

IMMIGRATION
NEW ZEALAND



Immigration New Zealand Operational Manual

Refugees and Protection

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C1 OBJECTIVE

See also Immigration Act 2009 s 124

The objective of New Zealand's refugee and protection instructions is to provide a basis for the system by which New Zealand determines:

- to whom it has obligations under the 1951 Convention Relating to the Status of Refugees ('the Convention') and the 1967 Protocol Relating to the Status of Refugees ('the Protocol'); and
- to whom it has obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('CAT') and the International Covenant on Civil and Political Rights ('ICCPR').

New Zealand:

- acceded to the Convention on 30 June 1960;
- acceded to the Protocol on 6 August 1973;
- ratified the CAT on 10 December 1989; and
- ratified the ICCPR on 28 December 1978.

Effective 29/11/2010

C2 REFUGEE AND PROTECTION STATUS IN NEW ZEALAND

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C2.1 Refugee or protection status to be determined under the Immigration Act 2009

See also Immigration Act 2009 ss 125, 425, 426, 427

- a. Anyone who seeks recognition in New Zealand as a refugee under the Convention and Protocol or as a protected person under the CAT or ICCPR must have that claim determined in accordance with the Immigration Act 2009.
- b. Whether or not a person should continue to be recognised in New Zealand as a refugee under the Convention and Protocol or as a protected person under the CAT or ICCPR must be determined in accordance with the Immigration Act 2009.
- c. Claims for recognition as a refugee that were made but not yet determined before 29 November 2010 must be treated as if they were made under Part 5 of the Immigration Act 2009. The Immigration Act 2009 applies with any necessary modifications.
- d. Subsequent claims (within the meaning of section 129B of the Immigration Act 1987) for refugee status that have been made under the Immigration Act 1987, but where no decision has been made to consider the claim as of 29 November 2010, must be considered for acceptance in accordance with section 129J of the Immigration Act 1987. If that claim is accepted for consideration, it must be determined as if it were a claim accepted for consideration under Part 5 of the Immigration Act 2009, and that Act applies with any necessary modifications.
- e. Subsequent claims (within the meaning of section 129B of the Immigration Act 1987) made and accepted for consideration but not determined before 29 November 2010 must be determined as if they were claims accepted for consideration under Part 5 of the 2009 Act. The 2009 Act applies with any necessary modifications.
- f. An appeal against a decision to decline recognition as a refugee or a protected person by a person to whom one of C2.1(c), (d) or (e) apply must be made under section 194 of the Immigration Act 2009.
- g. A refugee and protection officer is not required to repeat any act or thing done by a refugee status officer under the Immigration Act 1987 in relation to a claim and may rely on any act or thing done by a refugee status officer including any finding of fact, or decision or determination made for the purposes of:
 - i determining a claim, including a subsequent claim; or

- ii determining whether to accept a subsequent claim made and not yet accepted, or accepted but not determined before 29 November 2010.

Effective 29/11/2010

C2.5 Who may determine whether a person is recognised as a refugee or protected person

See also Immigration Act 2009 ss 127, 149, 390

- a. Every refugee and protection claim must be determined by a refugee and protection officer. Refugee and protection officers are INZ employees whom the chief executive has designated to undertake refugee and protection status determinations. No person who is currently employed to consider applications for visas or to administer the deportation provisions of the Immigration Act 2009 may be designated as, or act as, a refugee and protection officer.
- b. In carrying out their functions under the Immigration Act 2009 **refugee and protection officers** must act in accordance with that Act and to the extent that a matter relating to a refugee or a person claiming recognition as a refugee is not dealt with in the Act, in a manner consistent with New Zealand's obligations under the Convention.

Effective 29/11/2010

C2.10 Person recognised as a refugee under Immigration Act 1987

See also Immigration Act 2009 s 424

Any person recognised as a refugee under Part VIA of the Immigration Act 1987, or before 1 October 1999, or any person recognised as a refugee outside New Zealand and who travelled to New Zealand as a mandated refugee, must be treated as a person recognised as a refugee in New Zealand under the Immigration Act 2009, which applies accordingly with any necessary modifications.

Effective 29/11/2010

C2.15 Who is a refugee

See also Immigration Act 2009 Schedule 1 Article 1A(2)

- a. Refugees are persons who are outside the country of their nationality and have a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion and are unable or, owing to such fear, unwilling to avail themselves of the protection of that country or who not having a nationality and being outside the country of former habitual residence as a result of such events, are unable or, owing to such fear, are unwilling to return to it.
- b. A person to whom any of Articles 1C to 1F of the Convention apply is not a refugee.

Effective 29/11/2010

C2.20 Who is a protected person

See also Immigration Act 2009 ss 130, 131

Protected persons must be recognised as such if there are substantial grounds for believing that they would be in danger of being subjected to torture, arbitrarily deprived of life, or subjected to cruel, inhuman or degrading treatment or punishment if deported from New Zealand.

Note: the assessment of the danger of being subjected to torture takes into account the caveats and clarifications in section 130 of the Immigration Act 2009.

Note also: the assessment of arbitrary deprivation of life and cruel, inhuman or degrading treatment or punishment takes into account the caveats and clarifications in section 131 of the Immigration Act 2009.

Effective 29/11/2010

C2.25 Confidentiality to be maintained

See also Immigration Act 2009 ss 151, 354, 355(3)

- a. All persons must keep confidential the fact that a person is a claimant, a refugee, or a protected person, as well as the details of their case and status, at all times, both during and after the determination of the claim or other matter.
- b. Compliance with C2.25(a) may require confidentiality be maintained as to the very fact or existence of a claim or case, if disclosing its fact or existence would tend to identify the person concerned or be likely to endanger anyone.
- c. Despite C2.25(a) and (b) the fact of a claim or particulars relating to a claim may be disclosed:
 - i for the purposes of determining a claim or matter, administering the Immigration Act 2009, or determining any obligations, requirements, or entitlements of the claimant or other person concerned under any other enactment; or
 - ii for the purposes of the maintenance of the law, including for the prevention, investigation and detection of offences in New Zealand or elsewhere; or
 - iii to the United Nations High Commissioner for Refugees or his or her representative; or
 - iv if the particulars of the claim are published in a way that is unlikely to allow identification of the person concerned; or
 - v if, in the circumstances of the particular case, there is no serious possibility that the safety of the claimant or any other person would be endangered by the disclosure of the information.
- d. A refugee and protection officer may disclose information under C2.25(c)(i) when carrying out his or her functions under the Immigration Act 2009.
- e. When determining if information may be released in circumstances covered by C2.25(c)(v), the person considering whether to disclose the information may have regard to how the person, agent or body to whom information is disclosed may protect the information including any applicable requirements of the Privacy Act 1993, any orders of the Tribunal or a court and any protection mechanisms the recipient must or may apply.
- f. If information relating to a particular claim is able to be released after considering C2.25(c)(v) and (e), the chief executive of the Department of Labour may publish a decision of the refugee and protection officer relating to the claim, if the chief executive determines in the circumstances of the particular case, it is in the public interest to do so.
- g. Nothing in C2.25 prevents the disclosure of the fact that a person is a claimant, a refugee, or a protected person, or disclosure of particulars in relation to a claimant, a refugee, or a protected person, to the extent that the person concerned:
 - i has expressly waived his or her right to confidentiality under section 151 of the Immigration Act 2009; or
 - ii by his or her words or actions, impliedly waived his or her right to confidentiality under section 151 of the Immigration Act 2009.

