

21 April 2017

**IMMIGRATION NEW ZEALAND INSTRUCTIONS: Amendment Circular No. 2017/05**

**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 Appendix 1 on and after 8 May 2017 and Appendix 2 on and after 22 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 8 May 2017**

### **New regulations concerning dependants included in a residence application**

*R2.40 Mandatory requirements for lodging an application for a residence class visa*

*R5.115 Dependants*

Immigration instructions are amended to align with new regulations that will come into force on 8 May 2017 requiring all dependants to be included in a residence application where they hold or have applied for a temporary entry class visa based on their relationship to the principal applicant. Dependants, once included in a residence application, cannot be removed unless circumstances change so that a child is no longer a dependent child, or in the case of a partner ceasing to be the applicant's partner.

### **New regulations for non-mandatory passports**

*A13.1 The form in which documents must be submitted*

*R2.40 Mandatory requirements for lodging an application for a residence class visa*

*RV1.10 Lodging an application*

*E3.10 Currency of visas*

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

*E4.50 Requirements for lodging an application for a temporary entry class visa*

*L6.1 Limited visas for some refugee or protection status claimants, refugees or protected people*

Immigration instructions are amended to align with new regulations that will come into force on 8 May 2017 allowing visa applicants to supply a certified copy of a passport or certificate of identity in place of an original.

### **Specific Purpose or Event work visa instructions amended for clarity**

*WS1 Objective*

*WS2 Requirements for the grant of a Specific Purpose or Event visa*

*WS2.1 Who is eligible for a Specific Purpose or Event Work visa*

*WS2.5 Definitions*

*WS2.10 Currency and conditions of specific purpose or event visa*

*WS3 Performing Artists, Entertainers and Entertainment Industry workers*

*WS3.1 Requirements*

*WS3.5 Referral to the relevant New Zealand performers' union or professional association*

*WS3.10 Obtaining the agreement of the relevant New Zealand performers' union or professional association*

*WS3.15 Entertainment industry accreditation*

*BJ7.40 Temporary visa to arrange transfer and/or investment of funds*

*F3.25 Approval in principle and transfer of funds*

*E9 Trade commitments*

*V3.45 Applicants wanting to obtain occupational registration in New Zealand*

*WI14.5 Philippines Nurses*

*WK2.1 Approval in principle to recruit overseas workers*

Specific Purpose or Event work visa instructions are restructured and reformatted to make them easier to follow. The evidence required for each work visa purpose will now be specified in a table format, along with the respective maximum visa duration that may be granted. Other changes to content include clear instructions allowing for the decline of a further Specific Purpose or Event visa when it is not appropriate. The following immigration instructions are rescinded as their content is covered elsewhere:

- *WS1.5 Who is eligible for a Specific Purpose or Event Visa*
- *WS4 Currency of specific purpose or event visa*
- *WS5 Conditions of specific purpose or event work visas*
- *WS6 Performing Artists, Entertainers and Entertainment Industry workers*
- *WS6.1 Requirements*
- *WS6.5 Referral to the relevant New Zealand performers' union or professional association*
- *WS6.10 Obtaining the agreement of the relevant New Zealand performers' union or professional association*
- *WS6.15 Entertainment industry accreditation.*

### **Discontinue 'partnership deferral' policy for Partnership Category residence applications**

*F2.25 Verification*

*F2.5 How do partners of New Zealand citizens and residents qualify for a residence class visa?*

Immigration instructions are amended in line with a Cabinet decision to discontinue the 'partnership deferral' policy. Instead, minimum partnership requirements must be met at the time that the assessment is made. No provision is given to delay a decision to allow applicants to meet the 12-month time requirement for living together in a genuine and stable relationship. In addition to amendments to F2.5 and F2.25, the following immigration instructions are rescinded:

- *F2.35 Deferring the final decision if the partnership is genuine and stable but less than 12 months duration, and*
- *WF2.15 Principal applicants of residence application under Partnership Category whose application has been deferred.*

### **Remove the seven-year limit when considering prior domestic violence or sexual offences committed by New Zealand residents or citizens supporting partnership-based visa applications**

*F2.10 Definitions*

*R5.95 Character requirement for partners supporting Partnership Category applications*

*E7.45 Character requirements for partners supporting 'partnership-based temporary entry applications'*

Immigration instructions are amended in line with a Cabinet decision to remove the seven-year limit for considering prior domestic violence or sexual offences committed by New Zealand residents or citizens supporting partnership-based visa applications. The amended criteria means that a New Zealand resident or citizen supporting a partnership-based visa application must not have had any conviction in any country for domestic violence or sexual offences since turning the age of 17. New Zealand-based convictions are subject to the Criminal Records (Clean Slate) Act 2004.

Partners supporting applications under the Partnership Category will be required to provide police certificates from each country they have lived in for 12 months or more in the 10 years prior to the application being lodged. Immigration officers will also have the ability to request additional police certificates if they have reason to believe a partner does not meet character requirements.

## **New Luxembourg Working Holiday Visa**

### *WI2.94 Luxembourg Working Holiday Scheme*

Immigration instructions for a new working holiday scheme for citizens of Luxembourg are being introduced. The scheme will open on 9 May 2017, with 50 places available annually to citizens of Luxembourg aged 18 to 30 years inclusive.

## **Update definition of ‘fit and proper’ person as it relates to applicants under business instructions**

### *BM2 Definition of a ‘fit and proper’ person*

#### *BM2.1 Applications usually deferred*

Immigration instructions are amended so that people convicted of offences arising in the course of, or resulting from, business dealings are not considered ‘fit and proper’ for the purposes of business instructions. A deferral process will apply to applicants who have been charged with such offences or are under investigation by the Serious Fraud Office or New Zealand Police. The changes also affect foreign crew of fishing vessels work visa instructions (see below).

## **Updating foreign crew of fishing vessels work visa instructions**

### *WJ1 Overview*

#### *WJ1.5 Objective*

##### *WJ1.15 Exemptions from the requirement to be a New Zealand ship*

### *WJ2 Requests for Approval in Principle*

#### *WJ2.1 Genuine attempts to fill crew positions*

##### *WJ2.5 Sound financial position evidential requirements*

##### *WJ2.10 Fit and proper person test*

### *WJ3 Granting of an Approval in Principle*

#### *WJ3.1 Significant non-compliance of Approval in Principle conditions*

### *WJ5 Employer responsibilities and obligations*

#### *WJ5.10 Sponsorship*

##### *WJ5.15 Arrival of crew in New Zealand*

*WJ5.20 Foreign crew education*

*WJ5.25 Desertion*

*WJ5.30 Complaints by crew*

*WJ5.40 Audits*

*WJ5.45 Conditions of employment for crew*

*WJ5.50 Departure procedure*

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

*WJ6.1 Application requirements*

*WJ6.5 Additional requirements for non-Approval in Principle Applicants*

*WJ6.15 Conditions of the work visa*

Immigration instructions are amended to align with the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014 that came into effect in May 2016. Amendments are also being made to align with adjustments to 'fit and proper' people requirements, including a new deferral process for directors or senior managers of supporting companies who are under investigation or facing charges by the Serious Fraud Office or New Zealand Police (see other updates to business instructions above). The following immigration instructions are rescinded as they are no longer necessary or relevant:

- *WJ4.1 Authorised agent*
- *WJ4.5 Employer*
- *WJ4.10 Fisheries Act 1996*
- *WJ4.25 New Zealand Charter Partner*
- *WJ4.30 Foreign Charter Partner, and*
- *Appendix 9 - Foreign Charter Fishing Vessels - Foreign Crew Employment Agreements.*

### **Providing clarity on the maximum duration of partnership-based temporary entry class visas**

*WF2.1 Instructions on duration of visa for partners of New Zealand citizens or residence class visa holders*

*V3.15 Partners of New Zealand citizens or residence class visa holders*

Immigration instructions are amended to clarify the maximum duration of temporary entry visas granted on the basis of partnership. These changes do not materially alter the current visa criteria.

### **Clarifying English language requirements for applicants providing Occupational English Test results**

*SM5.20 Pre-purchase of ESOL tuition*

*RW5.40 The amount of ESOL tuition to be pre-purchased*

Immigration instructions are amended to clarify that applicants who are awarded a "C" in each area of Listening, Reading, Writing and Speaking do not need to pre-purchase ESOL tuition, whereas applicants awarded a "D" need to pre-purchase ESOL tuition of NZ\$3,420.

