

4 November 2009

IMMIGRATION NEW ZEALAND INSTRUCTIONS: Amendment Circular No. 2009/14

To: All Manual Holders

AMENDMENTS TO IMMIGRATION NEW ZEALAND (INZ) OPERATIONAL MANUAL

Introduction

This circular outlines changes to Government immigration policy in the INZ Operational Manual. A copy of the amended policy is attached to this circular.

All visa and immigration officers dealing with immigration applications should read the amended policy and operate in accordance with it on and from 29 October 2009.

Note

The amendment described in this circular will be published in the INZ Operational Manual on 30 November 2009.

Any enquiries about this policy change should be directed to the Service Design Mailbox.

Changes to policy effective from 29 October 2009

WH1.10 Agreement to Recruit

A provision has been added to require an employer who holds an Agreement to Recruit under Recognised Seasonal Employer (RSE) policy to inform the Department of Labour of the expected departure date of non-New Zealand citizen or resident workers employed under RSE policy once bookings for outward flights have been made.

WH1.15 Recognised Seasonal Employer (RSE) Limited Purpose Entry (LPE) Policy - Visas and Permits

The provision requiring applicants for RSE Limited Purpose Visas to hold a return ticket to their home country has been removed.

Appendix 1: Amended Policy

WH1.10 Agreement to Recruit (ATR)

- a. An Agreement to Recruit (ATR) is an approval for a Recognised Seasonal Employer (RSE) to offer employment (in planting, maintaining, harvesting, and packing crops) to non-New Zealand citizen or resident workers. This approval will only be given at times where demand for such workers in the horticulture and viticulture industries cannot be met from the available New Zealand workforce.
- b. The availability of suitable New Zealand citizen or resident workers will be assessed in consultation with the Ministry of Social Development (MSD).

WH1.10.1 Requirements for an ATR

- a. An application for an Agreement to Recruit (ATR) will only be approved where the employer holds RSE status (WH1.5).
- b. INZ must be satisfied that the employer has taken all reasonable steps to recruit and train New Zealand citizens or residents for available positions before seeking an ATR to recruit workers who are not New Zealand citizens or residents. Evidence to support the employer's case for requiring an ATR must be provided with each application for an ATR.
- c. Each application must include the following information:
 - i. the region(s) of seasonal demand; and
 - ii. the number of workers required; and
 - iii. the nature of each position (planting, maintaining, harvesting, or packing crops); and
 - iv. the period for which each position is available (start and end date of employment); and
 - v. the location where the non-New Zealand citizen or resident workers will be working; and
 - vi. the country or countries from which the employer intends to recruit their workers; and
 - vii. a copy of the employment agreement that will be offered to the workers, and that meets the requirements set out in WH1.20.

Note: The employment agreement provided to workers must be the same as that which is provided to INZ at the ATR stage, unless the terms and conditions are more beneficial to the worker.

- d. Where the RSE applying for an ATR intends to recruit workers to undertake work at the worksite of a third party, such as a grower or pack house operator, they must provide written evidence of that arrangement with the third party. Such arrangements between RSEs and third parties do not remove any of the RSEs' obligations under this policy (except where WH1.5.5 (d) applies).
- e. Where two or more RSEs have an arrangement to provide consecutive periods of employment to the same workers, they must submit their

separate ATRs (covering each consecutive period) to INZ together. Where INZ approves those jointly submitted ATRs, workers will be able to apply for a further permit to work for the second or subsequent RSEs without the need to depart from New Zealand.

Note: In any case the maximum stay in New Zealand of seven months in any 11 month period (or nine months in any 11 month period for citizens of Tuvalu or Kiribati who are normally resident in Tuvalu or Kiribati) must be adhered to.

- f. INZ must be satisfied that the employer will make available appropriate pastoral care to workers. Employers must provide full details of how they plan to address the following pastoral care, and health and safety requirements:
 - i. transportation to and from the port of arrival and departure; and
 - ii. an induction programme; and
 - iii. suitable accommodation; and
 - iv. transportation to and from the worksite(s); and
 - v. access to personal banking; and
 - vi. provision of personal protective equipment; and
 - vii. provision of onsite facilities (toilets, hand washing, first aid, shelter, fresh drinking water); and
 - viii. necessary language translation, e.g. for health and safety purposes; and
 - xi. opportunity for recreation and religious observance.

