

27 March 2017

**IMMIGRATION NEW ZEALAND INSTRUCTIONS: Amendment Circular No. 2017/04**

**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 and operate in accordance with the amended instructions in Appendices 1 to 3 on and after 1 April 2017 and Appendix 4 on and after 8 May 2017.

**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 instructions effective on and after 1 April 2017**

### **Non-compliant employers list**

*R5.110 Compliance with employment law*  
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*WD1 Post-study work visa – employer assisted*  
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*WJ6 Applications for work visas for foreign crew of fishing vessels*  
*WK2 Applications under Essential Skills work instructions*  
*WK2.1 Approval in principle to recruit overseas workers*  
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*WK2.15 Evidence required from employers under Essential Skills work instructions*  
*WK2.25 Labour hire employers accreditation*  
*WL3.1 Determining an application for a Silver Fern Practical Experience visa*  
*WM2 Definition of 'religious work'*  
*WR1.10 Requirements for offers of employment*  
*WR1.25 Requirements for accreditation*  
*WR3.5 Requirements for offers of employment*  
*WS3 Evidence required*  
*WS6.15 Entertainment industry accreditation*  
*U8.20 Dependent children of holders of work visas*  
*Appendix 10: Rules for non-compliant employers*

Immigration instructions have been amended to reflect the creation of a list of employers, maintained by the Labour Inspectorate, who meet the criteria for being a non-compliant employer. Employers on this list are unable to support visa applications or be granted

employer status such as approval in principle, accreditation, or recognised seasonal employer.

### **Adjustments to minimum income level requirements**

*F4.30 Additional requirements for tier one of the Parent Category*

*S1.10 Samoan Quota Scheme*

*S1.40 Pacific Access Category*

*V3.10 Partners and dependent children of student or work visa holders*

*U8.20 Dependent children of holders of work visas*

Minimum income thresholds across a number of categories have been increased to reflect annual changes to New Zealand benefit rates. The changes include the following:

- The minimum income requirements for people who support dependants and are applying for residence through the Samoan Quota Scheme or Pacific Access Category will increase to \$33,739.68 gross per annum. This is based on the maximum Jobseeker Support and Accommodation Supplement.
- The guaranteed lifetime income requirements under the Parent Category are based on the cut-off point at which a person is, or a couple are, no longer eligible for a Supported Living Payment. These are increasing to \$27,898 gross per annum for a single person and \$41,046 gross per annum for a couple.
- The minimum income requirement for Essential Skills and Religious Worker work visa holders whose dependants are in New Zealand on visitor or student visas is based on the maximum Jobseeker Support and Accommodation Supplement rates, and the Family Tax Credit rate for one child. The combined increase will equate to a new minimum level of income of \$37,090.68 gross per annum for these categories.

### **Changes to instructions effective on and after 8 May 2017**

#### **New instructions for Chinese visitors**

*V2.15 Multiple journey visas*

Instructions at V2.15 have been amended to allow for the grant of five year multiple journey visitor visas to nationals of the People's Republic of China.

**Appendix 1: Proposed amendments to Residence instructions effective on and after 1 April 2017**

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### **R5.110 Compliance with employment law**

- a. An employer who supports a visa application, or provides an offer of employment in support of an application, must have a history of compliance with employment law.
- b. A history of compliance with employment law includes, but is not limited to, meeting the requirements of the following legislation:
  - i. Accident Compensation Act 2001; and
  - ii. Employment Relations Act 2000; and
  - iii. Equal Pay Act 1972; and
  - iv. Health and Safety at Work Act 2015; and
  - v. Holidays Act 2003; and
  - vi. Minimum Wage Act 1983; and
  - vii. Parental Leave and Employment Protection Act 1987; and
  - viii. Wages Protection Act 1983.

#### **R5.110.1 Evidence of non-compliance with employment law**

- a. Employers are considered to not have a history of compliance with employment law if they are included on a list of non-compliant employers maintained by the Labour Inspectorate. The rules for inclusion on the list are set out in Appendix 10.
- b. If there is other information that indicates an employer does not have a history of compliance with employment law, an immigration officer should request further information to determine whether the employer meets the minimum employment requirements. Such information may include, but is not limited to, instances where an employer has an investigation or case pending with the Labour Inspectorate, the Employment Relations Authority, or the New Zealand courts.
- c. New employers may be considered to have a history of compliance if:
  - i. they do not appear on the list of non-compliant employers maintained by the Labour Inspectorate; and
  - ii. they can demonstrate they have sound human resources policies and practices; and
  - iii. there is no other information that indicates non-compliance, for example when a person who is on the stand-down list is able to influence employment agreements, practices and policies.
- d. A visa application will be declined if:
  - i. it is supported by, or includes a job offer based on employment with, an employer who is included on a list of non-compliant employers; or
  - ii. an immigration officer is otherwise not satisfied the employer meets the requirements of R5.110.1(a) – (c) above.

#### **Notes:**

- Breaches of employment standards which lead to inclusion on a list of non-compliant employers may still be considered when determining an employer's compliance with employment law, as required elsewhere in immigration instructions, even if the employer is no longer on the list.

## **BE2.10 Compliance with employment and immigration law**

- a. Businesses relocated to New Zealand must comply with all relevant employment and immigration law in force in New Zealand. Compliance with relevant New Zealand employment and immigration law includes but is not limited to:
  - i. paying employees no less than the appropriate minimum wage rate or other contracted industry standard; and
  - ii. meeting holiday and special leave requirements or other minimum statutory criteria, e.g. occupational safety and health obligations; and
  - iii. only employing people who have authority to undertake that work under the Immigration Act 2009.
- b. Businesses relocated to New Zealand are considered to not be compliant with employment law if they fail to meet the requirements set out at R5.110, or they are included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).

## BH2.5 Compliance with employment and immigration law

- a. Businesses established in New Zealand must comply with all relevant employment and immigration law in force in New Zealand. Compliance with relevant New Zealand employment and immigration law includes but is not limited to:
  - i. paying employees no less than the appropriate minimum wage or other contracted industry standard; and
  - ii. meeting holiday and special leave requirements or other minimum statutory criteria, e.g. occupational safety and health obligations; and
  - iii. only employing people who have authority to undertake that work under the Immigration Act 2009.
- b. Despite BH2.5 (a) above, **and except in cases where BH2.5(d) applies**, where an application otherwise meets all requirements for approval and there is an incident of non-compliance with any relevant employment or immigration law in force in New Zealand, a business immigration specialist may nevertheless approve the application where:
  - i. they are satisfied that the breach of requirements is of a minor nature; and
  - ii. evidence is provided that satisfies the business immigration specialist that the cause and consequences of the breach have been remedied.
- c. To determine the nature of a breach, the business immigration specialist may consult with WorkSafe New Zealand, the Labour Inspectorate and other sections of the Ministry of Business, Innovation and Employment, and/or the Accident Compensation Corporation.
- d. **The business established is considered to not be compliant with employment law if it fails to meet the requirements set out at R5.110, or if it is included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).**

### **F4.30 Additional requirements for tier one of the Parent Category**

In addition to the requirements of the Parent Category in sections [F4.1](#) to [F4.25](#), applicants under tier one of the Parent Category must meet one of the following requirements:

- a. Sponsor's income (see [F4.30.1](#)); or
- b. Guaranteed lifetime minimum income (see [F4.30.5](#)); or
- c. Settlement funds (see [F4.30.10](#)).

#### **F4.30.1 Sponsor's income**

- a. To meet the minimum income requirements:
  - i. a sponsor or their partner must earn a minimum of \$65,000 per annum before income tax; or
  - ii. a sponsor and their partner together must earn a minimum of \$90,000 per annum before income tax.
- b. The minimum income requirement referred to in (a) above must be met by personal taxable income that is obtained from one or any combination of:
  - i. sustained paid employment; or
  - ii. regular self-employment; or
  - iii. regular investment income.
- c. The minimum income requirement must be met by personal taxable income. Income earned by another legal entity, such as a company or a trust, cannot be included unless it has been paid directly to the sponsor and/or their partner in the form of shareholder-employee salary or dividends, or is income derived from the trust.
- d. When assessing whether the income obtained from the source(s) in (b) above is sustained and/or regular, officers may consider, but are not limited to, such factors as the length of employment, terms of employment and the regularity of payments.
- e. The income of a sponsor's partner may only be considered if the partner has been:
  - i. living with the sponsor for a period of at least 12 months in a partnership that is genuine and stable (see [F2.10.1](#)), and they meet the requirements for the recognition of a partnership set out at [F2.15](#); and
  - ii. a New Zealand residence class visa holder for at least three years immediately preceding the date the application their partner wishes to sponsor is made, or is a New Zealand citizen.
- f. Sponsors must meet the evidential requirements set out at [F4.40.25.1](#).

#### **F4.30.5 Guaranteed lifetime minimum income**

- a. If there is one applicant included in the application, the applicant must have a guaranteed lifetime minimum income of at least NZ\$**27,898** per annum.
- b. If a partner is also included in the application, the applicants jointly must have a guaranteed lifetime minimum income of at least NZ\$**41,046** per annum.
- c. The applicants must meet the evidential requirements set out at [F4.40.30.1](#).

#### **F4.30.10 Settlement funds**

- a. Principal applicants must:
  - i. nominate funds (or assets that can be converted into funds) to bring to New Zealand of a minimum value of NZ\$500,000; and
  - ii. demonstrate ownership of the nominated funds and/or assets (see the evidential requirements set out at [F4.40.30.5](#)); and
  - iii. demonstrate that the nominated funds and/or assets have been earned or acquired legally (see [F4.5.25](#) and [F4.40.30.5](#)).
- b. Funds or assets may be owned either:
  - i. solely by the principal applicant; or
  - ii. jointly by the principal applicant and their partner who is included in the resident visa application.
- c. The principal applicant may claim the full value of jointly owned funds or assets (as per [F4.30.10\(b\)\(ii\)](#) above) for assessment purposes, provided an immigration officer is satisfied the principal and secondary applicants meet the partnership requirements set out at [R2.1.15](#).
- d. If funds or assets are held jointly by the principal applicant and a person other than their partner, the principal applicant may only claim the value of that portion of the funds or assets for which they provide evidence of ownership.
- e. The principal applicant may only nominate funds or assets that they earned or acquired legally, including funds and/or assets which have been gifted to them unconditionally and in accordance with local law (also see [F4.5.25](#)). Where nominated funds or assets have been gifted to the principal applicant an immigration



officer must be satisfied that the funds or assets being gifted were earned lawfully by the person(s) gifting the funds or assets.

- f. The nominated funds and/or assets must be unencumbered.
- g. The nominated funds and/or assets must not be borrowed.
- h. The principal applicant and/or their partner who is included in the application must transfer, or have transferred, a total of NZ\$500,000 in settlement funds to New Zealand from outside New Zealand.

**Note:** The value of the amount transferred will be dependent on the currency exchange rate at the time of transfer, not at the time the residence application is assessed (see also F4.30.10.15). Funds that have not been transferred to New Zealand by the principal applicant and/or their partner who is included in the application may not be used to meet requirements for F4.30.10.

#### **F4.30.10.1 Aim and intent of settlement funds transfer**

The instructions regarding the nominated settlements funds and the method of transfer of those funds to New Zealand are designed to ensure:

- a. the legitimacy and lawful ownership of the nominated funds; and
- b. the direct transfer of the settlement funds through a structured and prescribed process to guarantee ongoing legitimacy and lawful ownership of the funds brought to New Zealand.

#### **F4.30.10.5 Approval in principle pending the transfer of settlement funds**

If the applicants meet the criteria set out for settlement funds at F4.30.10 and all other requirements under the Parent Category (excluding instructions for transferring funds to New Zealand at F4.30.10.15), the applicants will be advised that:

- a. their application has been approved in principle; and
- b. resident visas may be granted once they:
  - i. provide acceptable evidence of having transferred the nominated funds in accordance with the relevant instructions; and
  - ii. pay any outstanding fee for English language tuition to meet English language requirements (see F4.15).

#### **F4.30.10.10 Timeframe for transferring funds to New Zealand**

- a. Principal applicants must meet the requirements for transferring nominated funds within 12 months of the date of the letter advising of approval in principle.
- b. Applications for a resident visa must be declined if a principal applicant does not present acceptable evidence of having transferred the nominated settlement funds within 12 months (or 18 months if an extension is granted, see provisions (c), (d), and (e) below) from the date of approval in principle.
- c. Principal applicants may request an extension to their transfer period for up six months.
- d. If a principal applicant wishes to request an extension to the timeframe for transferring the nominated funds to New Zealand, they must contact the immigration officer within 12 months of the date of the letter advising of Approval in Principle and present evidence of reasonable attempts to transfer the nominated funds to New Zealand.
- e. Following a principal applicant's presentation of evidence an immigration officer may:
  - i. grant an extension to the transfer period if they believe the evidence shows the principal applicant has made reasonable attempts to transfer the nominated funds within the 12 month time period; or
  - ii. decline to grant an extension to the transfer period if they believe the principal applicant has not made reasonable attempts to transfer the nominated funds within the 12 month time period.

#### **F4.30.10.15 Transferring funds to New Zealand**

- a. When their application meets the requirements for tier one through settlement funds, as per F4.30.10, and is approved in principle, the applicant will be required to transfer the nominated settlement funds to New Zealand and meet the evidential requirements set out at F4.40.30.10.
- b. A minimum of NZ\$500,000 in total must be transferred to New Zealand.
- c. These funds must be the funds initially nominated, or the funds that result from the sale of the same assets as those initially nominated, in the resident visa application; and
  - i. be transferred through the banking system directly from the principal and/or secondary applicant's bank account(s) to New Zealand; or
  - ii. be transferred by a foreign exchange company to New Zealand through the banking system. Immigration officers may not accept the transferred funds if the applicant cannot provide satisfactory evidence of the following:
    - o the nominated funds have been transferred to the foreign exchange company directly from the applicant's bank account(s); and

- the nominated funds have been transferred through a foreign exchange company in a way that is not contrary to laws of New Zealand; and the nominated funds transferred are traceable; and
- cash transactions were not made; and
- the foreign exchange company is not suspected of, or proven to have committed, fraudulent activity or financial impropriety in any country it operates from or in.

Note: Nominated funds held in a country other than the country in which they were earned or acquired legally must have been originally transferred through the banking system, or a foreign exchange company that uses the banking system from the country in which they were earned or acquired.

## SM7.20 Requirements for employers

- a. All employers wishing to employ non-New Zealand citizens or residents must comply with all relevant employment and immigration law in force in New Zealand. Compliance with relevant New Zealand employment and immigration law includes, but is not limited to:
  - i. paying employees no less than the appropriate minimum wage rate or other contracted industry standard; and
  - ii. meeting holiday and special leave requirements or other minimum statutory criteria, e.g. occupational safety and health obligations; and
  - iii. only employing people who have authority to work in New Zealand.
- b. To qualify for points, skilled employment must be with an employer who has good workplace practices, including a history of compliance with all immigration and employment laws such as the Immigration Act 2009, the Accident Compensation Act 2001, the Minimum Wage Act 1983, the Health and Safety at Work Act 2015, the Employment Relations Act 2000; the Wages Protection Act 1983, the Parental Leave and Employment Protection Act 1987, the Equal Pay Act 1972 and the Holidays Act 2003.
- c. An employer is considered to not have a history of compliance with employment law if it fails to meet the requirements set out at R5.110 or if it is included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).
- d. Current employment or an offer of employment does not qualify for points if it is not compliant with all relevant immigration and employment laws in force in New Zealand or if INZ considers that the employment of the applicant creates unacceptable risks to the integrity of New Zealand's immigration or employment laws, policies or instructions.

### Note:

To determine whether an offer of employment creates an unacceptable risk to the integrity of New Zealand's immigration and employment laws, policies or instructions an immigration officer may consider whether the remuneration offered for the position is comparable to the market rate for New Zealand workers in that occupation.

- Breaches of employment standards which lead to inclusion on a list of non-compliant employers may still be considered when determining if an employer has a history of compliance with employment law, even if the employer is no longer on the list.

## RW2.5 Requirements for employment

Employment must be:

- a. in New Zealand; and
- b. full-time (that is it amounts to, on average, at least 30 hours per week); and
- c. ongoing, that is:
  - i. an offer of employment or current employment, with a single employer, that is permanent or indefinite, and of which the employer is in a position to meet the terms specified; or
  - ii. an offer of employment or current employment with a single employer, for a stated term of at least 12 months; and
- d. genuine; and
- e. compliant with all relevant employment law in force in New Zealand; and
- f. with an employer who has a history of compliance with employment law and who is not included on a list of non-compliant employers maintained by the Labour Inspectorate (see R5.110 and Appendix 10).

**Note:** Compliance with relevant New Zealand employment law includes but is not limited to:  
~ a written employment agreement that contains the necessary statutory specified terms and conditions;  
~ meeting holiday and special leave requirements and other minimum statutory criteria;  
~ meeting occupational safety and health obligations.