## Other miscellaneous changes

Minor amendments are being made to correct or clarify immigration instructions and other parts of the Operational Manual as follows:

- Amend Parent Category instructions at F4.1.15(d) to reflect the increased sponsorship period from five to ten years, which was made elsewhere in immigration instructions in November 2016.
- Clarify the wording of student visa instructions at U5.1(d) to more accurately reflect the requirement that a student visa cannot be granted to someone to attend an education provider that holds a Category Four status under the New Zealand Qualifications Authority's External Evaluation Review (EER) quality assurance system.
- Amend the wording of pathway student instructions at U14(c) to make it clearer that a pathway student visa application will not be approved for applications made after 7 June 2018.
- Amend U14.15.5(a)(iii) to reflect the current allowance (made in the November 2016 release) that pathway student visa holders have 20 weeks to complete an English language programme of study.
- Clarify U14.20.5 to make clear the distinction between secondary school New Zealand Qualifications Framework levels 1–3 courses (Years 11 to 13) and tertiary level NZQF levels 1-3 courses.
- Remove instruction at U4.20(a)(iii) that refers to defunct instructions for student visas for religious trainees, as religious trainees can no longer be granted student visas (instead, these trainees are now provided for in work instructions).
- Reinstate provisions into the *S1.45 Special Samoan Quota Places Category* and *S1.50 Special PAC Places Category* that were omitted inadvertently in April 2017.
- Amend instruction at U8.20.5(b)(i) so that a dependent child of a work visa holder under Religious Worker instructions can only be granted a student visa if the minimum income threshold of NZ\$37,090.68 per annum is met.
- Remove guidance specifying the addresses for submissions to the Operations Support Area Office from instructions at V3.140.10 and E11.20.
- Amend various instructions to refer to the *Ministry of Business, Innovation and Employment* instead of the *Department of Labour*, and to refer to processing offices, not branches.
- Make minor corrections or updates to grammar, formatting and cross references at S1.10, S4.10.10(c), BE5.1, BB3.5, W12.1.5, W12.175(b) and WR1.25.
- Amend *A12.5 Applicants must not be charged for forms* to specify the correct provider and method of ordering.
- Amend *A9.1 INZ's Client Complaint Resolution Process* so that the correct post office box is listed.
- Amend operational instructions under *A7 Privacy Act 1993* and *A8 Official Information Act 1982* to refer to the *Ministry of Business, Innovation and Employment* instead of the *Department of Labour* and to remove obsolete references to the Privacy and Official Information Act policies on the *Department of Labour* website.

## **Changes to instructions effective on and after 22 May 2017**

### **Visitor visas for international tour escorts**

*V3.150 International Tour Escorts*

*V3.1 Group visas*

*W2.2 Definitions*

A new special category of visitor visa for overseas tour escorts is being introduced to better facilitate tour groups visiting New Zealand by allowing tour escorts to enter New Zealand with their tour groups on a visitor visa or visa waiver.

**APPENDIX 1: AMENDMENTS TO THE OPERATIONAL MANUAL EFFECTIVE ON AND AFTER 8 MAY 2017**

### A3.1 Definition and effect of a visa

*See also Immigration Act 2009 ss 43, 62*

- a. A visa (other than a transit visa) authorises the holder to travel to or stay in New Zealand (or both).
- b. A visa may be granted inside or outside New Zealand or in an immigration control area.
- c. A visa granted outside New Zealand indicates that:
  - i. the holder may travel to New Zealand in line with the conditions of that visa (if any) and apply for entry permission; and
  - ii. if entry permission is granted, may stay in New Zealand in line with the conditions of that visa (if any); and
  - iii. at the time the visa is granted, Immigration New Zealand has no reason to believe that entry permission will be refused, provided the holder of the visa complies with the conditions of the visa (if any).
- d. A visa granted inside New Zealand indicates that:
  - i. the holder of the visa may stay in New Zealand in accordance with the conditions of the visa; and
  - ii. if granted travel conditions, the holder of the visa may re-enter New Zealand in line with the travel conditions and apply for entry permission.
- e. A visa granted in an immigration control area indicates that:
  - i. if granted entry permission, the holder of the visa may stay in New Zealand in accordance with the conditions of the visa; and
  - ii. if granted travel conditions, the holder of the visa may re-enter New Zealand in line with the travel conditions and apply for entry permission.
- f. A visa is granted by being entered and retained in the records of the **Ministry of Business, Innovation and Employment**.
- g. A visa may (but need not) be evidenced by an endorsement in a passport or a certificate of identity.

## A5.5 Character checks

See also *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* Regs 5(2)(d)(iii), 6(2)(d)(iv), 10(2)(e)(iii)

- a. Character checks must be carried out for the following categories of applicant:
- i. those aged 17 and over applying for residence class visas; and
  - ii. those aged 17 and over applying for temporary entry class visas who intend to stay in New Zealand for 24 months or longer; and
  - iii. other applicants for temporary entry class visas who warrant a character check if the immigration officer decides it is necessary.

**Note:** the 24-month period in A5.5(a)(ii) above includes time already spent in New Zealand prior to the application being made.

- b. It is a mandatory requirement (see [R2.40](#)) for first time applicants for a residence class visa aged 17 and over to obtain a police or similar certificate from:
- i. the applicant's country of citizenship; and
  - ii. each country in which the applicant has lived for 12 months or more (whether on one visit or intermittently) in the last 10 years (but see [A5.10.1](#)).

Applicants for a further residence class visa under [RV2](#) or [RV4](#) will not usually need to submit a police or similar certificate, unless specifically asked to by an immigration officer. Applicants for a further residence class visa applying under any other category are required to submit a police or similar certificate as if they were applying for residence for the first time.

**Note:** the requirement in A5.5(b) above does not apply to Australian citizens, holders of a current Australian permanent residence visa and holders of a current Australian resident return visa, applying for a resident visa at an immigration control area.

- c. If required, applicants aged 17 and over applying for a temporary entry class visa must obtain a police or similar certificate from:
- i. their country of citizenship; and
  - ii. from any country in which they have lived for five or more years (whether on one visit or intermittently) since attaining the age of 17 years.
- d. Despite (c) above, student visa applicants do not have to provide a police or similar certificate until they are aged 20 or over if they:
- i. held a student visa when they turned 17; and
  - ii. have held consecutive student visas (or interim visas with study conditions) since the date they turned 17; and
  - iii. are applying for a further student visa.
- e. Despite (d) above, a police or similar certificate is required if an immigration officer decides it is necessary.

### **A7.5 Privacy Act Policy**

The information contained in these instructions does not replace the Ministry of Business, Innovation and Employment's Privacy Act Policy.

## **A7.10 Who may make a request under the Privacy Act 1993**

*See also Privacy Act 1993 ss 6, 34*

- a. Requests regarding personal information by the individual concerned, under principle 6 (access) and principle 7 (correction), may only be made by that individual.
- b. Individuals may authorise an agent to receive the information on their behalf.
- c. Subject to (d) below, New Zealand based lawyers holding a current New Zealand practising certificate and licensed immigration advisers do not require written authority to act when representing their clients in interactions with **the Ministry of Business, Innovation and Employment**. Lawyers and licensed immigration advisers may make requests for the personal information of their client.
- d. If **the Ministry of Business, Innovation and Employment** has information which suggests that a client may not be represented by the lawyer or licensed immigration adviser requesting their personal information, an authority to act may be requested before such information is released.

#### A7.40 Which INZ processing office responds to the request?

- a. The office nearest to where the client lives will normally process the information request, or if there is an undecided visa or compliance application, the office that is processing that application.
- b. The processing office must obtain **all INZ physical and electronic files and information** whether these are at other INZ offices, MFAT posts, Archives, Online, National Office, or temporarily with the Immigration and Protection Tribunal pending the outcome of an appeal.
- c. If a request has to be forwarded to another office (because the client lives in that area or there is undecided visa or compliance action), lodge the request on AMS and fax a copy to the relevant office. Remember, the time starts from the date the request is received by INZ so forward the request promptly. Advise the requestor of the office you have sent it to. Transfer any physical/electronic files.

## **A8.5 Official Information Act Policy**

The information contained in these instructions does not replace the **Ministry of Business, Innovation and Employment's** Official Information Policy.

## **A8.40 Which INZ processing office responds to the request?**

### **A8.40.1 Information relating to INZ clients**

- a. The office nearest to where the client lives will normally process the information request, or if there is an undecided visa or compliance application, the branch that is processing that application.
- b. The processing office must obtain **all INZ physical and electronic files and information** whether these are at other offices, MFAT posts, Archives, Online, National Office, or temporarily with the Tribunal pending the outcome of an appeal.
- c. If a request has to be forwarded to another office (because the client lives in that area or there is an undecided visa or compliance action), lodge the request on AMS and fax a copy to the relevant office. Remember, the time starts from the date the request is received by INZ so forward the request promptly. Advise the requestor of the office you have sent it to. Transfer any physical/electronic files.
- d. The Tribunal does not process requests for information held on INZ files. However, the Tribunal is required to provide INZ with a copy of the appeal and decision, and these should be on the relevant INZ file. With respect to refugee or protection decisions, only a copy of the decision is required to be provided.

