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<p>WORKFORCE (IMMIGRATION NEW ZEALAND) INTERNAL ADMINISTRATION CIRCULAR NO: 09-09</p>
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To: *All Workforce/Immigration New Zealand (INZ) staff* **Date:** 23 October 2009

**AGENTS: AUTHORITY TO ACT AND
DIRECTING COMMUNICATIONS VIA AUTHORISED AGENTS**

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

Purpose

1. This Internal Administration Circular (IAC) provides guidance for INZ staff on:
 - when an INZ client may authorise an agent to act on their behalf to request general information about an application from INZ, and
 - the need to ensure that where an INZ client has authorised an agent to act on their behalf, any communication in respect of that client matter must be to the agent
2. An agent refers to a person who is authorised to act on behalf of an immigration client and is:
 - a licensed immigration adviser, or
 - an unlicensed offshore immigration adviser (only until 4 May 2010), or
 - a person who is exempt from the immigration adviser licensing requirements – “an exempt person”), or
 - a person who does not provide immigration advice and is therefore not required to be licensed or exempt e.g person making a Privacy Act request on behalf of an applicant.

Background

3. Recently, there has been confusion regarding when an agent has the authority to act for an applicant and occurrences where clients who have authorised agents have been contacted directly without the authority of the agent.
4. There has also been confusion over whether an authorised agent has to be a licensed immigration adviser (or exempt from being licensed), particularly in the context of information requests from the agent or a staff member of the agent's company.

REQUESTS FOR INFORMATION FROM AN AUTHORISED AGENT OR OTHER PERSON

5. Any person can make a request for information about an application or information held by INZ. Where the person is eligible to receive that information under the Privacy Act 1993 or the Official Information Act (OIA) 1982, then INZ provides that information. An individual can request information themselves or they can authorise an agent to act on their behalf to make such requests for information.
6. A request for information does not fall within the definition of "immigration advice" in the Immigration Advisers Licensing Act 2007 (IAL). It does not involve advising, directing, assisting or representing another person. The information requested is likely to go towards the provision of immigration advice but the request, and provision of the information, is not enough to be immigration advice on its own. It could be considered clerical work, in the sense that it falls within the definition of "clerical work" in section 5 of the IAL.
7. This means that an agent does not have to be licensed or exempt to request information on behalf of another person. Information may be provided to any person authorised on an application to access information, including unlicensed support staff employed in an immigration adviser's company. In the case of unlicensed support staff, INZ recognises that the immigration client usually has authorised the company (and not just a single licensed immigration adviser) to act on their behalf.

COMMUNICATION WITH AGENTS

8. If a person is a licensed immigration adviser or a lawyer, and they say that they represent a person or that a particular person is their client, the Department will accept this unless it has evidence to the contrary. This is on the basis that both licensed immigration advisers and lawyers are subject to strict regulation and must adhere to a comprehensive code of conduct or rules. Where you rely on this policy, you must be sure that the person is either a licensed immigration adviser or a lawyer with a current New Zealand practising certificate.
9. In addition, non-lawyer employees of lawyers do not require an authority to act to communicate with INZ about a client represented by their lawyer employer, although immigration applications should still be signed by the lawyer employer. The lawyer employer must hold a current New Zealand practising certificate.
10. The Department's policy on communication with agents is that if a client has authorised an agent to act on their behalf, the Department will address all correspondence to the nominated agent in the first instance.

11. As part of the visa/permit application process, clients provide information on contact details. The forms generally require the name and address for correspondence (or agent details). Clients can give their own address or their agent's address as the point of contact. If an applicant gives an agent's address as the point of contact, the Department will send the agent all correspondence about the application, including notices for interviews and original documentation. If the client gives their address for correspondence, the Department will send correspondence to the client.
12. The Department, however, can contact the client directly in some situations where the circumstances justify this. This will be the case where there is a need to undertake verification and/or compliance activities. Further detail is provided at paragraph 21.
13. If an immigration client stops using the services of an agent, or hires a new agent, the applicant will need to advise the Department of this in writing. If the agent is a licensed immigration adviser or an exempt person, the *Immigration Advisers Details* form (INZ 1160) should be used to capture the immigration adviser's licensing status.
14. An immigration client is responsible for any documents or information submitted with the application as well as any information that the agent submits on their behalf.

Process

15. Where a client has authorised an agent to act on their behalf and be the contact for correspondence, staff should ensure that the authorised agent is added to the contacts tab on AMS at lodgement. This is critical for meeting our obligations under the Immigration Advisers Licensing Act 2007, to detect unlicensed immigration advisers, and to ensure agents can access information.
16. The extent of an agent's authority to act on behalf of the client is determined by the authority the client gives to the agent. If we are advised that the agent's authority is in relation to a particular immigration application, we are under no obligation to assume that the agent acts for the client on all immigration matters. But being informed of an agent for a particular application can extend to incidental matters e.g. an agent could make Privacy Act requests on behalf of the client. If a licensed adviser informs us that they were acting on behalf of their client for all matters we should accept that. If you are not sure about the extent of the unlicensed adviser's authority, request confirmation from the client about whether the authority extends to related immigration matters e.g. OIA/Privacy Act requests and other immigration applications.
17. Where a client has advised that the agent is also the person to receive correspondence ensure that any communication with the applicant is directed through the authorised agent as a matter of standard business practice. This includes phone calls and emails.

Where the client is no longer using an authorised agent

18. Where a client advises that they have ceased to use the services of the authorised agent, you must request the client to confirm this in writing to the branch so it is clear that the client has made this decision. Note that the only person who can add/change a "contact" on AMS is the person in whose name the application currently

sits. Please ensure that if you receive the new information, that this is communicated to the case officer and that the change is made.

Where the client is using a new authorised agent

19. Where a client advises that they have authorised a new agent to act on their behalf, you must request the client to confirm this in writing with the contact details of the new agent. As noted in paragraph 13, where the new agent is a licensed immigration adviser or an exempt person, the *Immigration Adviser Details* form (INZ 1160) should be used. The new agent details must be entered on the contact tab on AMS as soon as possible.

Clarifying minor matters

20. There may be minor matters (not having any prejudicial impact on the client's application – e.g. clarification of information provided on the application form) that you think could be resolved quickly by contacting the client directly. In this type of situation you must seek authorisation from the agent to communicate directly with the client for the particular matter, or obtain an on-going authorisation from the agent to communicate directly with the client for minor matters. For example, you may email the agent and ask if they have the information readily to hand or if they are happy for you to contact the applicant directly to provide this.

Exceptions

21. The Department can contact the client directly in some situations where the circumstances justify this. This will be the case where there is a need to undertake verification and/or compliance activities. The following are examples of some of the situations where it is appropriate to communicate directly with applicants rather than their authorised agent:

- If an applicant makes unsolicited contact directly with the Department.
- Verification purposes - where forewarning would jeopardise the outcome of the verification exercise. Normal PPI process will need to be followed in every case to ensure that agents and applicants have an opportunity to comment on any adverse findings.
- Situations where an agent is not responding to requests despite repeated requests (in this case, advise the agent that you have made direct contact with the applicant). Send a copy of the letter to both the applicant and their agent at the same time.
- Executing search warrants.

22. If this IAC is inconsistent with any previous information or instruction, the instructions contained here prevail.

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