0958

Fax: +61 2 9333 09333

Email: imports@alliance.org.au

<http://www.alliance.org.au/imports>

Sircar, Sanjay

From: Miguel.Robichaud@international.gc.ca
Sent: Wednesday, 24 June 2009 9:38 AM
To: Sircar, Sanjay
Subject: RE: Query: Skilled Worker Immigration [SEC=UNCLASSIFIED]

Dear Sir,

All temporary foreign workers require a Labour Market Opinion (LMO) issued by HRSDC unless exempted. Foreign actors are not/not exempted unless they come to promote a movie, be interviewed, etc. Any other activities you would expect an actor to perform means that there is a requirement for the LMO and the work permit. Now to answer more specifically:

- hosts, presenters and regular on screen performers (as opposed to guests) in television documentaries, reality television programs, panel & discussion programs, quiz programs or variety programs?

LMO and work permit required.

- hosts, presenters and regular on screen performers in sports programs and sports broadcasts?

LMO and work permit required.

- hosts and regular on screen presenters of news and current affairs programs?

LMO and work permit required. (journalists from other countries coming to Canada to cover news/sports/weather, etc. are exempt from an LMO and work permit)

- hosts or presenters of broadcasts of public events (ie major community, cultural, ceremonial or sporting events which members of the public can attend)

LMO and work permit required. If the host/presenter is foreign and is coming only for a single event, with the result of the coverage being broadcast outside of Canada, then exemption from LMO and work permit.

- performers in television commercials?

LMO and work permit required.

Let me know if you have further questions.

Sincerely,

Miguel Robichaud | Consul (Immigration)
Consulat général du Canada à Sydney, Australie
Consulate General of Canada - Sydney, Australia
Level 5 - 111 Harrington Street
Sydney NSW 2000
miguel.robichaud@international.gc.ca
T: +61 2 9364 3025 | Mitnet 351-3025
F: +61 2 9364 3099
www.australie.gc.ca | www.australia.gc.ca

29/06/2009

De : Sircar, Sanjay [mailto:Sanjay.Sircar@environment.gov.au]
Envoyé : 22 juin 2009 10:18
À : SYDNEY (IMMIGRATION)
Objet : Query: Skilled Worker Immigration [SEC=UNCLASSIFIED]

Dear Sydney Canadian Immigration,

The Australian Government is reviewing its guidelines on the entry of foreign actors into Australia to take part in film and television productions.

We are looking at the systems that operate in other countries to determine if they may be useful models for any revision of the Australian guidelines. In this regard we have reviewed the "Temporary Foreign Worker Program: Exemptions and Specific Arrangements for Foreign Workers in Film and Entertainment" (http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/entertexem.shtml) and "Hiring Foreign Workers in Entertainment and Film-Related Occupations" (http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/entertainment.shtml).

It is clear that these arrangements apply to performers in feature films and television drama productions. Can you advise whether they also apply to:

- hosts, presenters and regular on screen performers (as opposed to guests) in television documentaries, reality television programs, panel & discussion programs, quiz programs or variety programs?
- hosts, presenters and regular on screen performers in sports programs and sports broadcasts?
- hosts and regular on screen presenters of news and current affairs programs?
- hosts or presenters of broadcasts of public events (ie major community, cultural, ceremonial or sporting events which members of the public can attend)
- performers in television commercials?

Thank you for your help.

Yours sincerely

Sanjay Sircar
(Sanjay.Sircar@environment.gov.au)
Tel: 02 62759633)

If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.

Please consider the environment before printing this email.

Sircar, Sanjay

From: Sircar, Sanjay
Sent: Monday, 22 June 2009 10:18 AM
To: Richards, Stephen; Glenn, Raelene
Subject: FW: Query: Skilled Worker Immigration [SEC=UNCLASSIFIED]
Categories: UNCLASSIFIED

From: Sircar, Sanjay
Sent: Monday, 22 June 2009 10:18 AM
To: 'sydney.immigration@international.gc.ca'
Subject: Query: Skilled Worker Immigration [SEC=UNCLASSIFIED]

Dear Sydney Canadian Immigration,

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We are looking at the systems that operate in other countries to determine if they may be useful models for any revision of the Australian guidelines. In this regard we have reviewed the "Temporary Foreign Worker Program: Exemptions and Specific Arrangements for Foreign Workers in Film and Entertainment" (http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/entertexem.shtml) and "Hiring Foreign Workers in Entertainment and Film-Related Occupations" (http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/entertainment.shtml).