### **A8.40.5 All other information**

The branch that holds the information or knows most about the information will respond to the request. For instance, if the information relates to refugee or protection status, the Refugee and Protection Unit will respond. If the request is for information relating to policy development or policy papers, National Office will respond.

## A9.1 INZ's Client Complaint Resolution Process

Immigration New Zealand's (INZ) Client Complaint Resolution Process (CCRP) is a two-stage system providing clients with an avenue to seek resolution of a complaint relating to the service they received from INZ. The CCRP is not an avenue to seek a review of a declined visa application, an invitation to apply for residence or a request for a visa made under section 61 of the Immigration Act 2009.

Full information about the CCRP can be found on the [INZ website Complaints Process page](#).

- a. INZ's expectation is that clients will access the CCRP to seek resolution of a complaint before approaching the Office of the Ombudsmen.
- b. INZ endeavours to acknowledge all complaints within two working days of receipt and to send a response at Stage 1 within 15 working days of receipt and within 20 working days of receipt at Stage 2.
- c. Where INZ determines that it erred in the provision of a service to a client, a remedy, if appropriate, will be provided in the response.

### A9.1.1 Stage one of the CCRP

Stage one of the CCRP is for complaints about matters that have been handled at office level and are to be directed in the first instance to the Operations Manager of that office. The contact details for each office can be found on the [INZ website on the Contact Us page](#).

### A9.1.5 Stage two of the CCRP

- a. Stage two of the CCRP is used where a complaint could not be resolved at stage one of the CCRP, or for complaints about matters that have been handled by INZ other than at office level. Complaints under stage two of the CCRP can be made by writing to:

Deputy Chief Executive – Immigration New Zealand  
Ministry of Business, Innovation and Employment  
PO Box 1473  
Wellington 6140

By facsimile to: +64 04 915 6278  
By email to: [dcecomplaints@mbie.govt.nz](mailto:dcecomplaints@mbie.govt.nz)

- b. It is the complainant's responsibility to escalate their complaint to Stage Two quickly after receiving the Stage One response and to clearly state their reasons for being unsatisfied with the Stage One response.

**Note:** If a complaint concerning the actions of an office is submitted to stage two of the CCRP without having first gone through stage one, the complaint will usually be treated as a complaint at stage one and directed to the appropriate Operations Manager for consideration.

## **A12.5 Applicants must not be charged for forms**

Application forms are to be made available to applicants free of charge.

### **A12.5.1 Supply to customers**

- a. All processing offices must supply forms and leaflets to customers in their area of responsibility. INZ customers include members of the public, licensed or exempt immigration advisers, travel agents, solicitors or community groups.
- b. When ordering supplies, offices must take into consideration the needs of their customers.
- c. A list of forms, guides and other leaflets will be available for download and use from the INZ website ([www.immigration.govt.nz/forms](http://www.immigration.govt.nz/forms)).

### **A12.5.5 Supplies to licensed or exempt immigration advisers**

When licensed or exempt immigration advisers based in New Zealand require large numbers of forms and leaflets regularly they may request Convergta to deliver the forms and leaflets direct to the immigration adviser.

### **A12.5.10 How to order**

INZ offices, MFAT offices and external licensed or exempt immigration advisers must order their forms and leaflets directly by using the order form found on the Immigration New Zealand website.

### A13.1 The form in which documents must be submitted

- a. Unless the exceptions at (b) below apply, any passport, certificate of identity, birth certificate or other document provided as evidence of an applicant's identity must be either the original or a certified copy.
- b. Documents specified in (a) do not need to be original or certified copies if provided in support of an application made:
  - i. on an electronic form; or
  - ii. by a diplomatic or consular official for a temporary entry class visa; or
  - iii. for reconsideration of a decision to decline a further temporary entry class visa.
- c. All other documents submitted in support of an application must be originals, or certified copies, unless:
  - i. uncertified copies are specifically requested on the relevant INZ form or guide; or
  - ii. the application is made on an electronic form, in which case a legible scan of the original document must be provided in the manner specified by the online form or by an immigration officer; or
  - iii. the application is for a temporary entry class visa, in which case a legible copy of the original document may be provided.
- d. Despite (a) and (c) above, original documents must be provided if specifically requested on the relevant INZ form or guide, or if requested by an immigration officer.

#### A13.1.1 Originals

Original documents must:

- a. be copied or processed immediately; and
- b. be returned directly to the owner or the owner's authorised agent (e.g. solicitor) as soon as possible; and
- c. not be released to any other person unless the owner has made a written statement authorising their release to a specified person.

#### A13.1.5 Certified copies

- a. Certified copies must be stamped or endorsed as being true copies of the originals by a person authorised by law to take statutory declarations in the applicant's country or in New Zealand.

**Examples:** a lawyer, notary public, Justice of the Peace, or court official.

- b. If certified copies are supplied, immigration officers may also request the original documents.
- c. An immigration officer may certify copies submitted with the original document if they are satisfied that the copy agrees with the original in essential details.
- d. If the actioning officer is satisfied that the copy is a true copy, it must be marked with:
  - i. the words "original sighted"; and
  - ii. the date.
- e. An immigration officer should accept faxed copies of certified documents only if the originals, or certified copies, are then submitted at the earliest opportunity.
- f. Documents with evidence of having been tampered with, or unofficially altered, must be referred to an immigration officer, with Schedule 1-3 delegations, who will decide what further action to take.

#### A13.1.10 Uncertified copies

- a. Where uncertified copies of original documents have been provided, an immigration officer may request to see the original documents before making a decision on the application.
- b. Uncertified copies must be legible and an accurate reflection of the original document.

## A15.1 Making decisions in terms of the Immigration Act

*See also Immigration Act 2009 ss 154-162, 172, 175-177, 380(1), 388(1) and (6), 390, 391*

- a. All references to the Immigration Act within this chapter refer to the Immigration Act 2009.
- b. To make immigration decisions under the Immigration Act a person must be designated by the chief executive as an immigration officer (see A15.1.10) or a refugee and protection officer (see A15.1.25).
- c. In addition, from time to time the Minister of Immigration may delegate some of his or her powers under the Immigration Act to immigration officers. These delegations are listed in schedules (see A15.5). Some delegations are for a whole class of officers (for example for all technical advisors); some can only be exercised by officers in particular roles, and are not related to a position in the hierarchy. Further, delegations may effectively act as an administrative constraint on the exercise of statutory decision-making powers.
- d. Where a person has not been designated as an immigration officer or a refugee and protection officer, they cannot make any immigration decisions. In addition, the Minister may not delegate any other powers to a person who is not an immigration officer.
- e. A person who is designated as a refugee and protection officer cannot also be designated as an immigration officer, and vice versa.
- f. To be able to:
  - i. sign or cancel a deportation order, or
  - ii. consider or cancel a person's liability for deportationan immigration officer must be specifically authorised by the chief executive as having the power to do so.
- g. The chief executive of the Ministry of Business, Innovation and Employment may at any time revoke a designation (see A15.1.30).

**Note:** The power to designate a person as an immigration officer or a refugee and protection officer, or to revoke a designation, has been delegated to the Deputy Chief Executive – [Immigration New Zealand](#).

### A15.1.5 Designations

*See also Immigration Act 2009 ss 388, 390*

- a. An immigration officer:
  - i. is the chief executive, and every person who has been designated by the chief executive as an immigration officer;
  - ii. includes any Customs officer designated by the chief executive as an immigration officer, whether individually or by class or position for the purposes of Parts 3 and 4 and sections 279, 280, 282-285, 366 and 367 of the Immigration Act 2009, and regulation 34 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010;
  - iii. includes any person designated by the chief executive as an immigration officer, whether individually or by class or position, who:
    - o is a head of mission or head of post; or
    - o is a member of staff at a New Zealand overseas mission or post who is authorised by the head of mission or head of post to exercise consular functions; or
    - o is a member of staff of an overseas branch of the Ministry of Business, Innovation and Employment; or
    - o is in the service of the Government of another country;
  - iv. includes any other person, including a person employed in the service of the Government of another country, who acts as an agent for the Government of New Zealand in the performance of consular functions, either pursuant to an agreement between the Government of another country and the Government of New Zealand or pursuant to a request by an immigration officer employed in the service of the Government of New Zealand.
- b. The chief executive must specify which functions and powers an immigration officer is authorised to exercise under this Act. An officer may not perform any functions or exercise any powers under this Act unless specifically authorised by the chief executive.

**Note:** The power to specify which functions and powers an immigration officer is authorised to exercise under the Immigration Act 2009 has been delegated to the Deputy Chief Executive – Immigration, General Manager – Visa Services and Immigration New Zealand Branch Managers.

