

7 April 2016

IMMIGRATION NEW ZEALAND INSTRUCTIONS: Amendment Circular No. 2016/03

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 at Appendix 1.

All immigration officers dealing with immigration applications should read the amendments and operate in accordance with the amended instructions on and after 11 April 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 entry instructions effective on and after 11 April 2016

WK2.1 Approval in principle to recruit overseas workers

WK2.5 Applications for work visas under Essential Skills work instructions

WK2.10 Determining the availability of New Zealand citizens or residents

WK2.20 Instructions on duration of Essential Skills work visas

Applications for Essential Skills work visas based on job offers in low-skilled occupations (ANZSCO skill level 4-5) must include a Skills Match Report completed by Work and Income, unless excluded from this requirement at WK2.5.1(b).

WK2.5 has been restructured so it is clear which instructions apply to lodging or determining an application.

**APPENDIX 1: AMENDED IMMIGRATION INSTRUCTIONS EFFECTIVE ON AND AFTER
11 April 2016**

WK2.1 Approval in principle to recruit overseas workers

- a. Applications for approvals in principle must be made on the form *Request for Approval in Principle (INZ 1112)* and be lodged at the INZ **office** nearest the place of proposed employment.
- b. Immigration officers must not grant an approval in principle, unless they are satisfied that:
 - i. there are no New Zealand citizens or residence class visa holders available to do the work offered (see [WK2.10](#)); and
 - ii. the job offer is for genuine, sustainable and full time employment for the duration of the period for which employment is offered, as specified in the proposed employment agreement; and
 - iii. the employer has previously complied and will comply in future with all relevant New Zealand employment and immigration law and immigration instructions.

Note:

- For applications for approvals in principle for the entertainment industry sector (see [WS2\(g\)](#)), the job offer does not have to be full-time for the duration of the period of employment and may be a contract for services (an employee may be engaged as an independent contractor).

- A Skills Match Report is not required.

- c. Where approval in principle to recruit foreign workers is granted, the approval must specify:
 - i. the duration the approval is valid for; and
 - ii. the duration of the work visa(s) to be granted to the eligible applicants who apply on the basis of the approval in principle; and
 - iii. the number of positions the employer has been approved to recruit for; and
 - iv. the training and/or work experience necessary for applicants to be considered qualified for the position(s); and
 - v. any undertakings the employer has agreed to as part of the job offer (such as provision of accommodation) and any other conditions deemed necessary by the immigration officer.
- d. No approval in principle application for the recruitment of workers to plant, maintain, harvest or pack crops in the horticulture or viticulture industries will be approved under these instructions. All requests to recruit non-New Zealand citizen or residence class visa holder workers to plant, maintain, harvest or pack crops in the horticulture or viticulture industries must be made under Recognised Seasonal Employer (RSE) instructions (see [WH1](#)) or the Supplementary Seasonal Employment (SSE) instructions (see [WH3](#)).

WK2.5 Applications for work visas under Essential Skills work instructions

WK2.5.1 Lodging an Essential Skills work visa application

- a. Applications for work visas must be lodged in the prescribed manner (see E4.50) and include an *Employer Supplementary Form (INZ 1113)* completed by the employer.
- b. Applications made on the basis of an offer of employment in an ANZSCO skill level 4 or 5 occupation must include a valid Skills Match Report prepared by Work and Income, unless:
 - i. the employer holds a valid approval in principle for the role identified; or
 - ii. the role is on an Essential Skills in Demand list and the applicant meets the qualification and/or experience requirements; or
 - iii. the role is in the Canterbury region (WK2.11); or
 - iv. Work and Income have advised Immigration New Zealand of a regional absolute labour shortage (WK2.10.1(e)); or
 - v. the role is included in a list of occupations published by Work and Income that are exempt from the Skills Match Report process.

Note: A Skills Match Report may be used to support more than one work visa application, as long as it remains valid. A copy of the Skills Match Report should be included with each visa application.