Where an offer of employment or current employment is for a stated term of at least 12 months, the stated term must be valid both at the time the application is lodged and when the application is decided, in particular:  
~ if the applicant has current employment, he or she must be in that employment, or  
~ if the applicant has an offer of employment, the offer must continue to be valid.

### RW2.5.1 Requirements for employment for a stated term

- a. For the purposes of RW2.5(c)(ii), INZ must be satisfied that the employer:
  - i. has genuine reasons based on reasonable grounds for specifying that the employment is for a stated term; and
  - ii. has advised the employee of when or how their employment will end and the reasons for their employment ending; and
  - iii. is in a position to meet the terms specified.
- b. 'Genuine reasons' for the purposes of RW2.5.1(a)(i) do not include reasons:
  - i. that exclude or limit the rights of a person under employment law; or
  - ii. to determine the suitability of a person for permanent or indefinite employment.

**Note:** In order to meet employment law, employment agreements that are for a stated term must specify in writing the way in which the employment will end and the reasons for ending the employment.

## RW4.1 Requirements for employment

Employment must be:

- a. in New Zealand; and
- b. full-time, (that is it amounts to, on average, at least 30 hours per week); and
- c. ongoing, that is:
  - i. an offer of employment or current employment, with a single employer, that is permanent or indefinite, and of which the employer is in a position to meet the terms specified; or
  - ii. an offer of employment or current employment with a single employer, for a stated term of at least 12 months; and
- d. genuine; and
- e. compliant with all relevant employment law in force in New Zealand; and
- f. with an employer who has a history of compliance with employment law and who is not included on a list of non-compliant employers maintained by the Labour Inspectorate (see R5.110 and Appendix 10).

**Note:** Compliance with relevant New Zealand employment law includes but is not limited to:  
~ a written employment agreement that contains the necessary statutory specified terms and conditions  
~ meeting holiday and special leave requirements and other minimum statutory criteria  
~ meeting occupational safety and health obligations.

Where an offer of employment or current employment is for a stated term of at least 12 months, the stated term must be valid both at the time the application is lodged and when the application is decided, in particular:

- ~ if the applicant has current employment, he or she must be in that employment, or
- ~ if the applicant has an offer of employment, the offer must continue to be valid.

### RW4.1.5 Requirements for employment for a stated term

- a. For the purposes of RW4.1(c) (ii), INZ must be satisfied that the employer:
  - i. has genuine reasons based on reasonable grounds for specifying that the employment of the employee is for a stated term; and
  - ii. has advised the employee of when or how their employment will end and the reasons for their employment ending; and
  - iii. is in a position to meet the terms specified.
- b. 'Genuine reasons' for the purposes of RW4.1.5(a)(i) do not include reasons:
  - i. that exclude or limit the rights of a person under employment law; or
  - ii. to determine the suitability of a person for permanent or indefinite employment.

**Note:** In order meet employment law, employment agreements that are for a stated term must specify in writing the way in which the employment will end and the reasons for ending the employment.

## RW7.10 Sponsorship by an acceptable sponsor

- a. Applicants must provide evidence of sponsorship by an acceptable sponsor by providing a completed Sponsorship Form for Religious Workers (INZ 1190) with their application for a resident visa.
- b. Completion of the form must include:
  - i. evidence that:
    - the sponsoring organisation is a charity registered with Charities Services with a primary purpose of advancing religion; and
    - work to be undertaken by the applicant meets the requirements at [RW7.5\(c\)](#);
  - ii. a statement from the sponsoring organisation establishing the reasons why that the organisation considers that work by the applicant will continue to serve their religious objectives; and
  - iii. a declaration of sponsorship from the organisation, to confirm they will meet the undertakings specified at [R4.10](#) for a period of five years after the grant of the resident visa; and
  - iv. information to demonstrate that the sponsoring organisation has a long term need for a religious worker (this may include, but is not limited to a statement demonstrating a shortage of New Zealanders or resident visa holders suitable and available for the religious work, or information pertaining to the growth of the religious organisation or their followers).

### RW7.10.1 Requirements for sponsoring organisations

- a. Sponsoring organisations under these instructions must have a history of compliance with the relevant employment and immigration law in force in New Zealand. Compliance with relevant New Zealand employment and immigration law includes, but is not limited to:
  - i. paying employees no less than the appropriate minimum wage rate or other contracted industry standard; and
  - ii. meeting holiday and special leave requirements or other minimum statutory criteria, e.g. occupational safety and health obligations; and
  - iii. only employing people who have authority to work in New Zealand.
- b. Evidence or confirmation of compliance with relevant New Zealand employment and immigration law may include but is not limited to:
  - i. an employment agreement with the applicant which demonstrates compliance (if the applicant is employed); and
  - ii. a recognised history with the Ministry of Business, Innovation and Employment of past compliance.
- c. The sponsoring organisation is considered to not have a history of compliance with employment law if it fails to meet the requirements set out at R5.110 or if it is included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).
- d. Immigration officers may also request other evidence or confirmation of the employer's past and future compliance with employment and immigration law.
- e. Immigration officers may require employers to provide evidence that the rate of pay and/or conditions of work offered to the applicant is not less than that for New Zealand workers undertaking similar work for the sponsoring organisation.
- f. INZ will decline an application for a Religious Worker resident visa where it considers that granting the visa would undermine the integrity, credibility or reputation of the New Zealand immigration or employment relations systems.

**Note:** To determine whether an employment agreement creates an unacceptable risk to the integrity of New Zealand's immigration and employment laws or instructions, an immigration officer may consider whether the rate of pay and/or conditions of the work are comparable to that for New Zealand workers undertaking similar work for the sponsoring organisation.

### **S1.1 Pitcairn Islanders**

- a. Pitcairn Islanders are considered for a resident visa under a special category because New Zealand recognises that there are few employment opportunities on Pitcairn Island.
- b. Pitcairn Islanders must be approved for a resident visa if they:
  - i. apply in the prescribed manner (see [R2.35](#) - [R2.45](#)), and
  - ii. meet health and character requirements (see [A4](#) and [A5](#)), and
  - iii. have an offer of employment in New Zealand that meets the requirements of [SM7.15](#) and is made by an employer who meets the requirements set out at [R5.110](#).

## **S1.10 Samoan Quota Scheme**

### **S1.10.1 Objective**

The Samoan Quota Scheme allows up to 1,100 Samoan citizens to be granted a resident visa each year. The total number of Samoan citizens approved under this category includes principal applicants, their partners and dependent children.

### **S1.10.5 Criteria for a resident visa**

- a. To qualify for a resident visa under the Samoan Quota Scheme, the principal applicant must:
  - i. be a Samoan citizen (having been born in Samoa or born overseas to a Samoan citizen who was born in Samoa); and
  - ii. be either in Samoa or lawfully in New Zealand at the time their application for a resident visa is made; and
  - iii. have their registration drawn from the Samoan Quota Scheme pool; and
  - iv. lodge their application for a resident visa under the Samoan Quota Scheme within eight months of written advice from INZ that their registration has been drawn from the Samoan Quota Scheme pool; and
  - v. have been aged between 18 and 45 (inclusive) at the registration closing date; and
  - vi. have an acceptable offer of employment, or have a partner included in the application who has an acceptable offer of employment (see S1.10.30 below); and
  - vii. (if they have dependent children) meet the minimum income requirement (see S1.10.35 below); and
  - viii. meet a minimum level of English language ability (see S1.10.45 below); and
  - ix. meet health and character requirements (see A4 and A5).
- b. Partners and dependent children of the principal applicant who are included in the resident visa application must also meet health and character requirements for a resident visa (see A4 and A5).
- c. An immigration officer may extend the eight month timeframe referred to in paragraph (a)(iv) if the officer believes the special circumstances of the applicant justify such an extension.
- d. An Assistant General Manager, Visa Services may extend the eight month timeframe referred to in paragraph (a)(iv) in relation to a class of applicants if the Assistant General Manager believes the special circumstances of the class of applicants justify such an extension.

### **S1.10.10 Registration process**

- a. Principal registrants may register for entry into the Samoan Quota pool within a set registration period. The dates of the registration period will be announced each year prior to the registration opening.
- b. Principal registrants must be aged between 18 and 45 (inclusive) at the registration closing date for their registration to be accepted into the ballot.
- c. Registrations must be made on the appropriate registration form for the Samoan Quota Scheme.
- d. Registrations must be submitted during the registration period to the appropriate receiving office specified in the appropriate registration guide for the Samoan Quota Scheme.
- e. Registrations will be accepted for entry into the ballot only if they are fully completed, signed by the principal registrant, and accompanied by any documents or evidence specified as required by the registration form.
- f. Any person included in a registration must either:
  - i. be in New Zealand lawfully at the time the registration is made; or
  - ii. be offshore at the time the registration is made.
- g. Any person who has previously overstayed in New Zealand, but has departed voluntarily, and is not subject to a removal order or period of prohibition on entry, can register under the Samoan Quota Scheme.

#### **S1.10.10.1 Definition of 'principal registrant'**

The principal registrant is the person who is declared to be the principal registrant on the registration application form and who intends to be the principal applicant of any resulting resident visa application.

### **S1.10.15 Inclusion in registration of immediate family members of the principal registrant**

- a. Where the principal registrant has a partner and/or dependent children all of those people must be included in the registration.
- b. If a registration is successful in the pool draw, only a partner and/or dependent children included in the registration may be included in the resulting application for a resident visa under the Samoan Quota Scheme. This limitation applies despite R2.1 concerning the inclusion of family members in an application.
- c. Any partner and/or dependent children who were eligible for inclusion in the registration but were not included must not subsequently be granted a residence class visa under the Partnership or Dependent Child Categories.



- d. Despite (b) and (c) above, a partner or dependent child who was included in the registration but not in the resulting application for a resident visa may be granted a residence class visa as a principal applicant under the Partnership or Dependent Child Categories.
- e. Notwithstanding (b) above, in the event an applicant includes any partner and/or dependent child in their application who was not included in their registration, officers should allow the principal applicant an opportunity to explain the non-declaration in accordance with R5.15 before applying the limitation referred to in (b).
- f. Where a person is not eligible to be included at the time of registration but is eligible at the time of the application for a resident visa (e.g. in the case of a newborn child), they may be included in the resident visa application provided R2.1 is met.

#### **S1.10.20 Number of registrations that may be lodged**

Registrants must lodge (or be included in) only one registration within the registration period. If a registration is lodged that includes registrants who are already included in a registration accepted by INZ, the subsequent registration(s) will not be accepted.

#### **S1.10.25 Selection process following closure of registration**

- a. As soon as practicable following the closure of the registration period, INZ will conduct an electronic draw.
- b. Registrations will be randomly drawn from the pool until the appropriate number of potential applicants to fill the number of available places within the annual period has been drawn.
- c. Principal registrants whose registrations have been drawn from the pool will be notified by INZ in the month following the draw that their registration has been successful, and will be invited to lodge an application for a resident visa under the Samoan Quota Scheme at the appropriate receiving office of INZ not more than eight months after the date of that advice.

#### **S1.10.30 Acceptable offers of employment**

- a. Acceptable offers of employment may be in either a skilled or unskilled occupation but must be for on-going and sustainable employment. On-going and sustainable employment is:
  - i. an offer of employment or current employment with a single employer which is permanent, or indefinite, and of which the employer is in a position to meet the terms specified; or
  - ii. an offer of employment or current employment, with a single employer for a stated term of at least 12 months.

**Note:** When assessing whether employment is sustainable, officers may consider, but are not limited to, such factors as the residence status of the employer, the period for which the employing organisation has been established as a going concern, and the financial sustainability of the employing organisation.

Where an offer of employment or current employment is for a stated term of at least 12 months, the stated term must be valid both at the time the application is lodged and when the application is decided, in particular:

- ~ if the applicant has current employment, he or she must be in that employment, or
- ~ if the applicant has an offer of employment, the offer must continue to be valid.

- b. Acceptable offers of employment must also be:
  - i. for full-time employment (employment is full-time if it amounts to, on average, at least 30 hours per week) unless S1.10.35.1 (c) applies; and
  - ii. current at the time of assessing the application and at the time of grant of the visa; and
  - iii. genuine; and
  - iv. for a position that is paid by salary or wages (ie, positions of self-employment, payment by commission and/or retainer are not acceptable); and
  - v. accompanied by evidence of professional or technical registration if this is required by law to take up the offer; and
  - vi. compliant with all relevant employment law in force in New Zealand.
- c. An acceptable offer of employment must be from an employer who complies with all relevant employment and immigration law in force in New Zealand. Compliance with relevant New Zealand employment and immigration law will be assessed on the basis of past and current behaviour, and includes, but is not limited to:
  - i. paying employees no less than the applicable minimum wage rate; and
  - ii. meeting holiday and leave entitlements and other minimum statutory requirements; and
  - iii. meeting occupational safety and health obligations; and
  - iv. only employing people who are entitled to work in New Zealand.
- d. An employer is not considered to be compliant with employment law if it fails to meet the requirements set out at R5.110 or if it is included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).
- e. For the purposes of S1.10.30(a) (ii), INZ must be satisfied that the employer:

- i. has genuine reasons based on reasonable grounds for specifying that the employment is for a stated term; and
  - ii. has advised the employee of when or how their employment will end and the reasons for their employment ending; and
  - iii. is in a position to meet the terms specified.
- f. 'Genuine reasons' for the purposes of [SM7.15\(c\)\(i\)](#) do not include reasons:
- i. that exclude or limit the rights of a person under employment law; or
  - ii. to determine the suitability of a person for permanent or indefinite employment.

**Note:** In order to meet employment law, employment agreements that are for a stated term must specify in writing the way in which the employment will end and the reasons for ending the employment.

- g. If the principal applicant has dependent children, the offer of employment must also meet the minimum income requirement set out at [S1.10.35](#) below.

#### **S1.10.35 Minimum income requirement**

- a. Principal applicants with dependent children must show that they will meet the minimum income requirement if they come to New Zealand, which is intended to ensure they can support themselves and their dependent children.
- b. The gross minimum income requirement is NZ\$[33,739.68](#). This is based on the Unemployment Benefit (married and civil union rate) plus the maximum Accommodation Supplement (as set by the New Zealand Government).
- c. The minimum income requirement must be derived from an acceptable offer of employment - see [S1.10.30](#).

##### **S1.10.35.1 Ability to include partner's income as part of the minimum income requirement**

- a. If both the principal applicant and their partner included in their application have an acceptable offer of employment in New Zealand, both of their wages or salaries may be taken into account when determining if the minimum income requirement is met.
- b. In such cases the partner's employment and income will only be taken into account if, at the time the application is assessed, an immigration officer is satisfied the principal applicant and partner have been living together for 12 months or more in a partnership that is genuine and stable (see [R2.1.15.1\(b\)](#) and [R2.1.15.5\(a\)\(i\)](#)).
- c. Where the employment (and income) of both the principal applicant and their partner is used to meet the minimum income requirement, both offers of employment must meet all the requirements in [S1.10.30](#) except that only one has to meet the requirement that the offer be for full-time employment.

##### **S1.10.40 Evidence of employment offer**

- a. Evidence of an offer of employment is original or certified copies of the following documents:
  - i. a written offer of employment; and
  - ii. a detailed job description; and
  - iii. an employment agreement entered into by the employer and the principal applicant, stating:
    - iv. the terms of employment; and
    - o the hours of work; and
    - o the period during which employment may begin.
- b. Additional evidence may include, but is not limited to:
  - i. any information requested by INZ; and
  - ii. the results of any verification undertaken by INZ; and
  - iii. information from the employer or recruitment agency.

##### **S1.10.45 Minimum English language requirement**

The interviewing immigration officer determines whether principal applicants meet the minimum English language requirement by assessing whether they are able to:

- a. read English; and
- b. understand and respond to questions in English; and
- c. maintain an English language conversation about themselves, their family or their background.

##### **S1.10.50 Determining applications**

- a. The immigration officer must sight the original job offer and verify that it is genuine and current by checking:
  - i. directly with the employer; or
  - ii. through the nearest office of INZ to the employer in New Zealand; or

- iii. by some other appropriate arrangement.
- b. The immigration officer must then assess the applicant's English language ability against the criteria at S1.10.45 above.

**S1.10.55 Grant of visas**

- a. If an application for a resident visa under the Samoan Quota Scheme is approved and the applicant is in New Zealand lawfully, a resident visa will be granted.
- b. If an application for a resident visa under the Samoan Quota Scheme is approved and the applicant is in Samoa, the principal applicant will be granted with a resident visa with travel conditions allowing first entry within three months, while the partner and dependent children will be granted resident visas with travel conditions allowing first entry within 12 months.

## **S1.40 Pacific Access Category**

### **S1.40.1 Objective**

The Pacific Access Category allows up to 250 citizens of Fiji, 250 citizens of Tonga, 75 citizens of Tuvalu, and 75 citizens of Kiribati to be granted residence class visas in New Zealand each year. The total number of individuals approved under each category includes principal applicants, their partners and dependent children.

