

4 February 2016

IMMIGRATION NEW ZEALAND INSTRUCTIONS: Amendment Circular No. 2016/01

To: All Manual Holders

AMENDMENTS TO THE IMMIGRATION NEW ZEALAND OPERATIONAL MANUAL

Introduction

This circular outlines changes to immigration instructions. A copy of the amended instructions is attached.

All immigration officers dealing with immigration applications should read the amendments in Appendix 1 and operate in accordance with the amended instructions on and after 4 February 2016.

Note

The amendments described in this circular will be published in the Immigration New Zealand Operational Manual in due course.

Any enquiries about these amendments should be directed to the Immigration Contact Centre on 0508 558 855 or 09 914 4100 (Auckland only).

Changes to temporary instructions effective on and after 4 February 2016

U14.5 Requirements to be granted a pathway student visa

U14.10 Currency and conditions of pathway student visas

U14.15 Changing and complying with pathway student visa conditions

U14.20 Provider requirements

First time pathway student visa applicants seeking to undertake a study pathway that begins with an English language course and leads to a programme of study at levels 5 to 7 on the New Zealand Qualifications Framework no longer need to submit an International English Language Testing System (IELTS) test (or equivalent), unless they are from a country that has a decline rate of more than 20 per cent for student visa applications. The annual decline rates for all countries are published on the Immigration New Zealand website.

The 16 week course length restriction for English language courses will also only apply to first time pathway student visa students from countries with a student visa application decline rate that is greater than 20 per cent.

The range of programmes that require an applicant to provide an IELTS (or equivalent) test have also been increased from levels 5 - 7 to levels 5 - 8.

WH1.1 Objectives and overview – RSE Instructions

WH1.1.15 Annual limit to number of visas available under RSE instructions

The annual Recognised Seasonal Employer visa cap has been increased from 9,000 to 9,500.

**APPENDIX 1: AMENDED IMMIGRATION INSTRUCTIONS EFFECTIVE ON AND AFTER
4 FEBRUARY 2016**

U14.5 Requirements to be granted a pathway student visa

To be granted a pathway student visa, an applicant must:

- a. be offered an eligible study pathway from a qualifying provider (U14.20);
- b. meet the general requirements to be granted a student visa as set out at U3.1;
- c. meet the additional evidential requirements for pathway student visa set out at U14.5.1; and
- d. make an application for a student visa before 7 June 2017.

U14.5.1 Evidence of meeting requirements

- a. In addition to meeting the general requirements to be granted a student visa as set out at U3.1, when applying for a pathway student visa an applicant must provide:
 - i. Where there is more than one education provider, a joint covering letter from pathway education providers setting out the pathway programmes of study and start and end dates of each programme of study;
 - ii. An offer of place (or joint offer) for each programme of study that meets the requirements set out at U3.5;
 - iii. Evidence that tuition fee requirements, as set out at U3.10, for either the first programme of study or first year of study (whichever is shorter) have been met and satisfy an immigration officer that they have the ability to fund any remaining balance of the first programme of study and subsequent programmes of study on the intended pathway; and
 - iv. Evidence that the maintenance funds requirements set out in U3.20 for the first year of study on the intended pathway have been met and satisfy an immigration officer that they have the ability to fund any remaining balance of the first programme of study and subsequent programmes of study on the intended pathway.
- b. Despite (a)(ii), second and subsequent offers of place for a pathway can be conditional on meeting pre-requisite programme of study entry criteria.
- c. First time pathway student visa applicants from a country with a student visa decline rate of more than 20 per cent who intend a study pathway commencing with an English language programme of study and culminating in a qualification at Levels 5 to 8 on the New Zealand Qualifications Framework must:
 - i. submit an International English Language Testing System test (IELTS) (or equivalent internationally recognised test) at the time of application; and
 - ii. demonstrate that they only require an improvement of 0.5 of an IELTS overall band score (or equivalent) to meet the English language prerequisite for entry into the intended level 5 to 8 programme of study.

