



29 October 2024

ARPITA FOODS PTY LTD
4 CENTURY CIRCUIT
NORWEST NSW 2153

In reply quote:

Name of applicant	ARPITA FOODS PTY LTD
Application ID	1005682038
Name of nominee	Bina SHRESTHA
Nomination transaction reference number	EGP21QZOOQ
Visa program	Temporary Skill Shortage (subclass 482) visa
Stream	Short Term
File number	BCC2024/2234276
Transmission method	Email sent to realdreamsaustralia@gmail.com

Dear Applicant

Notification of refusal of a nomination application

Nominee

Bina SHRESTHA 12 October 1983

I wish to advise that the application for approval of a nomination has been refused. The attached nomination refusal decision record outlines details about this decision.

After careful consideration of the information provided, the applicant has failed to demonstrate how they have met the relevant criteria for the approval of this nomination as set out in Australian migration law.

Review rights

The Department cannot consider this application for approval of a nomination any further. However, you are entitled to apply to the Administrative Review Tribunal (the Tribunal) for merits review of this decision within 28 days after the day on which you are taken to have received this letter.

As this letter was sent to you by email, you are taken to have received it at the end of the day it was transmitted.

You have appointed an authorised recipient and are taken to have received this letter at the end of the day it was transmitted to your authorised recipient.

The abovementioned time in which an application may be made to the Tribunal for merits review of this decision is prescribed by law and cannot be extended.

Lodging an application for merits review

Applications for review can be lodged online, in person, by post, email or fax to the Administrative Review Tribunal (the Tribunal) as provided below. The preferred method of lodgement is online.

Online: online.art.gov.au

In person or by post to a registry of the Tribunal:

Australian Capital Territory Level 8 14 Moore Street Canberra City ACT 2601	New South Wales Level 6 83 Clarence Street Sydney NSW 2000	Northern Territory Applications made by residents of the Northern Territory are managed by the South Australia registry.
Queensland Level 6 295 Ann Street Brisbane Qld. 4000	South Australia Level 2 1 King William Street Adelaide SA 5000	Tasmania Edward Braddon Building Commonwealth Law Courts 39-41 Davey Street Hobart Tas. 7000
Victoria Level 4 15 William Street Melbourne Vic. 3000	Western Australia Level 13 111 St Georges Terrace Perth WA 6000	Norfolk Island Supreme Court of Norfolk Island Kingston Norfolk Island 2899

By email to: reviews@art.gov.au

By fax to:

Australian Capital Territory Fax: (02) 9276 5599	New South Wales Fax: (02) 9276 5599	Northern Territory Fax: (08) 8128 8099
Queensland Fax: (07) 3052 3069	South Australia Fax: (08) 8128 8099	Tasmania Fax: (03) 9454 6999
Victoria Fax: (03) 9454 6999	Western Australia Fax: (08) 6222 7299	

Include a copy of this letter and the attached decision record when lodging any application for review.

More information about the merits review process is available on the Tribunal website www.art.gov.au or by telephoning 1800 228 333.

Yours sincerely

Angelo

Position number: 60182528

Department of Home Affairs

The original of this letter including any attachments was sent to your authorised recipient:

Shishir NEPAL

realdreamsaustralia@gmail.com



NOTICE OF DECISION NOMINATION REFUSAL NOTICE TEMPORARY SKILL SHORTAGE SUBCLASS 482 VISA

Details of Nomination

Name of sponsor	ARPITA FOODS PTY LTD
Sponsorship application ID	1790664294

Nominated person

Client name	Bina SHRESTHA
Client ID	58075893964
Date of birth	12 October 1983
Proposed occupation, training or activity	Baker - 351111

Details of nomination application

Place of lodgement	Central Office
Date of application	11 April 2024
Nomination application ID	1005682038
File number	BCC2024/2234276

Information and evidence considered

I am a delegated decision maker under section 140GB of the *Migration Act 1958*. In reaching my decision, I have considered the following:

- relevant legislation contained in the Migration Act and *Migration Regulations 1994*
- information contained in the Department's Procedural Instructions
- documents and information provided by the applicant(s)
- relevant information held on Departmental files
- where relevant, the Australian and New Zealand Standard Classification of Occupation (ANZSCO) as it is applied to occupation definitions and skill requirements in Australia.

Reasons for decision

Under migration law, the Minister must approve a person's nomination if:

(a) in a case to which section 140GBA applies, unless the person is exempt under section 140GBB or 140GBC - the labour market testing condition under section 140GBA is satisfied; and

(b) in any case - the prescribed criteria are satisfied.

The prescribed criteria for approval of a nomination are set out in regulation 2.72 of the Migration Regulations.

Prescribed Criteria (in part)

Regulation 2.72 Criteria for approval of nomination - Temporary Skill Shortage (subclass 482) visa.