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- hosts, presenters and regular on screen performers in sports programs and sports broadcasts?
- hosts and regular on screen presenters of news and current affairs programs?
- hosts or presenters of broadcasts of public events (ie major community, cultural, ceremonial or sporting events which members of the public can attend)
- performers in television commercials?

Thank you for your help.

Yours sincerely

Sanjay Sircar
(Sanjay.Sircar@environment.gov.au)
Tel: 02 62759633)

22/06/2009

[Home](#) > [Skills](#) > [Foreign Workers](#)

Temporary Foreign Worker Program

Exemptions and Specific Arrangements for Foreign Workers in Film and Entertainment

Under the *Immigration and Refugee Protection Act (IRPA)*, there are specific cases where employers in the film and entertainment industries do not need an HRSDC job offer confirmation, or the foreign workers do not need a Citizenship and Immigration Canada (CIC) work permit.

Positions Exempt from Work Permits and HRSDC Labour Market Opinion

Foreign Workers who do **not** need a CIC work permit or an HRSDC labour market opinion include:

- Producers of film, television, video and documentary projects funded entirely from outside of Canada;
- Adjudicators at music and dance festivals;

Performing artists, their support crew, and other workers essential to the artistic performance.

Examples of **performing artists** include:

- Musicians in a band performing several tour dates in Canada;
- Guest conductors and artists performing with Canadian productions or groups for a few performances;
- Actors in foreign touring theatrical productions;
- Professional wrestlers and circus performers in foreign touring productions;
- Musicians and buskers coming to Canada to perform in festivals;
- Support crew and other workers who are integral to a live production;
- Disc jockeys coming to Canada to work at private events, festivals, concerts and fairs.

Special Conditions

The **performing artists** listed above must not:

- Perform in bars or restaurants;
- Work on the production of a film, television, radio, or Internet broadcast;
- Enter into an employment relationship with the Canadian organization contracting for their services.

A work permit and a labour market opinion are required in these instances, and you need to follow the steps outlined in [hiring Foreign Workers in film and entertainment in Canada](#).

Entry to Canada

Foreign workers exempted from a CIC work permit and HRSDC labour market opinion can apply for a visitor visa directly at a [CIC visa office](#) or at a Canadian Port of Entry in the case of citizens of contiguous states including the United States, St. Pierre et Miquelon, and Greenland

Positions that Require A CIC Work Permit but do not Require an Individual HRSDC Labour Market Opinion

Foreign Workers who need CIC work permits, but who do not require an individual HRSDC labour market opinion include:

- Actors and workers on a film co-production between Canada and a foreign country.

Entry to Canada

These Foreign Workers can apply for a work permit directly at a CIC visa office or at a Canadian Port of Entry in the case of citizens of contiguous states including the United States, St. Pierre et Miquelon, and Greenland.

Date Modified: 2009-02-25

Citizenship and
Immigration CanadaCitoyenneté et
Immigration Canada

Canada

[Home](#) > [Working temporarily in Canada](#) > [Information for Canadian employers](#) > [Who can apply](#)

Information for Canadian employers: Labour Market Opinion Basics

As an employer, you must apply for a Labour Market Opinion (LMO) before you can hire a foreign worker or get pre-approval to hire a large number of workers.

A positive Labour Market Opinion will show that there is a need for the foreign worker to fill the job you offer and that there is no Canadian worker available to do the job.

You can find more information about LMOs and application forms at Service Canada's Foreign Worker Program website, under Related Links at the bottom of this page.