- h. Anyone who without reasonable excuse breaches C2.25(a) or (b) or publishes information released in breach of C2.25(a) or (b) or commits an offence under section 354 of the Immigration Act 2009 and, if convicted, is liable to imprisonment for a term not exceeding 3 months, a fine not exceeding \$10,000, or both.

Effective 29/11/2010

C3 MAKING A CLAIM TO REFUGEE OR PROTECTION STATUS

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C3.1 Whose claim for refugee or protection status may not be accepted

See also Immigration Act 2009 ss 132, 163

- a. A refugee and protection officer must not consider a claim by a person who is:
 - i a New Zealand citizen; or
 - ii a resident or permanent resident, unless the person has been served with a deportation liability notice or is named in an Order of Council which certifies that the person constitutes a threat or risk to security.
- b. Nothing in C3.1 affects the power of a refugee and protection officer to re-open a claim for further consideration as to cessation or cancellation.

Effective 29/11/2010

C3.5 Who may make a claim for refugee or protection status

See also Immigration Act 2009 ss 132, 163

- a. People, other than those to whom C3.10 applies, who are in New Zealand either lawfully or unlawfully may make a claim for refugee or protection status.
- b. A resident or permanent resident who has been served with a deportation liability notice or is named in an Order in Council certifying the person constitutes a threat or risk to security may make a claim for refugee or protection status.

Effective 29/11/2010

C3.10 Making a subsequent claim to refugee or protection status

A subsequent claim is a claim for refugee or protection status made by a person who has previously made a claim of any kind for refugee or protection status in New Zealand, whether under the Immigration Act 2009 or the Immigration Act 1987, which has been finally determined. A claim has been finally determined once the expiry of any appeal period relating to the decline of refugee or protection status has expired, or an appeal that was lodged has been determined.

A subsequent claim is made in the same manner as a first claim for refugee or protection status.

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C3.15 How refugee or protection claim to be made

See also Immigration Act 2009 s 133

- a. A claim is made as soon as a person expresses an intention to seek recognition as a refugee or protected person, either orally or in writing, to a representative of the Department of Labour or to a constable.
- b. An indication of intent is all that is required to initiate the processing of a refugee or protection claim.
- c. People may express an intention to seek refugee or protection status in a variety of ways, including, but not limited to, statements of the following kind:
 - i they have been persecuted; or
 - ii they fear being persecuted; or
 - iii they have been imprisoned for political reasons; or
 - iv they are afraid of being imprisoned in their home country; or
 - v they want to 'see the United Nations' (ie the United Nations High Commissioner for Refugees (UNHCR) office in New Zealand; or
 - vi they want to know if there is a United Nations (ie UNHCR) office in New Zealand; or
 - vii they are 'stateless' or 'homeless' persons; or
 - viii they are afraid to return to their home country; or
 - ix they are in danger of being subjected to torture if they return to their home country; or
 - x they are in danger of being subjected to cruel, inhuman or degrading treatment or punishment if they return to their home country;
 - xi they are in danger of being arbitrarily deprived of their life if they return to their home country; or
 - xii they will be killed if they are returned home; or
 - xiii they simply "do not want to return".
- d. A written claim for refugee or protection status may be:
 - i received at any office of the Department of Labour in New Zealand; and
 - ii delivered either in person or by mail.
- e. There is no fee for making a claim for refugee or protection status.

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C3.20 Claims for refugee or protection status on arrival in New Zealand

- a. New Zealand has a general obligation to admit people who make a claim for refugee or protection status on arrival in New Zealand.

- b. Officers should give due consideration to such people because they may be tired, disoriented, distressed, and incapable of communicating in English, either orally or in writing.
- c. Immigration officers must not take any action to deport the claimant.
- d. Immigration officers should determine the immigration status of persons claiming refugee or protection status at the border in accordance with the Operational Instruction at A16.2.
- e. If a visa is not granted, or entry permission is denied, the claimant must be treated as a person to whom section 115 of the Immigration Act 2009 applies, except that they may not be deported from New Zealand until their refugee or protection status has been finally determined.

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C3.25 Refugee or protection claim to be confirmed in writing in the prescribed manner

See also Immigration Act 2009 s 133(2)

See also Immigration (Refugee and Protection Status Processing) Regulations 2010 regs 4, 13

- a. Once a claim is made, the claimant must, on request by a representative of the Department of Labour, confirm the claim in writing in the prescribed manner.
- b. A claim for refugee or protection status must be:
 - i lodged in writing using the approved form *Confirmation of Claim to Refugee or Protection Status in New Zealand*; and
 - ii completed in English; and
 - iii signed by the claimant; and
 - iv lodged with a refugee and protection officer; and
 - v accompanied by:
 - a current residential address for the claimant; and
 - a current address to which communications relating to the claim may be sent, including a fax number if appropriate; and
 - the name of any lawyer or agent authorised to represent the claimant; and
 - the current postal address of any lawyer or agent authorised to represent the claimant, including a fax number for the lawyer or agent if appropriate.
- c. The claimant must notify the Refugee and Protection branch in a timely manner of a change in any of the addresses or fax numbers provided.
- d. The officer may rely on the latest address to which communications may be sent for the purpose of communications under Part 5 of the Immigration Act 2009.

Effective 29/11/2010

C3.30 Further requirements

C3.30.1 Claimant to provide evidence of identity

See also Immigration (Refugee and Protection Status Processing) Regulations 2010 reg 4(4)

- a. When lodging the form *Confirmation of Claim to Refugee or Protection Status in New Zealand* claimants must as soon as possible, endeavour to provide the following to a refugee and protection officer:

- i evidence of their identity, including:
 - a recent photograph of the claimant; and
 - evidence of any identity documents that contain details of an alias or aliases used by them; and
 - evidence of any identity documents that contain a different spelling of their name or a different date of birth; and
 - ii evidence of their country of origin.
- b. Evidence of identity may include, but is not limited to, the following:
- i a travel document (eg a passport, certificate of identity or refugee travel document); or
 - ii (if no travel document is available) a birth certificate or other identity document; or
 - iii (if neither a travel document nor an identity document is available) a statutory declaration outlining the claimant's personal details. Any such declaration must be provided in English as well as the person's own language.