### **S1.40.5 Criteria for a resident visa**

- a. To qualify for a resident visa under the Pacific Access Category, the principal applicant must:
  - i. be a citizen of Fiji, Tonga, Tuvalu, or Kiribati; and
  - ii. have their Pacific Access Category registration drawn from the relevant Fiji, Tonga, Tuvalu, or Kiribati pool of the Pacific Access Category; and
  - iii. lodge their application for a resident visa under the Pacific Access Category within eight months of written advice from INZ that their registration has been drawn from the relevant Fiji, Tonga, Tuvalu, or Kiribati pool of the Pacific Access Category; and
  - iv. have been aged between 18 and 45 (inclusive) at the registration closing date; and
  - v. have an acceptable offer of employment or have a partner, included in the application, who has an acceptable offer of employment (see S1.40.30 below); and
  - vi. (if they have dependent children) meet the minimum income requirement set out at S1.40.35 below; and
  - vii. meet a minimum level of English language ability (see S1.40.45 below); and
  - viii. meet health and character requirements (see A4 and A5).
- b. Principal applicants who are citizens of Fiji:
  - i. must be either in Fiji or lawfully in New Zealand at the time their application under the Pacific Access Category is made; and
  - ii. must have been born in Fiji or born overseas to a Fijian citizen who was born in Fiji.
- c. Principal applicants who are citizens of Tonga:
  - i. must be either in Tonga or lawfully in New Zealand at the time their application under the Pacific Access Category is made; and
  - ii. must have been born in Tonga or born overseas to a Tongan citizen who was born in Tonga.
- d. Principal applicants who are citizens of Kiribati:
  - i. must be either in Kiribati or Fiji or lawfully in New Zealand at the time their application under the Pacific Access Category is made; and
  - ii. must have been born in Kiribati or born overseas to a Kiribati citizen who was born in Kiribati.
- e. Principal applicants who are citizens of Tuvalu:
  - i. must be either in Tuvalu or Fiji or lawfully in New Zealand at the time their application under the Pacific Access Category is made; and
  - ii. must have been born in Tuvalu or born overseas to a Tuvaluan citizen who was born in Tuvalu.
- f. Partners and dependent children included in applications under the Pacific Access Category must also meet health and character requirements (see A4 and A5).
- g. An immigration officer may extend the eight-month timeframe referred to in paragraph (a)(iii) if the officer believes the special circumstances of the applicant justify such an extension.
- h. An Assistant General Manager, Visa Services may extend the eight-month timeframe referred to in paragraph (a)(iii) in relation to a class of applicants if the Assistant General Manager believes the special circumstances of the class of applicants justify such an extension.

### **S1.40.10 Registration process**

- a. Principal registrants may register for entry into the relevant Fiji, Tonga, Tuvalu, or Kiribati pool of the Pacific Access Category within a set registration period. The dates of the registration period will be announced each year prior to the registration opening.
- b. Principal registrants must be aged between 18 and 45 (inclusive) at the registration closing date for their registration to be accepted into the ballot.
- c. Registrations must be made on the appropriate registration form for the Pacific Access Category.
- d. Registrations must be submitted during the registration period to the appropriate receiving office specified on the Pacific Access Category registration guide applicable to the country.
- e. Registrations will be accepted for entry into the ballot only if they are fully completed, signed by the principal registrant, submitted together with the appropriate fee and accompanied by any documents or evidence as required by the registration form.
- f. Any person included in a registration must either:

- i. be in New Zealand lawfully at the time the registration is made; or
  - ii. be offshore at the time the registration is made.
- g. Any person who has previously overstayed in New Zealand, but has departed voluntarily, and is not subject to a removal order or period of prohibition on entry, can register under the Pacific Access Category.

#### **S1.40.10.1 Definition of 'principal registrant'**

The principal registrant is the person who is declared to be the principal registrant on the registration application form and who intends to be the principal applicant of any resulting residence class visa application.

#### **S1.40.15 Inclusion in registration of immediate family members of the principal registrant**

- a. Where the principal registrant has a partner and/or dependent children all of those people must be included in the registration.
- b. If a registration is successful in the pool draw, only a partner and/or dependent children included in the registration may be included in the resulting application for a resident visa under the Pacific Access Category. This limitation applies despite R2.1 concerning the inclusion of family members in an application.
- c. Any partner and/or dependent children who were eligible for inclusion in the registration but were not included must not subsequently be granted a residence class visa under the Partnership or Dependent Child Categories.
- d. Despite (b) and (c) above, a partner or dependent child who was included in the registration but not in the resulting application for a resident visa may be granted a residence class visa as a principal applicant under the Partnership or Dependent Child Categories.
- e. Notwithstanding (b) above, in the event an applicant includes any partner and/or dependent child in their application who was not included in their registration, officers should allow the principal applicant an opportunity to explain the non-declaration in accordance with R5.15 before applying the limitation referred to in (b).
- f. Where a person is not eligible to be included at the time of registration but is eligible at the time of the application for a resident visa (e.g. in the case of a newborn child), they may be included in the resident visa application provided R2.1 is met.

#### **S1.40.20 Number of registrations that may be lodged**

Registrants must lodge (or be included in) only one registration within the registration period. If a registration is lodged that includes registrants who are already included in a registration accepted by INZ, the subsequent registration(s) will not be accepted.

#### **S1.40.25 Selection process following closure of registration**

- a. INZ will conduct an electronic draw as soon as practicable after the closure of the registration period.
- b. Registrations will be randomly drawn from the pool of registrations, until the appropriate number of potential registrants to meet the various quotas of available places within the annual period has been drawn.
- c. Principal registrants whose registrations have been drawn from the various pools will be notified by INZ in the month following the draw that their registration has been successful and that they must lodge a full application under the Pacific Access Category to the appropriate receiving office of INZ not more than eight months after the date of that advice.
- d. Principal registrants who are unsuccessful in the registration process within a particular registration period are able to re-register within subsequent registration periods at a reduced fee.

#### **S1.40.30 Acceptable offers of employment**

- a. Acceptable offers of employment may be in either a skilled or unskilled occupation but must be for on-going and sustainable employment. On-going and sustainable employment is:
  - i. an offer of employment or current employment with a single employer which is permanent, or indefinite, and of which the employer is in a position to meet the terms specified; or
  - ii. an offer of employment or current employment, with a single employer for a stated term of at least 12 months.

**Note:** When assessing whether employment is sustainable, officers may consider, but are not limited to, such factors as the residence status of the employer, the period for which the employing organisation has been established as a going concern, and the financial sustainability of the employing organisation.

Where an offer of employment or current employment is for a stated term of at least 12 months, the stated term must be valid both at the time the application is lodged and when the application is decided, in particular:

- ~ if the applicant has current employment, he or she must be in that employment, or
- ~ if the applicant has an offer of employment, the offer must continue to be valid.

- b. Acceptable offers of employment must also be:
    - i. for full-time employment (employment is full-time if it amounts to, on average, at least 30 hours per week) unless S1.40.35.1 (c) applies; and
    - ii. current at the time of assessing the application and at the time of grant the visa; and
    - iii. genuine; and
    - iv. for a position that is paid by salary or wages (ie, positions of self-employment, payment by commission and/or retainer are not acceptable); and
    - v. accompanied by evidence of professional or technical registration if this is required by law to take up the offer; and
    - vi. compliant with all relevant employment law in force in New Zealand.
  - c. An acceptable offer of employment must be from an employer who complies with all relevant employment and immigration law in force in New Zealand. Compliance with relevant New Zealand employment and immigration law will be assessed on the basis of past and current behaviour, and includes, but is not limited to:
    - i. paying employees no less than the applicable minimum wage rate; and
    - ii. meeting holiday and leave entitlements and other minimum statutory requirements; and
    - iii. meeting occupational safety and health obligations; and
    - iv. only employing people who are entitled to work in New Zealand.
  - d. An employer is considered to not have a history of compliance with employment law if it fails to meet the requirements set out at R5.110 or if it is included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).
  - e. For the purposes of S1.40.30(a)(ii), INZ must be satisfied that the employer:
    - i. has genuine reasons based on reasonable grounds for specifying that the employment is for a stated term; and
    - ii. has advised the employee of when or how their employment will end and the reasons for their employment ending; and
    - iii. is in a position to meet the terms specified.
  - f. 'Genuine reasons' for the purposes of SM7.15(c)(i) do not include reasons:
    - i. that exclude or limit the rights of a person under employment law; or
    - ii. to determine the suitability of a person for permanent or indefinite employment.
- Note:** In order meet employment law, employment agreements that are for a stated term must specify in writing the way in which the employment will end and the reasons for ending the employment.
- g. If the principal applicant has dependent children, the offer of employment must also meet the minimum income requirement set out at S1.40.35 below.

#### **S1.40.35 Minimum income requirement**

- a. Principal applicants with dependent children must show that they will meet the minimum income requirement if they come to New Zealand, which is intended to ensure they can support themselves and their dependent children.
- b. The gross minimum income requirement is NZ\$33,739.68. This is based on the Unemployment Benefit (married and civil union rate) plus the maximum Accommodation Supplement (as set by the New Zealand Government).
- c. The minimum income requirement must be derived from the acceptable offer of employment - see S1.40.30.

#### **S1.40.35.1 Ability to include the partner's income as part of the minimum income requirement**

- a. If both the principal applicant and their partner included in their application have an acceptable offer of employment in New Zealand, both of their wages or salaries may be taken into account when determining if the minimum income requirement is met.
- b. In such cases the partner's employment and income will only be taken into account if, at the time the application is assessed, an immigration officer is satisfied the principal applicant and partner have been living together for 12 months or more in a partnership that is genuine and stable (see R2.1.15.1(b) and R2.1.15.5(a)(i)).
- c. Where the employment (and income) of both the principal applicant and their partner is used to meet the minimum income requirement, both offers of employment must meet all the requirements in S1.40.30, except that only one has to meet the requirement that the offer be for full-time employment.

#### **S1.40.40 Evidence of employment offer**

- a. Evidence of an offer of employment is original or certified copies of the following documents:
  - i. a written offer of employment; and
  - ii. a detailed job description; and

- iii. a letter from the employer stating whether or not any occupational registration is required by law for the principal applicant to take up the position; and
  - iv. an employment agreement entered into by the employer and the principal applicant, stating:
    - o the terms of employment; and
    - o the hours of work; and
    - o the period during which employment may begin.
- b. Additional evidence may include, but is not limited to:
- i. any information requested by INZ; and
  - ii. the results of any verification undertaken by INZ; and
  - iii. information from the employer or recruitment agency.

#### **S1.40.45 Minimum English language requirement**

Immigration officers determine whether principal applicants meet the minimum English language requirement by assessing whether they are able to:

- a. read English; and
- b. understand and respond to questions in English; and
- c. maintain an English language conversation about themselves, their family or their background.

#### **S1.40.50 Determining applications**

- a. Immigration officers must sight the original job offer and verify that it is genuine and current by checking:
  - i. directly with the employer; or
  - ii. through the nearest office of INZ to the employer in New Zealand; or
  - iii. by some other appropriate arrangement.
- b. Immigration officers must assess the applicant's English language ability against the criteria at S1.40.45 above.

#### **S1.40.55 Grant of visas**

- a. If an application for a resident visa under the Pacific Access Category is approved and the applicant is in New Zealand lawfully, a resident visa will be granted.
- b. If an application for a resident visa under the Pacific Access Category is approved and the applicant is in Fiji, Tonga, Kiribati, or Tuvalu, the principal applicant will be granted a resident visa with travel conditions allowing first entry within three months, while the partner and dependent children will be granted resident visas with travel conditions allowing first entry within 12 months.

## S1.45 Special Samoan Quota Places Category

### S1.45.1 Objective

This category allows for the grant of a resident visa to citizens of Samoa who made an application for a resident visa under the Residual Quota Places Category and that application had not been decided as at 7 December 2008.

### S1.45.5 Criteria for a resident visa

- a. To qualify for a resident visa under the Special Samoan Quota Places Category, the principal applicant must:
  - i. be a Samoan citizen (having been born in Samoa or born overseas to a Samoan citizen who was born in Samoa); and
  - ii. have made an application for a resident visa under the Residual Quota Places Category before 28 November 2005 which was not decided as at 7 December 2008; and
  - iii. have withdrawn that undecided application after 7 December 2008; and
  - iv. have an acceptable offer of employment or have a partner, included in the application, who has an acceptable offer of employment (see S1.45.10 below); and
  - v. meet the minimum income requirement (see S1.45.15 below) if they have dependants; and
  - vi. meet a minimum level of English language ability (see S1.45.20 below); and
  - vii. meet health and character requirements (see A4 and A5).
- b. Partners and dependent children accepted under this category must meet health and character requirements (see A4 and A5).
- c. Applications will only be accepted on the Application for Special Samoan Quota Places form and should be sent to the designated receiving office in New Zealand.
- d. Applications that are made in the prescribed manner (that meet all mandatory lodgement requirements) will be processed in the order in which they are received.
- e. Applications must have been made before or on 31 March 2009.

### S1.45.10 Acceptable offers of employment

- a. Acceptable offers of employment may be in either a skilled or unskilled occupation but must be for ongoing and sustainable employment. Ongoing and sustainable employment is employment with a single employer:
  - i. in a job which is permanent, or indefinite, and for which the employer is in a position to meet the terms specified; or
  - ii. for a stated term of at least twelve months with an option for the employee of further terms, and for which the employer is in a position to meet the terms specified.

**Note:** When assessing whether employment is sustainable, officers may consider, but are not limited to, such factors as the residence status of the employer, the period for which the employing organisation has been established as a going concern, and the financial sustainability of the employing organisation.

- b. Acceptable offers of employment must also be:
  - i. for full-time employment (employment is full-time if it amounts to, on average, at least 30 hours per week); and
  - ii. current at the time of assessing the application and at the time of the grant of the visa; and
  - iii. genuine; and
  - iv. for a position that is paid by salary or wages (ie, positions of self-employment, payment by commission and/or retainer are not acceptable); and
  - v. accompanied by evidence of professional or technical registration if this is required by law to take up the offer; and
  - vi. compliant with all relevant employment law in force in New Zealand; and
  - vii. with an employer who has a history of compliance with employment law and who is not included on a list of non-compliant employers maintained by the Labour Inspectorate (see R5.110 and Appendix 10).

**Note:** Compliance with relevant New Zealand employment law includes but is not limited to:  
~ a written employment agreement that contains the necessary statutory specified terms and conditions  
~ paying employees no less than the appropriate adult or youth minimum wage  
~ meeting holiday and special leave requirements and other minimum statutory criteria  
~ meeting occupational safety and health obligations.

- c. If the principal applicant has dependent children, the offer of employment must also meet the minimum income requirement set out at S1.45.15 below.



## S1.50 Special PAC Places Category

### S1.50.1 Objective

This category allows for the grant of a resident visa to citizens of Tonga, Tuvalu, Kiribati or Fiji who made an application for a resident visa under the Residual PAC Places Category and that application had not been decided as at 7 December 2008.

### S1.50.5 Criteria for a resident visa

- a. To qualify for a resident visa under the Special PAC Places Category, the principal applicant must:
  - i. be a citizen of Tonga, Tuvalu, Kiribati or Fiji;
  - ii. have made an application for a resident visa under the Residual PAC Places Instructions before 28 November 2005 which was not decided as at 7 December 2008; and
  - iii. have withdrawn that undecided application after 7 December 2008; and
  - iv. have an acceptable offer of employment or have a partner, included in the application, who has an acceptable offer of employment (see S1.50.10 below); and
  - v. meet the minimum income requirement (see S1.50.15) if they have dependants; and
  - vi. meet a minimum level of English language ability (see S1.50.20); and
  - vii. meet health and character requirements (see A4 and A5).
- b. Principal applicants who are citizens of Tonga must have been born in Tonga or born overseas to a Tongan citizen who was born in Tonga.
- c. Principal applicants who are citizens of Kiribati must have been born in Kiribati or born overseas to a Kiribati citizen who was born in Kiribati.
- d. Principal applicants who are citizens of Tuvalu must have been born in Tuvalu or born overseas to a Tuvaluan citizen who was born in Tuvalu.
- e. Principal applicants who are citizens of Fiji must have been born in Fiji or born overseas to a Fijian citizen who was born in Fiji.
- f. Partners and dependent children accepted under this category must meet health and character requirements (see A4 and A5).
- g. Applications will only be accepted on the Application for Special PAC Places Instructions form and should be sent to the designated receiving office in New Zealand.
- h. Applications that are made in the prescribed manner (that meet all mandatory lodgement requirements) will be processed in the order in which they are received.
- i. Applications must be made before or on 31 March 2009.