- c. A person who has been designated by the chief executive as a refugee and protection officer may perform all the functions and exercise all the powers of a refugee and protection officer.

### **A15.1.10 Process for being designated as an immigration officer**

*See also Immigration Act 2009 ss 388, 391(3)*

- a. To be designated as an immigration officer a person must:
  - i. complete a training schedule (coordinated by the Ministry of Business, Innovation and Employment technical trainers); and
  - ii. demonstrate competence in a number of specified areas; and
  - iii. be deemed competent to carry out the functions of an immigration officer.
- b. However, the chief executive may otherwise designate an individual as an immigration officer as he or she sees fit.

**Note:** the chief executive need not be issued with a warrant of designation, and may perform or exercise all the powers and functions of an immigration officer under this Act.

- c. The manager should make a request to the chief executive, using the appropriate form, that a person be designated as an immigration officer when the person's manager is satisfied that the person:
  - i. has completed the required training; and
  - ii. can demonstrate competence in a number of specified areas; and
  - iii. should be designated as an immigration officer.
- d. If the chief executive decides to designate the person as an immigration officer, a letter will be sent to the person detailing any relevant delegated powers the person may exercise.
- e. Any such designation or authorisation:
  - i. continues in force according to its tenor until it is revoked, even if the chief executive who made it has ceased to hold office, and continues to have effect as if made by the successor in office of that chief executive;
  - ii. is subject to such restrictions or conditions as the chief executive specifies in writing in the warrant of designation.

#### **A15.1.10.1 Transitional provisions regarding immigration officers**

*See also Immigration Act 2009 s 462*

From commencement of the Immigration Act 2009:

- a. immigration officers, including customs officers, designated under the Immigration Act 1987 must be treated as immigration officers designated under the Immigration Act 2009 who are authorised to exercise visa and entry permission decision-making powers; and
- b. visa officers designated under the Immigration Act 1987 must be treated as immigration officers designated under the Immigration Act 2009 who are authorised to make decisions relating to visas outside New Zealand.

#### **A15.1.15 Immigration officers' functions and powers**

*See also Immigration Act 2009 ss 389(1), 389(2)*

- a. An immigration officer may be authorised to perform or exercise individual functions and powers, or functions and powers of one or more classes.
- b. Functions and powers may be classified as follows:
  - i. visa decision-making;
  - ii. entry permission decision-making;
  - iii. compliance and enforcement;
  - iv. the power of detention.

#### **A15.1.20 Warrant of designation**

*See also Immigration Act 2009 ss 388(3), 388(4), 388(7), 388(8), 388(9)*

- a. An immigration officer authorised to exercise one or more of the following powers must be issued with a warrant of designation, signed by the chief executive, specifying which of those powers the officer may exercise:
  - i. the power to deport a person under section 178;
  - ii. the power of entry and inspection under sections 276, 277, and 278;
  - iii. the powers under sections 279, 280, 281, and 288 to require information or documents for the purpose of ensuring compliance with this Act;
  - iv. the powers under sections 282, 283, 284, and 285 at a border;

- vi. the power of entry and search under section 286;
  - vii. the power to obtain certain information pending a person's deportation under section 287;
  - viii. the power to detain a person under section 312.
- b. A warrant is sufficient evidence of an officer's designation as an immigration officer and the officer's authorisation to perform the functions and exercise the powers specified in it.
  - c. To be issued with a warrant, the immigration officer must have received suitable training.
  - d. Whenever an immigration officer (including a constable exercising the powers of an immigration officer):
    - i. seeks entry to any premises, building, or craft in the course of exercising a power; or
    - ii. exercises a power of detention
 the officer must produce their warrant of designation and, if requested, state the provision or provisions of the Act under which they are acting.
  - e. An immigration officer (including a constable exercising the powers of an immigration officer) who, in exercising a power described in (a) above, orally makes a request, requirement, or demand of a person must also produce his or her warrant of designation if called upon to do so by the person.
  - f. A constable exercising the powers of an immigration officer can meet the requirement to produce his or her warrant of designation by being in uniform or by producing their badge or other evidence of being a constable.
  - g. Notwithstanding (a) above immigration officers who are not authorised to exercise any of those powers may also be issued with a warrant of designation.
  - h. The warrant of designation must be:
    - i. in a secure place when not in use; and
    - ii. used only by the officer to whom it is issued; and
    - iii. produced in circumstances where production is required by law (as described in (d) and (e) above); and
    - iv. returned to the chief executive of the Ministry of Business, Innovation and Employment when the officer leaves the Ministry or moves to a position which does not require them to exercise the functions of an immigration officer.

#### **A15.1.25 Process for being designated as a refugee and protection officer**

*See also Immigration Act 2009 s 390*

To be designated as a refugee and protection officer a person must:

- a. complete a training schedule (coordinated by Immigration New Zealand trainers); and
- b. demonstrate competence in a number of specified areas; and
- c. be deemed competent to carry out the functions of a refugee and protection officer.

#### **A15.1.30 Revocation or lapsing of designations**

*See also Immigration Act 2009 s 391*

- a. Every designation by the chief executive of a person as an immigration officer or a refugee and protection officer, or for any other purpose under this Act, is revocable in writing at will.
- b. Every authorisation of an immigration officer to exercise a power or perform a function is revocable in writing at will.
- c. A designation lapses when the person leaves the Ministry or the service or employment in respect of which the person was designated.
- d. A person whose designation has lapsed or been revoked must immediately surrender the warrant of designation to the chief executive.

## **A19 Determination that classified information relates to matters of security or criminal conduct and may be relied on in decision-making**

*See also Immigration Act 2009, ss 33, 34, 36, 37*

- a. Classified information may be relied on in making decisions or determining proceedings if the Minister of Immigration determines that the classified information relates to matters of security or criminal conduct.
- b. Where classified information may be relevant to a making a decision under the Immigration Act 2009, the Minister of Immigration may:
  - i. request an oral or a written briefing from the chief executive of the relevant agency, and if so, the content of briefing is to be determined by the chief executive of that agency; and
  - ii. seek the assistance of such security cleared assistants as he or she thinks fit.
- c. No person may be called to give evidence in any court or tribunal in relation to the content of the briefing or anything coming to his or her knowledge as a result of the briefing except as provided for in the Immigration Act 2009 for the tribunal or court.
- d. The Minister of Immigration may:
  - i. rely on the classified information to make a visa decision, an entry decision or a deportation decision; or
  - ii. direct that a refugee and protection officer may rely on the information to make a refugee and protection status determination; or
  - iii. refer the classified information to the Immigration and Protection Tribunal or a court, as applicable, if the information is first to be relied on:
    - iv. in an appeal to the Tribunal or the court; or
    - v. in an application to the Tribunal or
    - vi. in review proceedings; or
    - vii. refer the information to the Chief Executive of the **Ministry of Business, Innovation and Employment** to make an application for a warrant of commitment, or an application or a response to an application for review or release, in accordance with **section 325 (to continue to be detained until a determination is made on the application)**.
- e. The chief executive of a relevant agency who provides classified information to the Minister of Immigration must ensure that:
  - i. the information is provided in a manner that does not, by reason of the omission of any other relevant classified or non-classified information, give a misleading view of the information supplied; and
  - ii. any classified or non-classified information that is favourable to the person subject to the decision or proceedings is also provided; and
  - iii. any further classified information that becomes available and that is relevant to the decision or proceedings is provided until the decision is made or a decision on the proceedings is made.
- f. If the chief executive of a relevant agency updates, withdraws or adds to the classified information provided to the Minister of Immigration, the Minister of Immigration must make a further determination under A19(a) as to whether the information may be relied on.
- g. If the chief executive of a relevant agency withdraws any classified information:
  - i. the classified information must be kept confidential and must not be disclosed by the decision maker, the Tribunal, or the court (as the case may be); and
  - ii. the decision maker, the Tribunal, or the court must continue to make the decision or determine the proceedings:
    - o without regard to that classified information (but subject to matters to be considered by the Tribunal); and
    - o in the case of an appeal, a matter or review proceedings, as if that information had not been available in making the decision subject to the appeal, matter, or review proceedings.
- h. The chief executive of the relevant agency may at any time direct any person to return classified information to the relevant agency.