C3.30.5 Claimant to provide all information relevant to claim

See also Immigration Act 2009 s 133(3)

See also Immigration (Refugee and Protection Status Processing) Regulations 2010 regs 4(4), 6

- a. A claimant must as soon as possible endeavour to provide an officer with all information relevant to their claim (at least five working days prior to the interview), including:
- i a written statement; and
 - ii any evidence supporting their claim; and
 - iii any evidence supporting any other potential claim by them under section 129, 130, or 131 of the Immigration Act 2009; and
 - iv any information about whether they have the protection of another country or whether they can be received back and protected in that other country (see C4.20); and
 - v whether claiming refugee or protection status, any information about whether they have committed acts as described in C5.15.1(c)(i).
- b. The written statement must as far as reasonably possible include:
- i a statement of the grounds for the claim seeking recognition as a refugee or protected person; and
 - ii a statement of the grounds for any other potential claim seeking recognition as a refugee or protected person; and
 - iii any evidence supporting the grounds of the claim for seeking recognition as a refugee or protected person; and
 - iv if available, documents indicating the alleged agent of persecution or potential persecution and the reason for that persecution; and
 - v if available, documents indicating the alleged agent of potential torture, arbitrary deprivation of life, or cruel, inhuman or degrading treatment or punishment; and
 - vi details of persons (if any) who can be contacted to support or verify the claim.

C3.30.10 Other family members applying for refugee or protection status

See also Immigration Act 2009 s 133(4)

See also Immigration (Refugee and Protection Status Processing) Regulations 2010 reg 4(5)

- a. A claimant must as soon as possible after making a claim inform an officer whether any other members of their immediate family who are in New Zealand are also seeking refugee or protection status and, if so, whether any such claim is on different grounds.
- b. If more than one person in a family group is claiming refugee or protection status or makes a subsequent claim:
 - i each claimant must complete and sign a separate Confirmation of Claim to Refugee or Protection Status in New Zealand form; and
 - ii all those forms should be lodged together with a refugee and protection officer.

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C4 DETERMINING A CLAIM FOR REFUGEE OR PROTECTION STATUS

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C4.1 Whether to accept a claim for consideration

See also Immigration Act 2009 s 134

- a. If a refugee and protection officer receives a claim that is not a subsequent claim (see C3.10), it is their function, as appropriate, to determine whether to accept a claim for consideration. The officer may take into account whether:
 - i in light of any international arrangement or agreement, the claimant may have lodged, or had the opportunity to lodge, a claim for refugee status or protection in another country;
 - ii one or more of the circumstances relating to a refugee claim were brought about by the claimant acting otherwise than in good faith for a purpose of creating grounds for recognition as a refugee.
- b. A refugee and protection officer may decline to accept a claim if it falls within the criteria at C4.1(a)(i).
- c. A refugee and protection officer must decline to accept a claim for refugee status where he or she is satisfied that C4.1(a)(ii) applies. When determining the matter in C4.1(a)(ii), the officer must not treat the actions of any other person in relation to the claim or the claimant as a mitigating factor.

Effective 29/11/2010

C4.5 Limitation on subsequent claims for refugee and protection status

See also Immigration Act 2009 ss 140, 141(2)

- a. If a refugee and protection officer receives a subsequent claim, it is their function to determine whether:

- i there has been a significant change in circumstances material to the claim since the previous claim was determined; and
 - ii the change in one or more of the circumstances was not brought about by the claimant acting otherwise than in good faith for a purpose of creating grounds for recognition as a refugee; and
 - iii the subsequent claim is manifestly unfounded or clearly abusive, or repeats a previous claim.
- b. A refugee and protection officer must not consider a subsequent claim for refugee status by a person unless he or she is satisfied that C4.5(a)(i) and (ii) applies. When determining the matter in C4.5(a), the officer must not treat the actions of any other person in relation to the claim or the claimant as a mitigating factor.
- c. A refugee and protection officer may refuse to consider a subsequent claim if it falls within the criteria at C4.5(a)(ii).
- d. In any such subsequent claim, the officer may rely on any finding of credibility or fact made in relation to a previous claim. The claimant may not challenge any finding of credibility or fact made by a refugee and protection officer (or a refugee status officer under the Immigration Act 1987) or the Tribunal (or the Refugee Status Appeals Authority under the Immigration Act 1987).

Effective 29/11/2010

C4.15 Matters to be determined in relation to a claim

See also Immigration Act 2009 ss 129, 130, 131, 137

- a. Where a claim is accepted for consideration, a refugee and protection officer must determine in the following order whether:
 - i the claimant is a refugee within the meaning of the Convention, or whether the claimant should be excluded from the protection of the Convention because any of Articles 1D, 1E or 1F of the Convention apply;
 - ii the claimant is a protected person under the CAT;
 - iii the claimant is a protected person under the ICCPR;
- b. In relation to a protection claim, the refugee and protection officer must also determine whether there are serious reasons for considering a person claiming protection status has committed a crime against peace, a war crime, or a crime against humanity, a serious non-political crime outside New Zealand or been guilty of acts contrary to the purposes and principles of the United Nations.
- c. In relation to all claims, whether the claimant has the protection of another country.
- d. A refugee and protection officer must determine the matters in C4.15(a) - (c) regardless of whether the claim was made on only one or two of those grounds.

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C4.20 Protection of another country

See also Immigration Act 2009 ss 130, 131, 137(4), Schedule 1 Article 1A(2)

- a. If a refugee and protection officer determines a person has the protection of one of their countries of nationality or residence, New Zealand's obligations under the Convention, CAT or ICCPR are not engaged.

- b. In the case of a person who has more than one nationality, 'country of nationality' means each of the countries of which they are a national.
- c. A refugee and determination officer must also determine whether a claimant has been recognised as a refugee by another country and whether they can be received back and protected there without risk of being returned to a country where they would be at risk of circumstances that would give rise to grounds for their recognition as a refugee or protected person in New Zealand.