Learn about:

- [The basics of a Labour Market Opinion \(LMO\)](#)
- [Pre-approval to hire foreign workers](#)

The basics of a Labour Market Opinion (LMO)

When applying for an LMO, you must show:

- The efforts you made to recruit and/or train willing and available Canadian citizens/permanent residents;
- The wages you offer are consistent with the prevailing wage rate paid to Canadians in the same occupation in the region;
- The working conditions for the occupation meet the current provincial labour market standards; and
- Any potential benefits that hiring a foreign worker might bring to the Canadian labour market, such as the creation of new jobs or the transfer of skills and knowledge.

If you get a positive Labour Market Opinion, you will need to send a copy to the foreign worker you wish to hire. The foreign worker will submit the LMO with his or her application for a work permit.

Pre-approval to hire temporary foreign workers

If you are an employer who is hiring foreign workers in an occupation that requires prolonged and/or extensive recruitment and you would like approval in principle before you recruit, you can fill out the application form to hire foreign workers. You might use this process because of the large number of workers being recruited and/or the complexity of the required recruitment.

Leave blank the part of the application form regarding information about the foreign worker. Clearly indicate on the application that this is a request for pre-approval.

Submit the completed application to the nearest Service Canada Centre that processes foreign worker applications. If you have any questions on pre-approvals or on completing the application form, contact the nearest Service Canada Centre that processes foreign workers. You can find a list of these centres under Related Links at the bottom of this page.

When a decision is made about your pre-approval request, you will receive a notice from Service Canada, which explains the decision. You can then start to recruit.

After you have recruited foreign workers and the necessary information about them has been provided to Service Canada, positive LMOs will be issued to each successfully recruited worker. In these cases, you as an employer must meet the conditions of the foreign worker application form and employment contract (if applicable).

Do not recruit if Service Canada refuses your pre-approval request. If you disagree with the Service Canada decision, you may submit any new information that you feel may affect the decision to the Service Canada Centre indicated in the notice.

Once a positive LMO has been issued, you should provide a copy of the confirmation letter to each foreign worker and advise each worker to apply for a work permit and, if necessary, a temporary resident visa at a visa office abroad.

Related Links

- [Service Canada's Foreign Worker Program website.](#)
- [Service Canada Centres that process foreign worker applications.](#)
- [Application for a Labour Market Opinion \(EMP5239B\)](#)

Date Modified: 2007-11-09

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UK material

Sircar, Sanjay

From: Glenn, Raelene
Sent: Friday, 19 June 2009 7:06 PM
To: Sircar, Sanjay
Subject: RE: Application of Resident Labour Market Test Code of Practice for performers in film and television productions [SEC=UNCLASSIFIED]

Categories: UNCLASSIFIED

Sanjay – Grateful if we could discuss the additional UK info below once you've had a chance to read through. Re Stephen's PS I think this refers to some earlier internet searching he asked you to do – could you follow up as suggested if you've not done so already please.

Thanks, Raelene.

From: Richards, Stephen
Sent: Friday, 19 June 2009 8:48 AM
To: Glenn, Raelene; Sircar, Sanjay
Subject: FW: Application of Resident Labour Market Test Code of Practice for performers in film and television productions [SEC=UNCLASSIFIED]

Raelene
Sanjay

Some general information from the UK in response to my e-mail at the bottom of this page.

While the response doesn't specifically answer my questions, I get the impression all foreign TV performers are covered unless they are picked up by the special exemptions in the UK policy which Sanjay is incorporating into our "flexibility" provisions.

Any thoughts? Worth going back to them with more questions?

Cheers

Stephen

PS With respect to your e-mail about approaching the Canadian Television Fund, if you can't source information direct from relevant Canadian Govt websites then please put similar request to Canadians through relevant e-mail inquiry lines to the questions I put to the UK below. Is the Canadian Television Fund the best source? What about Citizenship and Immigration Canada (CIC), which is the government agency overseeing temporary and permanent entry of foreigners? ✓

From: Sponsorship PBS enquiries [mailto:SponsorshipPBSenquiries@UKBA.gsi.gov.uk]
Sent: Friday, 19 June 2009 2:54 AM
To: Richards, Stephen
Subject: RE: Application of Resident Labour Market Test Code of Practice for performers in film and television productions [SEC=UNCLASSIFIED]

Dear Stephen,

Thank you for your e-mail,

With regard to your enquiry; please see below.