WK2.5.5 Determining an Essential Skills work visa application

- a. Immigration officers must not grant a work visa to a non-New Zealand citizen or residence class visa holder worker applying on the basis of an offer of employment, unless they are satisfied that:
 - i. the applicant is suitably qualified by training and experience to do the work offered; and
 - ii. there are no New Zealand citizens or residence class visa holders available to do the work offered (see [WK2.10](#)); and
 - iii. the job offer is for genuine, sustainable and full-time employment for the duration of the period for which employment is offered, as specified in the proposed employment agreement; and
 - iv. the employer has previously complied and will comply in future with all relevant New Zealand employment and immigration law and immigration instructions.
- b. Applications for visas under Essential Skills Instructions related to planting, maintaining, harvesting or packing crops in the horticulture or viticulture industries must be declined.

Note: Applications for work visas to plant, maintain, harvest or pack crops in the horticulture or viticulture industries must be made under the Recognised Seasonal Employer (RSE) Instructions (see [WH1](#)) or the Supplementary Seasonal Employment Instructions (see [WH3](#)).

- c. INZ may, on an exceptional basis, require an employer to apply for an approval in principle to recruit overseas workers (AIP) for the purposes of assessing any further work visa applications supported by the employer. This requirement will be imposed only where an employer's recruitment of non-New Zealand citizen or residence class visa holder workers is such that it is appropriate to undertake a labour market test for future applications collectively with an AIP, rather than on an individual basis. In these circumstances any further application for a work visa supported by that employer which is not associated with a valid AIP may be declined.
- d. Where the job offer is in the construction sector in the Canterbury region and the employer is a labour hire company, the application must be declined unless the labour hire company holds accreditation (see [WK2.25](#)).

Note: Employment is in the Canterbury region if the entire or principal place of work (as defined in section 2 of the Health and Safety in Employment Act 1992) is within the territorial authorities of Christchurch City Council, Selwyn District Council and Waimakariri District Council.

WK2.5.10 Determining an Essential Skills work visa application where an employer holds approval in principle

- a. If the applicant is applying on the basis that their employer has been granted an approval in principle, immigration officers should refer to the approval in principle application to satisfy [WK2.5.5\(a\)\(ii - iv\)](#) above. **A Skills Match Report does not need to be provided.**
- b. Despite [WK2.5.10\(a\)](#), where an immigration officer has reasonable grounds for determining that the labour market or circumstances of the employment have materially altered since the grant of the approval in principle, they may undertake further checks to ensure the provisions of [WK2.5.5\(a\)\(ii - iv\)](#) are still satisfied.
- c. In cases where the employer supporting a work visa application currently holds or has previously held an AIP which has lapsed for that position, the conditions specified in the AIP will continue to apply, unless the employer can satisfy the immigration officer that the circumstances of employment have changed.

WK2.5.15 Determining an Essential Skills work visa application where an applicant is awaiting a Skilled Migrant Category decision

- a. Despite [WK2.5.5\(a\)\(ii\)](#), an applicant may be granted an Essential Skills work visa, valid for 12 months, without an immigration officer being satisfied that there are no New Zealand citizens or residence class visa holders available to do the work offered if:
 - i. they currently hold a temporary work visa; and
 - ii. they have applied for an Essential Skills work visa to continue working in the role they currently hold; and
 - iii. they meet all other requirements of Essential Skills work visa instructions; and
 - iv. they have been issued an Invitation to Apply under the Skilled Migrant Category and retain the ability to apply (see [SM4.1](#)), or have made an application for residence under the Skilled Migrant Category and that application has not yet been completed; and
 - v. their Expression of Interest was selected in part on the basis of points claimed for skilled employment in the role they currently hold.
- b. One further Essential Skills work visa, valid for six months, may be granted in exceptional circumstances to an applicant who continues to meet the requirements of (a) above.

WK2.10 Determining the availability of New Zealand citizens or residents

- a. New Zealand citizens or residence class visa holder workers are considered to be 'available' if, as a result of a labour market test (see WK2.10.1), an immigration officer establishes that there are:
 - i. suitable New Zealand citizens or residence class visa holder workers who can take up the work on offer (see WK2.10.10); or
 - ii. suitable New Zealand citizens or residence class visa holder workers who can readily be trained to do the work on offer (see WK2.10.15).
- b. Immigration officers will accept that no suitably qualified New Zealand citizens or residence class visa holders are available where an occupation is included on the current Long Term Skill Shortage List, Immediate Skill Shortage List or (for employment in the Canterbury region only) Canterbury Skill Shortage List and the applicant's qualification and/or work experience meets the requirements on the list.
- c. It is not relevant to the determination of availability of New Zealand citizens or residence class visa holder workers whether those New Zealand citizen or residence class visa holder workers are prepared to do the work on the terms and conditions proposed by the employer.

