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| <p style="text-align: center;"><b>WORKFORCE (IMMIGRATION NEW ZEALAND)</b><br/><b>INTERNAL ADMINISTRATION CIRCULAR NO: 09-08</b></p> |
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**To:** All Workforce/Immigration New Zealand (INZ) staff

**Date:** 13 October 2009

**Skilled Migrant Category: Consideration of Expressions of Interest**

Please **READ** this information and ensure that all staff members who may be affected are aware of what is required of them.

**Purpose**

1. The purpose of this Internal Administration Circular (IAC) is to:
  - a) emphasise that in-depth assessment and verification of the claims made in an Expression of Interest (EOI) should be undertaken at the application stage and that the decision to issue an Invitation to Apply (ITA) should be based on a prima facie assessment,
  - b) provide guidance to ensure consistent practice with respect to the assessment of health, character, and English language requirements at the EOI stage, and
  - c) clarify consistent practice with respect to notifying clients of potentially prejudicial information at the EOI stage and dealing with complaints following declines.

**Background**

2. On 6 August 2008 Cabinet agreed that the EOI process be improved by ensuring that in-depth verification of points claimed at the EOI stage takes place at the application stage. It was not originally envisaged that an EOI would be subject to the same levels of investigation as an application.
3. Consideration should be a fast, high level (prima facie) assessment of a client's claims. The aim in an EOI assessment is to become sufficiently confident – as opposed to being confident beyond a reasonable doubt – that the information in the EOI in question is credible and genuine.
4. Currently there is variation amongst branches in the way EOI's are assessed and verified. In some cases, an intensive level of assessment and verification has been undertaken to ensure a high likelihood of successful conversion from an ITA to a residence visa or permit. However this is contrary to the original intent and the Cabinet decision.

**An EOI is not an application**

5. The EOI mechanism is specifically provided for in the Immigration Act 1987 (the Act) and is conceptually distinct from the residence application process. Section 34(G)(1A) of the Act places responsibility on clients to ensure that they have provided the most up to date and accurate information in their EOI. Section 18C (2A) clarifies that there is no right of appeal against a decision not to issue an ITA. The right of appeal by residence applicants who have provided false or misleading information in their EOI is also removed under this section.
6. Skilled Migrant Category (SMC) policy and process reflect the legal framework, and make a distinction between the level of assessment required at the EOI and the

application stages. The decision on whether to issue an ITA is intended to be based on a prima facie assessment of an EOI.

### **Credibility check**

7. At EOI stage case officers should check the credibility of the points claimed in an EOI. This credibility check should be a quick common sense check of the points claimed for employability and capacity building factors (see SM6), based solely on the information provided in the EOI and held on AMS. Consideration across qualifications, job offers and work experience should be given, and where there are obvious discrepancies present, the EOI should be declined.
8. Specific documentation that will assist in addressing any unresolved concerns or identified risk(s) at the application stage should be requested in the ITA letter. The ITA letter template has been updated to reflect this approach.

### **Health assessment**

9. It is not appropriate to make a full assessment of a client's standard of health at EOI stage. Immigration New Zealand (INZ) medical and X-ray certificates should not be requested, nor should previous medical information on hand be referred to the Medical Assessors.
10. Clients with conditions listed on Appendix 10 should be declined. A medical waiver consideration should not be undertaken at the EOI stage as there will be insufficient information on all circumstances to make a full assessment. If health issues other than those in Appendix 10 have been declared in the EOI, and the information in the EOI is otherwise found to meet the basis of selection, an ITA should be issued.
11. If health issues other than Appendix 10 are declared the client should be advised in the ITA letter that if they submit an application for residence, it may result in their medical certificate being referred to an INZ Medical Assessor and consideration for a medical waiver may be necessary.
12. The ITA letter should advise that a medical waiver is not guaranteed to be approved, nor is issuing an ITA an indication that INZ considers the potential applicant to have an acceptable standard of health to be granted residence in New Zealand.

### **Character assessment**

13. It is not appropriate to make a full assessment of a client's character at the EOI stage and police clearances should not be requested. Unless there is information that a Special Direction or character waiver has been approved, nor should previous character information on hand be considered.
14. Clients who fall under Section 7 should be declined, unless there is evidence of issues which fall under *A5.20 Applicants ineligible for a residence visa or permit*. Where other character issues are indicated, and the information in the EOI is otherwise found to meet the basis of selection, an ITA should be issued.
15. Where there are outstanding character issues, the client should be advised in the ITA letter that consideration of a character waiver may be necessary in the assessment of their eligibility for residence. They should be further advised that a favourable outcome is not guaranteed and the issuing of an ITA is not an indication that INZ considers they meet good character requirements to be granted residence in New Zealand.

### **English language assessment**

16. International English Language Testing System (IELTS) tests should not be requested as part of the EOI assessment process. If there are concerns about whether a client meets the English language requirements, and the information in the EOI is otherwise found to meet the basis of selection, an ITA should be issued.
17. The ITA letter should advise the client that if they fail to demonstrate that they meet the minimum standard of English an IELTS test may be requested (see SM5.5 (d)).

#### **Decision not to ITA**

18. Within the legal framework described above, where a decision is made not to issue an ITA, INZ is not required to seek comment on that decision. Officers should not send a potentially prejudicial information (PPI) letter to the client. Instead the client should be sent a letter which notifies them of the decision, and the reasons behind the decision.
19. As stated in Section 10A of the Immigration Act 1987, "Issue of invitation to apply for residence a matter of discretion", no person is entitled as of right to an invitation to apply for residence. There are no appeal rights against the decision not to issue an ITA.

#### **Deputy Secretary Complaints**

20. Section 10A of the Immigration Act 1987 states that issue of an invitation to apply for residence is a matter of discretion and that no appeal lies against a decision on any such question. This is because the EOI process was designed to be a prima facie assessment of the information.
21. Internal Administration Circular 09/07 "Client Complaint Resolution Process" (CCRP) outlines the two stages of our complaint process. The CCRP is a process available to all clients to seek resolution of any interaction between Workforce and its clients.
22. Managers should be aware that the CCRP process is not intended to be used as an avenue to re-litigate a decision not to issue an ITA. It would be sufficient to quote section 10A of the Immigration Act where a complaint appears simply to be an attempt to circumvent the provisions of section 10A. Managers should ensure that responses to all complaints appropriately address the concerns raised, including in particular any process-related concerns or concerns that information supplied has been misconstrued.