Note: The student visa decline rate for a country is based on statistics, generated over a calendar year (12 months), by Immigration New Zealand. The decline rate and the name of the country are published on the INZ website.

For the purpose of this instruction, the internationally recognised English language tests and corresponding IELTS equivalent test scores set out on the INZ website are considered acceptable.

U14.10 Currency and conditions of pathway student visas

- a. For the purposes of the pathway student visa pilot, a visa can be granted up to a maximum of five years;
- b. A visa may be granted to expire no more than three months beyond completion of the final pathway programme of study within the maximum currency of five years;
- c. Work conditions for the duration of the pathway student visa will only be granted where the first programme of study meets the requirements as set out at U13.1, U13.10 or U13.15;
- d. If the second or subsequent programme of study meets the requirements set out at U13.1, U13.10 or U13.15, a variation of conditions is required in order to be granted work conditions;
- e. Where (d) applies, a *Variation of Conditions or Variation of Travel Conditions (INZ 1020)* application form must be completed and submitted with the required fee.
- f. The holder must make satisfactory progress on the pathway by:
 - i. meeting the conditional pre-requisites for enrolment into a second or subsequent programme of study (E3.20(d)); and
 - ii. commencing the second or subsequent programme of study on a pathway within a 16 week period of completing an earlier programme of study.
- g. Where a first time student has submitted an IELTS test (or equivalent) as set out at U14.5.1 (c) and been granted a pathway student visa to undertake an English language programme of study culminating in a qualification at Levels 5 to 8 on the New Zealand Qualifications Framework, the English Language programme of study must be completed within a 16 week period.

U14.15 Changing and complying with pathway student visa conditions

See also Immigration Act 2009 ss 49, 52, 56

- a. If a student holding a pathway student visa wishes to move to a different education provider or lower level programme of study than those specified in their visa conditions, they must apply for a new student visa and meet the requirements set out at U3.40.
- b. A variation of conditions, for the purpose of changing a programme of study at the same education provider will only be granted if an immigration officer is satisfied that:
 - i. the applicant meets the student requirements set out at U3.1; and
 - ii. the applicant has not breached their visa conditions as set out at E3.20; and
 - iii. the original student visa would have been granted for the proposed programme of study; and
 - iv. the proposed programme of study is at the same or higher level on the New Zealand Qualification Framework as the original programme of study; and
 - v. the applicant remains a bona fide applicant (see E5.1).
- c. Factors that an immigration officer may take into consideration when determining (a)(iii) and (a)(iv) above include, but are not limited to:
 - i. the time elapsed since the original visa was granted;
 - ii. whether the level and/or subject area of the proposed programme of study are significantly different from the original programme of study; and
 - iii. any relevant information held about the previous application(s) including advice from the original issuing branch (see E7.1.1).
- d. Students who have received New Zealand Aid Programme funding within the two years prior to their application to change programme of study must also provide evidence that the Ministry of Foreign Affairs and Trade supports the change of programme of study and that any scholarship continues.

U14.15.5 Breaching visa conditions

- a. A student on an pathway student visa will be considered to be in breach of visa conditions where:
 - i. they fail to meet conditional pre-requisites for enrolment into a second or subsequent programme of study (E3.20(d)); or
 - ii. the time between the completion of one programme of study and the start of a second or subsequent programme of study on a pathway exceeds 16 weeks; or
 - iii. **they have submitted an IELTS test (or equivalent) as set out at U14.5.1 (c) and** their intended pathway is an English language programme of study culminating in a qualification at Levels 5 to **8** on the New Zealand Qualifications Framework and the English Language programme of study is not completed within a 16 week period.
- b. A breach of visa conditions may result in the issue of a Deportation Liability Notice (E3.60).

U14.20 Provider requirements

U14.20.1 Pathway pilot entry criteria

To qualify for entry to the Pathway student visa pilot, an education provider must:

- a. be invited by Immigration New Zealand to be a pilot participant; and
- b. have signed the Pathway Student Visas - Pilot Participation Declaration agreeing to the requirements as set out at U14.20.10; and
- c. be either a school, a university or hold a Category One or Two rating under New Zealand Qualifications Authority's (NZQA) External Evaluation and Review framework; and
- d. have a minimum 90% student visa application approval rate over the 2014/15 financial year (12 month period); and
- e. comply with the legislative requirements as set out under the Education Act 1989 to offer programmes of study to foreign students (U5.5 to U5.20); and
- f. be a signatory to the Ministry of Education's Code of Practice for Pastoral Care of International Students.

