

THE NEW E-3 TREATY PROFESSIONAL VISA FOR AUSTRALIAN NATIONALS - BACKGROUND

The United States Congress has created a new visa, the E-3 treaty professional visa for Australian nationals who enter the United States temporarily to work in a specialty occupation. The following provides a brief overview of our understanding of this new visa category, and its major provisions, conditions, and requirements. Further steps will need to be taken for the visa to become operational.

ELIGIBILITY – SPECIALTY OCCUPATION

- ▶ To be eligible for the E-3 visa, an Australian national must be entering the United States temporarily to work for a U.S. employer in a specialty occupation. The term “specialty occupation” is defined under U.S. law in the context of the H-1B visa program. A specialty occupation requires the theoretical and practical application of a body of highly specialized knowledge and, at a minimum, the attainment of a bachelor’s or higher degree (or its equivalent) in the specialty field. For instance, specialty occupation workers include architects, accountants, engineers, lawyers, physicians, and surgeons (to name a few).
- ▶ The E-3 visa allows Australian nationals to work for any U.S. employer in a specialty occupation, where this is accompanied by a job offer. For this reason, it is different from the current E-1 and E-2 visas, which require a direct and significant link between the occupation and international trade and investment between the United States and Australia.

KEY CHARACTERISTICS OF THE E-3 VISA

- ▶ The E-3 visa affords entry to the professional worker as well as the worker’s spouse and minor children. Significantly, unlike many U.S. non-immigrant visas, the E-3 visa allows spouses to apply for authorization to work in the United States for any U.S. employer.
- ▶ Australian nationals and their dependents traveling to the United States under E-3 visas will be admitted for up to two years. The E-3 visa may be renewed for two year periods indefinitely.
- ▶ The E-3 visa has no impact upon the ability of Australians to apply for other visa categories. In addition, current H-1B and E visa holders may apply for an E-3 visa, and E-3 visa holders remain eligible to apply for any other visa.

APPLICATION PROCEDURES AND REQUIREMENTS

- ▶ Application procedures for the E-3 visa will generally be governed by the rules applicable to E visa applications. We expect that Australian nationals may be able to make an E-3 visa application directly to a U.S. embassy or consulate abroad. US agencies will need to consider issuance of notices or other administrative regulations governing the new classification.
- ▶ The prospective U.S. employer is required to secure a certified Labor Condition Application (LCA) from the U.S. Department of Labor. The E-3 applicant will present this certification at the time of the application along with proof that the applicant has a job

offer in the United States, that the position qualifies as a specialty occupation, and the applicant has the necessary educational credentials and/or work experience to occupy the position. Visa application and issuance fees for E-3 visas are expected to be the same as fees charged for E-1 and E-2 visas (currently US\$205).

ANNUAL CAP

- ▶ The new legislation establishes an annual numerical limit of 10,500 E-3 visas for each fiscal year. The numerical limit applies only to the primary E-3 visa recipient; E-3 visas issued to spouses and minor children traveling with the principal E-3 applicant do not count against the cap.