(10) *The Minister is satisfied that the position associated with the occupation is:*

(a) *genuine;*

I have assessed the applicant's application against the prescribed criteria in regulation 2.72 of the Migration Regulations and I am not satisfied that the applicant satisfies the criterion in paragraph 2.72(10)(a).

Assessment of whether the position associated with the nominated occupation is genuine

Paragraph 2.72(10)(a) of the Migration Regulations requires that the position associated with the nominated occupation is genuine.

In making my assessment, I have considered the ANZSCO description of the nominated occupation as well as the context of the business setting, including consideration of the financial profile of the business, its staffing structure, the primary activities of the business, and the scale of those activities.

I have referred to all of the relevant supporting documentation including but not limited to:

- Genuine Position letter dated the 19/03/2024
- Organisational Chart for ARPITA FOODS PTY LTD
- Position Description for the nominated occupation
- Employment contract signed by the nominee on the 05/04/2024
- Business activity statements for ARPITA FOODS PTY LTD for the periods of Apr 2023 – Jun 2023 - Jul 2023 – Sep 2023 and Oct 2023 – Dec 2023
- Information as declared on the application form

Having considered the nature of the applicant's business and the nominated position in this context, I am not satisfied that the position associated with the nominated occupation is genuine.

Information provided by the applicant indicates the following:

The applicant declares that they currently have 15 employees working in the business with 12 being Australian employees and 3 Foreign employees.

The applicant has declared “No” to the question “Does the applicant already have Australian employee(s) doing the same work as the nominated person?”

An organisational chart has been provided showing the current positions that the employees hold within the business.

While some of the duties to be performed by the nominee appear at face value to be consistent with those of the nominated occupation I am not satisfied that in the context of the

applicant's business, the majority of the tasks that the nominee is actually likely to perform align substantially with the tasks of the nominated occupation.

This is because I note the applicant has declared, "No" to the question "Does the applicant already have Australian employee(s) doing the same work as the nominated person?" However, with the provided organisational chart provided, the applicant currently has one baker/production manager, one full-time baker and as noted in the genuine position submission provided it is noted that the owner also undertakes baker duties as declared. This raises concerns, as it appears that the applicant has many employees undertaking the same position and conducting the same tasks as the nominee in question.

I also note the applicant has not provided sufficient evidence to demonstrate the split of duties, between the nominee and other bakers within the business, whilst I acknowledge the claims made by the applicant noting that they have declared the following. *"As you can see from the organisation chart, we only have one other full time baker in our team besides the production manager. The production manager cannot perform the duties of the baker as he needs to focus on the overall operation of the kitchen and the store."* As well as considering the provided statement *"Recently, we have decided to expand our business and now we are planning to acquire a new store in Australia. So, I will need to be managing the overall business and managing all of the bakery stores rather than acting as a baker."*

However, considering the claims made by the applicant I put limited weight in the provided claims made, noting the applicant has not provided sufficient evidence demonstrating the expansion of the business as claimed as well as furthermore I am not satisfied the claims made by the applicant are sufficient in demonstrating and addressing concerns of the split of duties between bakers already in the applicant's employ and to demonstrate the genuineness of the applicant requiring further bakers within it's employ.

Concerns arise if there would be sufficient work for the nominee to perform the duties of Baker 351111 as per ANZCO in a full-time manner whereas the nominee has many other Bakers as well as other staff not in the position of baker however appearing to undertake the same duties/tasks of a baker as the nominee. Hence leading to concerns if the nominee will be expected to perform lower level tasks or tasks that do not align with their nominated ANZCO as a result.

Whilst I acknowledge the claims made by the applicant in this application provided in the genuine position letter to how the position had come to be. However, I put limited weight in the claims made based on the concerns found and noting the applicant has not provided sufficient evidence to address the concerns noted in this application.

Therefore, having considered all the information carefully and cumulatively, I am not satisfied that the applicant has provided sufficient evidence.

Consequently I am not satisfied the position associated with the nominated occupation to be genuine, and the applicant does not satisfy the criterion in paragraph 2.72(10)(a).

I am therefore not satisfied that the applicant satisfies the criterion in subregulation 2.72(10).

Decision

Subsections 140GB(2) and (3) of the Migration Act relevantly provide that a nomination application must satisfy the prescribed criteria, among other things, in order to be approved. The prescribed criteria relevant to this application are set out in regulation 2.72.

As the applicant does not satisfy the criterion in subregulation 2.72(10) of the Migration Regulations, I am not satisfied that the applicant satisfies the prescribed criteria for approval of a nomination under the Temporary Skill Shortage (TSS) (subclass 482) visa program.

Therefore, I refuse ARPITA FOODS PTY LTD's application for approval of a subclass 482 visa nomination.

Angelo

Position Number: 60182528

Department of Home Affairs

29 October 2024