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New bill will make paying for sponsorship-related 457 Visas illegal

A new bill has had a second reading in parliament. This bill, if it passes, will make it illegal to pay for, receive, offer, or ask for payment for sponsorship-related 457 visas.

The bill is called *The Migration Amendment (Charging for a Migration Outcome) Bill 2015*.

The new Bill makes it illegal to:

- ask for payment or other benefits
- receive payment or other benefits
- offer or provide payment or other benefits

in return for being sponsored or nominated for a 457 or other prescribed visa.

If a sponsor, or other person, asks for or receives a benefit from a sponsorship-related event, they can be punished by up to 2 years in prison. Alternatively, they can be fined up to \$64,000 for an individual person, or \$324,000 for a body corporate.

Civil punishment includes fines only

The penalties that apply to the sponsor, visa applicant or other third party who does any of the above, will be fines up to \$43,200 for an individual person or \$216,000 for a body corporate.

And in addition, visas can be cancelled.

A discretionary power to consider visa cancellation will be introduced. It will apply where there is any person who engages in this conduct.

<http://www.richardtimpson.com.au/2015/09/30/new-bill-will-make-paying-sponsorship-related-457-visas-illegal/>

‘Callous and indifferent’: Australian government slammed for scrapping three types of skilled visas, turning away 16,000 people

The federal government has turned away thousands of people aspiring to a life in Australia by abolishing a group of visas and telling would-be residents their applications never existed. About 16,000 people including families are affected by the decision. Many of them have waited eight years for a response and migration agents say some are now too old to apply for other visas.

In one of her last acts as assistant immigration minister last week, Senator Michaelia Cash ruled that an annual cap of 284 places for three types of skilled migration visas had been reached, and all outstanding applications "are taken not to have been made", or cancelled without a trace.

Senator Cash was promoted to Minister for Employment and Minister for Women by Prime Minister Malcolm Turnbull last week.

Perth migration agent Robert Chelliah said the decision was "callous and indifferent".

"With a single stroke of a pen the minister has destroyed ... the life opportunity of people who have been waiting patiently," he said.

"They [thought] they had a hope, they have been told to wait and wait, put on hold from doing anything else and they were deliberately made to feel that their application would be resolved."

He said some applicants were now too old to apply for other visas.

The change took effect on September 22 2015 and affected three skilled visa types in the independent, sponsored and regional sponsored categories (subclasses 175, 176 and 475). It also applies to visa cases not yet decided by the Administrative Appeals Tribunal.

The visa types were closed to new applicants in mid 2012 but outstanding applications were being processed. Applicants can apply for a refund on charges paid.

<http://www.smh.com.au/federal-politics/political-news/callous-and-indifferent-australian-government-slammed-for-scrapping-three-types-of-skilled-visas-turning-away-16000-people-20150928-gjwyc7.html>

Eddie Kang, Sydney businessman accused of visa scam, still operating despite charges against him

A Sydney businessman accused of ripping off foreign students is continuing to run his operation despite facing 22 charges of fraud and misconduct.

Lateline first came across Eddie Kang two years ago when foreign students claimed they had paid him tens of thousands of dollars for visas that never eventuated.

He was also accused of making a death threat against a client but he denies the claim.

Since then, Mr Kang has started calling himself Ted Kang, his business now operates under the name Skylane and he has sued the ABC for defamation.

Mr Kang was arrested on February 18 2015 on 22 charges including fraud and making misleading statements after an operation conducted by the NSW Department of Fair Trading.

Mr Kang is pleading not guilty to all of the charges. His case is unlikely to be heard until next year and in the meantime his company is still advertising, offering to help clients secure visas and jobs.

Now for the first time a former employee has made new claims about Mr Kang and how his business operates, giving an insider account of how he believes Mr Kang is misleading both his clients and the Department of Immigration.

The former employee, Daniel, who did not wish to give his last name, told Lateline that Mr Kang sets up fake email accounts to try and obtain visas for clients.

"The way he organises it is he takes money from the clients and poses as the client in setting up a Gmail account similar to their name," he said.

"[He] makes contact to the Department of Immigration on the web and registers with that client's name with some slight alteration to it.

"He's posing as a client and he doesn't inform the client of this and he doesn't give the client access or control of the Gmail account."