- g. An RSE who holds an ATR must:
 - i. comply with the conditions of the ATR; and
 - ii. provide all prospective non–New Zealand citizen or resident workers to be employed under RSE policy with a written employment agreement that meets the requirements set out in WH1.20; and
 - iii. comply with the terms and conditions of the employment agreements; and
 - iv. comply with the minimum requirements set out in WH1.20 in relation to:
 - paying half the return airfare between New Zealand and the worker's country of residence for each worker recruited under the RSE policy, unless the worker is a citizen of Tuvalu or Kiribati who is normally resident in Tuvalu or Kiribati (in which case the employer must pay for half the return airfare between Nadi (Fiji) and New Zealand), or WH1.15.5(a) applies; and
 - minimum remuneration; and
 - pay deduction requirements; and
 - v. comply with any request from the Department of Labour to audit the RSE against RSE Policy and the conditions of the RSEs ATR and employment agreements; and
 - vi. pay to the Department of Labour any costs reasonably incurred by the Department, to a maximum of NZ\$3000 per worker, in relation to the repatriation (including any maintenance and accommodation) of any non–New Zealand citizen or resident worker who requires repatriation as a result of a breach of the terms and conditions of their RSE limited purpose permit; and

- vii. inform the Department of Labour of the expected departure date of non-New Zealand citizen or resident workers employed under RSE policy once bookings for outward flights have been made.

Note: For the purposes of this policy, the return airfare is defined as the total cost of travel from the worker's country of residence (or from Nadi (Fiji) for a worker who is a citizen of Tuvalu or Kiribati) to New Zealand and back, including all associated taxes and fees.

WH1.10.5 Determining an application for an ATR

- a. An ATR will be approved only where:
 - ii. the appropriate regional Work and Income office(s) has been advised of the RSEs vacancies; and
 - ii. INZ, in consultation with MSD, is satisfied that there are no suitable New Zealand citizen or resident workers available to undertake the work; and
 - iii. there are sufficient places remaining within the annual limit (see WH1.1.15), for the grant of permits under this policy; and
 - iv. INZ is satisfied that the requirements set out in WH1.10.1 and WH1.10.10 are met.
- b. Where INZ is not satisfied that the number of workers requested in the ATR is appropriate for the work required, or this number of people exceeds the forecast labour shortage for the region and period requested, INZ may approve the recruitment of a lesser number of workers, or for a lesser period of work than requested.
- c. INZ will take into consideration the needs of the horticulture industry and viticulture industry as a whole when determining an ATR application and the number of workers that may be approved, to ensure that no particular region, crop or season is disadvantaged.
- d. Any supporting documentation to verify a regional labour shortage will be considered.

WH1.10.10 Pacific countries eligible for the recruitment of workers

- a. ATRs will only be granted for recruitment of citizens from the following eligible Pacific countries who are also normally resident in one of those countries, unless (c) below applies:

Federated States of Micronesia

Kiribati

Nauru

Palau

Papua New Guinea

Republic of Marshall Islands

Samoa

Solomon Islands

Tonga

Tuvalu

Vanuatu

- b. In response to the December 2006 Fiji coup, Fiji has been excluded from the list of eligible Pacific countries, however ATRs may be granted to citizens from the eligible Pacific countries who are normally resident in Fiji.
- c. ATRs will only be granted for recruitment of citizens other than those listed above where INZ is satisfied that:
 - i. reasonable attempts to recruit from the eligible Pacific countries have not been successful (see WH1.10.15); or
 - ii. the RSE has pre-established relationships with workers from countries other than the eligible Pacific countries (see WH1.10.20); or
 - iii. the RSE has reasonable grounds for why it is not feasible to recruit from the eligible Pacific countries.
- d. Any request to recruit from outside the eligible Pacific countries must state the country or countries the RSE wishes to recruit from, and must be accompanied by evidence that supports this request.