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C4.25 Powers of refugee and protection officers

See also Immigration Act 2009 s 26, 136 (2), 149

See also Immigration (Refugee and Protection Status Processing) Regulations 2010 reg 14

- a. In carrying out their functions under Part 5, in relation to a claimant or to a person whose recognition as a refugee or protected person is under investigation, a refugee and protection officer may:
 - i require the person to supply any information, and within such times, as the officer reasonably requires; and
 - ii require the person to produce any documents the person possesses or is able to obtain as the officer requires; and
 - iii inform the person that any other person may be required to produce or disclose relevant documents or information relating to the person, and require the other person to produce or disclose such material relating to the person; and
 - iv require the person to allow biometric information to be collected from him or her; and
 - v require the person to attend an interview.
- b. A refugee and protection officer may seek information from any source, but the officer is not obliged to seek any information, evidence, or submissions further to that provided by the claimant. A refugee and protection officer may determine the claim or matter on the basis only of the information, evidence and submissions provided by the claimant.
- c. If an officer has good cause to suspect that a person other than the person concerned (a third party) possesses or controls any document of the person concerned (including any passport or travel document), the officer may request, in the prescribed manner, that person to produce the document.
- d. A refugee and protection officer who asks a third party (including a person who is a representative of a body corporate) to produce a document must make the request using the approved form and must sign the request.
- e. The request must be served by registered post or personally on the third party to which the request is addressed.
- f. The third party may not refuse to comply with the request by reason only that they have a lien over the document.
- g. If a claimant or a person whose recognition as a refugee or protected person is being investigated is detained in custody, a refugee and protection officer may require the person having custody of that claimant or person to:
 - i provide the officer with access to the place where the claimant or person is being detained; and
 - ii produce the claimant or person for interview; and

- iii make appropriate facilities available for the interview.
- h. If a claimant or person who is required to attend an interview fails to attend at the appointed time and place, the officer may determine the claim or matter without conducting the interview.
- i. The order and processing of any claim is a matter for the discretion of the refugee and protection officer unless the chief executive provides general instructions to the Department relating to the order and manner of processing claims. If such general instructions are given, the refugee and protection officer must process the claim in accordance with the instructions.

Effective 29/11/2010

C4.30 Information to be provided to claimants

See also Immigration (Refugee and Protection Status Processing) Regulations 2010 regs 5, 15

- a. Once a refugee or protection status claim has been assigned to a refugee and protection officer for processing, that officer must inform the claimant of the following rights:
 - i the right to contact a representative of the UNHCR, together with information on how to exercise that right; and
 - ii the right to contact a lawyer; and
 - iii the availability of an independent interpreter, if appropriate; and
 - iv the right to have an independent interpreter engaged by INZ present at any interview of the claimant by a refugee and protection officer.
- b. The refugee and protection officer must also inform claimants of the procedure for determining their claim, including the following matters:
 - i how contact will be maintained; and
 - ii possible requests for further information;
 - iii the claimant's right to provide further information up to the time that the claim is actually determined; and
 - iv the availability of an independent interpreter, if appropriate; and
 - v the decision-making process, including information about the process for scheduling an interview; and
 - vi the right of appeal to the Tribunal if the claim is unsuccessful; and
 - vii the right to an interview before the Tribunal if the claimant has not been interviewed by a refugee and protection officer for the purpose of determining the claim.

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C4.35 Officer may determine procedures on claim

See also Immigration Act 2009 ss 26(3)-(7), 136

- a. Subject to Part 5 of the Immigration Act 2009 and to the Immigration (Refugee and Protection Status Processing) Regulations 2010, and any general instruction by the chief executive, officers may determine the order and manner of processing claims.
- b. A refugee and protection officer may decide the order in which claims are to be handled, subject to any instructions from the chief executive. A refugee and protection officer processing claims or matters of persons who are in detention should take into account the information in C4.70.

- c. The question of whether a claim is processed in an order and manner consistent with any general instructions is a matter for the discretion of the refugee and protection officer concerned. No review proceedings and no appeal, whether to the Minister, the Tribunal, a court or otherwise, lie against that decision.

Effective 29/11/2010

C4.40 Request by officer for further information

- a. A refugee and protection officer may make a request for further information from a claimant by:
- i giving that request at an interview; or
 - ii sending it to the claimant in writing.
- b. Any such request must specify the date (which must be reasonable in all the circumstances) by which the claimant has to provide the extra information, although the officer may grant further time at their discretion.
- c. Any such request must include a statement to the effect that if the officer does not receive the requested further information within the given time period, the officer may proceed to determine the claim on the basis of the information available.

Effective 29/11/2010

C4.45 Comment on prejudicial information

See also Immigration (Refugee and Protection Status Processing) Regulations 2010 reg 12

- a. A refugee and protection officer must disclose to a claimant any material or information obtained by the officer that is or may be prejudicial to the claimant or the claim if:
- i the material or information:
 - was not obtained from the claimant; and
 - is not publicly available material or information; and
 - ii the claimant has not previously had an opportunity to comment on the material or information; and
 - iii the officer intends to take the material or information into account in determining the claim.
- b. If an officer discloses potentially prejudicial material or information to a claimant, they must give the claimant a reasonable opportunity (whether within a specified time period or at an interview) to comment on or rebut that material or information.
- c. The officer must also advise the claimant that if they fail to respond within the given time period or (where reasonable) at the interview, the officer may proceed to determine the claim on the basis of the material and information available.
- d. Nothing in C4.40(a) requires an officer to disclose to a claimant any material or information whose disclosure would be likely to endanger any person, but the officer must advise the claimant of the non-disclosure.

- e. Any prejudicial information which is also classified information is disclosed, where possible, in accordance with the instructions at A19.

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C4.50 Failure to provide further information or to comment on prejudicial information

See also Immigration (Refugee and Protection Status Processing) Regulations 2010 reg 12

If a refugee and protection officer asks a claimant to provide further information or invites a claimant to comment on potentially prejudicial material or information, and the claimant fails to respond within any appropriate time frame set for that purpose under C4.40 or C4.45, the officer may proceed to determine the claim.

Effective 29/11/2010

C4.55 Interviews

See also Immigration (Refugee and Protection Status Processing) Regulations 2010 regs 5, 15

- a. If a claimant or a person whose refugee or protection status is in question is to be interviewed by a refugee and protection officer, they must be notified in advance of the date, time and place of the interview.
- b. The notice must advise the claimant or person :
- i of (if the first language of the claimant or person is not English and the refugee and protection officer considers that an independent interpreter is reasonably required for the purpose of conducting an interview of the claimant or person) the fact that an independent interpreter will be present at the interview unless:
 - the claimant or person requests otherwise; and
 - this request is acceptable to the officer; and
 - ii that their representative, including legal counsel, may be present at the interview
- c. The notice must advise the claimant or person that if they do not attend the interview, the officer may still determine the relevant matter.