U14.20.5 Eligible pathways

- a. All pathways must demonstrate academic progression to the second or subsequent programme of study building on the previous study.
- b. All consecutive programmes of study that demonstrate progression are eligible to be included in the pilot with the exception of the following pathways:
 - i. Any English language programme of study to any Level 1-4 Certificate on the New Zealand Qualifications Framework (NZQF);
 - ii. All pathways within and between NZQF Levels 1-4 Certificates, and
 - iii. Secondary school to any NZQF Levels 1-4 Certificates.
- c. Breaks between consecutive programmes of study must not exceed 16 weeks;
- d. Only education providers who meet the requirements set out under U14.20.1 can offer a joint pathway in conjunction with one another.

U14.20.10 Formal agreement between qualifying education providers

- a. To ensure a student's pastoral care needs are met, qualifying education providers who intend offering an education pathway in conjunction with one another must enter into a formal agreement.
- b. The formal agreement must include and set out the following processes and arrangements:
 - i. The application process (joint covering letter with two/three offers of place)
 - ii. Pastoral care obligations
 - iii. Handover arrangements in transition periods between programmes of study/education providers
 - iv. The process if a significant gap exists between completion of a programme of study and the start of a second or subsequent programme of study or in the event some papers are failed and cannot be repeated within a 16 week period.
 - v. The process if conditional entry requirements for second or subsequent programmes of study are not met
 - vi. The process if the student fails to attend and/or make satisfactory progress (E3.20(d))
 - vii. The process if the student wishes to leave intended pathway
 - viii. The obligation to notify INZ where a pathway student:
 - requires additional time to complete a programme of study and time required is likely to exceed 16 weeks; or
 - fails to meet the conditional entry requirements for a second or subsequent programme of study; or
 - fails to enrol for a subsequent programme of study; or
 - fails to attend and/or make satisfactory progress; and
 - has their enrolment in a programme of study terminated.
- c. Where an education pathway is offered by a single qualifying education provider, the formal agreement processes set out at (b) must be met.
- d. The signed formal agreement does not have to be submitted with a pathway student visa application, however it must be made available to INZ if requested.

U14.20.15 Non-compliance with formal agreement requirements or when under active investigation by Immigration New Zealand

Where non-compliance, other than of a minor nature, with any of the matters agreed to in the Pathway Student Visas - Pilot Participation Declaration, or where the pathway education provider is under active investigation by INZ for offences committed under part 10 of the Immigration Act 2009 the following process may occur:

- a. INZ will suspend the processing of any student visa applications related to an existing pathway agreement immediately.
- b. The non-compliant pathway education providers will be advised in writing of the suspension and will be sent a report detailing the non-compliance, and will be given 30 days to remedy the non-compliance.
- c. Resolution (or satisfactory progress towards resolution) of the non-compliance to the satisfaction of INZ within the 30 day period will see the suspension lifted and processing of related pathway student visa applications will resume.
- d. The Ministry of Business, Innovation and Employment or the New Zealand Qualifications Authority may conduct an investigation three to six months later to assess the effectiveness of the remediation undertaken. If the remediation is deemed inadequate or ineffective, the suspension can be re-imposed or the provider may be removed from the pathways pilot and current pathway student visa holders become liable for deportation.
- e. If INZ is not satisfied that the non-compliance has been addressed or satisfactory progress has been made towards resolution within the 30 day period, the suspension of related student visa processing will continue (until resolution occurs).
- f. Failure to address or make satisfactory progress towards resolving the non-compliance may result in removal from the pathways pilot, and current student visa holders becoming liable for deportation.