### S1.50.10 Acceptable offers of employment

- a. Acceptable offers of employment may be in either a skilled or unskilled occupation but must be for ongoing and sustainable employment. Ongoing and sustainable employment is employment with a single employer:
  - i. in a job which is permanent, or indefinite, and for which the employer is in a position to meet the terms specified; or
  - ii. for a stated term of at least twelve months with an option for the employee of further terms, and for which the employer is in a position to meet the terms specified.

**Note:** When assessing whether employment is sustainable, officers may consider, but are not limited to, such factors as the residence status of the employer, the period for which the employing organisation has been established as a going concern, and the financial sustainability of the employing organisation.

- b. Acceptable offers of employment must also be:
  - i. for full-time employment (employment is full-time if it amounts to, on average, at least 30 hours per week); and
  - ii. current at the time of assessing the application and at the time of the grant of the visa; and
  - iii. genuine; and
  - iv. for a position that is paid by salary or wages (ie, positions of self-employment, payment by commission and/or retainer are not acceptable); and
  - v. accompanied by evidence of professional or technical registration if this is required by law to take up the offer; and
  - vi. compliant with all relevant employment law in force in New Zealand; and
  - vii. with an employer who has a history of compliance with employment law and who is not included on a list of non-compliant employers maintained by the Labour Inspectorate (see R5.110 and Appendix 10).

**Note:** Compliance with relevant New Zealand employment law includes but is not limited to:  
~ a written employment agreement that contains the necessary statutory specified terms and conditions  
~ paying employees no less than the appropriate adult or youth minimum wage

~ meeting holiday and special leave requirements and other minimum statutory criteria  
~ meeting occupational safety and health obligations.

- c. If the principal applicant has dependent children, the offer of employment must also meet the minimum income requirement set out at S1.50.15 below.

**Appendix 2: Proposed amendments to Temporary Entry instructions effective on and after 1 April 2017**

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## E3.26 Varying the conditions of temporary entry class visas

See also *Immigration Act 2009 s 52*

- a. Holders of temporary entry class visas should apply for a variation of the conditions of their visa if:
  - i. they wish to work and do not have a visa that allows work in New Zealand; or
  - ii. they hold a work or visitor visa and wish to undertake a programme of study in New Zealand for longer than 3 months (unless [U2.5](#) applies); or
  - iii. they hold a work visa limited by conditions and wish to change employers, and/or occupation and/or the place of employment.
- b. Immigration officers may grant a variation of conditions in such cases provided that the applicant completes an Application for Variation of Conditions and produces:
  - i. the appropriate fee;
  - ii. a valid passport or travel document;
  - iii. documents which support the requested variation, such as:
    - o an offer of employment (see [W2.10.10](#)); or
    - o an offer of place at a suitable education provider (see [U3.5](#)), and evidence of tuition fee payment or exemption (see [U3.10](#)); and
  - iv. any other documents or information requested by the immigration officer.
- c. A variation of conditions will only be granted where the varied conditions still meet the objectives of the instructions which the visa was granted under.

### E3.26.1 Varying the conditions of work visas

- a. In order to meet the objective of Essential Skills instructions, particularly [WK1.1\(c\)](#), Essential Skills visa holders seeking to change occupation or place of employment will not be granted a variation of conditions and must instead apply for a new work visa, unless their occupation is listed on the Essential Skills in Demand Lists and the applicant meets the requirements of the list.
- b. Holders of a work visa granted under [WS2](#) as players or professional sports coaches may apply for a variation of conditions of their work visa to undertake additional employment. A variation of conditions may be granted if:
  - i. the terms of the existing employment have been met, and will continue to be met; and either
  - ii. the secondary employment is offered by the sports club or a company involved in the sport and the position is offered solely to this particular player or coach; or
  - iii. the secondary employment is offered by an employer other than the sports club or a company involved in the sport and an immigration officer is satisfied that there are no New Zealand citizens or residence class visa holders available to be employed in the position (see [WK2.5](#)).
- c. Holders of a work visa granted under [WR1](#) (Talent Accredited Employers) Work Instructions) may apply for a variation of conditions of their work visa to change employers. A variation of conditions may be granted:
  - i. to undertake employment for another accredited employer; or
  - ii. to undertake employment for another employer who is not an accredited employer if their employment is no longer available due to reasons beyond the visa holder's control. When assessing such applications for a variation of conditions, immigration officers will consider all the circumstances of the applicant and the reasons for which the former accredited employer did not continue employment or the former employer's accreditation was not renewed or rescinded.
- d. In order to be granted a variation of conditions under (c) above:
  - i. the base salary offered must be no less than the base salary that was required at the time the initial work visa application was made; and
  - ii. the offer of employment must meet the requirements of [WR1.10](#); and
  - iii. employers must meet the requirements under [W2.10.6](#) and [W2.10.10](#).

**Note:**

~ Where a person fails to continue employment in the circumstances described in (c) and (d) above, they will not be eligible for residence under the Residence Instructions for holders of work visas granted under the Talent (Accredited Employers) Work Instructions.  
~ For the avoidance of doubt, the base salary in (d) above excludes employment-related allowances (for example overtime, tool or uniform allowances, medical insurance, accommodation). The base salary is calculated on the basis of 40 hours work per week.

### E3.26.5 Varying the conditions of visitor visas

- a. Holders of visitor visas granted under V3.100 Guardians accompanying students to New Zealand may only be granted a variation of conditions for part time work or part time study between the hours 9:30am and 2:30pm Monday to Friday (inclusive) (see [V3.100.35](#)).

- b. Holders of visitor visas may be granted a variation of conditions for a duration of six weeks to undertake seasonal work (planting, maintaining, harvesting and packing crops) in any region where the Ministry of Social Development has identified a shortage of seasonal labour and for any employer in the horticulture or viticulture industries, provided the applicant has not been granted a variation of conditions for this purpose since their most recent entry to New Zealand.

#### **E3.26.10 Varying the conditions of student visas**

- a. Holders of student visas may be granted a variation of conditions to allow them to work in line with the requirements at U13.

#### **E3.26.15 Compliance with employment standards**

All applications for a variation of conditions to work for a specific employer must be for an employer that has a history of compliance with employment law as set out at W2.10.15, and is not currently included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).

## E11.15 Requirements for approved work exchange schemes

### E11.15.1 Reciprocity

- a. Exchanges must be reciprocal in terms of both:
  - i. the number of foreign and New Zealand exchange participants each year; and
  - ii. the granting of permission for New Zealand participants to visit other countries for equivalent periods, under similar terms and conditions.
- b. Normally, the total number of incoming exchange participants in any 24-month period is approximately equal to the number of outgoing New Zealand participants.

**Note:** INZ may approve a longer period than 24 months if particular organisers make a satisfactory case.

### E11.15.5 Guarantors

- a. A person or organisation in New Zealand must agree to be the New Zealand guarantor for the exchange.
- b. If the scheme is organised from New Zealand, the people who propose the scheme are usually the New Zealand guarantors.
- c. If the scheme is organised from outside New Zealand, the organisers must nominate a guarantor who will act on their behalf in New Zealand.

### E11.15.10 Obligations of guarantors

New Zealand guarantors of an exchange scheme must accept all of the following obligations, either as organisers or on behalf of the organisers:

- a. they must assist in selecting New Zealand participants, and agree to provide INZ with details of the number of inbound foreign and outbound New Zealand participants who have participated in the scheme in the preceding 24 months; and
- b. they must agree to be the contact point for any communication between the organisers, the participants and INZ; and
- c. they must sign an undertaking that suitable accommodation will be arranged before each inbound participant and any accompanying dependents arrive; and
- d. they must be responsible for ensuring that inbound participants (and any accompanying dependants) will be adequately maintained during the period of the exchange; and
- e. they must sign an undertaking that suitable jobs will be arranged before each inbound participant arrives.

### E11.15.15 Length of exchange

The maximum length of stay permitted for participants is 12 months. INZ must give special approval for any exchanges which last longer than 12 months.

### E11.15.20 Terms and conditions of employment under the exchange

- a. The organisers of a work exchange scheme must ensure that the proposed conditions of work for inbound participants comply with the minimum employment requirements as provided for under New Zealand employment law. INZ approval of a work exchange scheme does not exempt the organisers from this obligation.
- b. All job offers must comply with New Zealand employment law and be made by employers who have a history of compliance with employment law, including employment standards (see W2.10.15).

**Note:** Compliance with relevant New Zealand employment law includes but is not limited to:  
~ a written employment agreement that contains the necessary statutory specified terms and conditions;  
~ meeting holiday and special leave requirements and other minimum statutory criteria, e.g. health and safety obligations;  
~ paying employees no less than the appropriate adult or youth minimum wage.

### V3.10 Partners and dependent children of student or work visa holders

Subject to the provisions of E4.5:

- a. Partners (see E4.1.20) of student or work visa holders may be granted visitor visas if that type of visa is appropriate to their needs for the currency of the partner's visa.
- b. Dependent children (see E4.1.10) of student or work visa holders may be granted visitor visas if that type of visa is appropriate to their needs for the currency of the parent's visa.
- c. Despite (a) and (b) above, partners and dependent children of the following persons are not eligible for the grant of a visa under these instructions:
  - i. people granted a work visa under the instructions for Foreign Crew of Fishing Vessels (see WJ); or
  - ii. people granted a work visa under the instructions for Recognised Seasonal Employer (RSE) (see WH1); or
  - iii. persons granted a work visa under the instructions for Supplementary Seasonal Employment (SSE) (see WH3); or
  - iv. persons granted a work visa under the Silver Fern Job Search Instructions (WL2); or
  - v. persons granted a work visa under the Skilled Migrant Category Job Search Instructions (see WR5); or
  - vi. persons granted a work visa under a Working Holiday Scheme (see WI2); or
  - vii. persons granted a work visa as a domestic staff member of diplomatic, consular or official staff (see WI4).
- d. Partners and dependent children of people granted work to residence visas must meet health and character requirements for residence class visa applications as set out at A4 and A5.15 to A5.25.
- e. Despite (c) (v) partners or dependent children of Skilled Migrant Category (SMC) Job Search visa holders may be granted visitor visas if the related SMC application was under consideration on or before 24 July 2011.

#### V3.10.1 Dependent children of Essential Skills work visa holders

- a. A dependent child of a holder of a work visa granted under the Essential Skills work instructions (WK) after 30 November 2009 will only be granted a visitor visa if the minimum income threshold is met.
- b. Despite (a) above, dependent children born in New Zealand after 30 November 2009 will not be tested against the threshold until their parent(s) next applies for an Essential Skills work visa.
- c. Despite (a) and (b) above, the minimum income threshold does not apply if the dependent child's parent(s):
  - i. have held any temporary work visa before 30 November 2009; and
  - ii. have remained on a valid visa from 30 November 2009 until the date of the dependent child's application under V3.10.

#### V3.10.5 Minimum income threshold

- a. The minimum income threshold is NZ\$37,090.68 gross per annum.
- b. The minimum income threshold must be met and maintained wholly by the salary or wages of a parent or parents holding an Essential Skills work visa.
- c. Evidence must be provided of the Essential Skills work visa holder's current salary or wages.
- d. Despite (a) above, if the dependent child is included in a Samoan Quota or Pacific Access Category application, the minimum income threshold is the amount specified in Samoan Quota or Pacific Access Category instructions.
- e. If a visa application is declined under these instructions and the dependent child becomes unlawful the parent(s) may become liable for deportation.
- f. If the parent(s) do not maintain the minimum income threshold for the duration of their or their dependent child's visa, both the child and the parent(s) may become liable for deportation.

**Note:** Where both parents hold Essential Skills work visas, their income may be combined to meet the minimum income threshold.

#### V3.10.10 Dependent children of work visa holders under Religious Worker instructions

*See also Immigration Act 2009 ss 56, 157*

- a. Dependent children of a holder of a work visa under Religious Worker instructions (WM) will only be granted a visitor visa if:
  - i. the minimum income threshold of NZ\$37,090.68 gross per annum is met by the Religious Worker visa holder and their partner; or
  - ii. the religious organisation sponsoring the principal applicant agrees to sponsor the dependent children.

- b. Under (a)(i) above:
- i. the minimum income threshold must be met and maintained by the salary, wages or a stipend received by the Religious Worker visa holder and their partner; and
  - ii. evidence must be provided of the current salary, wages or stipend of the Religious Worker visa holder and their partner; and
  - iii. if a visa application is declined under these instructions and the dependent child becomes unlawful the parents may become liable for deportation; and
  - iv. if the parents do not maintain the minimum income threshold for the duration of their visa or their dependent child's visa, both the child and the parents may become liable for deportation.

**Note:** The income of both parents may be combined to meet the minimum income threshold.



### V3.100 Guardians accompanying students to New Zealand

- a. A person may be granted a visitor visa under these instructions for the purpose of living with and caring for, a foreign fee paying student in New Zealand, if they are the legal guardian of a person who:
  - i. is the holder of a current student visa and is 17 years old or younger; or
  - ii. is the holder of a current student visa and is enrolled in school years 1-13.
- b. Only one legal guardian of the holder of a student visa will be granted a visa under these instructions at any one time.
- c. To be granted a visa under these instructions applicants must meet the requirements for bona fide applicants as set out at E5.
- d. If a student visa is granted to more than one person in a particular family, only one legal guardian of those holders of student visas will be granted a visa under these instructions at any one time during the validity of those student visas.

#### V3.100.1 Deportation liability

*See also Immigration Act 2009 s 157*

- a. The holder of a visa granted under these instructions will become liable for deportation if the student whom the applicant accompanied to New Zealand becomes liable for deportation.
- b. All visas granted under these instructions are subject to the condition that the holder lives in New Zealand with the student they are accompanying, unless the student's visa has been varied as set out at U7.25. If this condition is breached, the visa holder may become liable for deportation.

**Note:** If the presence of a student's legal guardian in New Zealand (and that legal guardian's support for the student) is material to the decision of a New Zealand education provider to enrol that student, any failure of the legal guardian (see V3.100.5) to live with and care for that student (either through withdrawal of their support or absence from New Zealand) may result in the holder of the student visa being made liable for deportation (see U7.10).

#### V3.100.5 Definition of 'legal guardian'

For the purposes of these instructions, a 'legal guardian' is:

- a. the person with the legal right and responsibility to provide for the care (including education and health) of an international student. This includes the student's biological or adoptive parents, testamentary guardian, or court-appointed guardian; and
- b. the person who provides for the care of the student in the student's home country.

#### V3.100.10 Length of permitted stay

Successful applicants under these instructions will be granted a multiple entry visitor visa valid for the same period as the student visa held by the student they are accompanying.

**Note:** If the student visa holder is not enrolled in school years 1-13 and turns 18 years of age during the validity of their student visa, the legal guardian may only be granted a visitor visa valid until the day before the student turns 18.

#### V3.100.15 Grant of further visitor visas

- a. Further visitor visas may be granted to the applicant, if they are accompanying the student and continuing to meet the requirements of V3.100, upon application and payment of the fee.
- b. In determining whether further visas may be granted, immigration officers must take into consideration whether, during the currency of a previous visa granted under these instructions, the legal guardian lived with and cared for the student on the basis of whose stay in New Zealand they were granted a visa.
- c. The length of permitted stay for further visitor visas should be granted in line with V3.100.10 above.

#### V3.100.20 Funds for maintenance in New Zealand

Applicants for a visitor visa under these instructions must have funds of at least NZ\$1,000 per month for maintenance and accommodation, or NZ\$400 per month if their accommodation has been prepaid.

#### V3.100.25 Evidence of onward travel arrangements

Applicants must provide evidence of travel tickets, onward travel arrangements or sufficient funds for the purchase of onward travel tickets (see V2.25).

#### V3.100.30 Health and character requirements

Applicants must meet health and character requirements for temporary entry as set out in A4 and A5.

#### V3.100.35 Guardians who wish to work or study once in New Zealand

- a. Guardian visa holders are not eligible for:

- i. the grant of a work visa under Essential Skills work instructions or Specific Purpose or Event instructions; or
  - ii. the grant of a student visa under Student instructions.
- b. Guardian visa holders who wish to work or study may apply for a variation of conditions to their visitor visa to allow for part-time work between the hours of 9:30am and 2:30pm Monday to Friday (inclusive), or part time study.
- c. Applications for variations of conditions by guardians must meet general work requirements (with the exception of the labour market test requirement) or student requirements.
- d. Variations of conditions will not be granted if the proposed employer does not have a history of compliance with employment standards or is currently included on a list of non-compliant employers maintained by the Labour Inspectorate (see W2.10.15 and Appendix 10).

## W2.10 Generic work visa instructions

Unless specifically stated otherwise elsewhere in work visa instructions the requirements set out below apply to all applicants for work visas and all employers wishing to employ them.