C4.55.1 Procedure for interviews

- a. In conducting an interview a refugee and protection officer is not bound by any rules of evidence but may make any inquiries they see fit.
- b. If the claimant has a representative at the interview, the representative must be given the opportunity to make any comments or submissions on the case to the officer. Subject to the discretion of the officer, such comments and submissions will normally be made at the start or finish of the interview.
- c. A record of the interview must be made either in writing or by recording.
- d. If possible, potentially prejudicial information should be put to the claimant at the interview.

- e. A refugee and protection officer may consider whether or not an interview report needs to be completed and sent to the claimant.

Effective 29/11/2010

C4.60 Claimant to establish claim

See previous instructions: C4.60 Effective 29/11/2010

See also Immigration Act 2009 s 135

See also Immigration (Refugee and Protection Status Processing) Regulations 2010 regs 4, 6

- a. A claimant has the responsibility of establishing their claim.
- b. The claimant must ensure that all information, evidence and submissions that they wish to have considered in support of the claim or any other potential claim are provided to the refugee and protection officer before the officer determines the claim.

C4.60.1 Documents submitted in support of claim

- a. Any documentary evidence the claimant wishes to have considered must be disclosed to a refugee and protection officer as soon as possible.
- b. Any documents submitted in support of the claim that are not written in English must be accompanied by a full English translation.
- c. Translations must:
 - i not be prepared by a claimant, any member of their family or an immigration adviser assisting with the application; and
 - ii be accompanied by the original documents or certified copies; and
 - iii be certified as a correct translation made by a person familiar with both languages and competent in translation work; and
 - iv bear the stamp or signature of the translator or translation business; and
 - v if applicable, be on the official letterhead of the translation business.
- d. Officers may:
 - i request a translation of the complete document where the translation is of a selected part(s) of the document, and
 - ii request a translation by a different (specified) translation service where they are not satisfied by the initial translation.

Note: If a translation by a different (specified) translation service is requested the reason(s) behind the request must be clearly documented and conveyed to the applicant by INZ.

- e. All written statements, submissions and any other documents produced with the assistance of an interpreter must bear the name of the interpreter used.

- f. Final submissions and evidence a claimant wants considered before a decision is made should be filed within a reasonable time, as set by the refugee and protection officer.

Effective 04/04/2011

C4.65 Withdrawal of claim for refugee or protection status

See also Immigration Act 2009 s 142

- a. Claimants who wish to withdraw their claim for refugee or protection status before a determination is made may do so at any time by notifying a refugee and protection officer in writing.
- b. In such cases, the refugee and protection officer will give the claimant or their representative written confirmation of the withdrawal.
- c. A refugee or protection status claim or subsequent claim must be treated as withdrawn if the claimant leaves New Zealand or is granted a residence class visa.
- d. In such cases, after verifying the claimant's departure or residence class visa the refugee and protection officer will notify the claimant or their representative in writing of the withdrawal, except if the claimant has no representative and has left New Zealand.

Effective 29/11/2010

C4.70 Communications on refugee matters

C4.70.1 Methods of communication

See also Immigration Act 2009 s 386(3)-(4)

See also Immigration (Refugee and Protection Status Processing) Regulations 2010 reg 11

Unless otherwise specified, any matter that is to be communicated between a refugee and protection officer and a claimant or person whose refugee or protection status is in question may be communicated by:

- a. personal service; or
- b. by service on the person's lawyer or agent in accordance with section 386(4) of the Immigration Act 2009; or
- c. registered post addressed to the person's New Zealand address.

C4.70.5 Receipt of communications

See also Immigration (Refugee and Protection Status Processing) Regulations 2010 reg 12

- a. If a document has been given to, served on or sent by registered post to a claimant or other person whose refugee or protection status is in question, the document is to be treated as having been received by the person 5 working days after the date on which it was posted.
- b. C4.70.5(a) applies unless the person proves that otherwise than through fault on the person's part, the notice or document was not so given, served or received.

- c. If any document is sent by fax, the document is to be treated as having been received at the date and time specified in a record of the successful transmission of the fax that is generated by the machine sending the fax.

Effective 29/11/2010

C4.75 Person claiming refugee or protection status may already be detained

- a. A person claiming refugee or protection status may already be detained under the Immigration Act 2009, or any other legislation. A claimant in detention is entitled to the same refugee or protection status process and procedures as a non-detained claimant.
- b. Time limits for different stages of the claim process are likely to be reduced for detained claimants. When setting time limits for a detained claimant, a refugee or protection officer needs to ensure satisfactory time is allowed for a claimant to exercise the rights outlined at C5.1.
- c. Because the claimant is being detained, the refugee and protection officer should determine the claim as speedily as possible, ideally within 14 weeks from the date of lodgement of the *Confirmation of Claim to Refugee or Protection Status in New Zealand* form. The refugee and protection officer will make a decision after:
- i receiving submissions or comments on the interview report; or
 - ii if there are no submissions or comments on the interview report:
 - being notified that there are no submissions or comments on the interview report; or
 - the time limit for making submissions or comments on the interview report has expired, or
 - the interview itself, if there is no interview report.

Effective 29/11/2010

C5 AFTER A CLAIM TO REFUGEE OR PROTECTION STATUS HAS BEEN DETERMINED

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C5.1 Decisions on claims

See also Immigration Act 2009 ss 138, 386

See also Immigration (Refugee and Protection Status Processing) Regulations 2010 reg 8

- a. The decision of a refugee and protection officer on a claim is final, unless the claimant appeals to the Tribunal and the Tribunal allows their appeal.
- b. A refugee and protection officer must, if satisfied that the grounds for recognition have been met, recognise a person as a refugee (if section 129 of the Immigration Act 2009 has been met) and as a protected person (if one or more of the grounds under sections 130 and 131 of the Immigration Act 2009 have been met).
- c. Despite C5.1(b), a refugee and protection officer may refuse to recognise a person as a refugee or protected person if satisfied the person has the protection of another country or has been recognised as a refugee by another country and can return there without risk of circumstances that would give rise to grounds for recognition as a refugee or protected person.
- d. An officer must notify a claimant, in the prescribed manner, of:
 - i the officer's decision on the claim; and
 - ii the reasons for that decision; and
 - iii the officer's determination of matters in C4.15(b).
- e. Notification must be made in the approved form and served on the claimant, or lawyer or representative, by:
 - i personal service; or
 - ii registered post, addressed to the last address supplied by the claimant; or
 - iii fax, sent to the last fax number supplied by the claimant.
- f. If in a family group more than one person has claimed refugee or protection status, each family member must be notified separately of the decision on their claim and, if their claim is declined, their right of appeal.

- g. Once a decision on a claim is made and notified to the claimant, any officer may in their absolute discretion re-open the claim for further consideration as to cessation or cancellation of refugee or protection status.