WH1.10.15 Reasonable attempts to recruit from eligible Pacific countries

INZ may consider an RSE to have made reasonable attempts to recruit from eligible Pacific countries if:

- a. the RSE has failed, having made genuine and reasonable attempts, to recruit suitable potential workers from the eligible Pacific countries within six weeks of commencing recruitment; and
- b. evidence can be provided of genuine and reasonable attempts to recruit workers in the eligible Pacific countries, such as a written communication from a National RSE Officer stating that they have been consulted and agree that employing people from these nations is not feasible in the circumstances.

Note: If any employment offers provided to workers from the eligible Pacific countries do not meet the criteria set out in WH1.20, the employer will not be considered to have made a reasonable attempt to recruit from eligible Pacific countries.

WH1.10.20 Pre-established employment relationships with workers of other nationalities

- a. When determining whether an employer has a pre-established employment relationship with workers who are not citizens of eligible Pacific countries, INZ will take into account factors such as (but not limited to):
 - i. the number of workers employed from each country, relative to the total number of workers employed by the employer; and
 - ii. the number of previous occasions on which workers have been recruited from these countries; and
 - iii. the length of time for which these workers were employed; and
 - iv. whether the employer has made a substantial investment in establishing formal training opportunities or recruitment processes with workers or communities within these countries.
- b. When determining whether an employer has a pre-established employment relationship with workers who are not citizens of eligible Pacific countries, INZ will not take into account employment relationships with workers holding permits granted:
 - i. under the Seasonal Work Permit policy, or

- ii. under a Working Holiday Scheme policy, or
- iii. under the Transitioning to Recognised Seasonal Employer policy, or
- iv. under the Supplementary Seasonal Employment policy, or
- v. on the basis of a Variation of Conditions to a visitor's permit.
- c. Where INZ is satisfied that an employer has a pre-established relationship with workers from a country not listed in WH1.10.10 (a) and the employer has applied to recruit a greater number of workers from that country than the number of workers from that country previously employed by the employer, INZ will then determine whether the number of workers requested is appropriate in the circumstances.
- d. When making a determination under (c) above, INZ may take into account such factors as:
 - i. the nature of the pre-established relationship, such as whether the employer has made a substantial investment in establishing formal training opportunities or recruitment processes with workers or communities within that country; and
 - ii. whether the employer has made any attempts to develop relationships with countries listed in WH1.10.10(a) above.

WH1.10.25 Reconsideration process for applications for ATRs which are declined

There is no statutory right of appeal against the decision to decline an application for an Agreement to Recruit (ATR), however INZ may reconsider a declined application for an ATR where new information is promptly provided.

WH1.10.30 Applying for an ATR

An application for an ATR must be:

- a. made in New Zealand; and
- b. made on the Application for an Agreement to Recruit under the Recognised Seasonal Employer Policy (NZIS 1141) form; and
- c. accompanied by the prescribed fee; and
- d. supported by evidence that demonstrates the employer meets the requirements set out at WH1.10.1 and WH1.10.10.

WH1.15 Recognised Seasonal Employer (RSE) Limited Purpose Entry (LPE) Policy - Visas and Permits

Applications for RSE limited purpose entry visas and permits must be considered under WH1.15 Recognised Seasonal Employer (RSE) Limited Purpose Entry (LPE) Policy - Visas and Permits in addition to the Limited Purpose Entry policy.

- a. All visas issued and permits granted under the RSE policy for the purpose of working for a Recognised Seasonal Employer (RSE) must be issued or granted as a limited purpose visa or permit.
- b. A Recognised Seasonal Employer (RSE) limited purpose visa allows a person to travel to New Zealand for the express purpose of undertaking seasonal employment in the horticulture and viticulture industries for a specified RSE(s) (see L2).
- c. A Recognised Seasonal Employer (RSE) limited purpose permit allows a person to be in New Zealand for the express purposes of undertaking seasonal employment in the horticulture and viticulture industries for a specified RSE (see L3).
- d. For the purposes of this policy seasonal work in the horticulture and viticulture industries means planting, maintaining, harvesting, and packing crops in the horticulture and viticulture industries.

WH1.15.1 Who is eligible for a RSE limited purpose visa or permit?