Note: INZ may rely on the advice of the Ministry of Education and/or the New Zealand Qualifications Authority in determining whether resolution has been reached or satisfactory progress has been made towards resolution.

WH1.1 Objectives and overview – RSE Instructions

WH1.1.1 Objectives

The objectives of the RSE Instructions are to:

- a. allow horticulture and viticulture businesses to supplement their New Zealand workforce with non-New Zealand citizen or residence class visa holder workers when labour demand exceeds the available New Zealand workforce and employers have made reasonable attempts to train and recruit New Zealand citizens and residence class visa holders; and
- b. promote best practice in the horticulture and viticulture industries to support economic growth and productivity of the industry as a whole, while ensuring that the employment conditions of both New Zealand and non-New Zealand citizen or residence class visa holder workers are protected and supported; and
- c. encourage economic development, regional integration and good governance within the Pacific, by allowing preferential access under RSE Instructions to workers who are citizens of eligible Pacific countries; and
- d. ensure workers recruited under these instructions are adequately paid and financially benefit from their time in New Zealand; and
- e. ensure outcomes which promote the integrity, credibility and reputation of the New Zealand immigration and employment relations systems.

WH1.1.5 Meeting the objectives of RSE Instructions

To ensure these objectives are met:

- a. RSE limited visas will only be granted under the RSE Instructions where:
 - i. there are available places for employment in the horticulture and viticulture industries as determined by INZ in consultation with Ministry of Social Development (MSD); and
 - ii. INZ is satisfied the RSE will:
 - iii. continue to have direct responsibility for those workers and their work output (except where WH1.5.5(d) applies); and
 - iv. comply strictly with the requirements for RSE status and Agreements to Recruit (ATRs) under the RSE instructions; and
- b. a high standard of proof is required to satisfy INZ that requirements set out in instructions will be and are being met; and
- c. INZ may consider the compliance history and particular employment or other arrangements (including recruitment practices) of the RSE and other organisations or individuals associated with the RSE; and
- d. permission to use non-New Zealand citizen or resident workers will be withdrawn and further permission refused where there is any breach of requirements other than of a minor nature; and
- e. RSE status will not be granted to employers whose core area of business activity is the facilitation of entry to New Zealand of non-New Zealand citizens and residence class visa holders or who are not engaged directly in the industries to which these instructions apply.

WH1.1.10 Overview

- a. An employer who wishes to recruit non-New Zealand citizen or residence class visa holder workers to plant, maintain, harvest and pack crops in the horticulture and viticulture industries under these instructions must apply to become an RSE (see WH1.5).
- b. An employer with RSE status may then apply for an ATR. An ATR allows the recruitment of a set number of non-New Zealand citizen or residence class visa holder workers for each period where demand requires it (see WH1.10). ATRs will be restricted to recruitment from specified Pacific countries, unless RSEs can satisfy INZ that they:
 - i. have pre-established relationships with workers of other nationalities (see WH1.10.20); or
 - ii. have made reasonable attempts to recruit from the specified Pacific countries, but were unsuccessful (see WH1.10.15); or
 - iii. have reasonable grounds for why it is not feasible to recruit from the specified Pacific countries.
- c. An employer with a current ATR may offer seasonal employment to non-New Zealand citizen or residence class visa holder workers.
- d. Workers who hold such an offer of employment may then apply for an RSE limited visa (see WH1.15) consistent with the terms and conditions of the RSE's ATR.

- e. All visas granted to plant, maintain, harvest and pack crops in the horticulture or viticulture industry for an RSE under the RSE instructions will be granted under the RSE Limited Visa instructions (see WH1.15).

WH1.1.15 Annual limit to number of visas available under RSE instructions

- a. The number of visas that can be granted under these instructions is limited to 9,500 for each year ending 30 June.
- b. Applications for ATRs or RSE limited visas submitted after this limit has been reached will not be approved for places within that year and the application fee and immigration levy will be refunded.
- c. INZ will take into consideration the following matters when determining whether the annual limit has been reached:
 - i. the number of visas granted in the year ending 30 June; and
 - ii. the number of workers requested in ATRs approved for each year ending 30 June.