

VISA PAK ISSUE 242 — 15 JANUARY 2016

IMMIGRATION LEGISLATION HIERARCHY

Legislation

The Immigration Act 2009 (the Act)

The Immigration Act 2009 is the highest and primary source of immigration law. The Act provides the legal framework for New Zealand's immigration system. The purpose of the Act is to manage immigration in a way that balances the national interest, as determined by the Crown, and the rights of individuals. To achieve this purpose, the Act establishes an immigration system that –

- requires persons who are not New Zealand citizens to hold a visa and be granted entry permission to be in New Zealand;
- provides for the development of immigration instructions which set the rules and criteria for the grant of visas and entry permission;
- allows for the management of the immigration aspects of border requirements by setting requirements that apply to persons arriving in, or intended to arrive in, New Zealand;
- provides a process for implementing specified immigration-related international obligations (e.g. the Refugee Convention, and the International Convention on Civil and Political Rights);
- includes mechanisms to ensure that those who engage with the immigration system comply with its requirements, including mechanisms that –
 - enable immigration officers to gather information in relation to visa holders, employers, and education providers to determine compliance with obligations in respect of the system; and
 - prescribe the system for the deportation of people who are not New Zealand citizens and who fail to comply with immigration requirements, commit criminal offences, or are considered to pose a threat or risk to security; and
- establishes the Immigration and Protection Tribunal, a specialist tribunal, to consider appeals against certain decisions made under the Act and to consider Humanitarian appeals.

The Act also provides immigration officers with the decision maker powers necessary to make determinations on applications for visas.

As the primary piece of legal authority, if regulations or instructions are inconsistent or in conflict with the Act, the Act prevails.

Regulations

Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 (Immigration Regulations)

The Immigration Regulations are one set of regulations (of several) made pursuant to the Immigration Act and are secondary law. Amongst other things, the Regulations set out:

- the prescribed manner in which applications for visa and entry permission must be made (often referred to as “lodgement requirements”);
- the classes of person who are visa waiver for travel, and are deemed to be granted a visa and entry permission;
- the fees and immigration levy to be paid by visa applicants.

Instructions

Immigration Instructions

Immigration Instructions are statements of government policy and set out the rules and criteria used for determining the eligibility of a person for the grant of a visa of a particular class and type. In the case of applications for residence class visas, any judgement exercised by immigration officers in determining an application must be in accordance with the residence instructions in force at the time the application was made. They are formally certified by the Minister of Immigration in accordance with the Act, and are published in the Immigration New Zealand (INZ) Operational Manual.

The INZ Operational Manual contains immigration instructions, as well as administrative instructions and relevant matters from the Act and Regulations (which are not immigration instructions). The Operational Manual is not a replacement for the Act or regulations, and if in conflict or inconsistent with these sources, the Act and regulations prevail.

Internal Administration Circulars

Internal Administration Circulars (IACs) are guidance given to staff around processing visa applications and administrative processes in offices. IACs do not have any legislative authority and are not a substitute for instructions.

However, some IACs are issued in accordance with the Act. For example, *IAC 14/04 Prioritisation of the 2014/2016 Residence Programme and General Instructions* is issued in accordance with section 26(4) of the Immigration Act 2009 which enables the chief executive to give instructions on the order and manner of processing any application or claim. Guidance such as this IAC must be signed off by the DCE – Immigration.

Visa Pak/Staff Toolkit/Standard Operating Procedures

These documents all contain standard practice advice, guidance and processing requirements. They are intended to try and ensure consistency in the interpretation and application of immigration instructions and they do not have the status of immigration law or instructions. That said, by publishing such guidance, an expectation (which may be enforceable in Court) is created that officers will adhere to these documents.

Decisions of the Immigration and Protection Tribunal

In considering residence appeals, the Immigration and Protection Tribunal (IPT) may give guidance on the application of instructions and processes. This advice should be followed by immigration officers. In some cases the IPT will give directions on the way in which an application must be lodged and if any of the lodgement requirements should be waived. These directions must be followed.