### W2.10.1 Requirements for applicants

Unless specifically stated otherwise all applicants for work visas must:

- a. meet the requirements under Generic Temporary Entry instructions for:
  - i. lodging an application for temporary entry as set out at E4; and
  - ii. bona fide applicants as set out at E5; and
  - iii. health and character as set out at A4 and A5; and
- b. produce evidence to show that:
  - i. they are suitably qualified by training and experience to do the job they have been offered; and
  - ii. they can meet any of the necessary New Zealand registration requirements (see SM19.5 for the list of occupations requiring registration); or
  - iii. they have an offer of employment and evidence from the New Zealand Medical or Dental Council that they are eligible for registration subject only to attending a personal interview with a Council representative within one month of their arrival in New Zealand; and

**Note:**

~ For medical practitioners, registration within a 'special purpose scope of practice' is not registration for the purpose of a residence or work to residence application.  
~ Applicants who have been granted a visa in order to obtain registration as a nurse may only work in an occupation which is ANZSCO Skill Level 1 or 2.

- c. not have held a work visa as a Primary Sector Trainee (WI18) in the two years prior to their current work visa application.

### W2.10.5 General requirements for employers

See also *Immigration Act 2009 ss 350, 351*

- a. All employers wishing to employ non-New Zealand citizen or residence class visa holders to work in New Zealand must comply with all relevant employment and immigration law in force in New Zealand. Compliance with relevant New Zealand employment and immigration law includes, but is not limited to:
  - i. paying employees no less than the appropriate statutory minimum wage or other contracted industry standard; and
  - ii. meeting holiday and special leave requirements or other minimum statutory criteria, e.g. health and safety obligations; and
  - iii. only employing people who have authority to work in New Zealand (see W2.10.6 below); and
  - iv. meeting the requirements of W2.10.15.
- b. Evidence or confirmation of past and future compliance with employment and immigration law may include but is not limited to:
  - i. employment agreements with workers which demonstrate compliance; and
  - ii. a recognised history with the Ministry of Business, Innovation and Employment of past compliance.
- c. Immigration officers may also request other evidence or confirmation of the employer's past and future compliance with employment and immigration law.
- d. To ensure that the objective of work visa instructions at W1(b)(iii) is met, immigration officers may require employers to provide evidence that the rate of pay offered to non-New Zealand citizen or residence class visa holder workers is not less than the market rate for New Zealand workers in that occupation.
- e. INZ will decline an application for a work visa or employer status (such as accreditation, recognised seasonal employer, agreement to recruit or approval in principle) where the employer does not have a history of compliance with employment law or where the employer is included on a list of non-compliant employers maintained by the Labour Inspectorate (see W2.10.15 and Appendix 10).

**Note:**

~W2.10.5(d) applies regardless of whether a labour market test (including where an occupation is listed on the Essential Skills in Demand Lists (see WK2.10)) has been met.  
~INZ will decline an application for a work visa or entry permission where it considers that granting the work visa or entry permission would undermine the integrity, credibility or reputation of the New Zealand immigration or employment relations systems.

### W2.10.6 Duty of employers to only employ people who have authority to work in New Zealand

See also *Immigration Act 2009 ss 350, 351*

- a. All employers wishing to employ non-New Zealand citizen or residence class visa holders have a duty to only employ people who are entitled to work in New Zealand. This duty includes employing people only in

accordance with the employment-related conditions of their visas, if such conditions are imposed (such as a specific employer or a specific position).

- b. Employers are liable for prosecution under section 350 of the Immigration Act 2009 if they:
  - i. allow or continue to allow any person to work in that employer's service, knowing that the person is not entitled under the Immigration Act 2009 to do that work (see also [D7.40](#)); or
  - ii. allow a person who is not entitled under the Immigration Act 2009 to work in the employer's service to do that work.
- c. It is not a defence to b(ii) above that the employer did not know that the person was not entitled to do that work, except where the employer has taken reasonable precautions and exercised due diligence to ascertain a person's entitlement to do the work.
- d. An employer is treated as knowing that an employee is not entitled under the Immigration Act 2009 to do any particular work if, at any time in the preceding 12 months (whether before or after the commencement of section 350 of the Immigration Act 2009), the employer has been informed of that fact in writing by an immigration officer.
- e. Employers may ascertain an employee or potential employee's entitlement to work for them by:
  - i. sighting suitable documentation proving that person's entitlement to work in New Zealand; or
  - ii. utilising the online VisaView system ([www.immigration.govt.nz/VisaView](http://www.immigration.govt.nz/VisaView)); or
  - iii. contacting the INZ Contact Centre; or
  - iv. any combination of the above.
- f. Suitable documentation for (e)(i) above includes, but is not limited to:
  - i. for non-New Zealand citizens:
    - o a passport with a valid work visa;
    - o a passport with a valid temporary-entry class visa (other than a work visa) with a variation of conditions to work;
    - o a passport with a valid residence class visa;
    - o an Australian passport;
    - o an eVisa allowing work (and evidence of the visa-holder's identity);
  - ii. for New Zealand citizens:
    - o a New Zealand passport;
    - o a New Zealand birth certificate confirming New Zealand citizenship, and photo identification;
    - o a New Zealand citizenship certificate and photo identification.
    - o a non-New Zealand passport with an INZ endorsement confirming New Zealand citizenship
- g. Where an employer takes reasonable precautions and exercises due diligence to ascertain an employee's entitlement to do that work, they should keep a record of the steps they took and evidence of the employee's entitlement to work for them.
- h. If an employee's entitlement to work is for a limited period, an employer is liable under (b) if the employment continues after the employee is no longer entitled to work.

**Note:**

~ Suitable documentation may also include evidence of a permit allowing work, issued under the Immigration Act 1987.  
~ The defence available under s 39(1B) of the Immigration Act 1987 of holding a tax code declaration (IRD form IR330) signed by a person before or when employment began, stating that this person is entitled to undertake employment in the employer's service, is no longer valid.

### **W2.10.10 Offers of Employment**

All offers of employment must be genuine and sustainable. Unless specifically stated otherwise all offers of employment should contain the following information:

- a. name, address, telephone and/or fax number of the employer; and
- b. name and address of the person to whom the job is offered; and
- c. a full job description including:
  - i. the job title or designation; and
  - ii. the address of the place of employment if different from that in paragraph (a) above; and
  - iii. the type of work, duties and responsibilities involved; and
  - iv. details of pay and conditions of employment; and
  - v. any qualifications, experience or training required; and
  - vi. the duration of the job; and
  - vii. how long the job offer is open.

- d. To determine whether an offer of employment is genuine and sustainable, and to ensure that the objective of work visa instructions at [W1\(b\)\(iii\)](#) is met, immigration officers may consider whether the salary or wages offered meet the New Zealand market rate.

**Note:** INZ will decline an application for a work visa where it considers that the employment was offered as a result of payment made by the applicant (or their agent) to the employer (or their agent) in exchange for securing that offer of employment.

#### **W2.10.15 Compliance with employment law**

- a. An employer who supports a visa application, provides an offer of employment in support of a visa application, or applies for employer status must have a history of compliance with employment law.
- b. A history of compliance with employment law includes, but is not limited to, meeting the requirements of the following legislation:
- i. Accident Compensation Act 2001; and
  - ii. Employment Relations Act 2000; and
  - iii. Equal Pay Act 1972; and
  - iv. Health and Safety at Work Act 2015; and
  - v. Holidays Act 2003; and
  - vi. Minimum Wage Act 1983; and
  - vii. Parental Leave and Employment Protection Act 1987; and
  - viii. Wages Protection Act 1983.
- c. Employers are considered to not have a history of compliance with employment law if they are included on a list of non-compliant employers maintained by the Labour Inspectorate. The rules for inclusion on the list are set out in Appendix 10.
- d. If there is other information that indicates an employer does not have a history of compliance with employment law, an immigration officer should request further information to determine whether the employer meets the minimum employment standards. Such information may include, but is not limited to, instances where an employer has an investigation or case pending with the Labour Inspectorate, the Employment Relations Authority, or the New Zealand courts.
- e. New employers may be considered to have a history of compliance if:
- i. they do not appear on the list of non-compliant employers maintained by the Labour Inspectorate; and
  - ii. they can demonstrate they have sound human resources policies and practices; and
  - iii. there is no other information that indicates non-compliance, for example when a person who is on the stand-down list is able to influence employment agreements, practices and policies.
- f. Unless otherwise specified, a visa application or employer request will be declined if:
- i. it is supported by, or includes a job offer based on employment with, an employer who is included on a list of non-compliant employers; or
  - ii. an immigration officer is otherwise not satisfied the employer meets the requirements of W2.10.15 (a-e) above.

#### **Notes:**

- Breaches of employment standards which lead to inclusion on a list of non-compliant employers may still be considered when determining if an employer has a history of compliance with employment law, as required elsewhere in immigration instructions, even if the employer is no longer on the list.

## WD1 Post-study work visa – employer assisted

- a. To be eligible for a work visa under these instructions, applicants must:
  - i. have successfully completed a qualification(s) that meet the qualification requirements as set out in [WD1.10](#); and
  - ii. hold an offer of full-time employment relevant to that qualification (see [WD1.5](#)); and
  - iii. if they were a New Zealand Aid Programme-supported student, meet requirements set out at [U11.1\(d\)](#).
- b. A work visa may be granted for a maximum of 2 years to obtain practical work experience relevant to the applicant's programme of study or qualification, unless (c) below applies.
- c. A work visa may be granted for a maximum period of 3 years if:
  - i. the applicant is working towards membership or registration with a New Zealand professional association which requires more than two years of practical work experience; and
  - ii. such membership or registration is a requirement for the person to fully perform their professional duties; and
  - iii. the applicant provides evidence the employment is considered relevant practical experience by the professional association, including but not limited to documentation from the professional association, or from the employer, stating how the employment meets the requirements set by the professional association; and
  - iv. the applicant has completed a New Zealand qualification which meets the requirements for registration or membership of the professional association.
- d. To be granted a work visa under these instructions, applicants must:
  - i. apply no later than 3 months after the end date of their student visa for that programme of study or qualification or, if the qualification was a Doctoral Degree, no later than 6 months after the end date of their student visa; or
  - ii. hold a 'graduate job search work visa' or a 'post-study work visa – open' (see [WD2](#)).

**Note:** A person must have successfully completed the programme of study or qualification stated as a condition on their student visa in order to meet the requirements of WD1(d)i.

- e. Applicants must provide:
  - i. a completed work application form, fee and immigration levy; and
  - ii. evidence of an offer of full-time employment relevant to their programme of study or qualification (see [WD1.5](#)); and
  - iii. evidence that they meet the requirements in [WD1\(a\)](#); and
  - iv. an Employer Supplementary Form (INZ 1113) completed by their employer.
- f. Applicants must also provide:
  - i. evidence that the work visa application is being made no later than 3 months after the end date of their student visa for that programme of study or qualification; or
  - ii. evidence that they hold a 'graduate job search work visa' (see [WD2](#)).
- g. A work visa will only be granted where an immigration officer is satisfied that the offer of full-time employment is one which will provide practical experience relevant to the applicant's programme of study or qualification.
- h. Any work visas granted under these instructions may be subject to any or all of the conditions as listed at [W2.25](#).
  - i. All job offers must be consistent with employment law and made by employers who have a history of compliance with employment law, including employment standards (see [W2.10.15](#)).

## WH1.5 Recognised Seasonal Employer (RSE)

For the purpose of these instructions, a Recognised Seasonal Employer (RSE) is a New Zealand employer whose core area of business is horticulture or viticulture and who has had an application for RSE status approved by INZ. An RSE is able to apply for an Agreement to Recruit (ATR) that will allow them to recruit workers who are not New Zealand citizens or residence class visa holders under the RSE Instructions.

### WH1.5.1 Definition of a New Zealand employer under RSE Instructions

A New Zealand employer for the purposes of RSE Instructions is an employer who:

- a. has the power to enter into employment agreements; and
- b. is a natural person who is ordinarily resident in New Zealand; or
- c. is a company that is incorporated in New Zealand and carries on business in New Zealand; or
- d. is an overseas company that is registered under the Companies Act 1993 and carries on business in New Zealand; or
- e. is an incorporated society that is incorporated in New Zealand.

### WH1.5.5 Requirements for RSE status

- a. RSE status may be granted where INZ is satisfied that an employer:
  - i. is a New Zealand employer as set out at WH1.5.1; and
  - ii. is in a sound financial position; and
  - iii. has human resource policies and practices which are of a high standard, promote the welfare of workers, and include dispute resolution processes; and
  - iv. has a demonstrable commitment to recruiting New Zealanders; and
  - v. has a demonstrable commitment to training New Zealanders; and
  - vi. has good workplace practices and a history of compliance with New Zealand immigration and employment law (see W2.10.5), including meeting the requirements of the following legislation:
    - o Accident Compensation Act 2001; and
    - o Employment Relations Act 2000; and
    - o Equal Pay Act 1972; and
    - o Health and Safety at Work Act 2015; and
    - o Holidays Act 2003; and
    - o Immigration Act 2009; and
    - o Minimum Wage Act 1983; and
    - o Parental Leave and Employment Protection Act 1987; and
    - o Wages Protection Act 1983; and
  - vii. will meet the requirements set out at (c) below.
- b. To ensure that INZ can verify an employer's ability to meet the requirements in (a) above, applicants must consent to INZ seeking information from other services of the Ministry of Business, Innovation and Employment, the Ministry of Social Development, Inland Revenue, the Accident Compensation Corporation, the New Zealand Council of Trade Unions, and any relevant unions, agencies, and industry bodies. Where such consent is not given an application for RSE status may be declined.
- c. RSEs must:
  - i. take all reasonable steps to recruit and train New Zealanders for available positions before seeking to recruit non-New Zealand citizen or residence class visa holder workers; and
  - ii. not use a recruitment agent who seeks a commission from workers in exchange for securing an employment agreement, to recruit non-New Zealand citizen or residence class visa holder workers; and
  - iii. pay for half the return airfare between New Zealand and the worker's country of residence for each worker recruited under the RSE instructions, 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
  - iv. comply with the requirements for employment agreements including the minimum remuneration and pay deduction requirements as set out at WH1.20; and
  - v. make available appropriate pastoral care (including food and clothing and access to health services and suitable accommodation) to their non-New Zealand citizen or residence class visa holder workers at a reasonable cost during the period of the workers' RSE limited visas; and
  - vi. promptly notify INZ if any of their non-New Zealand citizen or residence class visa holder workers breach the conditions of their visas; and
  - vii. promptly notify INZ of any dispute with the holder of an RSE limited visa that has resulted in the suspension or dismissal of the worker; and

- viii. not engage the services of a contractor, who does not have good workplace practices as outlined at WH1.5.5(a)(vi) and who employs non New Zealand citizen or residence class visa holder workers; and
  - ix. have direct responsibility for the daily work output and supervision of non-New Zealand citizen or residence class visa holder workers recruited under RSE instructions, except where (d) below applies; and
  - x. pay to the Ministry of Business, Innovation and Employment any costs reasonably incurred by the Ministry, 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 visa; and
  - xi. on request disclose to representatives of the Ministry of Business, Innovation and Employment all payments received from RSE workers (including payments for airfares, accommodation and other pastoral care).
- d. An RSE is not required to have direct responsibility for the daily work output and supervision of non-New Zealand citizens and residence class visa holder workers recruited under RSE instructions when the workers are temporarily working on the worksite or worksites of another RSE (the recipient RSE), and the recipient RSE has agreed to take on these responsibilities. The RSE who employed the workers under RSE instructions (the first RSE) remains accountable for all other responsibilities under RSE instructions. This arrangement may only occur where:
- i. the total period of work on the recipient RSE's worksite or worksites is of one month or less;
  - ii. the worksite or worksites of the recipient RSE is within the same region as that specified in the ATR held by the first RSE; and
  - iii. the first RSE has notified INZ in advance of the workers starting work at the recipient RSE's worksite or worksites.
- e. Employers are considered to not have a history of compliance with employment law if they fail to meet the requirements set out at W2.10.15 or if they are included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).

**Note:** For the purposes of instructions, 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.

#### **WH1.5.10 Determining applications for RSE status**

- a. In determining whether employers may be granted RSE status, INZ will assess applications and associated documents taking into account such factors as:
  - i. the period for which the employing organisation has been established as a going concern; and
  - ii. whether the employer has engaged with the Ministry of Social Development - Work and Income; and
  - iii. whether the employer has engaged with the relevant Industry Training Organisation; and
  - iv. whether the employer is a member of any relevant industry bodies (eg Horticulture New Zealand, New Zealand Kiwifruit Growers Inc., Pipfruit New Zealand, Hawkes Bay Fruitgrowers Association, New Zealand Wine, Rural and Associated Contractors Federation or a regional contractors association); and
  - v. whether the employer is certified by any quality standard organisation (eg New Zealand GAP); and
  - vi. whether the criteria in WH1.5.5(a) and (b) have been met by the employer; and
  - vii. whether INZ is satisfied that the requirements in WH1.5.5(c) will be met by the employer; and
  - viii. where there has been any previous breach of the requirements of immigration instructions (regardless of whether or not that resulted in RSE status being rescinded), whether any evidence has been provided to satisfy INZ that the cause and consequence of that breach has been remedied.
- b. INZ must be satisfied that the information and documents included in an application for RSE status are genuine and accurate, and may take any steps it determines necessary to verify such documents and the information they contain.
- c. Representatives of the Ministry of Business, Innovation and Employment may, where it is deemed necessary, conduct a site visit to the employer's premises.
- d. INZ may consult with other services of the Ministry of Business, Innovation and Employment, the Ministry of Social Development, Inland Revenue, the Accident Compensation Corporation, the New Zealand Council of Trade Unions, and any relevant unions, agencies, and industry bodies when determining whether an employer has been compliant with relevant statutory law and policies, and has a demonstrable commitment to recruiting and training New Zealanders.
- e. Where any information is identified by the employer as commercially sensitive and:
  - i. that information is provided in confidence to INZ; and
  - ii. INZ considers that disclosure of that information is necessary for the determination of an application, INZ will seek the consent of the employer for the disclosure of that information. Where such consent is not given, an application for RSE status may be declined.