This code of practice applies to all applicants under the Tier 5 procedure without exception.

22/06/2009

Tier 5 (Temporary Worker) - Creative and Sporting

This category is for applicants in the creative and sporting sector who are entering the United Kingdom for short term contracts/engagements in the United Kingdom.

Applicants entering the United Kingdom under the creative and sporting sub-category must obtain entry clearance prior to travelling to the United Kingdom. **The exception to this is non-visa nationals seeking entry to the United Kingdom for a period of less than three months.**

These applicants will require a certificate of sponsorship, but will not be required to obtain entry clearance. Separate arrangements, consistent with the principles of sponsorship, will enable appropriate checks to be made at the port of entry.

An applicant will need to tell the Immigration Officer his/her certificate of sponsorship number when they arrive in the United Kingdom. The Immigration Officer will also ask the applicant to provide his/her evidence of meeting the maintenance requirements. Please refer to the maintenance section for the evidence we expect applicants to provide. It may take the Immigration Officer some time to process the application. If an applicant does not bring all the necessary evidence it may result in his/her application being refused and he/she will not be allowed to enter the United Kingdom.

The applicant may wish to bring contact details for his/her sponsor with him/her in case we need to speak to the sponsor, and should ask the sponsor to confirm the details that it has entered on the certificate of sponsorship.

All applicants who wish to come to the United Kingdom for three months or longer will need to get entry clearance.

A creative worker or sportsperson may apply for entry clearance from a country that is not his/her normal place of residence if he/she is in that country for a similar role to the one he/she wants to do in the United Kingdom.

When a sponsor issues a certificate of sponsorship in either the creative or sporting sector, it is guaranteeing that the migrant:

- i. is seeking entry to the United Kingdom to work or perform in the relevant sector;
- ii. is not intending to establish a business in the United Kingdom;
- iii. poses no threat to the resident labour market; and
- iv. will comply with the conditions of his/her permission to stay and leave the United Kingdom when it expires.

Sportspeople

For sportspeople, the applicant must be internationally established at the highest level in their sport and/or whose employment will make a significant contribution to the development and operation of that particular sport in this country; coaches must be suitably qualified to fulfil the role in question.

In order for a certificate of sponsorship to be issued for a sportsperson under Tier 5 (Temporary Worker - Creative and Sporting), the sponsor will need to have an endorsement for the applicant from the appropriate governing body for his/her sport. The endorsement will confirm that:

- the player or coach is internationally established at the highest level; and

- will make a significant contribution to the development of his/her sport at the highest level in the United Kingdom; and
- the post could not be filled by a suitable settled worker.

The endorsement will be obtained from the governing body by the sponsor.

Find a list of all approved governing bodies on our website at:
<http://www.ukba.homeoffice.gov.uk/workingintheuk/tier5/sportspeople/>.

Length of Stay

If a migrant is given permission to stay as a sports person, they can come to live and work in the United Kingdom for a maximum time of 12 months, or the time given in their certificate of sponsorship plus 28 days, whichever time is shorter.

If the migrant is a sports person, they can only apply to extend their stay for a maximum of 12 months.

Switching

The following visa categories can switch into Tier 5 (creative and sporting) inside the UK:

- Tier 5 (creative and sporting);
- Sports Visitor

Creative Workers

For a creative worker and his/her entourage operating in dance, theatre, or film and television, the sponsor must commit to following the specified code of practice, which includes taking into account the needs of the resident labour market in that area.

In issuing a certificate of sponsorship, the sponsor will have guaranteed that the applicant:

- is seeking entry to the United Kingdom to work or perform in the relevant sector;
- is not intending to base themselves in business in the United Kingdom;
- poses no threat to the resident labour force; and
- will comply with the conditions of their permission to stay and leave the United Kingdom when it expires.