## **A19.1 Definition of 'classified information'**

*See also Immigration Act 2009 ss 39, 40, 265*

- a. Classified information means information that the chief executive of a relevant agency certifies in writing cannot be disclosed, unless expressly provided for under the Act, because:
  - i. the information is of a kind specified in A19.1(c) below; and
  - ii. disclosure of the information would be disclosure of a kind specified in A19.1(d) below.
- b. A chief executive of a relevant agency must not delegate to any person the ability to certify information as classified information under A19.1(a) above.
- c. Information falls under section A19.1(a)(i) above if it:
  - i. might lead to the identification, or provide details, of the source of the information, the nature, content, or scope of the information, or the nature or type of the assistance or operational methods available to the relevant agency; or
  - ii. is about particular operations that have been undertaken, or are being or are proposed to be undertaken, by the relevant agency; or
  - iii. has been provided to the relevant agency by the government of another country, an agency of a government of another country, or an international organisation, and is information that cannot be disclosed by the relevant agency because the government, agency, or organisation from which the information has been provided will not consent to the disclosure.
- d. Disclosure of information falls under A19.1(a)(ii) above if the disclosure would be likely:
  - i. to prejudice the security or defence of New Zealand or the international relations of New Zealand; or
  - ii. to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the government of another country, an agency of a government of another country, or an international organisation; or
  - iii. to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
  - iv. to endanger the safety of any person.

### **A19.1.1 Definition of 'relevant agency'**

In relation to any classified information, a relevant agency is any of the following agencies that hold, were the source of, or were provided with, that classified information:

- a. Aviation Security Service;
- b. Civil Aviation Authority of New Zealand;
- c. Department of Corrections;
- d. Department of Internal Affairs;
- e. **Ministry of Business, Innovation and Employment;**
- f. Government Communications Security Bureau;
- g. Maritime New Zealand;
- h. **Ministry for Primary Industries;**
- i. Ministry of Foreign Affairs and Trade;
- j. New Zealand Customs Service;
- k. New Zealand Defence Force;
- l. New Zealand Police;
- m. New Zealand Security Intelligence Service.

### **A19.1.5 Definition of 'proceedings involving classified information'**

*See also Immigration Act 2009, s 7*

- a. Proceedings involving classified information means any proceedings in which classified information:
  - i. was relied on in making the decision appealed against or subject to review proceedings (including a decision of the Immigration and Protection Tribunal); or
  - ii. is first raised or proposed to be raised in the course of an application to the Tribunal or an appeal or in review proceedings; or
  - iii. is raised in an application under detention or monitoring.

#### **A19.1.10 Protection of classified information**

*See also Immigration Act 2009, s 35*

- a. Classified information relied on for the purpose of making any decision or determining any proceedings under the Immigration Act 2009 must be kept confidential and must not be disclosed, except as provided for under the Act to the Tribunal, a court, a Special Advocate, counsel assisting the court, or a special adviser.
- b. A19.1.10(a) above does not limit or affect the application of the Ombudsmen Act 1975, the Official Information Act 1982, or the Privacy Act 1993, but otherwise applies despite any other enactment or rule of law to the contrary.
- c. Neither the Tribunal or any court may require or compel the chief executive of the relevant agency, the Minister of Immigration, or any other person to disclose any classified information in any proceedings under the Immigration Act 2009 (but without derogating from Tribunal access and Court access to classified information).

#### **A19.1.15 The Summary of Allegations**

*See also Immigration Act 2009, ss 38, 40*

- a. Before a relevant decision is made that relies on any classified information that may be prejudicial to the person who is the subject to the proposed decision, a summary of allegations arising from the classified information must be agreed on by the chief executive of the relevant agency and either the Minister of Immigration or the refugee and protection officer as applicable.
- b. The Minister of Immigration or the refugee and protection officer must forward the summary of allegations to the person who is the subject of the proposed decision for comment, and specify a time by which any comment may be provided.
- c. The summary of allegations must be updated and agreed as stated in A19.1.15(a) above, and the person affected provided with an updated summary of allegations, where:
  - i. any classified information that was proposed to be relied on in making the decision is withdrawn (unless all of the classified information is withdrawn); or
  - ii. the chief executive of the relevant agency adds to or updates the classified information that will be relied on in making the decision.
- d. The summary of allegations is not required to:
  - i. list any documents or other source material containing classified information; or
  - ii. detail the contents of any documents or other source material containing classified information; or
  - iii. specify the source of any documents or other source material containing classified information.
- e. The provision of a summary of allegations only applies where classified information is to be relied on, or may be relied on, in the making of any decision in relation to:
  - i. an application for a visa, if the application is for:
    - o a residence class visa; or
    - o a temporary visa or a limited visa, and the applicant is onshore; or
  - ii. a person's liability for deportation; or
  - iii. any matter to which refugee and protection status determinations apply, if the decision is to be made by a refugee and protection officer.
- f. The summary of allegations is not required to be provided:
  - i. if the decision concerned is in the absolute discretion of the decision maker; or
  - ii. in relation to expressions of interest or invitations to apply for a visa, or
  - iii. to applicants for transit visas; or
  - iv. to applicants for temporary entry class visas who are outside New Zealand; or
  - v. in relation to applications for visas made in an immigration control area or a place outside New Zealand that is designated by the Chief Executive of the Department of Labour where entry permission may be granted; or
  - vi. in relation to applications for entry permission.

#### **A19.1.20 Reason for decision made that relied on classified information**

*See also Immigration Act 2009 ss 39, 40, 265*

- a. Following a prejudicial decision by the Minister of Immigration or refugee and protection officer of a kind referred to in A19.1.15(e), the person who is the subject of the decision must be informed, in writing, of:
  - i. the fact that classified information was relied on in making the decision; and
  - ii. the reasons for the decision (except to the extent that providing reasons would involve a disclosure of classified information that would be likely to prejudice the interests referred to in A19.1(d)) and

- contain the information required under s23 of the Official Information Act 1982 as if the reasons were given in response to a request to which that section applies; and
- iii. the appeal rights, if any, available in respect of the decision; and
  - iv. if appeal rights are available, the right to be represented by a special advocate.
- b. Where appeal rights are available in respect of a decision of a kind referred to in A19.1.15(e), the Minister of Immigration or a refugee and protection officer, as applicable, must notify the **designated agency** that a decision relying on classified information has been made under the Immigration Act 2009.
  - c. The Minister of Immigration or a refugee and protection officer, as applicable, must prepare a record of the reasons for the decision, including any reasons arising from the classified information, which may not be accessed or disclosed except as required by the Tribunal or courts, or to the chief executive of the relevant agency.
  - d. The reasons for the decision are not required to be provided:
    - i. if the decision concerned is in the absolute discretion of the decision maker; or
    - ii. in relation to expressions of interest or invitations to apply for a visa; or
    - iii. to applicants for transit visas; or
    - iv. to applicants for temporary entry class visas who are outside New Zealand; or
    - v. in relation to applications for visas made in an immigration control area or a place outside New Zealand that is designated by the chief executive where entry permission may be granted; or
    - vi. in relation to applications for entry permission.

#### **A19.1.25 Declassification of classified information**

*See also Immigration Act 2009 s 41*

- a. Information can be declassified when the chief executive of the relevant agency certifies in writing that, as from a specified date, the classified information is no longer classified information within the definition of classified information at A19.1.
- b. From the date of the declassification, the information is no longer subject to any confidentiality, processes or other requirements of the Immigration Act 2009 that apply to classified information or the users of the information.

#### **A19.1.30 No right of complaint to Inspector-General of Intelligence and Security**

*See also Immigration Act 2009 s 42*

No complaint may be made to the Inspector-General of Intelligence and Security about any situation or set of circumstances relating to an act, omission, practice, policy, or procedure done, omitted, or maintained (as the case may be) in connection with a decision under the Immigration Act 2009 involving classified information (including a determination in proceedings involving classified information).

## A20.5 Definition and effect of an endorsement

*See also Immigration Act 2009, s 384*

- a. An endorsement is granted by being entered and retained in the records of the Ministry of Business, Innovation and Employment.
- b. An endorsement may (but need not) be evidenced by a physical endorsement in a passport.
- c. An endorsement is not a visa.
- d. An endorsement is current for the duration of the passport it is endorsed in.
- e. An endorsement is evidence of New Zealand citizenship for New Zealand citizens travelling to New Zealand on a foreign passport.