- f. Where INZ, in consulting with other agencies, receives information that may be prejudicial to the positive outcome of an employer's application for RSE status, that adverse information will be put to the employer for comment before a decision is made on their application.
- g. INZ will decline an application for RSE status where it considers granting RSE status to the employer would create unacceptable risks to the integrity of New Zealand's immigration or employment laws or policies.

#### **WH1.5.15 Evidential requirements**

- a. Set out below are examples of evidence that may be provided in support of an application for recognition. The provision or non-provision of any of these examples of evidence will not be determinative.
- b. Evidence that an employer is in a sound financial position includes but is not limited to:
  - i. a signed statement of creditworthiness from the applicant stating that the business seeking RSE status is financially viable and the applicant knows of no adverse credit matters affecting the business;
  - ii. a statement from a chartered accountant confirming the business is financially sound and is able to meet all outstanding obligations;
  - iii. an authenticated set of accounts showing a sound financial position.
- c. Evidence of an employer's human resource policies and practices includes but is not limited to:
  - i. a copy of the business's human resource manual or guidelines;
  - ii. a written statement describing the employer's human resource policies and practices such as information on:
    - o how the business recruits workers;
    - o what checks are carried out on prospective New Zealand and non-New Zealand citizen or residence class visa holder workers, including any checks done by a recruitment agent on behalf of an employer;
    - o what remuneration structure is in place;
    - o any internal disputes resolution policies, including any performance management processes;
    - o health and safety practices, including any provision of health and safety equipment for workers.
- d. Evidence of an employer's commitment to training New Zealand citizens and residence class visa holders includes but is not limited to:
  - i. records of in-house training and development programmes;
  - ii. involvement with any New Zealand Industry Training Organisation;
  - iii. records of funding provided to workers to allow attendance at training courses by external training providers.
- e. Evidence of an employer's commitment to recruiting New Zealand citizens and residence class visa holders includes but is not limited to:
  - i. a written description of the steps taken in the previous 12 months to recruit workers;
  - ii. evidence of previous advertising;
  - iii. a letter of support from an industry body confirming the employer's commitment to recruiting New Zealanders;
  - iv. records of any previous communication with Work and Income regarding the recruitment of workers.
- f. Where any previous breach of the requirements of immigration instructions has occurred (regardless of whether or not that breach resulted in RSE status being rescinded) the employer must provide evidence to satisfy INZ that the cause and consequence of that breach has been remedied.

#### **WH1.5.20 Rescinding RSE status**

- a. INZ may rescind an employer's RSE status where:
  - i. there is any breach of RSE or ATR requirements other than of a minor nature; or
  - ii. the conduct of that employer has created an unacceptable risk to the integrity of New Zealand's immigration or employment laws or policies.
- b. Where an employer's RSE status has been rescinded, INZ will not approve any further applications for RSE status from the employer that are made within one year of the date their RSE status was rescinded.
- c. Any decision to rescind RSE status must be approved by an INZ Area Manager in consultation with their Assistant General Manager.

#### **WH1.5.25 Reconsideration process for applications for RSE status which are declined**

- a. There is no statutory right of appeal against the decision to decline an application for RSE status.
- b. INZ may reconsider a declined application for RSE status where the reconsideration request is made in writing and any new information (not amounting to a completely new application) is promptly provided.

#### **WH1.5.30 Currency of RSE status and subsequent applications**

- a. If an initial application for RSE status is successful, RSE status may be granted for a period of two years.
- b. If a subsequent application for RSE status is successful and the employer has previously held RSE status, and that status was not rescinded, the subsequent RSE status may be granted for a period of three years.
- c. Where an employer holds RSE status at the time a subsequent RSE application is accepted for consideration by INZ, their current RSE status will continue until the date their subsequent application is decided, unless their RSE status is rescinded during that interim period.

#### **WH1.5.35 Applying to become an RSE**

An application for RSE status must be:

- a. made in New Zealand; and
- b. made on the Application for Recognised Seasonal Employer Status (INZ 1140) form; and
- c. accompanied by the prescribed fee; and
- d. supported by evidence that demonstrates the employer meets the requirements set out at WH1.5.5.

## 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 residence class visa holder 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 residence class visa holder workers will be assessed in consultation with the Ministry of Social Development.

### WH1.10.1 Requirements for an ATR

- a. An application for an 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 residence class visa holders for available positions before seeking an ATR to recruit workers who are not New Zealand citizens or residence class visa holders. 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 residence class visa holder 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 these instructions (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, INZ may grant a visa allowing work for each RSE (if requirements at WH1.10.1 (h) and (i) are met).

**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. access to lawful and reputable remittance services; and
  - vii. access to acceptable medical insurance (see [WH1.25](#)); and
  - viii. provision of personal protective equipment; and
  - ix. provision of onsite facilities (toilets, hand washing, first aid, shelter, fresh drinking water); and
  - x. 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 residence class visa holder workers to be employed under RSE instructions 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:

- v. paying half the return airfare between New Zealand and the worker's country of residence for each worker recruited under the RSE instructions, 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
  - vi. minimum remuneration; and
  - vii. pay deduction requirements; and
  - viii. comply with any request from the Ministry of Business, Innovation and Employment (the Ministry) to audit the RSE against RSE instructions and the conditions of the RSEs ATR and employment agreements; and
  - ix. pay to the Ministry any costs reasonably incurred by the Ministry, 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 visa; and
  - x. inform the Ministry of the expected departure date of non-New Zealand citizen or residence class visa holder workers employed under RSE instructions once bookings for outward flights have been made; and
  - xi. arrange, but not necessarily pay for, acceptable medical insurance (see [WH1.25](#) for workers recruited under RSE instructions for the duration of their stay in New Zealand).
- h. In cases where two or more employers apply for ATRs to provide consecutive periods of employment to the same workers, each employer must provide:
- i. full details of how the pastoral care and health and safety requirements set out at (f) above will be arranged by the employers (including accommodation arrangements for both or all periods of employment); and
  - ii. the start and end dates in which RSE workers will work for each employer during their visa.
- i. If the requirements at (h) above are met and INZ is satisfied that appropriate pastoral care will be available to workers for the duration of their visa, immigration officers may grant an RSE limited visa valid for any or all periods of employment within the term of the visa.

**Note:** For the purposes of these instructions, 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:
  - i. 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 residence class visa holder 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 visas under these instructions; 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.
- e. INZ will decline an application where the employer or any relevant third party (see [WH1.10.1\(d\)](#) and (e)) has a history of non-compliance with immigration or employment law, including if they fail to meet the requirements set out at [W2.10.15](#) or are currently included on a list of non-compliant employers maintained by the Labour Inspectorate (see [Appendix 10](#)).

#### **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 (b) below applies:
  - Federated States of Micronesia
  - Fiji
  - Kiribati
  - Nauru
  - Palau
  - Papua New Guinea

- Republic of Marshall Islands
  - Samoa
  - Solomon Islands
  - Tonga
  - Tuvalu
  - Vanuatu.
- b. 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.
- c. 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 visas granted:
  - i. under the Seasonal Work Permit instructions; or
  - ii. under a Working Holiday Scheme; or
  - iii. under the Transitioning to Recognised Seasonal Employer instructions; or
  - iv. under the Supplementary Seasonal Employment instructions; or
  - v. on the basis of a Variation of Conditions to a visitor visa.
- 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 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 (INZ 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.

### WH3.5 Supplementary Seasonal Employment (SSE) - Approval in Principle

SSE approval in principle is an approval for employers in the horticulture and viticulture industries to offer employment (to plant, maintain, harvest or pack crops) to workers who hold SSE work visas (see WH3.10).

#### WH3.5.1 Requirements for SSE approval in principle

Employers applying for SSE approval in principle must:

- a. provide the details of the available employment including:
  - i. the number of workers required; and
  - ii. the nature of each position (planting, maintaining, harvesting, or packing crops); and
  - iii. the period for which each position is available; and
  - iv. the location(s) in which the work is to be undertaken; and
- b. ensure that workers recruited under SSE instructions will have access to suitable accommodation for the duration of their employment; and
- c. have taken steps to obtain suitable and available New Zealand citizen or residence class visa holder workers for the vacant position(s) through Work and Income; and
- d. provide a copy of the employment agreement that will be offered to the workers recruited under SSE instructions that meets the requirements set out in WH3.5.15; and
- e. comply with the employer requirements under Generic work visa provisions (see W2.10.5); and
- f. satisfy INZ that they will:
  - i. make ongoing genuine efforts to recruit New Zealand citizen or residence class visa holder workers throughout the period for which the SSE approval in principle applies, including regular contact with Work and Income; and
  - ii. comply with any request from the Department of Labour to audit the employer against SSE instructions and the conditions set out in the employment agreements; and
  - iii. have direct responsibility for the daily work output and supervision of non-New Zealand citizen or residence class visa holder workers recruited by them under SSE instructions; and
  - iv. promptly notify INZ if they become aware that a worker is breaching or has breached the conditions of his or her SSE work visa; and
  - v. employ no more than the number of SSE workers stated on their approval in principle at any given time.

**Note:** The employment agreement provided to workers must be the same as that which is provided to INZ with the employer's application for SSE approval in principle, unless the terms and conditions of the employment agreement provided to the worker are more beneficial to the worker.

#### WH3.5.5 Determining an application for SSE approval in principle

- a. SSE approval in principle will only be granted where:
  - i. INZ is satisfied that an employer is a New Zealand employer as set out at WH1.5.1; and
  - ii. INZ is satisfied that an employer meets the requirements set out at WH3.5.5 above; and
  - iii. INZ is satisfied that the employer has established a relationship with the appropriate regional Work and Income office(s) concerning their seasonal labour requirements; and
  - iv. INZ, in consultation with MSD and relevant industry bodies, is satisfied that there are no suitable New Zealand citizen or residence class visa holder workers available to undertake the work; and
  - v. INZ is satisfied the employer has complied with the conditions of any previous SSE approval in principle that has been granted to the employer.
- b. Where INZ is not satisfied that the number of positions requested in the SSE approval in principle is appropriate for the work required, or considers that the number of non-New Zealand citizen or residence class visa holder workers the employer proposes to recruit exceeds the forecast labour shortage for the region and period requested, INZ may approve the recruitment of a lesser number of positions, or the recruitment of workers for a lesser period of work than requested.
- c. INZ may consult with other services of the Department of Labour, the Inland Revenue Department, the Accident Compensation Corporation, the New Zealand Council of Trade Unions, and any relevant unions, agencies, and industry bodies when determining whether an employer meets the requirements set out at WH3.5.5.
- d. INZ will decline an application for SSE approval in principle where it considers such approval would create unacceptable risks to the integrity of New Zealand's immigration or employment laws or policies.
- e. INZ will decline an application for SSE approval where the employer has a history of non-compliance with immigration or employment law, including if they fail to meet the requirements set out at W2.10.15 or are currently included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).

**Note:** To ensure that accurate information is available on the availability of suitable New Zealand citizen and residence class visa holder workers in the region, a decision will not be made on an SSE approval in principle significantly in advance of the period requested.

#### **WH3.5.10 Minimum requirements for employment agreements under SSE instructions**

Employment agreements between employers with SSE approval in principle and non-New Zealand citizen or residence class visa holder workers must:

- a. be genuine; and
- b. be for planting, maintaining, harvesting or packing crops in the horticulture or viticulture industry; and
- c. be for a period of work of no more than six months; and
- d. specify a 'per hour' rate (the per hour rate for any training period must be specified separately in the employment agreement); and
- e. where piece rates apply to the work to be performed by the worker, also specify the piece rate(s); and
- f. provide that the worker will be paid no less than the market rate (see WH3.5.20); and
- g. comply with all relevant employment law in force in New Zealand, such as the requirements of the Accident Compensation Act 2001; the Wages Protection Act; the Minimum Wage Act; the Health and Safety at Work Act 2015; the Employment Relations Act; the Equal Pay Act 1972 and the Holidays Act.

#### **WH3.5.15 Market Rates for SSE**

For the purpose of SSE instructions, 'market rate' is the typical rate a New Zealand citizen or residence class visa holder is paid for doing the equivalent work or training, in the same period, in the same region. The 'market rate' may be expressed in terms of a 'per hour' rate or a piece rate.

#### **WH3.5.20 Reconsideration process for applications for SSE approval in principle which are declined**

There is no statutory right of appeal against the decision to decline a request for SSE approval in principle, however, INZ may reconsider a declined application where new information is promptly provided.

#### **WH3.5.25 INZ may impose further restrictions after grant of SSE approval in principle**

Where INZ, in consultation with MSD, considers that the number of positions or period of work approved in the SSE approval in principle is no longer appropriate to the labour market conditions in the region (for example, if suitable New Zealand citizen or residence class visa holder workers become available due to a redundancy situation), further restrictions may be imposed on the number of positions or period of work that had been approved in the SSE approval in principle.

INZ will notify an employer in writing of any further restrictions imposed on the number of positions or period of work that had been approved in the employer's SSE approval in principle.

**Note:** Any further restrictions on the number of positions or period of work will only apply from the date of the written notification from INZ. The employment of non-New Zealand citizen or residence class visa holder workers who commenced employment under SSE instructions with the employer before that date will not be affected by the further restrictions.

#### **WH3.5.30 Applying for SSE approval in principle**

Application for SSE approval in principle must be:

- a. made in New Zealand; and
- b. made on the Application for Supplementary Seasonal Employment (SSE) Approval in Principle form; and
- c. accompanied by the prescribed approval in principle fee; and
- d. supported by evidence that demonstrates the employer meets the requirements set out at WH3.5.5.



## **WI18.5 Requirements**

- a. A work visa may be granted to a primary sector trainee to undertake vocational programmes of study and subsequent work placements, provided that:
  - i. the applicant is funded or supported by the government of a qualifying country (WI18.15);
  - ii. there is a place available under that country's quota for primary sector trainees;
  - iii. the study requirements are met;
  - iv. the work placement requirements are met;
  - v. the applicant agrees to hold medical and comprehensive hospitalisation insurance that will remain current throughout their stay in New Zealand;
  - vi. the applicant meets health and character requirements set out in A4 and A5; and
  - vii. the applicant meets the requirements for bona fide applicants set out in E5.
- b. Trainees will not be granted a further work visa in New Zealand for two years following the expiry of their work visa under these instructions.

### **WI18.5.1 Requirements for study**

- a. Trainees must study in New Zealand for a minimum of 12 weeks before they can undertake a work placement.
- b. The study must be undertaken at a high quality education provider (universities or education providers assessed as Category One by the New Zealand Qualifications Authority under the External Evaluation Review quality assurance system).

### **WI18.5.5 Requirements for work placements**

- a. Trainees may undertake work placements related to their study up to a maximum of nine months' duration.
- b. The education provider with whom study was undertaken is responsible for:
  - i. arranging, monitoring and maintaining records of all work placements, and
  - ii. arranging suitable alternative work placements should they be required, and
  - iii. notifying Immigration New Zealand should any breach of visa conditions or the employment agreement occur.
- c. Trainees must have employment agreements that comply with all relevant New Zealand employment law and be paid at least the New Zealand minimum statutory hourly wage.
- d. No work placements can be undertaken in the forestry sector.
- e. If an immigration officer is not satisfied an education provider is able to meet its work placement responsibilities, work visa applications may be declined under these instructions.
- f. INZ will decline an application where the employer has a history of non-compliance with immigration or employment law, including if they fail to meet the requirements set out at W2.10.15 or are currently included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).