This category is not for people who currently enter the United Kingdom under the permit-free concessions for entertainers, including permit-free festivals, and sportspeople. These concessions will be brought within the Immigration Rules under the revised visitor categories.

These certificates of sponsorship can include any rehearsal periods required. A sponsor must ensure that they issue certificates of sponsorship only for the period required. If it is found on a compliance visit that a certificate has been issued wrongly, we will take appropriate action against the sponsor.

Group certificates of sponsorship

The sponsor may also issue a group certificate of sponsorship where it is appropriate to do so.

An applicant will be able to bring his/her entourage using a group certificate of sponsorship. An entourage can include people whose work is directly related to the employment of an entertainer, cultural artist, sports person or a dramatic production. The person should have proven technical or other specialist skills.

Multiple engagements or performances

Due to the nature of the creative sector, at times the applicant may need to perform a number of engagements at a number of venues. If the applicant has a single sponsor, for example an agent, and there is no more than a maximum of 14 calendar days between each engagement, that sponsor can issue a single certificate of sponsorship to cover the whole period.

If the applicant is sponsored by individual venues, producers or promoters, then it is still possible for each sponsor to issue a certificate of sponsorship to cover its own show. The periods of work stated on the certificates of sponsorship must not overlap (the applicant may need to co-ordinate the periods of work with his/her sponsors). If there is no more than a maximum of 14 calendar days between each engagement, then entry clearance will be granted to cover the whole period.

If there is a gap of more than 14 calendar days between engagements, then the applicant will have to leave the United Kingdom and apply for entry clearance again as a new application.

A sponsor may choose to issue a multiple entry certificate of sponsorship if there are engagements abroad.

Length of Stay

If the migrant is given permission to stay as a creative worker, they can come to live and work in the United Kingdom for an initial time of up to 12 months, or the time given in their certificate of sponsorship plus 28 days, whichever time is shorter.

The migrant can apply to extend their permission to stay in the United Kingdom as a creative worker for up to 12 months at a time to a total of 24 months. If their extension will take their time in the United Kingdom beyond 12 months, the job must continue with their last sponsor.

For example, if the migrant came for nine months initially, they can get an extension to stay for up to a maximum of 12 months and this does not have to be with the same sponsor. If a migrant came for nine months initially, they can get an extension to stay for a further 12 months, but this must be with the same sponsor. After that time, they can get a further extension to stay to take the length of their stay up to 24 months in total.

Switching

The following visa categories can switch into Tier 5 (creative and sporting) inside the UK:

- Tier 5 (creative and sporting);
- Entertainer Visitor

Maintenance requirement

One of the requirements of the Tier 5 (Temporary Worker) category is that an applicant coming to the United Kingdom must be able to support himself/herself for the entire duration of his/her stay in the United Kingdom without use of public funds (benefits provided by the state). An applicant who is unable to support himself/herself could face financial hardship because he/she will not have access to most state benefits.

In order to qualify for Entry Clearance. Leave to Enter or Leave to Remain under Tier 5 (Temporary Worker) an applicant must meet the maintenance requirement. The applicant can do this by:

- demonstrating that he/she has at least £800 of personal savings which must have been held for at least 3 months prior to the date of application; or
- his/her sponsor indicating on the certificate of sponsorship that it has certified his/her maintenance. Please note, only A-rated sponsors will be able to certify an applicant's maintenance. The sponsor will not be able to certify maintenance for any dependants.

Applicants may want to check the potential costs of living in the United Kingdom. If an applicant does not expect to get any income from his/her work in the United Kingdom after the first month, he/she may want to check that he/she has enough money to support himself/herself and any dependants.

Dependents

Any dependants wishing to join the main applicant must also provide evidence that they have access to sufficient funds. There is separate dependants guidance which can be found on our website at: <http://www.ukba.homeoffice.gov.uk/workingintheuk/>.

Other visitor categories

Some migrants circumstances may not meet the Tier 5 (creative and sporting) criteria, but may meet the sports visitor or entertainer visitor criteria.