## R2.40 Mandatory requirements for lodging an application for a residence class visa

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, Reg 5 & 20*

Unless RV1.10.10 applies, an application for a residence class visa made outside an immigration control area must:

- a. **be** made on an approved form; and
- b. **be** completed in English; and
- c. **be** signed by the applicant (unless the applicant is less than 18 years old, in which case it must be signed by a parent or guardian of the applicant); and
- d. **include all dependants of the principal applicant where they hold or have applied for a temporary entry class visa based on their relationship to the principal applicant; and**
- e. **be** given to an immigration officer together with the following material:
  - i. the applicant's passport **(or a certified copy)** or certificate of identity **(or a certified copy)**, or if this is unavailable, his or her original full birth certificate (or a certified copy) or other identity document (or a certified copy); and
  - ii. two passport-sized photographs of the applicant's head and shoulders; and
  - iii. an original or certified copy of the applicant's full birth certificate or, if this is unobtainable, an original or certified copy of an identity card; and
  - iv. the appropriate fee and immigration levy(if any); and
  - v. any information and evidence required by the relevant immigration instructions that shows that the principal applicant fits the category or categories of residence instructions under which the application is being made; and
  - vi. a completed Medical Certificate for the applicant that is less than three months old, unless A4.20(d) applies; and
  - vii. a completed Chest X-ray Certificate for the applicant that is less than three months old (except for pregnant women and children under the age of 11), unless A4.20(d) applies;
  - viii. a police or similar certificate, less than 6 months old, indicating the applicant's record of convictions or lack of convictions for their country of citizenship and for each country in which they have lived for 12 months or more during the past 10 years (except for applicants under 17 and except where the authorities of any such country will not generally provide certificates), unless A5.10(d)(iii) applies; and
  - ix. any other information, evidence and submissions that the principal applicant considers show fully that they are eligible to be granted a residence class visa in terms of the applicable residence instructions.

**Note:** Medical and Chest X-ray Certificates may be submitted directly to Immigration New Zealand by the physician who completed the examination.

### R2.40.1 Mandatory requirements for lodging an application for a resident visa at an immigration control area

*See also Immigration Act 2009 ss 4, 28*

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, Regs 7, 8*

- a. An application for a resident visa can be made at an immigration control area by:
  - i. an Australian citizen;
  - ii. a holder of Australian permanent residence visas (including a resident return visa)
  - iii. a person who previously held a resident visa.
- b. An application for a resident visa made by a person described in (a) at an immigration control area must:
  - i. be made on the approved form; and
  - ii. relate to only one person; and
  - iii. be completed in English; and
  - iv. be signed by the applicant, unless the applicant is less than 18 years old, in which case it must be signed by a parent or guardian (if the applicant is accompanied by a parent or guardian), or it is not required to be signed (if the applicant is not accompanied by a parent or guardian); and
  - v. be given to an immigration officer together with the applicant's passport or certificate of identity.
- c. A person who meets (a)(i) or (ii) above and is eligible to use the automated electronic system, may meet the requirements at (b)(v) above by giving their passport to the automated electronic system.

#### **R2.40.5 Definition of 'current'**

'Current' means, in relation to any document provided in support of an application or Expression of Interest, to meet:

- a. mandatory requirements for lodgement of an application; or
- b. other evidential requirements of residence instructions,

that, at any relevant stage during the life of an application or an Expression of Interest (e.g. at the time an application or Expression of Interest is lodged, during assessment of the application or Expression of Interest and at the date of final decision on an application), that document is not expired.

#### **R2.40.10 Authority to waive mandatory requirements**

Immigration officers may only waive those mandatory requirements for which they have delegated authority to make a special direction.

#### **R2.40.15 Requests for applications to be lodged otherwise than on an approved form**

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, Regs 21, 22*

- a. The Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 allow for applications to be made otherwise than on the approved form. The purpose of these provisions is to allow for applications for visas to be processed rapidly, where the decision to grant or refuse a visa is straightforward and in an immigration officer's view any verification requirements are minor in nature.
- b. Because of the complex nature of residence class visa applications and the high level of verification required, requests to lodge residence class visa applications otherwise than on the approved form will normally be refused.

#### **R2.40.20 Evidence of identity**

- a. Mandatory requirements (see R2.40 above) relating to proof of identity require applications to include full birth certificates for every applicant, which usually state:
  - i. the applicant's name; and
  - ii. their date of birth; and
  - iii. their place of birth; and
  - iv. the names and occupations of their parents.
- b. If a full birth certificate is unobtainable, the applicant may submit an original or certified copy of an identity card.
- c. A full birth certificate is considered to be obtainable even if there is a possible delay or expense in obtaining it.

## R5.95 Character requirement for partners supporting Partnership Category applications

- a. Any supporting partner who has been convicted **either within New Zealand or any other country** of:
  - i. any offence involving domestic violence; or
  - ii. any offence of a sexual naturewill not meet the character requirement for partners supporting Partnership Category applications, unless granted a character waiver (see R5.95.5 below).
- b. If the supporting partner does not meet the character requirement for partners supporting partnership application, the application may be declined.

**Note:** For the purpose of these instructions, 'domestic violence' has the meaning set out in s.3 of the Domestic Violence Act 1995.

### R5.95.1 Evidence that partners supporting Partnership Category applications meet the character requirement

- a. Character checks must be carried out for partners (aged 17 and over) supporting Partnership Category applications.
- b. The supporting partner character check consists of:
  - i. a New Zealand police certificate obtained by Immigration New Zealand; and
  - ii. a police or similar certificate, less than 6 months old, from any country in which the supporting partner has lived 12 months or more (whether on one visit or intermittently) in the last **ten** years.
- c. Despite (b), an immigration officer may, where they have reason to suspect the supporting partner may not meet character requirements, request a police certificate from the supporting partner for any country in which they have lived for 12 months or more since they turned 17.**
- d. Where an application is submitted without the required police certificate(s), an immigration officer may nevertheless accept the application, and obtain any necessary clearances after acceptance, if a supporting partner requires a police certificate from a country:
  - i. that does not issue police certificates to individuals; or
  - ii. for which no instructions in respect of how to obtain a police certificate is available.
- e. If a police certificate is not available from a particular country, the supporting partner must provide a separate statutory declaration in both English and the supporting partner's first language, which must:
  - i. detail the supporting partner's attempts to obtain a police certificate; and
  - ii. state whether the supporting partner has been convicted, or found guilty of, or charged with any offences against the law of that country; and
  - iii. be corroborated by other information confirming the supporting partner's character.

#### Notes:

~ For full information on police certificates see [A5.10](#).

~ Instructions in respect of how to obtain police certificates from specific countries can be obtained from the INZ website at [www.immigration.govt.nz/policecertificate](http://www.immigration.govt.nz/policecertificate).

### R5.95.5 Action

- a. Immigration officers must not automatically decline partnership applications on the basis that the supporting partner does not meet the character requirement for partners supporting partnership applications.
- b. Officers must consider the surrounding circumstances of the application to decide whether or not they are compelling enough to justify waiving the character requirement. The circumstances include but are not limited to the following factors as appropriate:
  - i. if applicable, the seriousness of the offence (generally indicated by the term of imprisonment or size of the fine); and/or
  - ii. whether there is more than one offence; and/or
  - iii. how long ago the relevant event occurred.
- c. Officers must make a decision only after they have considered all relevant factors, including (if applicable):
  - i. any advice from the National Office of INZ; and
  - ii. compliance with fairness and natural justice requirements (see [A1](#)).
- d. Officers must record:

- i. their consideration of the surrounding circumstances, (see paragraph (b) above), noting all factors taken into account; and
  - ii. the reasons for their decision to waive or decline to waive the character requirement.
- e. Any decision to waive the character requirement for partners must be made by an officer with Schedule 1-3 delegations.

**R5.95.10 Impact of Criminal Records (Clean Slate) Act on assessment of whether the character requirement for partners supporting Partnership Category applications is met**

- a. When assessing whether the supporting partner meets the character requirements of R5.95(a), an immigration officer must be aware that a supporting partner's New Zealand convictions may be covered by the Criminal Records (Clean Slate) Act 2004 (Clean Slate Scheme) and that, if so, the supporting partner is not required to declare those convictions.
- b. If Immigration New Zealand holds any information that the supporting partner has convictions, and those convictions are covered by the Clean Slate Scheme, this information cannot be used when assessing whether the supporting partner meets the character requirements of R5.95(a).

**Note:** The information referred to in (b), above, includes any prior police certificates, any information INZ holds in its records (including its Application Management System), and any other information which may have been gathered from a public source.

If a person's convictions are covered by the Clean Slate Scheme, immigration officers cannot, under any circumstances, request or require that an individual disregard the effect of the Clean Slate Scheme when answering questions about his or her criminal record, or disregard the effect of the Clean Slate Scheme and disclose, or give consent to the disclosure of, his or her criminal record. Doing so is an offence under the Criminal Records (Clean Slate) Act 2004. However, if the supporting partner voluntarily declares criminal convictions that are subject to the Clean Slate Scheme, this information can be used to assess whether the supporting partner meets the character requirements of R5.95(a).

**R5.115 Partners and dependent children who must be included in a residence class visa application**

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, Reg 5 & 20*

A partner or dependent child of the principal applicant included in a residence class visa application cannot be removed from that application while the application is being processed, unless a change in circumstances results in the partner ceasing to be the applicant's partner or the child ceasing to be a dependent child.