The Migration Act states: "A person who is not a registered migration agent must not ask for or receive any fee or other reward for giving immigration assistance."

The penalty is up to 10 years in prison.

Daniel said he knows how Mr Kang's system works because he had access to the Gmail accounts and saw dozens of emails sent to and from the Department of Immigration.

<http://www.abc.net.au/news/2015-09-30/eddie-kang-still-operating-business-despite-charges/6803356>

New Zealand PM John Key's 'blunt' message for Australia

Wellington: Prime Minister John Key says he's been "pretty blunt" with the Australian government over the way New Zealanders are being detained and deported.

Mr Key met Foreign Affairs Minister Julie Bishop in New York on Tuesday to raise the issue that is causing increasing concern across the Tasman.

Nearly 200 New Zealanders are being held in detention centres in Australia, facing deportation under new immigration laws that mean anyone who isn't a citizen and who has served a sentence of 12 months or more can be sent home.

It has been reported that nearly 100 have already been sent back to New Zealand.

"I had a chat with Julie about it and I was pretty blunt," Mr Key told Radio New Zealand.

"I said there's a special relationship between New Zealand and Australia and you challenge that, to a degree, when you see New Zealanders being treated in this way."

Mr Key said some of them had spent almost their entire lives in Australia, having gone there when they were very young.

"We also deport people, but not in the way the Australians are talking about," he said.

Mr Key said it would be one of the most important issues he raises with Prime Minister Malcolm Turnbull when they meet.

The meeting with Ms Bishop took place amid growing calls for the New Zealand government to take action, following the death two weeks ago of Kiwi born Junior Togatuki in a high-security detention centre while he was awaiting deportation.

The 23-year-old, who left New Zealand at the age of four, had served his sentence for robbery and assault, and authorities say he took his own life.

Ms Bishop has provided assurances to New Zealand that a full inquiry is under way into Togatuki's death.

<http://www.smh.com.au/world/new-zealand-pm-john-keys-blunt-message-for-australia-20150929-gjxo8n.html>

Australia's offshore processing policy to be examined by High Court in Canberra

The future of Australia's offshore detention regime will be under the spotlight in the High Court of Australia in Canberra.

A case has today been commenced in the High Court of Australia on behalf of a group of 10 asylum seekers and their families challenging the lawfulness of the Australian Government's offshore detention arrangements.

The Human Rights Law Centre's Director of Legal Advocacy, Daniel Webb, who is part of the legal team representing the families, said the group have been temporarily returned to Australia but are facing imminent removal back to Nauru.

MIA Newsletter – 7 October 2015

Visa scams

Scams target people of all backgrounds, ages and income levels. The Department of Immigration and Border Protection (DIBP) provides detailed information on how to protect yourself from migration fraud.

See: <http://www.border.gov.au/Trav/Visa/migration-fraud-and-scams>

Some of the recent scams and warnings are listed on this website under the 'Current scam warning' heading.

Warning Signs

- You get an offer for a 'guaranteed' Australian visa or an offer for a Family Resettlement in Australia.
- The offer comes via email, post, over the phone, on a website or even face-to-face.
- A visa is offered in return for payments, personal details and identity documents.
- The person making the offer claims to know someone in the Australian High Commission, be a 'registered agent' or 'Australian visa application service'.
- It claims to be a 'once in a lifetime opportunity', or your 'only' chance to travel or migrate to Australia.

- You are asked to pay the scammer upfront to 'register' your interest in getting a visa. The scammer asks you to pay them directly rather than paying the government department and claims that only they can pay the department's fees.
- The scammer claims to have a special relationship with DIBP.
- They tell you they need to keep your original documents.
- They may try to trick you into believing they are genuine by posing as staff from an Australian Government department, or by using websites which look like official Government sites.
- They commonly give you incorrect advice, ask you to lie on application forms, demand money and fail to deliver services.

What to Remember

- There is only one official Australian Government provider of visas - the Department of Immigration and Border Protection. DIBP's official website is www.border.gov.au.
- If you receive an email from the Australian High Commission or Embassy offshore the email address must end in "@dfat.gov.au".
- If you receive an email from a DIBP processing office in Australia the email address must end in "[@border.gov.au](mailto:)".
- It is easy for illegal operators to copy a real website or build one that looks professional. Even if one character is different, it can mean it's a different website or an email address.
- You can pay the fee directly to the department and do not require an agent to pay this fee on your behalf.
- No one can influence the outcome of a visa application or the visa decision making process. Visa is granted only by the authorised officers from DIBP only if you meet the relevant visa requirements.