Effective 29/11/2010

C5.5 Declining claims or refusing to consider claims or subsequent claims

See also Immigration Act 2009, s 233(2)

See also Immigration (Refugee and Protection Status Processing) Regulations 2010 reg 7(4)

- a. If a refugee and protection officer declines a claim or subsequent claim for refugee or protection status, the officer must notify the claimant in writing of:
- i the claimant's right of appeal to the Tribunal, including the fact they must lodge any humanitarian appeal at the same time as any appeal against the refusal to accept, or the decline of, a claim to refugee and protections status; and
 - ii their right to appeal the decision by filing with the Tribunal a written notice of appeal, which must contain:
 - a current address in New Zealand at which they may be contacted; and
 - a current residential address; and
 - iii the time limits within which to appeal; and
 - iv the address where an appeal may be filed; and
 - v if the claimant has a right of appeal, the claimant's right to an oral hearing provided in accordance with section 233(2) of the Immigration Act 2009 if the claimant lodges an appeal.

C5.5.1 Appeal to the Immigration and Protection Tribunal

See also Immigration Act 2009 ss 128-131, 134, 194, 195

- a. A claimant or refugee or protected person may appeal to the Tribunal against a decision to:
- decline to accept their claim for consideration under C4.1; or
 - decline the person's claim to be recognised as a refugee or protected person; or
 - refuse to consider their subsequent claim under C4.5; or
 - decline a subsequent claim by the person to be recognised as a refugee or protected person.
 - cease or cancel recognition of their status under C6.
- b. If the claimant or refugee or protected person is detained in custody under Part 9 of the Immigration Act 2009 when they are notified, they must appeal not later than 5 working days of being notified. In any other case they must do so not later than 10 working days of being notified of the decision. The tribunal may extend these time limits in special circumstances.
- c. A matter must not be treated as finally determined until the appropriate appeal period expires or, if lodged, an appeal has been determined.

Effective 29/11/2010

C5.10 Decision on claim of detained claimant

See also Immigration Act 2009 ss 194(2), 195(3)

- a. The provisions of C5.5 and C5.10 apply to refugee or protection status claims made by people who are detained.

- b. If the decision is to recognise the claimant as a refugee or protected person:
- i the refugee and protection officer must notify Compliance Operations, as well as the claimant or their representative, of this; and
 - ii Compliance Operations will then arrange for the claimant to be released from custody, if the claimant is being detained:
 - under section 116 of the Immigration Act 2009; or
 - to await deportation from New Zealand (unless they are a refugee and their deportation under Article 32(1) or 33(2) of the Convention is being considered); or
 - under Part 5 of the Immigration Act 2009 (unless they are a refugee and their deportation under Article 32(1) or 33(2) of the Convention is being considered)
- c. If the decision is to decline the claim, the notification of the decision to the claimant must contain the following 2 paragraphs, either (if there is a representative):
- i "The Immigration and Protection Tribunal will only consider an appeal lodged no later than 5 working days of the date your client receives this decision. The tribunal only has the power to extend this timeframe if it is satisfied that there are special circumstances. If your client fails to appeal within the appeal period, they may be deported from New Zealand on the first available flight after the appeal period expires."
- or (if there is no representative):
- ii "The Immigration and Protection Tribunal will only consider an appeal lodged no later than 5 working days of the date you receive this decision. The tribunal only has the power to extend this timeframe if it is satisfied that there are special circumstances. If you fail to appeal within the appeal period, you may be deported from New Zealand on the first available flight after the appeal period expires."
- d. A detained claimant whose claim has been declined may be deported from New Zealand earlier than the end of the appeal period if, understanding the implications of what they are doing, they formally waive their right of appeal, and ask to be deported forthwith, in writing.

Effective 29/11/2010

C5.15 Recognition of claimant as refugee or protected person

See also Immigration (Refugee and Protection Status Processing) Regulations 2010 reg 8

- a. If a refugee and protection officer recognises a claimant as a refugee or protected person, the officer informs the claimant or their representative of this in writing.
- b. The letter also states that if the claimant wishes to apply for residence, they should apply to the nearest INZ branch that processes applications for visas (see S3.15 for requirements).

C5.15.1 Eligibility to apply for residence

See also Immigration Act 2009 ss 137(2), 139

- a. Claimants who are recognised as having refugee or protection status may apply for residence on the basis of that recognition (see S3.10), with the exception of a protected person who a refugee and protection officer has determined committed an act set out at C4.10(b).
- b. Claimants may include dependants in the residence application in accordance with residence instructions (see S3).

- c. The Minister of Immigration will determine the immigration status of protected persons where:
 - a. there are serious reasons for considering that a protected person has committed a crime against peace, a war crime, a crime against humanity, a serious non-political crime outside New Zealand before entering New Zealand, or to have been guilty of acts contrary to the purposes and principles of the United Nations;
 - b. the person has been granted protection status but had a claim or subsequent claim for refugee status refused consideration under C4.1(a)(ii) or C4.5(a)(i).

C5.15.5 Residence not automatically granted on recognition of refugee or protection status

See also Immigration Act 2009 ss 15, 16, Schedule 1 Articles 33(1) and 33(2)

- a. The grant of residence does not automatically follow the recognition of refugee or protection status.

Examples:

- if section 15 or 16 of the Immigration Act 2009 applies to the claimant, and the Minister is not prepared to authorise granting a visa under section 17; or
- if Article 33(2) applies (see C5.20(f)).

- b. If it is not appropriate to grant residence to a person recognised as a refugee because they do not meet character or security requirements, officers must take into account the principle of 'non-refoulement' under Article 33 of the Convention (see C5.20(e) and (f)), and consider granting a temporary visa.
- c. For people with refugee status, it is also necessary to determine whether Articles 32(1) or 33(2) apply. In such cases New Zealand may lawfully expel a refugee because they represent a threat to national security or public order, or because they represent a danger to the community (see C5.20(f)). If applicable, consideration of liability for deportation under section 164(3) of the Immigration Act 2009 should be considered before a client applies for residence.
- d. For people with protection status, the matters set out at C5.15.1(c) are relevant.

Effective 29/11/2010

C5.20 Limitation on deportation of persons recognised or claiming recognition as a refugee or protected person

See also Immigration Act 2009 s 164, Schedule 1 Articles 32, 33

- a. Subject to (b) and (c) below, no person who has been recognised as a refugee or protected person or who is a claimant may be deported from New Zealand.
- b. A protected person may be deported to any place other than a place in respect of which there are substantial grounds for believing that the person would be in danger of being subjected to torture or to arbitrary deprivation of life or cruel, inhuman or degrading treatment or punishment.
- c. No person who has been recognised as a refugee in New Zealand and no refugee status claimant may be deported from New Zealand unless Article 32(1) or 33 of the Convention allows their deportation.
- d. Under Article 32(1), Governments undertake not to expel a refugee lawfully on their territory except on grounds of national security or public order.