### **BB3.5 Requirement for capital investment**

- a. An applicant must be able to make a minimum capital investment (see BB3.5.10) of NZ\$100,000 in to their proposed business, unless waived as per BB3.5.1 below.
- b. The principal applicant must:
  - i. nominate funds and/or assets equivalent in value to the total capital investment identified in the business plan; and
  - ii. demonstrate ownership of these funds and/or assets (see BB3.5.5); and
  - iii. demonstrate that the nominated funds and/or assets have been earned or acquired legally (see [BB6.1.5](#)).

#### **BB3.5.1 Discretion to waive capital investment requirement**

- a. Only members of the management team of the Business Migration Branch are able to waive the minimum capital investment requirement.
- b. The requirement for applicants to demonstrate a minimum capital investment of NZ\$100,000 can only be waived for businesses in science, ICT, or other high value export-oriented sector, which demonstrates a high level of innovation or credible short-term high growth prospects.

#### **BB3.5.5 Ownership of nominated funds and/or assets**

- a. The nominated funds and/or assets may be owned either:
  - i. solely by the principal applicant; or
  - ii. jointly by the principal applicant and partner, provided a business immigration specialist is satisfied that 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](#) and [R2.1.15.1\(b\)](#) and [R2.1.15.5\(a\)\(i\)](#)), and that the partner supports the use of these funds for the proposed business. If so, the principal applicant may claim the full value of such jointly owned funds or assets for assessment purposes.
- b. If nominated funds and/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 funds and/or assets for which they provide evidence of ownership.
- c. The principal applicant may only nominate funds and/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. Where nominated funds and/or assets have been gifted to the principal applicant, a business immigration specialist must be satisfied that the funds and/or assets being gifted:
  - i. were earned lawfully by the person/s gifting the funds and/or assets; and
  - ii. are based outside of New Zealand.
- d. The nominated funds and/or assets must be unencumbered (see [BB6.1.10](#)).
- e. The nominated funds and/or assets must not be borrowed, but may be gifted as per BB3.5.5(c).

#### **BB3.5.10 Recognition of capital investment**

Capital investment includes all nominated funds used in the establishment and operation of the approved business, except those used for:

- a. passive or speculative investment(s), such as reserve funds or term deposits; or
- b. the purchase of items for the personal use of the applicant(s), such as personal residences, cars or boats; or
- c. remuneration paid to the applicant(s) or their immediate family; or
- d. investment in residential property, except where the development of residential property meets the requirements of [BB6.1.50](#) and formed part of an applicant's business plan.

#### **BB3.5.15 Funds already held in New Zealand**

Funds held in New Zealand must originally have been transferred:

- a. to New Zealand through the banking system; and
- b. from the country or countries in which they were earned or acquired legally, or have been earned or acquired legally in New Zealand.

## BE5.1 English language requirements

- a. Principal applicants who lodge applications under the Employees of Relocating Businesses category meet the minimum standards of English for that category if:
- they provide acceptable English language test results, as set out at BE5.1.1 (no more than 2 years old at the time the application is lodged); or
  - they provide evidence that they have an English-speaking background (see [BF2.1](#)) which is accepted by a business immigration specialist as meeting the minimum standard of English; or
  - they provide other evidence which satisfies a business immigration specialist that, taking account of that evidence and all the circumstances of the application, the person meets the minimum standard of English (see [BF2.5](#)).
- b. In any case under (a) (ii) or (iii), a business immigration specialist may require an applicant to provide an English language test result in terms of paragraph (a)(i). In such cases, the English language test result will be used to determine whether the applicant meets the minimum standard of English.

### Note:

~ Full consideration must be given to all evidence of English language ability provided before a decision to request an English language test result under [BE5.1\(b\)](#) is made. If an English language test result is requested, the reason(s) behind the decision must be clearly documented and conveyed to the applicant.

~ The tests recognised by Immigration New Zealand as set out at BE5.1.1 provide an assessment of ability in English, including performance in listening, reading, writing and speaking.

### BE5.1.1 Acceptable English language test results

The following English language test results are acceptable:

Test	Minimum score required
International English Language Testing System (IELTS) - General or Academic Module	Overall score of 4.0 or more
Test of English as a Foreign Language Internet-based Test (TOEFL iBT)	Overall score of 31 or more
Pearson Test of English Academic (PTE Academic)	Overall score of 29 or more
Cambridge English: First (FCE) or Cambridge English: First (FCE) for Schools	Overall score of 142 or more
Occupational English Test (OET)	Grade D or higher in all four skills (Listening, Reading, Writing and Speaking)*

\* A score of Grade D or higher in all four skills is required for the OET as there is no overall grade for this test.

#### **BJ7.40 Temporary visa to arrange transfer and/or investment of funds**

- a. After approval in principle, and upon application, a work visa may be granted to allow the principal applicant to arrange the transfer to, and investment of funds in, New Zealand.
- b. The work visa will be granted with travel conditions allowing for multiple journeys to New Zealand for 12 months after approval in principle has been given. A further visa endorsed with travel conditions allowing for multiple journeys may be granted upon application for up to a further 12 months for Investor 1 applicants, or a further 6 months for Investor 2 applicants (see [BJ7.20](#)).
- c. On application, visitor's visas may be granted for the same period to the principal applicant's partner and dependants (see [WS2.1.1\(d\)](#)).
- d. Student visas may be granted for the same period on application to those of the principal applicant's dependants who wish to study, in accordance with current student instructions (see [U8](#)).

## BM2 Definition of a 'fit and proper' person

- a. Applicants are 'fit and proper' people if:
  - i. all businesses they have influence over have complied with all relevant immigration, employment and taxation laws; and
  - ii. they have never been **convicted of** any offence arising in the course of, or resulting from, business dealings; and
  - iii. they have never been convicted of an offence involving dishonesty in New Zealand or a foreign country; and
  - iv. they have never been involved in business fraud or financial impropriety.
- b. It is not relevant to the assessment of a 'fit and proper' person where the business operates or is registered, or whether the applicant has subsequently ceased to hold a position of influence.
- c. Relevant law includes, but is not limited to the:
  - i. Accident Compensation Act 2001; and
  - ii. Employment Relations Act 2000; and
  - iii. Health and Safety **at Work Act 2015**; and
  - iv. Holidays Act 2009; and
  - v. Immigration Act 2009; and
  - vi. Minimum Wage Act 1983.
- d. Applicants are considered to have influence over a business if they exercise significant influence over its management and administration. This includes, but is not limited to, when acting as a director or senior manager.

## **BM2.1 Applications usually deferred**

- a. Applications under business instructions will usually be deferred for up to six months if, at the time the application is assessed the applicant:
  - i. has been charged with any offence which, on conviction, would result in the applicant failing to meet BM2(a)(ii) apply to that person; or
  - ii. is under investigation for such an offence.
- b. Where BM2.1(a) applies at the time an application under business instructions is assessed, an immigration officer must:
  - i. defer the decision on the application for up to six months; and
  - ii. inform the applicant in writing of the decision to grant a deferral and the period of the deferral; and
  - iii. await the outcome of the charge or investigation.
- c. If during the deferral period the investigation is completed with no further action taken or any case that resulted from charges or investigation is resolved, an immigration officer must continue processing the application and apply the fit and proper person instructions as per BM2; and
- d. If the charge or investigation is still outstanding, or subsequent charges have been laid, when the deferral period is coming to an end, the application should be referred to an Area or Operations Manager for their decision on whether to impose a second or subsequent deferral as per BM2.1.1.

### **BM2.1.1 Second and subsequent deferral periods**

- a. In cases where the deferral period is coming to an end and the applicant is still awaiting the outcome of the charge or investigation, a second or subsequent deferral period may be imposed.
- b. A decision on a second or subsequent deferral will only be made after appropriate consultation with Visa Services Operations Support and the Legal Services of the Ministry of Business, Innovation and Employment about:
  - i. whether a second or subsequent deferral is justified in the circumstances; and
  - ii. whether the deferral period is reasonable, given the likely timeframe of any outcome being reached and the efforts the applicant is making to reach an outcome.
- c. A decision to grant a second deferral must be made by an Area or Operations Manager or above.
- d. If the applicant is still awaiting the outcome of the charge or investigation by the end of the second deferral period, the Area or Operations Manager may impose a subsequent deferral under the provisions at BM2.1.1.
- e. The length of the subsequent deferral period will be decided according to how long it is expected for a decision on the charge or investigation will take.
- f. The applicant must be informed in writing of any decision to impose a second or subsequent deferral and the period of the deferral.

## F2.5 How do partners of New Zealand citizens and residents qualify for a residence class visa?

- a. To be granted a residence class visa under Partnership Category applicants must provide sufficient evidence to satisfy an immigration officer that they have been living together for 12 months or more in a partnership that is genuine and stable with a New Zealand citizen or resident.
- b. For the purpose of these instructions 'partnership' means:
  - i. a legal marriage; or
  - ii. a civil union; or
  - iii. a de facto relationship

and 'partner' means one of the parties to such a partnership indicated in (i), (ii) and (iii) above.