- a. Applicants for visas and permits under the RSE LPE policy must:
 - i. be aged 18 or older; and
 - ii. have an employment agreement (which meets the requirements set out at WH1.20) with an employer who has RSE status and holds a current ATR; and
 - iii. meet the health and character requirements as set out at E6 with any necessary modifications and WH1.15.10; and
 - iv. meet the requirements for bona fide applicants as set out at [E5](#).

Note: The employment agreement provided to workers must be the same as that which is provided to INZ at the ATR stage, unless the terms and conditions are more beneficial to the worker.

- b. To be issued a limited purpose visa under RSE LPE policy applicants must be offshore at the time of application.
- c. To be granted a permit under RSE LPE policy applicants must:
 - i. hold a valid RSE limited purpose visa on entry to New Zealand; or
 - ii. hold a current RSE limited purpose permit at the time of application and meet the requirements set out at WH1.15.5 or WH1.15.6 below.

WH1.15.5 Who is eligible to transfer employment from one RSE to another RSE?

- a. An RSE limited purpose permit holder may transfer from one RSE to another, provided that the worker has a current employment agreement with the second or subsequent RSE who holds a current ATR and INZ is satisfied that the transfer is consistent with the objectives of RSE policy. Situations when transfers may be appropriate include, but are not limited to, where:

- i. the status of the first employer as an RSE has been rescinded (see WH1.15.35); or
- ii. the RSE limited purpose permit holder is no longer able to work for the first RSE and INZ is satisfied that this situation is due to circumstances beyond the control of that RSE; or
- iii. the RSE limited purpose permit holder is currently employed by an RSE who has jointly submitted ATRs with second or subsequent RSEs as set out in WH1.10.1(e);
- b. In all transfer cases the period of work for the second or subsequent RSE:
 - i. must fall within the second or subsequent RSE's approved ATR period; and
 - ii. will not take the worker beyond the maximum period of stay allowed in New Zealand (see WH1.15.20(c)).
- c. In cases where INZ has determined a worker is eligible to transfer to another RSE the worker may apply:
 - i. for a Variation of Conditions (VOC) if the new employment agreement is for a period of work that will end on the same date as the expiry date of their current RSE limited purpose permit; or
 - ii. for a new RSE limited purpose permit if the new employment agreement is for a period of work that does not end on the same date as the expiry date of the current RSE limited purpose permit.
- d. Any applications for a VOC or further limited purpose permit for the purposes of transferring from one RSE to another will only be approved where both RSEs have provided written consent to the transfer.
- e. Despite (c) above, in cases where the transfer is occurring because:
 - i. the status of the previous employer as an RSE has been rescinded; or
 - ii. the worker is not currently employed by an RSE;
 - iii. a VOC or further permit may be granted without the consent of the previous employer.
- f. VOC and further RSE limited purpose permits will only be granted where the terms and conditions of employment meet all RSE policy requirements.

WH1.15.6 Who is eligible to apply for an RSE Limited Purpose Permit to extend the period to be worked for an RSE?

- a. In cases where an RSE requires a worker to remain in New Zealand for a further period to achieve the express purpose of undertaking seasonal work for that RSE, the worker may apply for a further limited purpose permit if:
 - i. INZ is satisfied that the RSE has exceptional circumstances or there are circumstances beyond the control of that RSE that require them to extend the period of work for an RSE worker (e.g. due to bad weather); or
 - ii. the RSE has indicated the potential need to extend the period of work for a limited number of RSE workers at the ATR stage, and INZ is satisfied that this is necessary and will not undermine the integrity of RSE policy.
- b. In all cases:
 - i. the extended period of work must fall within an approved ATR period; and
 - ii. INZ must be satisfied that the employer has a genuine need to employ the worker(s) in question, for longer than the original duration of the employment agreement; and
 - iii. the extended period of work will not take the worker beyond the maximum period of stay allowed in New Zealand (see WH1.15.20(c)).