- e. Under Article 33(1) Governments undertake not to expel or return a refugee to a country where the refugee's life or freedom would be threatened on account of the person's race, religion, nationality, membership of a particular social group or political opinion.
- f. Article 33(2) states however that the prohibition in Article 33(1) no longer applies if:
 - i there are reasonable grounds for regarding a refugee as a danger to the security of the country in which they are (i.e. in our case, New Zealand); or
 - ii a refugee, having been convicted by a final judgement of a particularly serious crime in that country, constitutes a danger to the community of the country (i.e. New Zealand).
- g. A determination to deport a refugee, protected person, or refugee or protection status claimant must be made by a refugee and protection officer.

Effective 29/11/2010

C6 LOSS OR CANCELLATION OF REFUGEE OR PROTECTION STATUS

IN THIS SECTION

C6.1 Functions of refugee and protection officers in relation to loss of refugee and protections status	6-1
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C6.1 Functions of refugee and protection officers in relation to loss of refugee and protections status

Refugee and protection officers have the following functions in relation to loss of refugee and protection status.

C6.1.1 Cessation

See also Immigration Act 2009 ss 129, 130, 131, 143, 144

- a. The refugee and protection officer may cease to recognise a person as a refugee in terms of Article 1C of the Convention if:
 - i the original determination to recognise the person as a refugee was made by a refugee and protection officer or a refugee status officer under the Immigration Act 1987; or
 - ii the original determination to recognise the person as a refugee was made before 1 October 1999; or
 - iii the person was recognised as a refugee outside New Zealand and travelled to New Zealand under a government mandated programme on the basis of that recognition.
- b. The refugee and protection officer may cease to recognise a person as a protected person if that determination was made by a refugee and protection officer and there are no longer substantial grounds for believing that the protected person, if deported from New Zealand, would be in danger of being subjected to torture, or arbitrary deprivation of life or cruel, inhuman or degrading treatment or punishment; and
- c. The refugee and protection officer may apply to the Tribunal for a determination as to whether a person's recognition as a refugee or protected person should cease if the original determination was made by the Tribunal (or by the Refugee Status Appeals Authority under the Immigration Act 1987).

C6.1.5 Cancellation

See also Immigration Act 2009 ss 145, 147

- a. A refugee or protection officer may cancel a person's recognition as a refugee or protected person if:
 - i the person is a New Zealand citizen and the original determination was made by a refugee and protection officer or by a refugee status officer under the Immigration Act 1987 or before 1 October 1999; or

- ii the person is a non-New Zealand citizen and the original determination was made under the 2009 Act or under the Immigration Act 1987 or before 1 October 1999; or
 - iii the person was recognised as a refugee outside New Zealand and travelled to New Zealand under a government mandated programme on the basis of that recognition; and
 - iv the refugee and protection officer has determined that the recognition may have been procured by fraud, forgery, false or misleading representation or by concealment of relevant information; or
 - v the person has been convicted of an offence where it is established they acquired recognition as a refugee or protected person by fraud, forgery, false or misleading representation, or concealment of relevant information; or
 - vi the refugee and protection officer has determined that the matters dealt with in Articles 1D, 1E and 1F of the Refugee Convention may not have been able to be properly considered by a refugee and protection officer or a refugee status officer under the Immigration Act 1987 for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information; and
 - vii the refugee and protection officer has determined that the person is not a refugee or a protected person.
- b. In proceedings involving the loss or potential loss of refugee or protection status, a refugee and protection officer has those powers, with any necessary modifications which they would have as if they were processing a refugee or protection status claim (see C4.20). The refugee or protected person has the responsibilities for establishing their case as set out at C4.55.
- c. The refugee or protection officer may apply to the Tribunal for a determination as to whether the Tribunal should cancel the recognition of a New Zealand citizen as a refugee or protected person, in any case where that recognition was made by the Tribunal (or the Refugee Status Appeals Authority under the Immigration Act 1987). The Tribunal may cancel the recognition of a New Zealand citizen as a refugee or protected person if:
- i it determines that recognition may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information; or
 - ii the person has been convicted of an offence where it is established they acquired recognition as a refugee or protected person by fraud, forgery, false or misleading representation, or concealment of relevant information; or
 - iii it determines that in the case of a person recognised as a refugee, any of Articles 1D, 1E and 1F of the Convention may not have been able to be properly considered by the Tribunal (or the Refugee Status Appeals Authority under the Immigration Act 1987) for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information; and
 - iv it has determined that the person is not a refugee or protected person

Effective 29/11/2010

C6.5 Notice of intended determination involving cancellation of refugee or protection status

- a. In any case where a person has been recognised as a refugee or protected person by a refugee and protection officer, and an officer intends to make a determination under section 145 or 146 of the Immigration Act 2009 to the effect that a person's refugee or protection status may be cancelled, the officer must notify the person concerned in the approved form of:

- i that intention; and
- ii the matter it involves, including:
 - the reasons for it; and
 - any evidence relating to it.
- b. The officer must sign the notice, and the notice must be served personally on the person to whom it relates.
- c. At the same time as the person is served with the notice they must be given a copy of all relevant information from their departmental file. Any material or information whose disclosure would be likely to endanger any person may be withheld from the person, but the person must be notified of that non-disclosure.
- d. Any classified information relevant to the case for cancellation must be treated in accordance with A19.
- e. At the same time as the person is served with the notice they must also be informed of their right:
 - i to contact a representative of the UNHCR, together with information on how to exercise that right; and
 - ii to contact a lawyer; and
 - iii within 20 working days, to request an interview and to provide written submissions on the intended cancellation of refugee or protection status; and
 - iv to have an independent interpreter present at any interview by the officer.
- f. A person who is served with a notice must provide the person serving the notice with an address to which communications regarding the matter may be sent.
- g. In any case where a person is a New Zealand citizen and has been recognised as a refugee or protected person by the Tribunal (or the Refugee Status Appeals Authority under the Immigration Act 1987), and a refugee and protection officer intends to make an application to the Tribunal, the officer may do so under section 147 of the Immigration Act 2009. Such applications are made to the Secretariat of the Tribunal and must be submitted with a copy of any information relevant to the recognition of the person as a refugee or protected person and the determination of the application.
- h. If an application for cancellation of refugee or protection status is accepted for consideration, the Tribunal must take reasonable steps to arrange for a copy of the application to be served personally on the person to whom it relates.