Notes:

- The Essential Skills in Demand Lists are published on the immigration website at <http://skillshortages.immigration.govt.nz/>.
- Employment is in the Canterbury region if the entire or principal place of work (as defined in section 2 of the Health and Safety in Employment Act 1992) is within the territorial authorities of Christchurch City Council, Selwyn District Council and Waimakariri District Council.

WK2.10.1 Labour market tests

- a. When conducting a labour market test an immigration officer must be satisfied that:
 - i. the employer has made a genuine attempt to attract and recruit suitable New Zealand citizens or residence class visa holder workers (see WK2.10.5); and
 - ii. New Zealand citizens or residence class visa holder workers are not available (WK2.10).
- b. Matters an immigration officer may take into account when determining whether or not a labour market test is satisfied include but are not limited to:
 - i. the employer's case:
 - o for an approval in principle; or
 - o in support of an individual worker's application
 - ii. evidence of a genuine attempt (see WK2.10.5) on the part of the employer to recruit New Zealand workers by way of advertising and/or use of other appropriate avenues of recruitment likely to attract New Zealand workers;
 - iii. advice from Work and Income about the availability of New Zealand citizens or residence class visa holder workers to do the work offered;
 - iv. advice from relevant stakeholders within the particular industry, including unions.
- c. In any particular case an immigration officer may decide to:
 - i. determine the labour market test is satisfied by one or more of the above; or
 - ii. determine that the labour market test is not satisfied by one or more of the above; or
 - iii. make other inquiries.
- d. Despite (c) above, but subject to (e) below, when determining whether there are New Zealand citizen or residence class visa holder workers available to undertake work in an ANZSCO Skill Level 4 or 5 occupation, immigration officers must **consider** advice from Work and Income about the availability of New Zealand citizens or residence class visa holder workers to do the work offered.
- e. The requirement in (d) above does not apply for any period of time where Work and Income has advised INZ of a regional absolute labour shortage for a specified occupation or industry, and the work offered is both for that occupation or industry, and in the region specified.

WK2.10.5 Definition of 'genuine attempts'

- a. For the purpose of these instructions an employer is considered to have made genuine attempts to recruit suitable New Zealand citizens or residence class visa holders workers if:
 - i. any specifications or requirements stipulated in a job description and/or ideal person specification are restricted to those specifications or requirements necessary to perform the work on offer; and
 - ii. the terms and conditions specified for the work on offer are not less than those of the New Zealand market, including payment at the New Zealand market rate; and
 - iii. the extent and nature of advertising or use of other appropriate means of recruitment is such that any suitable New Zealand workers would apply or be likely to apply for the position(s), for example:
 - o listing the vacancy with Work and Income;
 - o advertising the vacancy in a national newspaper and/or website;
 - o contracting a recruitment company appropriate to the industry.

- b. For the purposes of these instructions an employer is not considered to have made genuine attempts to recruit suitable New Zealand citizens or residence class visa holders if:
 - i. the employer has advertised the work in such a way that no New Zealand citizen or residence class visa holder will or is likely to apply e.g. making foreign language skills a requirement when it is not necessary for the performance of the work; or
 - ii. an employer has advertised the work at terms and conditions that are less than terms and conditions New Zealand citizens or residence class visa holders typically receive for equivalent work; **or**
 - iii. **a Skills Match Report is required by WK2.5.1(b) and an immigration officer is satisfied the employer has not engaged with Work and Income regarding available New Zealand citizens or residence class visa holders.**

WK2.10.10 Definition of 'suitable New Zealand citizens or residence class visa holder workers who can take up the work on offer'

For the purpose of these instructions a 'suitable New Zealand citizen or residence class visa holder worker who can take up the work on offer' is a New Zealand citizen or residence class visa holder worker who:

- a. has the relevant recognised qualification which is at, or above, the qualification that corresponds to the indicative skill level described for that occupation in the ANZSCO or has the relevant recognised work experience that the ANZSCO indicates may substitute the required qualification; and
- b. has qualifications, work experience or skills identified by the employer as being necessary to perform the role, but which are not listed in the indicative skill level described for that occupation in the ANZSCO, that are determined by Immigration New Zealand to be reasonable; and
- c. has other competencies identified by the employer as necessary for the performance of the work that are determined by Immigration New Zealand to be reasonable including (but not limited to):
 - i. having a driver's license or ability to get one, or
 - ii. being fit enough to do the work or not have any medical or other reasons why they cannot perform the work, especially for physical work, or
 - iii. being able to pass health, drug and criminal checks if required; and
- d. is located in the local region, or is willing and able to move to that region; and
- e. can practically make it to the workplace by having a suitable mode of transport; and
- f. is available for work at the hours required by the employer, noting that the position must be for full-time employment (see [W2.2](#)).

Notes:

- Local region is defined based on the regions used by Work and Income.
- At ANZSCO skill level 5, work experience and qualifications will not be relevant.
- Where other prerequisites are needed to perform the role an employer must explain why and demonstrate that the remuneration offered reflects those requirements.

WK2.10.15 Definition of 'suitable New Zealand citizens or residence class visa holder workers who can readily be trained to do the work on offer'

For the purpose of these instructions a 'suitable New Zealand citizen or residence class visa holder worker who can readily be trained to do the work on offer' is a New Zealand citizen or residence class visa holder worker who:

- a. with on the job training could do the work on offer, despite not having:
 - i. the relevant recognised qualification which is at, or above, the qualification that corresponds to the indicative skill level described for that occupation in the ANZSCO or the relevant recognised work experience that the ANZSCO indicates may substitute the required qualification; and
 - ii. the qualifications, work experience or skills identified by the employer as being necessary to perform the role, but which are not listed in the indicative skill level described for that occupation in the ANZSCO, that are determined by Immigration New Zealand to be reasonable; and
- b. has other competencies identified by the employer as necessary for the performance of the work that are determined by Immigration New Zealand to be reasonable including (but not limited to):
 - i. having a driver's license or ability to get one, or
 - ii. being fit enough to do the work or not have any medical or other reasons why they cannot perform the work, especially for physical work, or
 - iii. being able to pass health, drug and criminal checks if required; and
- c. is located in the local region, or is willing and able to move to that region; and
- d. can practically make it to the workplace by having a suitable mode of transport; and
- e. is available for work at the hours required by the employer, noting that the position must be for full-time employment (see [W2.2](#)).

Notes:

- Local region is defined based on the regions used by Work and Income.
- All positions at ANZSCO skill level 5 are positions which New Zealand citizens and residence class visa holder workers are considered able to 'readily be trained to do the work on offer'.

WK2.20 Instructions on duration of Essential Skills work visas

Work visas may be granted for the period for which the employment is offered, up to a maximum of:

- a. five years, if an applicant has not previously been granted a five-year visa under this provision and the work visa is based on an offer of employment that:
 - i. is for an ANZSCO Skill level 1 occupation; and
 - ii. offers a minimum base salary equal to at least the highest threshold stated in Residence from Work (Accredited Employer) instructions (currently \$55,000 per annum, see [RW2](#)), or
- b. one year, if the work visa is based on an offer of employment for an ANZSCO Skill level 4 or 5 occupation, unless (c) or (d) apply; or
- c. three years, if the work visa is based on an offer of employment in the Canterbury region (unless the offer is made by a labour hire employer which is not accredited) and the application is made on or before 31 December 2016; or
- d. three years, if the offer of employment is from an accredited labour hire company; or
- e. 12 months or six months, if the applicant has a current invitation to apply or a current application under the Skilled Migrant Category and meets the criteria at [WK2.5.15](#); or
- f. three years in all other circumstances not covered by (a) to (e) above.

Notes:

- Employment is in the Canterbury region if the entire or principal place of work (as defined in section 2 of the Health and Safety in Employment Act 1992) is within the territorial authorities of Christchurch City Council, Selwyn District Council and Waimakariri District Council.