## WJ2 Requests for Approval in Principle

- a. Approval in Principle (AIP) requests to recruit foreign crew on fishing vessels are subject to the general objective of work visa instructions (W1).
- b. For an AIP to be granted, the New Zealand employer or New Zealand Charter Partner (NZCP) must satisfy Immigration New Zealand (INZ) that:
  - i. there are no (or insufficient) suitably qualified and experienced New Zealand citizens or residence class visa holders available to crew a single vessel for the specified period up to a maximum of 12 months;
  - ii. the terms and conditions of employment offered meet the requirements of [WJ5.45.10](#) Employment Agreements;
  - iii. it is financially sound ([WJ2.5](#));
  - iv. the directors and senior management of the New Zealand employer or NZCP are 'fit and proper' people ([WJ2.10](#));
  - v. where the employer is the Foreign Charter Party (FCP), the NZCP has completed a Deed of Guarantee of Financial Obligations in Respect of Foreign Crew (INZ 1211) guaranteeing payment of minimum levels of crew remuneration in the event of default by the employer;
  - vi. it is an acceptable sponsor (see [E6.5](#) and [WJ5.10](#));
  - vii. it will comply with all the requirements and obligations set out at WJ5; and
  - viii. it agrees to the conditions as specified at [WJ3](#).
- c. INZ will determine whether the New Zealand employer or NZCP has made genuine attempts to find suitably qualified and experienced New Zealand citizens or residence class visa holders in accordance with the requirements set out in [WK2.10](#).
- d. To ensure the above requirements have been met, INZ will consult with relevant government agencies including, but not limited to, the Ministry for Primary Industries, Maritime New Zealand, and the Ministry of Social Development.
- e. Employers must have a history of compliance with immigration and employment law. An employer is considered to not have a history of compliance if it fails to meet the requirements set out at [W2.10.15](#) or it is currently included on a list of non-compliant employers maintained by the Labour Inspectorate (see [W2.10.15](#) and Appendix 10).

## WJ6 Applications for work visas for foreign crew of fishing vessels

- a. An immigration officer may grant a work visa and entry permission to an individual crew member with an offer of employment from a New Zealand employer or a Foreign Chartered Party (FCP) where either:
  - i. has a current Approval in Principle (AIP); or
  - ii. is seeking to fill a maximum of six crew positions on one vessel in one calendar year (non-AIP).
- b. Work visas can be granted for up to a maximum of 12 months.
- c. Applications for individual work visas must be made before overseas crew members arrive in New Zealand.
- d. An application for a work visa will be declined where the employer has a history of non-compliance with immigration or employment law, fails to meet the requirements set out at W2.10.15 or is currently included on a list of non-compliant employers maintained by the Labour Inspectorate (see W2.10.15 and Appendix 10).

**Note:** If employers request approval in principle, or submit an application for an individual work visa, after the crew members arrive in New Zealand, then both must be declined.

## WK2 Applications under Essential Skills work instructions

- a. Applications under Essential Skills work instructions will not be approved unless they include an offer of employment in New Zealand which:
  - i. meets the requirements set out in W2.10.10 and W2.10.15; and
  - ii. is for full-time employment (W2.2.10); and
  - iii. specifies payment for the work is by wages or salary.
- b. To apply for an approval in principle or to support a work visa application under Essential Skills work instructions, an employer must be the proposed direct employer. A direct employer is usually responsible for such things as:
  - payment of salaries;
  - PAYE tax instalments;
  - conditions of employment;
  - day-to-day supervision of the workplace and the employee.

## 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](#)).
- e. An employer is considered to not have a history of compliance with employment law if it fails to meet the requirements set out at [W2.10.15](#) or it is currently included on a list of non-compliant employers maintained by the Labour Inspectorate (see [Appendix 10](#)).

## 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; and
  - v. the employer meets the requirements set out at W2.10.15 and is not included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).
- 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.

## WK2.15 Evidence required from employers under Essential Skills work instructions

- a. Employers requesting approval in principle to employ a non-New Zealand citizen or residence class visa holder worker or supporting an individual work visa application must provide:
  - i. job offer(s) containing all the information specified in the generic work visa provisions at W2.10.10; and
  - ii. confirmation of whether or not the worker requires occupational registration in New Zealand; and
  - iii. if more than one, the number of temporary workers sought; and
  - iv. the names of suitable applicants (if known); and
  - v. evidence of genuine attempts to recruit suitable New Zealand citizens or residence class visa holders (see W2.10.5), including the reasons why:
    - o any particular job specifications were considered necessary for the performance of the work; and
    - o any New Zealand applicants who applied were either not suitable, or refused to perform the work; and
  - vi. if requested by an immigration officer, evidence and/or confirmation of past compliance with employment and immigration law (see W2.10.5); and
  - vii. if the job offer(s) is in the construction sector in Canterbury region and the employer is a labour hire company, confirmation of the labour hire company's accreditation.

**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.

- b. Evidence and/or confirmation of past and future compliance with employment and immigration law may include but is not limited to:
  - i. employment agreements with workers which demonstrate compliance;
  - ii. a history with the Ministry of Business, Innovation and Employment and WorkSafe New Zealand of past compliance.
- c. Employers who are included on a list of non-compliant employers maintained by the Labour Inspectorate are considered to not have a history of compliance with employment law (see W2.10.15 and Appendix 10).
- d. Immigration officers must be satisfied that there are no New Zealand citizens or residence class visa holders available to do the work (WK2.10).
- e. To ensure that the objectives of Essential Skills work visa instructions at WK1.1 are met, job offers must specify a rate of pay not less than the market rate for New Zealand workers in that occupation (regardless of whether the occupation is on one of the Essential Skills in Demand Lists).



## WK2.25 Labour hire employers accreditation

- a. For the purposes of these instructions, labour hire employers are defined as employers who employ and outsource workers for short or long-term positions to third parties with whom the employer has a contractual relationship to supply labour.
- b. Accreditation will be granted where INZ is satisfied that the labour hire employer:
  - i. is in a sound financial position; and
  - ii. has human resource policies and processes which are of a high standard; and
  - iii. has a demonstrable commitment to training and employing New Zealand citizens or residence class visa holders; and
  - iv. has good workplace practices, including a history of compliance with all immigration and employment laws such as the Immigration Act 2009, the Accident Compensation Act 2001, the Minimum Wage Act 1983, the Health and Safety at Work Act 2015, the Employment Relations Act 2000, Wages Protection Act 1983, Parental Leave and Employment Protection Act 1987, the Equal Pay Act 1972 and the Holidays Act 2003; and
  - v. will comply with all the requirements and obligations set out at WK2.25.1.
- c. INZ will rescind an employer's accreditation where:
  - i. non-compliance, other than of a minor nature, with the conditions and obligations listed under WK2.25.1 are identified, or
  - ii. it considers an accredited employer's conduct has created an unacceptable risk to the integrity of New Zealand's immigration or employment laws or policies.
- d. Approved employers will be granted accreditation for a period of 12 months.
- e. Accreditation may be renewed on an annual basis, upon application, where INZ is satisfied that the employer still meets the requirements for accreditation set out above.
- f. An employer is considered to not have a history of compliance with employment law if it fails to meet the requirements set out at W2.10.15 or is currently included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).
- g. Breaches of employment standards which lead to inclusion on a list of non-compliant employers may still be considered when determining if an employer has a history of compliance with employment law, even if the employer is no longer on the list.

### WK2.25.1 Labour hire employer requirements and obligations

Before accreditation is granted the labour hire company must agree to meet the following conditions and obligations for the duration of the accreditation. They must agree to:

- a. offer employment agreements that:
  - i. meet the employment requirements set out in WK2;
  - ii. exclude a trial period provision;
  - iii. specify a rate of pay not less than the market rate for New Zealand workers in the specified occupation (see WK2.15);
  - iv. contain employment terms and conditions equivalent to those of workers directly employed by the company with whom the worker is placed; and
- b. ensure that any third party to whom they hire out a migrant worker has good workplace practices that align with the requirements set out under WK2.25 (b) (i-iv).

### WK2.25.5 Applying for accreditation

- a. Application for accreditation must be made on the INZ form Labour hire Employer Accreditation Application (INZ 1227) and accompanied by documents which demonstrate that the employer meets the requirements for accreditation set out at WK2.25 (b).
- b. A fee is payable for an application for accreditation. A lower fee is payable for annual renewal of accreditation.

### WK2.25.10 Determining applications for accreditation

- a. In determining whether employers may be accredited, INZ will assess applications taking into account such factors as:
  - i. the period for which the employing organisation has been established as a going concern; and
  - ii. whether the employer has an intention to maintain accreditation throughout the period of currency of any visas granted to their employees under the Essential Skills Work Instructions; and
  - iii. the number of New Zealand and migrant workers employed by the company.
- b. INZ must be satisfied that the information and documents included in an application for accreditation are genuine and accurate, and may take any steps it determines necessary to verify such documents and the information they contain, including interviews.

- c. INZ may, where necessary, seek the approval of an employer to conduct a site visit to the employer's premises.
- d. INZ will consult with relevant unions and other employee representatives when determining whether an employer has human resource policies and processes which are of a high standard, a commitment to training and employing New Zealand citizens and residence class visa holders and good workplace practices.
- e. Employers must consent to INZ seeking information from the Ministry of Business, Innovation and Employment, Worksafe New Zealand and the Accident Compensation Corporation concerning the applicant's compliance with New Zealand employment laws. Where such consent is not given an application for accreditation will be declined.
- f. INZ will seek the consent of the employer for the disclosure of any information where any information is:
  - i. identified by the employer as commercially sensitive; and
  - ii. that information is provided in confidence to INZ; and
  - iii. INZ considers that disclosure of that information is necessary for the determination of an application;
- g. If consent under (f) is not given, an application for accreditation will be declined.
- h. Where INZ, in consulting with other agencies, receives information which may be prejudicial to the positive outcome of an employer's application for accreditation, that adverse information will be put to the employer for comment before a decision is made on their application.

#### **WK2.25.15 Non-compliance of labour hire employer accreditation requirements and obligations**

Where non-compliance, other than of a minor nature, with the conditions listed under WK2.25.1 has been identified, the following process will occur:

- a. INZ will suspend the processing of any work visa applications related to an existing labour hire accreditation immediately.
- b. The non-compliant employer 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 work visa applications will resume.
- d. The Ministry of Business, Innovation and Employment may conduct an audit 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.
- 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 work visa processing will continue (until resolution occurs).
- f. Failure to address or make satisfactory progress towards resolving the non-compliance may result in the current accreditation being rescinded, current work visa holders becoming liable for deportation, and any future accreditation applications being declined.

**Note:** INZ may rely on the advice of the Ministry of Business, Innovation and Employment - Labour Inspectorate in determining whether resolution has been reached or satisfactory progress has been made towards resolution.

### **WL3.1 Determining an application for a Silver Fern Practical Experience visa**

In order to be granted a Silver Fern Practical Experience visa applicants must:

- a. hold a Silver Fern Job Search visa or a Silver Fern Practical Experience visa; and
- b. hold an offer of skilled employment, and that employment is for a term of at least 12 months; and
- c. provide a completed Employer Supplementary Form (INZ 1113); and
- d. meet temporary entry health and character requirements (see [A4](#) and [A5](#)); and
- e. not have held previous Silver Fern Practical Experience visas totalling more than two years.

#### **WL3.1.1 Requirements for skilled employment**

- a. For the purpose of these instructions, skilled employment is employment which would be assessed as skilled under the Skilled Migrant Category ([SM7.10](#)).
- b. Skilled employment must:
  - i. be full time ([W2.2.10](#)); and
  - ii. be genuine; and
  - iii. be for a position that is paid by salary or wages or in terms of a contract for service (payment by commission and/or retainer are not acceptable); and
  - iv. be accompanied by evidence of full or provisional registration if full or provisional registration is required by law to undertake the employment (see [SM19.20](#)); and
  - v. meet the generic work visa provisions at [W2.10](#); and
  - vi. be for an employer who has a history of compliance with employment law, and who is not included on a list of non-compliant employers maintained by the Labour Inspectorate (see [W2.10.15](#) and [Appendix 10](#)).

## WM2 Definition of 'religious work'

- a. Religious work must substantially be a primary role including one or more of the following:
  - i. teaching or guidance in religious scripture or philosophy;
  - ii. leading religious practice, worship or prayer;
  - iii. conducting religious initiations, ordination or ritual;
  - iv. ministering or pastoral care;
  - v. roles of religious leadership in relation to any of the above.
- b. Applicants are considered to be undertaking religious work where INZ is satisfied that the work the applicant is being sponsored to undertake directly serves the religious objectives of the sponsoring organisation.

**Note:** Supporting roles for the sponsoring organisation, including cooking or cleaning may be secondary roles a religious worker may undertake. Secondary roles, however, will not in themselves qualify as religious work for the purposes of a visa. Religious study is not considered religious work for the purposes of these instructions.

- c. Religious work, as defined above, may include:
  - i. employment for a position that is paid a salary or wages; or
  - ii. work for a position that is paid a stipend; or
  - iii. work for a position that does not receive direct financial return to the worker, or
  - iv. work for a position that is paid through any alternative arrangement to WM2(c) (i) - (iii).
- d. Where a religious worker is employed by the sponsoring organisation (WM2(c) (i)), the sponsoring organisation must provide an employment agreement for the duration of the sponsorship obligations.
- e. Where a religious worker is not employed by the sponsoring organisation (WM2(c) (ii) - (iv)), the sponsoring organisation must provide a description of the work that includes the primary role(s), and any secondary role(s) the religious worker will be expected to undertake for the duration of their work visa.
- f. All sponsoring organisations must be compliant with relevant instructions at [W2.10](#) and [E6.5](#), and INZ must be satisfied that evidence provided by the sponsoring organisation in support of the visa application under Religious Worker instructions are compliant with relevant employment and immigration laws in force in New Zealand.
- g. INZ will decline an application for a work visa under Religious Worker instructions where it considers that granting the visa would undermine the integrity, credibility or reputation of the New Zealand immigration or employment relations systems.

**Note:** To determine whether an employment agreement creates an unacceptable risk to the integrity of New Zealand's immigration and employment laws or instructions, an immigration officer may consider whether the rate of pay and/or conditions of the work are comparable to that for New Zealand workers undertaking similar work for the sponsoring organisation.

- h. Employers must have a history of compliance with immigration and employment law. An employer is considered to not have a history of compliance with employment law if it fails to meet the requirements set out at W2.10.15 or if it is included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).

## WR1.10 Requirements for offers of employment

Offers of employment from accredited employers must be:

- a. for employment in New Zealand in the accredited employer's core area of business activity and where the accredited employer will have direct responsibility for their work output; and
- b. for a period of at least 24 months; and
- c. for full-time employment, (that is it amounts to, on average, at least 30 hours per week); and
- d. current at the time of assessing the application and at the time of grant of the visa; and
- e. genuine; and
- f. for a position with a minimum base salary of NZ\$55,000 per annum; and
- g. accompanied by evidence of full or provisional registration, or eligibility for such registration, if full or provisional registration is required by law to take up the offer; and
- h. compliant with all relevant employment law in force in New Zealand; and
- i. with an employer who has a history of compliance with employment law and who is not included on a list of non-compliant employers maintained by the Labour Inspectorate(see W2.10.15 and Appendix 10).

### Note:

~ Compliance with relevant New Zealand employment law includes but is not limited to:

- \* a written employment agreement that contains the necessary statutory specified terms and conditions
- \* meeting holiday and special leave requirements and other minimum statutory criteria
- \* meeting health and safety obligations.

~ For the avoidance of doubt, the minimum base salary excludes employment-related allowances (for example overtime, tool or uniform allowances, medical insurance, accommodation).

~ Where an employee is to work more than 40 hours per week, the minimum base salary must be calculated on the basis of 40 hours work per week.

~ The minimum base salary requirement of NZ\$55,000 (see WR1.10 (f)) may be waived for applicants who have exceptional talent in a declared field of art, culture or sport and who hold an offer of employment in that field from an accredited employer.