Effective 29/11/2010

C6.10 Procedure for possible cancellation of refugee or protection status

See also Immigration Act 2009 ss 145-148

- a. A person who receives notice of the possible cancellation of refugee or protection status is entitled:
 - i to make a written submission on the matter of the possible cancellation of their refugee or protection status, and any reasons why they should continue to be recognised as a refugee or protected person; and
 - ii to be interviewed on the matter of the possible cancellation of their refugee or protection status, and any reasons why they should continue to be recognised as a refugee or protected person.

- b. Within the requirements of fairness, written responses to a notice received must be provided within 20 working days, or before any interview is held, whichever is first.
- c. If an interview is requested, the officer will schedule an interview.
- d. Timeframes for final written submissions following any interview will be provided by the interviewing officer and will depend on whether an interview report is completed. Such a timeframe will usually be 20 working days following either the last interview or, if produced, the interview report.
- e. If the refugee and protection officer determines that refugee or protection status may be cancelled under C6.1.5, then the officer will consider whether there is any further, new or other reason why that person should continue to be recognised as a refugee or protected person.
- f. Before making any decision involving the cancellation of refugee or protection status, the relevant officer must take into account any submissions (including any personal interview), documents or other evidence produced by the person affected.
- g. A decision on the matter specified in the notice may not be made sooner than 20 working days after the date on which the person receives the notice.

Effective 29/11/2010

C6.15 Notice of decision to cancel refugee or protection status

See also Immigration (Refugee and Protection Status Processing) Regulations 2010 reg 9

- a. If a refugee and protection officer has notified a person of their intention to make a determination involving cancellation of refugee or protection status, the officer must notify the person, in writing, of:
 - i the officer's final decision on the determination; and
 - ii the reasons for that decision; and
 - iii if applicable, the person's right to appeal against this decision to the Tribunal.
- b. Notification must be made in the approved form and served on the person, or lawyer or representative, by:
 - i Personal service; or
 - ii Registered post, addressed to the last address supplied by the person; or
 - iii Fax, sent to the last fax number supplied by the person.
- c. If the decision is to cease or cancel the recognition of the person as a refugee or a protected person and the person has a right of appeal against that decision, notification must include information about:
 - i The time limits within which an appeal may be lodged; and
 - ii The address where an appeal may be lodged; and
 - iii The person's right to an oral hearing provided in accordance with section 233(2) of the Immigration Act 2009 if the person lodges an appeal.

Effective 29/11/2010

C7 SPECIAL CASES

IN THIS SECTION

C7.1 Claims for refugee or protection status by minors 7-1

C7.5 Cases involving deportation of persons threatening security 7-2

C7.1 Claims for refugee or protection status by minors

C7.1.1 Definition of a 'minor'

See also Immigration Act 2009 s 375

A minor is a child who is not married or in a civil union and is under 18 years of age.

C7.1.5 Nomination of responsible adult

See also Immigration Act 2009 s 375

- a. If one or more of the minor's parents are also seeking refugee or protection status in New Zealand or are appealing against a decision of a refugee and protection officer to the Tribunal, that parent:
 - i must represent the minor's interests; and
 - ii is the responsible adult for the minor.
- b. If a minor who is seeking refugee or protection status does not have a responsible adult to represent their interests, a refugee and protection officer must take steps to ensure that a responsible adult is nominated in accordance with section 375 of the Immigration Act 2009, including making the nomination, if necessary.
- c. A person may be nominated as a responsible adult only if:
 - i the person is 20 or more years of age; and
 - ii except in the case of a parent or guardian of the minor, the person is a New Zealand citizen or a resident or permanent resident; and
 - iii the person is any of the following:
 - a parent, guardian or relative of the minor; or
 - a person suggested by the minor; or
 - any other person having responsibility for the minor or who is otherwise suitable to represent the minor's interests; or
 - if no other suitable person is available, a person designated by the chief executive of the Department responsible for the administration of the Children, Young Persons, and Their Families Act 1989; and
 - iv (except in the case of a parent or guardian of the minor) the person agrees in writing to be nominated as a responsible adult.
- d. Should the need arise, and after such consultation as is reasonable in the circumstances, a substitute responsible adult may be nominated in accordance with C7.1.5.
- e. A responsible adult who is representing the interests of the minor in any refugee or protection status claim must supply a refugee and protection officer with an address in New Zealand at which they may be notified of any matter concerning the minor.

C7.1.10 Roles and rights of responsible adult

See also Immigration Act 2009 ss 194, 195, 245, 247, 375, 376

- a. The role of a responsible adult relates to those matters or proceedings for which the nomination was made.
- b. The role of responsible adult finishes when the minor leaves New Zealand, the matter or proceedings concerned are completed or when the minor turns 18 or marries or enters a civil union.
- c. The responsible adult may appeal to the Tribunal or High Court on the minor's behalf, make submissions to the Tribunal, and bring review proceedings in the High Court.
- d. To the extent practicable given the level of maturity and understanding of the minor, the responsible adult must try to find out the views of the minor and make them known on behalf of the minor, where appropriate.
- e. Any document that must be served on or notified to the minor must instead be served on or notified to the responsible adult, and such service or notification is deemed to be service on or notification to the minor.

C7.1.15 Views of minor to be considered

See also Immigration Act 2009 s 377

- a. In any claim by the minor to be recognised as a refugee or protected person, as far as practicable, the minor must be given an opportunity to express their views on the matter, whether personally or through a responsible adult.
- b. The refugee and protection officer must give due weight to those views, taking into account the minor's age and level of maturity and understanding.

Effective 29/11/2010

C7.5 Cases involving deportation of persons threatening security

See also Immigration Act 2009 s 163

- a. Where D7.65 applies to a refugee or protection status claimant to be deported from New Zealand:
 - i the refugee and protection officer processing the claim must determine the claim; or
 - ii if the claim has not been allocated to an officer for processing, it must be allocated as soon as possible to an officer, who must determine the claim; and
 - iii the claimant continues to have the right to appeal to the Tribunal against a decision to decline the refugee or protection status claim.
- b. Where the Minister of Immigration certifies that a person constitutes a threat or risk to security, the Governor-General by Order in Council may order a refugee or protection status claimant to be deported from New Zealand. That claimant may not be deported from New Zealand until their claim for refugee or protection status has been finally determined.
- c. If the Governor-General by Order in Council orders the deportation from New Zealand of a person who is not a refugee or protection status claimant, that person still has the right to claim refugee or protection status.
- d. If such a person claims refugee or protection status, C7.5(a)(ii) and (iii) apply.

- e. Considerations under C5.20 may arise concerning a refugee or protected person whom the Governor-General by Order in Council has ordered to be deported from New Zealand.

Effective 29/11/2010