I migrant will be a sports visitor if during the course of their short visit they intend to:

- take part a particular sporting event, tournament or series of events;
- take part in a specific one-off charity sporting event and that you will not be paid other than cash prizes or for board and lodging and other reasonable expenses;
- join as an amateur a wholly or mainly amateur team and that you will not be paid other than for board and lodging and other reasonable expenses;
- be a member of the support staff of a visiting sportsperson or an official (including those officials coming on a voluntary basis) attending the same event as the visiting sportsperson;
- undertake personal appearances or promotional activities;
- undertake a trial provided it is not in front of an audience, or training provided that they are not basing themselves here and they participate in friendly or exhibition matches only.

More details are available on our website:

<http://www.ukba.homeoffice.gov.uk/visitingtheuk/businessandspecialvisitors/sportsvisitor/>

A migrant will be an entertainer visitor if during the course of their short visit they intend to:

- take part as a professional in one or more music competitions;
- fulfil one or more specific engagements as an individual amateur entertainer or as part of

- an amateur group;
- take part as either an amateur or a professional in a cultural event that is included in the list of specific events to which this applies;
- be a member of the support staff of a visiting entertainer or an official attending the same event as the visiting entertainer;
- take part in broadcasts or public appearances, provided you are not being paid;
- do an audition, provided this is not performed in front of an audience;
- only want to visit the United Kingdom for up to six months;
- plan to leave the United Kingdom at the end of your visit;
- have enough money to support and accommodate yourself without working or help from public funds, or will be supported and accommodated by relatives or friends;
- do not intend to charge members of the public for services provided or goods received;
- do not intend to study;
- can meet the cost of the return or onward journey; and
- intend to take part in a particular sporting event, tournament or series of events, including charity events, and will not be paid other than cash prizes or for board and lodging expenses.

<http://www.ukba.homeoffice.gov.uk/visitingtheuk/businessandspecialvisitors/entertainervisitors/>

For more information regarding applying for entertainer visitor or sportsperson visitor the migrants should see the UK Border Agency visa services website, www.ukvisas.gov.uk or contact a British Embassy or High Commission in the country which they are currently residing.

I hope this is helpful,

Yours sincerely,

s47F

Customer Service Advisor
Customer Contact Centre
North East, Yorkshire and the Humber region
UK Border Agency
PO Box 3468
Sheffield
S3 8WA

Telephone:

For sponsors requiring information on sponsorship under the new points-based system;

0300 123 4699

Enquires about residual work permits, the Highly Skilled Migrant Programme applications, as well as general enquiries about the Worker Registration Scheme A2.

Telephone: 0114 207 4074

Fax: 0114 207 5861

From: Richards, Stephen [mailto:Stephen.Richards@environment.gov.au]

Sent: 15 June 2009 02:34

To: Sponsorship PBS enquiries

Subject: Application of Resident Labour Market Test Code of Practice for performers in film and television

22/06/2009

productions [SEC=UNCLASSIFIED]

Dear UKBA

The Australian Government is reviewing its guidelines on the entry of foreign actors into Australia to take part in film and television productions.

We are looking at the systems that operate in other countries to determine if they may be useful models for any revision of the Australian guidelines. In this regard we have reviewed the UKBA's *Resident Labour Market Test - Code of practice for performers in film and television under the skilled migrant tier (Tier 2) and the temporary worker tier (Tier 5)*. It is clear this code of practice applies to performers in feature films and television drama productions. Can you advise whether the code of practice also applies to:

- hosts, presenters and regular on screen performers (as opposed to guests) in television documentaries, reality television programs, panel & discussion programs, quiz programs or variety programs?
- hosts, presenters and regular on screen performers in sports programs and sports broadcasts?
- hosts and regular on screen presenters of news and current affairs programs?
- hosts or presenters of broadcasts of public events (ie major community, cultural, ceremonial or sporting events which members of the public can attend)
- performers in television commercials?

Yours sincerely

Stephen Richards

Manager - Film Incentives & International

tel: 61-2-62759645

fax: 61-2-62759659

s47F

e-mail: stephen.richards@environment.gov.au

web: www.arts.gov.au

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22/06/2009

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