## WR1.25 Requirements for accreditation

- a. The objective of accreditation is to allow accredited employers to supplement their own New Zealand workforce in their core area of business activity through:
  - i. the recruitment of workers who are not New Zealand citizens or residence class visa holders and whose talents are required by the employer; and
  - ii. the accredited employer having direct responsibility for those employees and their work output.
- b. Under Talent (Accredited Employer) Work Instructions, accredited employers may offer employment to workers who are not New Zealand citizens or residence class visa holders without the need to establish that there are no New Zealand citizens or residence class visa holders suitably qualified by training and experience available, or readily able to be trained, to do the work.
- c. Accreditation will be granted where INZ is satisfied that an employer:
  - i. is in a sound financial position; and
  - ii. has human resource policies and processes which are of a high standard; and
  - iii. has a demonstrable commitment to training and employing New Zealand citizens or residence class visa holders; and
  - iv. has good workplace practices, including a history of compliance with all immigration and employment laws such as the Immigration Act 2009, the Accident Compensation Act 2001, the Minimum Wage Act 1983, the Health and Safety at Work Act 2015, the Employment Relations Act 2000, Wages Protection Act 1983, Parental Leave and Employment Protection Act 1987, the Equal Pay Act 1972 and the Holidays Act 2003.
- d. In determining whether employers may be accredited, INZ will assess applications taking into account such factors as:
  - i. the period for which the employing organisation has been established as a going concern;
  - ii. whether the employer has engaged with the relevant Industry Training Organisation (ITO);
  - iii. whether the employer is a member of the Equal Employment Opportunities (EEO) Employers Group;
  - iv. whether the employer is International Organisation for Standardisation (IOS) certified;
  - v. whether the employer has an intention to maintain accreditation throughout the period of currency of any visas granted to their employees under the Talent (Accredited Employers) Work Instructions.
- e. Applicants must consent to INZ seeking information from the Ministry of Business, Innovation and Employment, WorkSafe New Zealand and the Accident Compensation Corporation concerning the applicant's compliance with New Zealand employment laws. Where such consent is not given an application for accreditation will be declined.
- f. INZ will decline an application for accreditation where the employer has a history of non-compliance with immigration or employment law, including if they fail to meet the requirements set out at W2.10.15 or are currently included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).
- f. INZ will decline an application for accreditation where it considers accreditation would create unacceptable risks to the integrity of New Zealand's immigration or employment laws or policies.
- g. Because the accreditation of employers whose main business is the facilitation of entry to New Zealand of non-New Zealand citizens and residence class visa holders under Government immigration instructions potentially creates an unacceptable risk to the integrity of New Zealand's immigration laws and policies, applications for accreditation by such employers will not be approved.
- h. INZ will rescind an employer's accreditation where it considers that an accredited employer's conduct has created an unacceptable risk to the integrity of New Zealand's immigration or employment laws or policies. Decisions to rescind accreditation will not be made by INZ without the consent of the Minister of Immigration.
- i. Approved employers will be granted accreditation for a period of 12 months.
- j. Accreditation may be renewed on an annual basis, upon application, where INZ is satisfied that the employer still meets the requirements for accreditation set out above.
- k. A fee is payable for an application for accreditation. A lower fee is payable for annual renewal of accreditation.

### WR1.25.1 Applying for accreditation

Application for accreditation must be made on the INZ form Employer Accreditation Application (INZ 1090) and accompanied by documents which demonstrate that the employer meets the requirements for accreditation set out at WR1.25(c).

### WR1.25.5 Determining applications for accreditation

- a. INZ must be satisfied that the information and documents included in an application for accreditation are genuine and accurate, and may take any steps it determines necessary to verify such documents and the information they contain, including interviews.

- b. INZ may, where necessary, seek the approval of an employer to conduct a site visit to the employer's premises.
- c. INZ will consult with relevant unions and other employee representatives when determining whether an employer has human resource policies and processes which are of a high standard, a commitment to training and employing New Zealand citizens and residence class visa holders and good workplace practices.
- d. Where any information is:
  - i. identified by the employer as commercially sensitive; and
  - ii. that information is provided in confidence to INZ; and
  - iii. INZ considers that disclosure of that information is necessary for the determination of an application;INZ will seek the consent of the employer for the disclosure of that information. Where such consent is not given, an application for accreditation will be declined.
- e. Where INZ, in consulting with other agencies, receives information which may be prejudicial to the positive outcome of an employer's application for accreditation, that adverse information will be put to the employer for comment before a decision is made on their application.

**WR1.25.10 Reconsideration process for applications for accreditation which are declined**

- a. There is no statutory right of appeal against the decision to decline an application for accreditation, however INZ will reconsider a declined application for accreditation where new information is promptly provided.
- b. The fee for reconsideration of an application for accreditation must accompany the written request for reconsideration.

### WR3.5 Requirements for offers of employment

Offers of employment must be:

- a. for employment in New Zealand; and
- b. for a period of at least 24 months; and
- c. for full-time employment, (that is, it amounts to, on average, at least 30 hours per week); and
- d. current at the time of assessing the application and at the time of grant of the visa; and
- e. genuine; and
- f. accompanied by evidence of full or provisional registration, or eligibility for such registration, if full or provisional registration is required by law to take up the offer; and
- g. compliant with all relevant employment law in force in New Zealand; and
- h. made by an employer who has a history of compliance with employment and immigration law and who is not on a list of non-compliant employers maintained by the Labour Inspectorate (see W2.10.15 and Appendix 10).

**Note:** Compliance with relevant New Zealand employment law includes but is not limited to:  
~ a written employment agreement that contains the necessary statutory specified terms and conditions  
~ meeting holiday and special leave requirements and other minimum statutory criteria  
~ meeting health and safety obligations.



### **WS3 Evidence required**

People applying for a specific purpose or event work visa (with the exception of entertainers, performing artists, film and video production crew, and associated support personnel who have special requirements see [WS6](#)), must provide:

- a. evidence of the amount of time they need to be in New Zealand; and
- b. evidence of a job offer that meets the requirements of [W2.10.10](#) and [W2.10.15](#), invitation, or schedule of events, if required by [WS2](#); and
- c. a completed Employer Supplementary Form (INZ 1113), if a job offer is required by [WS2](#) ; and
- d. evidence of their qualifications or experience relevant to the position or event, if required by [WS2](#); and
- e. evidence of their international merit or distinction, if requested by an immigration officer; and
- f. evidence of any other requirements in [WS2](#) being met.

## WS6.15 Entertainment industry accreditation

Accredited entertainment industry companies may offer employment to workers who are not New Zealand citizens or residence class visa holders without the need to seek agreement of the relevant New Zealand entertainment union, guild or professional association.

**Note:** Employment, as defined under s4 of the Immigration Act 2009, includes engagement of an independent contractor under a contract for services.

**Note:** Companies who hold employer accreditation under the Talent (Accredited Employer) Work Instructions will be considered to hold accreditation under these instructions.

### WS6.15.1 Requirements for accreditation

- a. Accreditation will be granted where Immigration New Zealand (INZ) is satisfied that an employer or contractor:
  - i. is in a sound financial position; and
  - ii. has a sound industry track record; and
  - iii. has demonstrable knowledge of the New Zealand industry sector in which they operate; and
  - iv. has a demonstrable commitment to training and engaging New Zealand citizens or residence class visa holders; and
  - v. has good workplace practices, including a history of compliance with all immigration and employment laws such as the Immigration Act 2009, the Accident Compensation Act 1992, the Minimum Wage Act 1982, the Health and Safety at Work Act 2015, the Employment Relations Act 2000, the Equal Pay Act 1972 and the Holidays Act 2000.
- b. In determining whether employers may be accredited, INZ will assess applications taking into account such factors as:
  - i. the period for which the employing organisation has been established as a going concern; and
  - ii. whether the employer has engaged with the relevant industry union, guild, or professional organisation.

**Note:** In the case of 'Single Purpose Vehicle' production companies applying for accreditation, the length of the involvement of the parent company in New Zealand will be taken into consideration.

- c. Applicants must consent to INZ seeking information from the Employment Relations Service, the Health and Safety Services and the Accident Compensation Corporation concerning the applicant's compliance with New Zealand employment laws. Where such consent is not given an application for accreditation will be declined.
- d. INZ will decline an application for accreditation where it considers accreditation would create unacceptable risks to the integrity of New Zealand's immigration or employment laws or policies.
- e. INZ will rescind an employer's accreditation where it considers that an accredited employer's conduct has created an unacceptable risk to the integrity of New Zealand's immigration or employment laws or policies. Decisions to rescind accreditation will not be made by INZ without the consent of the Minister of Immigration.
- f. An employer is considered to not have a history of compliance with employment law if it fails to meet the requirements set out at W2.10.15 or is currently included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).

### WS6.15.5 Applying for accreditation

- a. Applications for accreditation and renewals must be made on the INZ form *Entertainment Industry Accreditation Application (INZ 1197)* and accompanied by documents which demonstrate that the employer meets the requirements for accreditation set out at WS6.15.1(a).
- b. A fee is payable for an application for accreditation. A lower fee is payable for a renewal of accreditation.

### WS6.15.10 Determining applications for accreditation

- a. INZ must be satisfied that the information and documents included in an application for accreditation are genuine and accurate, and may take any steps it determines necessary to verify such documents and the information they contain, including interviews.
- b. INZ will consult with relevant unions or professional associations and other industry organisations when determining whether an employer has:
  - i. a sound industry track record; and
  - ii. knowledge of the New Zealand industry sector in which they operate; and
  - iii. a commitment to training and engaging New Zealand citizens and residence class visa holders; and
  - iv. good workplace practices.

### WS6.15.20 Length of accreditation

- a. Approved employers will be granted accreditation for an initial period of 12 months.

- b. Accreditation may be renewed for additional two-yearly periods upon application, where INZ is satisfied that the employer still meets the requirements for accreditation set out above.

**WS6.15.15 Reconsideration process for applications for accreditation which are declined**

There is no statutory right of appeal against the decision to decline an application for accreditation. However, INZ will reconsider a declined application for accreditation where new information is promptly provided.

## U8.20 Dependent children of holders of work visas

- a. Dependent children (see E4.1) of work visa holders who wish to study in New Zealand may be granted student visas unless the work visa holder has been granted a work visa under any one of the following categories:
  - i. Foreign crew of fishing vessels (see WJ); or
  - ii. Recognised Seasonal Employer (RSE) Work instructions (see WH1); or
  - iii. Supplementary Seasonal Employment (SSE) instructions (see WH3); or
  - iv. Silver Fern Job Search Instructions (see WL2); or
  - v. Skilled Migrant Category Job Search Instructions (see WR5); or
  - vi. Working Holiday Scheme instructions (see WI2); or.
  - vii. domestic staff of diplomatic, consular or official staff (see WI4).
- b. Dependent children of work visa holders as defined in (a) above are regarded as domestic students (see U3.35) for the purpose of all tuition fees at primary and secondary schools for the period of the parent's work visa.
- c. Dependent children (see E4.1) of work visa holders may be granted student visas without the need to produce evidence of enrolment.
- d. Guarantees of accommodation and/or maintenance for dependent children may be waived provided this is covered by the income of the work visa holder parent or by evidence of funds or guarantees submitted with the work visa application of the parent (see W2.15).
- e. Dependent children of people granted work to residence visas must meet health and character requirements for residence class visa applications as set out at A4 and A5.15 to A5.25.
- f. Despite (a)(v) dependent children of Skilled Migrant Category (SMC) Job Search visa holders may be granted student visas if the related SMC application was under consideration on or before 24 July 2011.

### U8.20.1 Dependent children of Essential Skill work visa holders

*See also Immigration Act 2009 ss 56, 157*

- a. Dependent children (see E4.1.10) of holders of work visas granted under the Essential Skills work instructions (WK) after 30 November 2009 will only be granted a student visa if their parent(s) meet a minimum income threshold.
- b. The minimum income threshold is NZ\$37,090.68 gross per annum and must be met and maintained wholly by the salary or wages of a parent or parents holding an Essential Skills work visa.
- c. Evidence must be provided of the Essential Skills work visa holder's current salary or wages to satisfy an immigration officer that the applicant's parent(s) meet the minimum income threshold.
- d. Despite (b) above, dependent children of Essential Skills work visa holders whose parents have an application being considered under the Samoan Quota or Pacific Access Category must meet the minimum income requirements of those instructions (see S1.10.35 or S1.40.35) to be eligible for a student visa under these instructions.
- e. Dependent children are not required to be assessed against the Essential Skills minimum income threshold if their parent(s):
  - i. have held any temporary work visa before 30 November 2009; and
  - ii. have remained on a valid visa from 30 November 2009 until the date of the dependent child's application under U8.20.
- f. If a visa application is declined under these instructions and the dependent child becomes unlawful the parent(s) may become liable for deportation.
- g. If the parent(s) do not maintain the minimum income threshold for the duration of their or their dependent child's visa both the parent(s) and child may become liable for deportation.

**Note:** Where both parents hold Essential Skills work visas, their income may be combined to meet the minimum income threshold.

### U8.20.5 Dependent children of work visa holders under Religious Worker instructions

*See also Immigration Act 2009 ss 56, 157*

- a. Dependent children of a holder of a work visa under Religious Worker instructions (WM) will only be granted a student visa if the:
  - i. minimum income threshold is met by the Religious Worker visa holder and their partner; or
  - ii. religious organisation sponsoring the principal applicant agrees to sponsor the dependent children.
- b. Under (a)(i) above:
  - i. the minimum income threshold is NZ\$36,850.44 gross per annum; and
  - ii. the minimum income threshold must be met and maintained by the salary, wages or a stipend received by the Religious Worker visa holder and their partner; and

- iii. evidence must be provided of the current salary, wages or stipend of the Religious Worker visa holder and their partner; and
- iv. if a visa application is declined under these instructions and the dependent child becomes unlawful the parents may become liable for deportation; and
- v. if the parents do not maintain the minimum income threshold for the duration of their visa or their dependent child's visa, both the child and the parents may become liable for deportation.

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**Note:** The income of both parents may be combined to meet the minimum income threshold.

**Appendix 3: Proposed amendments to Residence and Temporary Entry instructions effective on and after 1 April 2017**

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## Appendix 10: Rules for non-compliant employers

- a. The Labour Inspectorate maintains a list of non-compliant employers in accordance with the rules set out in the table below.
- b. An immigration officer should rely on the list of non-compliant employers maintained by the Labour Inspectorate as evidence of whether or not the employer is a non-compliant employer under these rules.

Enforcement action	Stand-down period
Infringement notice	<ul style="list-style-type: none"> <li>• 6 month stand-down for a single infringement notice.</li> <li>• Each subsequent infringement notice incurs a further stand-down of 6 months.</li> <li>• The maximum stand-down for multiple infringement notices issued at one time is 12 months.</li> </ul>
Penalties ordered by the Employment Relations Authority or by the Employment Court.	<p><u>Non-pecuniary penalties</u></p> <ul style="list-style-type: none"> <li>• 6 month stand-down when the total amount of penalties ordered in a case is up to and including \$1,000 for individuals and companies.</li> <li>• 12 month stand-down when the total amount of penalties ordered in a case is:               <ul style="list-style-type: none"> <li>○ over \$1,000 but less than \$10,000 for individuals</li> <li>○ over \$1,000 but less than \$20,000 for companies.</li> </ul> </li> <li>• 18 month stand-down when the total amount of penalties ordered in a case is:               <ul style="list-style-type: none"> <li>○ \$10,000 and above, but less than \$25,000, for individuals</li> <li>○ \$20,000 and above, but less than \$50,000, for companies.</li> </ul> </li> <li>• 24 month stand-down when the total amount of penalties ordered in a case is:               <ul style="list-style-type: none"> <li>○ \$25,000 and above for individuals</li> <li>○ \$50,000 and above for companies.</li> </ul> </li> </ul> <p><u>Pecuniary penalties</u></p> <ul style="list-style-type: none"> <li>• 24 month stand-down for a pecuniary penalty from the Court</li> </ul> <p><u>Notes:</u></p> <p><i>The Authority and the Court take the approach of looking at the totality of penalties for a group of breaches without necessarily identifying a penalty for a breach. Therefore the proposed stand-down periods are set according to the total dollar amount for penalties ordered for a case.</i></p> <p><i>If an individual or company incurred several penalties in one determination they would only get the maximum of 24 months stand-down period at this time, but the individual or company would be eligible for another stand-down period after this if further non-compliance triggered another stand-down.</i></p>
Declaration of Breach ordered by the Employment Court	<ul style="list-style-type: none"> <li>• 12 month instant stand-down when Declaration of Breach issued, adjusted upwards as appropriate to reflect the resulting penalties ordered (up to a total of 24 months).</li> </ul>
Banning Order	<ul style="list-style-type: none"> <li>• 12 month stand-down from recruiting migrant workers for employers incurring a banning order of less than 5 years, to be added at the end of the ban period.</li> </ul>

	<ul style="list-style-type: none"><li>• 24 month stand-down from recruiting migrant workers for employers incurring a banning order of 5 years and over, to be added at the end of the ban period.</li></ul>
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**Appendix 4: Proposed amendment to Temporary Entry instructions effective on and after 8 May 2017**

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## V2.15 Multiple journey visas

- a. The objective of the multiple journey visa instructions is to facilitate opportunities for individuals who have bona fide reasons to regularly travel to New Zealand for visits of up to six months.
- b. To be granted a multiple journey visa under these instructions applicants:
  - i. must lodge an application for a visitor visa, as set out in E4, from outside New Zealand; and
  - ii. must meet visitor visa requirements (see V2.1); and
  - iii. must not have been in New Zealand for more than nine months in the preceding 18-month period (see V2.5) at the time the application is lodged.
- c. On arrival, an applicant may be granted entry permission, provided that they will not spend more than six months in New Zealand in the 12-month period before the end of their current stay.
- d. Multiple journey visas may be current for travel for up to 3 years from the date they are granted so long as the passport remains valid, except in the case of:
  - i. nationals of the United States of America, in which case the visa may be current for travel for up to 4 years from the date it is granted; or
  - ii. nationals of the People's Republic of China, in which case the visa may be current for travel for up to 5 years from the date it is granted.
- e. Where an applicant is applying under another visitor category that allows multiple journey visas, those instructions prevail.

### V2.15.1 Grant of further multiple journey visas

A further multiple journey visa will not normally be approved where an applicant has used their maximum entitlement and seeks to cancel their current visa in order to apply for a further one.