How to Protect Yourself

- Be suspicious if you are contacted by phone, post, email or approached in person about a visa you did not apply for. The department does not contact people offering visas. Any new information is always updated on the DIBP's official website www.border.gov.au.
- If you wish to use an Australian migration agent, check they are registered on the Office of the Migration Agents Registration Authority website (<https://www.mara.gov.au/>)
- Never give or send anyone your original identity documents. Government departments may wish to view your original documents in person or may ask for certified photocopies but should never ask to keep your original documents.
- Never provide your personal, credit card or banking details in an email or over the phone—scammers will use your details to commit identity fraud or steal your money.
- If you think you have provided your bank account details to a scammer, contact your bank or financial institution immediately.

- Never provide private information online unless it is a secure site and you know who you are dealing with. Secure sites are locked with a padlock in the browser window or secure URL at the beginning of the address (that is, https://)
- Job offers should be approached with caution and verified with the business in Australia.

<http://india.highcommission.gov.au/ndli/IMMI19022014.html>

7-Eleven operator to face court over wages

The former owner-operators of a 7-Eleven store in the Melbourne suburb of Parkville could be hit with fines after allegedly falsifying payroll records and underpaying 12 employees more than \$84,000 for a year, including one staff member who was paid \$6.25 an hour for some shifts.

The Fair Work Ombudsman launched action against the former store owners, Yiran "Janice" Gu and Haiyao "Harry" Xu, of Balwyn North, and their company Hiyi Pty Ltd as part of a major investigation into the payment practices of 7-Eleven franchisees.

The Parkville 7-Eleven was one of 20 stores raided by the regulator in Melbourne, Sydney and Brisbane in September 2014. It was the third raid of 7-Eleven stores by the regulator in the past six years.

Fair Work Ombudsman Natalie James said preliminary results from the investigation was concerning, with contraventions identified at most of the 20 outlets recently targeted for investigation.

A joint **Four Corners**-Fairfax Media investigation revealed rampant underpayment of staff at 7-Eleven's 620 stores in Australia, including explosive internal documents that showed 69 per cent of 225 stores internally audited had payroll compliance issues.

Since the revelations, 7-Eleven majority owner and chairman Russ Withers has resigned, along with chief executive Warren Wilmot and general manager operations Natalie Dalbo. The company has set up an "independent" panel to review payroll claims and outlined changes to its business model after Fairfax Media revealed many franchisees did not earn enough income to pay their staff the legal award wages.

The Fair Work Ombudsman's action against Ms Gu, Mr Xu and their company Hiyi is the fourth time the agency has put a 7-Eleven operator before court since July 2009. It recently took action against the operator of a store in Blacktown in Sydney's west.

Ms Gu and Mr Xu sold the Parkville store earlier this year, soon after the raid, but continue to own a store in the Melbourne CBD on the corner of Flinders and Spencer streets that they bought in 2013.

According to a statement from the Fair Work Ombudsman, the CBD store is under investigation.

The couple did not respond to inquiries.

The Fair Work Ombudsman filing in the Federal Circuit Court covers the period between September 2013 and September 2014.

It alleges Mr Xu and Ms Gu "entered inaccurate hours and rates of pay into the payroll technology made available ... by 7-Eleven head office which created records appearing to show employees were paid at award rates of pay which bore no relation to their hours of work or actual hourly rates".

<http://www.smh.com.au/business/workplace-relations/7eleven-operator-to-face-court-over-illegal-wages-20151011-gk66me.html>

Royal Children's Hospital doctors refuse to return children to detention

Victoria's Health Minister Jill Hennessy has thrown her support behind doctors at the Royal Children's Hospital who have refused to discharge asylum seeker children back into detention.

Doctors at the hospital are concerned about the welfare of their dozens of patients and say it would be unethical to discharge them to unsafe conditions that could compromise their health.

"I'm extremely proud to be the health minister in a state where its doctors and nurses are putting the interest of children first," Ms Hennessy said.

"If the staff of the Royal Children's Hospital come to the clinical view that it is not in the interests of those children to go back into detention, then we will support them."

