



Business Travel to Australia with a Criminal Background

Insights

5.18.15

2015 marks the 75th anniversary of diplomatic relations between the United States and Australia. In 1940, the two countries established diplomatic relations following the United Kingdom's recognition of Australia's domestic and external autonomy within the British Empire. The United States and Australia continue to maintain a robust partnership.

Many US Businesses maintain a strong presence in Australia and sending key personnel into the country is a critical part of continued business operations. Every US visitor to Australia requires a visa to enter and everyone who wants to enter or stay in Australia must satisfy the character requirements established in Section 501 of the *Migration Act 1958*. This includes all non-citizens, sponsors of visa applicants and non-migrating family members seeking to enter or stay in Australia.

Entrance to Australia, is a privilege, and it is expected that non-citizens are, and have been law-abiding citizens. Australia visa applicants must disclose any criminal convictions inside or outside of Australia. Applicants that fail to disclose a criminal history can be refused entry or have a visa cancelled.

The Australian Minister for Immigration and Border Protection has the power to refuse or cancel a visa on the basis that a person does not pass the character test. Decisions to cancel or refuse visas on the basis of the character test are made after full consideration of all the circumstances of a case.

You will not pass the character test if you have what the Australian Government deems a substantial criminal record. For Australian Immigration purposes a substantial criminal record is based on the length of a sentence imposed by a court of law, rather than the time actually spent in prison. A person is deemed to have a substantial criminal record if they have been:

- sentenced to death or life imprisonment
- sentenced to a term of imprisonment of 12 months or more
- sentenced to two or more terms of imprisonment (even if served concurrently), where the total of those terms is 12 months or more
- found by a court to be not fit to plead in relation to an offence but found to have committed the offence and as a result have been detained in a facility or institution.

Individuals with a criminal record in their background, but without any recent criminal convictions can apply for a business visitor visa for entry into Australia. These individuals may have to provide police records regarding their offence as well as an FBI background check as evidence of their rehabilitation. Each case will be reviewed individually. In order to avoid any delayed processing when entering Australia, the individual should apply for the Business Visitor Visa (sub class 600). The Business Visitor Visa (Sub Class 600) is more extensive and more expensive than applying for the traditional Electronic Travel Authority Business Visitor Visa (sub class 601), which can typically be secured by your travel agency or airline. Any individual with a criminal past that obtains the Electronic Travel Authority Business Visitor Visa (sub class 601) could encounter challenges when trying to enter Australia and may be denied entry. In order to avoid any delayed processing, secondary inspection, or possible denial of entry, an individual with a substantial criminal record as established above should apply for the Visitor Visa (sub class 600).

Related People



Cynthia J. Yarbrough
Partner
404.240.5845
Email