WH1.15.10 Specific health requirements for RSE limited purpose visa or permit applicants

- a. Applicants for visas and permits under this policy must:
 - i. undergo screening for pulmonary tuberculosis* if they have risk factors as set out in A4.25.1 and A4.25.5, regardless of their intended length of stay in New Zealand; and
 - ii. undergo screening for HIV/AIDS if they are from a country with risk factors for HIV/AIDS (see WH1.15.15).
- b. Despite A4.15, applicants for an RSE limited purpose visa or permit who are HIV positive will not be eligible for a limited purpose visa or permit under RSE limited purpose policy.

WH1.15.15 Applicants from countries with high risk factors for HIV/AIDS

- a. All RSE limited purpose visa or permit applicants who are citizens of, or are normally resident in, a country listed below must provide the results of an HIV test with their RSE limited purpose visa or permit application.
- b. The following is a list of countries with an estimated adult HIV/AIDS prevalence of 1% or more:

Angola	Estonia	Nigeria
Bahamas	Ethiopia	Papua New Guinea
Barbados	Gabon	Republic of Moldova
Belize	Gambia	Russian Federation
Benin	Ghana	Rwanda
Botswana	Guinea	Sierra Leone
Burkina Faso	Guinea-Bissau	South Africa
Burundi	Guyana	Sudan
Cambodia	Haiti	Suriname
Cameroon	Honduras	Swaziland
Central African Republic	Jamaica	Thailand
Chad	Kenya	Togo
Congo	Lesotho	Trinidad and Tobago
Côte d'Ivoire	Liberia	Uganda
Democratic Republic of Congo	Malawi	Ukraine
Djibouti	Mali	Tanzania
Dominican Republic	Mozambique	Zambia
Equatorial Guinea	Myanmar	Zimbabwe
Eritrea	Namibia	
	Niger	

WH1.15.20 Currency and conditions of an RSE limited purpose visa and permit

- a. Visas will be issued to allow arrival in New Zealand no earlier than 14 days before, and no later than 14 days after, the expected commencement of work as stated in the employment agreement.
- b. No limited purpose permit will be granted beyond the term of the relevant ATR.
- c. Limited purpose permits will only be granted for a maximum stay in New Zealand of up to seven months in any 11-month period, with the

exception of limited purpose permits for citizens of Tuvalu or Kiribati who are normally resident in Tuvalu or Kiribati, which may be granted for a maximum stay of up to nine months in any 11 month period. The maximum period of stay includes any time required for internal travel and induction arrangements.

- d. Limited purpose permits issued under RSE LPE Policy will be subject to the condition that RSE limited purpose permit holders may undertake employment only for the RSE who holds the relevant ATR and with whom they have entered into an employment agreement.
- e. Where the non-New Zealand citizen or resident worker ceases to be employed by an RSE, their RSE limited purpose permit will be revoked.

WH1.15.25 Ineligibility for other permits

Applications from the holder of an RSE limited purpose permit for any other type of temporary permit, or a residence permit will be declined.

WH1.15.30 Applying for a limited purpose visa or permit under RSE Limited Purpose Entry Policy

Applications for a RSE limited purpose visa or permit must:

- a. be made on the Application to Work in New Zealand for a Recognised Seasonal Employer (NZIS 1142) form, and
- b. meet all the requirements under Generic Temporary Entry policy for lodging an application for a temporary entry visa or permit as set out at E4; and
- c. meet all the requirements for eligibility under WH1.15.1; and include an employment agreement from an employer with RSE status and that meets the requirements for employment agreements set out in WH1.20; and
- d. include the results of an HIV test if the applicant is from a country listed as having high risk factors for HIV/AIDS (see WH1.15.15(b)) on the Recognised Seasonal Employer Policy Supplementary Medical Certificate (NZIS1143); and
- e. include the results of pulmonary tuberculosis* screening on the Temporary Entry X-ray Certificate (NZIS 1096) if the applicant has risk factors as set out in A4.25.1 and A4.25.5.

WH1.15.35 Workers whose employers lose RSE status

- a. If during the currency of an RSE limited purpose permit the employer has their RSE status rescinded, or not renewed, the holder of that permit may seek employment with another employer with RSE status (see WH1.15.5).
- b. Where no further offer of employment under the RSE limited purpose policy is obtained the RSE limited purpose permit will be revoked and the worker must leave New Zealand