Ms Hennessy said she was confident the doctors were motivated by concern for their patients' welfare and not by politics.

"I can only imagine what it's like to be a clinician, to treat a child, then have to reflect upon the health consequences of putting that child back into detention," she said.

Fairfax Media understands there are not currently any asylum seekers who are inpatients at the Royal Children's Hospital.

Defying new federal laws threatening two years' jail for health workers who speak out against immigration detention centre conditions, more than 400 of the hospital's doctors stood together on Friday demanding children be released from detention.

"We see a whole range of physical, mental, emotional and social disturbances that are really severe and we have no hope of improving these things when we have to discharge our patients back into detention," one paediatrician told News Corp.

The outlet reported that it understood the issue was sparked by a month-long standoff between doctors and authorities over the release of a child with a range of health issues this year.

Staff have also been outraged at immigration guards placed at the entrances of some patients' rooms for 24 hours a day.

The Australian Medical Association said it had a "fundamental problem" that children were in detention and had been asking governments to look for "any alternative" to it for years.

"We acknowledge the evidence that children in detention face circumstances which are very harmful to their health, their growth and their development," vice president Stephen Parnis said.

He said that if children did need to be detained, then they should be released "in weeks" at the absolute most.

Dr Parnis said the AMA was aware that a "number" of doctors who had provided care to children in detention had been quite distressed.

Children were presenting having self-harmed, with anxiety, severe depression and not growing in a healthy or normal way, he said.

Dr Parnis said doctors were constrained in the care that could be offered to these children. "It flies in the face of our ethical obligation to provide good care."

The Royal Australian College of Physicians, which has long opposed children in detention, on Sunday said it supported the stance taken by Royal Children's Hospital staff.

"Detention centres are no place for children," said college president laureate Professor Nick Talley. "The health and wellbeing of children should never be open to compromise...No child should be held in detention."

Sydney paediatrician David Isaacs, who runs the children's refugee clinic at the Children's Hospital at Westmead, also backed the Royal Children's Hospital staff.

He said results of a survey of paediatricians, published in the *Medical Journal of Australia*, showed 85 per cent of respondents were against children being placed in detention.

Dr Isaacs visited Nauru in December 2014 and saw a six-year-old girl try to hang herself. He said his visit to the island left him deeply troubled and he experienced nightmares on his return.

"These are very traumatic cases where children are severely suicidal and in a lot of trouble," Dr Isaacs said.

However Dr Isaacs said there were many other children in detention who were not admitted but treated as outpatients. One regular patient he diagnosed with tuberculosis on Nauru is now detained in Sydney's Villawood Detention Centre. When the child comes to his clinic for treatment he and his parents are accompanied by a guard.

"That is treating them like criminals rather than patients," he said.

<http://www.theage.com.au/victoria/royal-childrens-hospital-doctors-refuse-to-return-children-to-detention-20151010-gk63xm.html>

PNG to resettle Manus Island refugees

Mr Dutton said the Federal Government remained committed to ongoing support for PNG as part of the "strong working relationship" between the two countries.

"The Australian taxpayers provide considerable assistance in terms of the way in which the regional processing centre is run, in terms of the contracts and other services which are provided there," he said.

Over the three-month period between July and September 2015, arrangements on Manus Island cost the Australian taxpayer more than \$151 million.

A Senate Estimates committee was told this week that \$14.21 million was spent in relation to resettling refugees, despite no resettlements taking place in that period.

Mr Dutton could not provide a dollar figure for individual resettlements to date.

He said the announcement reinforced the message that "people who are on Manus or Nauru will not settle permanently in Australia".

"The development here sends a very clear message to people smugglers, and that it that the Government's resolve is as strong as it's ever been," he said.

"We are not going to [back down] from the fact that we have a tough policy when it comes to [Operation Sovereign Borders]."

Shadow immigration minister Richard Marles also praised the announcement.

<http://www.abc.net.au/news/2015-10-23/png-to-resettle-asylum-seekers/6879832>

Europe struggles with record numbers in asylum seeker surge

Greece has seen a record 48,000 migrants and refugees land on its shores in the space of just five days, the International Organisation for Migration says.

"Despite deteriorating weather conditions, approximately 48,000 refugees and migrants crossed from Turkey to the Greek islands, or about 9,600 migrants and refugees in each of the past five days," the IOM said in a statement, referring to the period between October 17 and 21.

"The influx has left many local authorities unprepared."

More than half of those crossing from Turkey had landed on the island of Lesbos, which saw 27,276 arrivals during the five-day period, it said.

In previous years, the numbers crossing the Mediterranean to Europe have dropped off sharply as winter approaches, but the IOM said the recent arrivals far exceeded the summer peaks.

They are among more than 600,000 people, mainly fleeing violence in Syria, Iraq and Afghanistan, who have braved the dangerous sea journey to Europe so far this year.

The rising numbers of people attempting the crossing to Greece has resulted in a growing number of deaths at sea, the organisation said.

So far this year, around 335 people have died while crossing from Turkey to Greece, the IOM said.

More than 2,800 have meanwhile perished attempting the much longer and more perilous crossing from Libya to Italy, bringing the total number of deaths to 3,175, the IOM said.

Meanwhile, Slovenia has become the main entry point into the European Union's passport-free Schengen zone from the increasingly crowded Balkan route after Hungary sealed its southern borders with razor-wire fences to stop migrants desperately trying to reach northern Europe before winter sets in.

More than 47,500 people have entered the small Alpine nation, which has a population of just two million, since October 17 when Budapest shut its frontier with Croatia, barely a month after also closing its Serbian border.

<http://www.abc.net.au/news/2015-10-24/europe-struggles-with-record-asylum-seeker-surge/6881804>

Anti-immigration wins votes

The anti-immigration Swiss People's Party (SVP) won the biggest share of the vote in Sunday's national parliamentary election, initial projections showed, keeping pressure on Bern to introduce quotas on people moving from the European Union.

The result, based on initial projections by Swiss TV, gives the SVP 65 seats in the 200-member lower house of Parliament, the largest number for any Swiss party in at least a century.

The SVP's success, coupled with gains made by the pro-business Liberal Party (FDP), led political commentators to talk of a "Rechtsrutsch" – move to the right – in Swiss politics.

Immigration was the central topic for voters amid a rush of asylum seekers from the Middle East and North Africa to Europe.

"The vote was clear," SVP leader Toni Brunner told Swiss television. "The people are worried about mass migration to Europe."

Sunday's result cements the position of the SVP as the dominant force in Swiss politics. It won 28 per cent of the vote, translating into 11 extra seats, according to first projections from Swiss broadcaster SRF, up from 26.6 per cent in the 2011 vote and roughly in line with expectations.

The election gains for the SVP, which was already the biggest single party in Parliament, come 20 months after the Swiss in a referendum backed limits on foreigners living in Switzerland. The SVP had strongly supported the restrictions.

Legislators have until 2017 to reconcile this referendum result with an EU pact that guarantees the free movement of workers, otherwise the Swiss government must write quotas into law regardless of any compromise with the EU.

<http://www.smh.com.au/world/migrant-crisis/migrant-crisis-antiimmigration-party-svp-wins-swiss-election-20151018-gkc71y.html>

Proposed Migration Amendment (Complementary Protection and Other Measures) Bill 2015 – Second reading

The Migration Amendment (Complementary Protection and Other Measures) Bill 2015 was read for the second time in the House of Representatives by Minister Dutton recently.

This Bill provides a narrower interpretation of the concept of the 'real risk of significant harm' (*the risk*) to be used for deciding whether Australia's international non-refoulement obligations are activated:

Under the new interpretation:

The person must 'personally' face the risk, it cannot be a generalised risk such as mass violation of human rights within the country.

The risk must extend to all areas of a receiving country.

If a person can relocate to a safer part of that country they do not face the risk.

Consideration must be given to whether the person can safely and legally travel within that country to the safer location.

If effective protection measures are available to the person in that country they do not face the risk.

The change is significant and will make it more difficult for applicants to establish they meet the threshold test of persecution.

MIA Notice – 15 October 2015

Safe Haven Enterprise Visa Program Begins

Tasmania opened its doors last week with the official commencement of the Safe Haven Enterprise Visa program.

Tasmania is now a designated regional zone, which means asylum seekers in Australia who have been granted a SHEV by the Federal Government can relocate to Tasmania.

Tasmania is only the second jurisdiction to opt-in to the SHEV program and welcome asylum seekers under this scheme, along with the Liberal Government in New South Wales.

The Tasmanian Government has committed \$1.2 million over four years to establish a Safe Haven Hub, to operate as a first point of contact for SHEV holders coming to Tasmania to live and work or study.

The intention is the hub will provide support to both migrants and potential employers, and connect both.

MIA Newsletter – 14 October 2015

The Impact of Australia's Temporary Work Visa Programs – Interim Report released

The Senate Standing Committee on Education and Employment has tabled its Interim Report into *The Impact of Australia's Temporary Work Visa Programs on the Australian Labour Market*.

The Interim Report provides a summary of the key observations from the enquiry to date, including information provided in the 63 submissions made to the Committee and at eight public hearings around Australia.

The effect of Subclass 457, Working Holiday and Student visa work rights on the labour market have been the primary focus of the Committee, with the concepts of 'temporary migrant work' and 'indefinitely temporary migrants' also examined.

The Committee has been provided with further time to undertake enquiries into the 7-Eleven exploitation of student visa holders. The Committee's terms of reference may also be extended to include the Australia Post contractor allegations.

MIA Notice – 15 October 2015

Fair Work – Recovery of unpaid wages

A Private Members Bill has been introduced in the House of Representatives entitled the *Fair Work Amendment (Recovery of Unpaid Amounts for Franchisee Employees) Bill 2015*.

The aim of the Bill is to ensure employees are paid correctly, whether or not they are Australian citizens. It will require more oversight by franchisers over the franchisee companies within their chains, to ensure legal minimum wages are paid to employees and the terms and conditions of employment meet the National Employment Standards (NES).

The Bill also promotes fairer contracts between franchisers and its franchisees. The harsh terms of some franchisee contracts, which leave little profit for franchisees, have been reported as a major reason for franchisees to attempt to cut costs by reducing wage rates.

The Bill has been read for the second time.

MIA Notice – 13 October 2015

Immigration Matters – Security Assessments – ASIO and IGIS

The Department of Immigration and Border Protection (DIBP) is responsible for processing applications for Australian visas. The Inspector-General of Intelligence and Security has no jurisdiction over DIBP. However, DIBP sometimes refers visa applications to the Australian Security Intelligence Organisation (ASIO) for security assessment. Applications by applicants from certain countries with high risk security profiles are routinely sent to ASIO. IGIS has jurisdiction only with regard to actions taken by ASIO, and not for other checks that DIBP may request.

IGIS has received thousands of complaints and queries about extended delays in the processing of security assessments for visa applicants. Only a very small percentage of these have been caused by errors resulting in a delay in the completion of the security assessment. Given the small incidence of error, IGIS has announced that it has decided to modify the way in which it will handle complaints of this kind.

In order to provide assurance to the public that ASIO is managing the processing of security assessments for visa applicants with legality and propriety, IGIS will be conducting regular inspections of ASIO's security processes and assessment practices rather than focusing on individual complaints about lack of timeliness.

In general IGIS will not inquire into individual complaints about lack of timeliness in any case where an application for a permanent visa is less than 12 months old. IGIS will consider complaints about timeliness where a visa application is more than 12 months old, on a case by case basis. In general IGIS considers a processing delay by ASIO of 12 to 18 months may not be unreasonable.

Before making a complaint to IGIS, we recommend that you contact your DIBP case officer to check that you have provided all the information requested to complete the assessment process.

When lodging a complaint relating to a security assessment, it is important that you provide the following details:

- name of the visa applicant as shown on his or her passport
- date of birth of the visa applicant
- country of birth of the visa applicant
- Class of visa
- date of visa application (must be at least 12 months ago).

Without all of these details IGIS will not process the complaint.

When lodging a complaint with the IGIS, provide your name, email address or contact details so IGIS can respond to you.

On receiving your complaint, IGIS will acknowledge receipt of your complaint in a prompt manner. IGIS will assess your complaint and may then make an administrative enquiry of ASIO about your case.

IGIS will only get back to you if ASIO advises there is information you need to provide, or if an exceptional issue has been identified.

IGIS is not able to:

- provide you with specific details about the security assessment process
- change the priority given to your security assessment
- influence the outcome of a security assessment
- provide you with a date for completion of the security assessment.

<http://www.parishpatience.com.au/blog/immigration-matters>

A.P.B. Education

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