- c. In each case the onus of proving that the partnership on which the application is based is genuine and stable lies with the principal applicant and their New Zealand partner.
- d. An application under Partnership Category will be declined if:
  - i. the application is not supported by an eligible New Zealand citizen or resident partner; or
  - ii. an immigration officer is not satisfied that the partnership on which the application is based is genuine and stable; or
  - iii. the applicant and New Zealand citizen or resident partner have not lived together for 12 months or more at the time the application is lodged; or
  - iv. the application is based on marriage or a civil union to a New Zealand citizen or resident and either that New Zealand citizen or resident, or the principal applicant is already married to or in a civil union with another person; or
  - v. both the principal applicant and the New Zealand citizen or resident partner cannot satisfy an immigration officer they comply with the minimum requirements for recognition of partnerships (see [F2.15](#)); or
  - vi. the applicant(s) does not meet health and character requirements (see [A4](#) and [A5](#)).
- e. Applications for residence under Partnership Category will also be declined if the principal applicant was a partner to the eligible New Zealand partner but not declared on the eligible New Zealand partner's application for a residence class visa (if applicable), unless an immigration officer is satisfied the non-declaration occurred with:
  - i. no intention to mislead; and
  - ii. would not have resulted in a different outcome in the eligible New Zealand partner's application.

If both these clauses are met, an immigration officer should continue to assess the application and may approve it if all other requirements are met.

**Note:** Notwithstanding (e) above, officers should not decline an application on the basis of this provision without first providing the principal applicant an opportunity to explain the non-declaration in accordance with [R5.15](#) Explaining discrepancies in family details.

### F2.5.1 Eligibility for a permanent resident visa for partners of New Zealand citizens living overseas

- a. A principal applicant may be granted a permanent resident visa ([RA1.5](#)) if:
  - i. they meet all the other criteria for a residence class visa under the Partnership Category; and
  - ii. they have a New Zealand citizen partner who has been residing outside New Zealand for a period of at least five years at the time the application is made; and
  - iii. the couple have been living together in a genuine and stable relationship for at least five years at the time the application is made.
- b. To meet the requirements of a(ii) above, the New Zealand citizen partner must either be
  - i. outside New Zealand at the time the application is made; or
  - ii. have been in New Zealand for less than three months after residing outside New Zealand for at least five years at the time the application is made.
- c. For the purposes of these instructions, residing outside New Zealand means spending less than 3 months in New Zealand in each of the five 12 month periods immediately preceding either:
  - i. the date the application is made (if the application was made outside New Zealand); or
  - ii. the date the New Zealand citizen partner arrived in New Zealand (if the application was made in New Zealand).
- d. Any secondary applicants included in an application where the principal applicant is eligible for a permanent resident visa under these instructions may also be granted a permanent resident visa ([RA1.5](#)).

- e. Any applicants who do not meet the criteria set out in this section but who meet all other requirements of the Partnership Category should be granted a resident visa ([RA1.1](#)).

## F2.10 Definitions

### F2.10.1 Definition of 'genuine and stable' partnership

A partnership is genuine and stable if an immigration officer is satisfied that it:

- a. is genuine, because it has been entered into with the intention of being maintained on a long-term and exclusive basis; and
- b. is stable, because it is likely to endure.

### F2.10.2 Definition of the 'New Zealand partner'

For the purposes of the Partnership Category, the New Zealand partner is the New Zealand citizen or resident who is supporting an application for a residence class visa made by their non-New Zealand citizen or resident partner.

### F2.10.5 Definition of 'New Zealand resident' for the purposes of Partnership Category

- a. New Zealand resident means a person who:
  - i. holds, or is deemed to hold, a current New Zealand residence class visa; or
  - ii. holds a valid Australian passport.
- b. Despite (a) above, the following people are defined as New Zealand residents for the purposes of Partnership Category only where an immigration officer is satisfied that New Zealand is their primary place of established residence at the time the application under Partnership is made and at the time of assessment of the application:
  - i. holders of valid Australian passports who do not hold a current New Zealand residence class visa;
  - ii. holders of current New Zealand residence class visas that have been granted on the basis that the person is the holder of a current Australian permanent residence visa, or a current Australian resident return visa.
- c. Where (b) applies, evidence must be provided that the eligible New Zealand partner's primary place of established residence is New Zealand. The evidential requirements are set out at [F2.20.5](#).

### F2.10.10 Definition of 'eligible to support a residence class visa application under the Partnership Category'

- a. For a New Zealand partner (F2.10.2) to be eligible to support a residence class visa application under the Partnership Category they:
  - i. must not have acted as a partner in more than one previous successful residence class visa application; and
  - ii. must not have acted as a partner in a successful application for a residence class visa in the five years immediately preceding the date the current application is made; and
  - iii. the New Zealand partner cannot have been the perpetrator of an incident of domestic violence which has resulted in the grant of a resident visa to a person under the category for victims of domestic violence (see [S4.5](#)); and
  - iv. must meet the character requirement for partners supporting applications made under the Partnership Category as set out in [R5.95](#).
- b. A New Zealand partner is considered to have acted as a partner if they previously:
  - i. supported a successful Partnership Category application for a residence class visa; or
  - ii. were the principal applicant in a successful Partnership Category application for a residence class visa; or
  - iii. were the principal applicant in a successful application for a residence class visa that included a secondary applicant partner, excluding residence class visa applications made under RV After the grant of a resident visa; or
  - iv. were a secondary applicant partner in a successful application for a residence class visa, excluding residence class visa applications made under [RV After the grant of a resident visa](#).

**Note:** Applications under Partnership Category include applications made under the Family Category Spouse and De facto partner policy in force before Partnership Category took effect.

## **F2.25 Verification**

### **F2.25.1 Interviews**

- a. Immigration officers will usually conduct an interview with both the principal applicant and their partner to determine whether the couple is living together in a partnership that is genuine and stable.
- b. Interviews may be waived if an immigration officer is satisfied without an interview that the couple is living together in a partnership that is genuine and stable.
- c. Immigration officers may also make home visits and conduct interviews with any other person relevant to the application.
- d. Home visits may only be made between the hours of 7.00 am and 9.00 pm so long as the time of the visit is reasonable in the circumstances.

### **F2.25.5 Family details**

Immigration officers may refer to former applications lodged by applicants, family members of applicants, or partners in order to verify declarations made by applicants about their family details (such as the number of family members, the whereabouts of family members, or an applicant's or partner's marital status).

## **F3.25 Approval in principle and transfer of funds**

### **F3.25.1 Aim and intent**

The instructions regarding the nominated investment funds and/or assets and the method of transfer of those funds to New Zealand is designed to ensure:

- a. the legitimacy and lawful ownership of the nominated funds and/or assets; and
- b. the direct transfer of the investment funds through a structured and prescribed process to guarantee on-going legitimacy and lawful ownership of the funds invested in New Zealand.

### **F3.25.5 Approval in principle**

Principal applicants who are assessed as meeting the requirements under the Parent Retirement Category 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 and invested the nominated funds in accordance with the relevant requirements set out in instructions; and
  - ii. provide a New Zealand address at which they can be contacted by mail, after they arrive in New Zealand; and
- c. resident visas will be granted subject to conditions under section 49(1) of the Immigration Act 2009.

### **F3.25.10 Transfer of the nominated investment funds**

- a. When their application is approved in principle, the principal applicant will be required to transfer the nominated investment funds to New Zealand. These funds must:
  - i. 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; or
  - ii. be funds, as agreed to by a business immigration specialist, secured against the nominated assets in the resident visa application and as approved in accordance with (b) below; and
  - iii. be transferred through the banking system directly from the principal applicant's bank account(s) to New Zealand; or
  - iv. be transferred by a foreign exchange company to New Zealand through the banking system. Business immigration specialists may not accept the transferred funds if the applicant cannot provide satisfactory evidence of the following:
    - o the nominated investment funds have been transferred to the foreign exchange company directly from the principal applicant's bank account(s); and
    - o the nominated investment funds have not been transferred through the foreign exchange company contrary to the criminal law of New Zealand; and
    - o nominated investment funds transferred are traceable; and
    - o cash transactions were not made; and
    - o 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.
- b. A business immigration specialist may consider, on a case by case basis, borrowed funds as acceptable investment funds where the principal applicant is able to demonstrate that:
  - i. they own net assets equal or greater in value to the required investment amount; and
  - ii. the borrowed investment funds will be from a bank or commercial lending institution acceptable to a business immigration specialist and will be secured against the assets identified under (i); and
  - iii. it is not economically viable or practical to liquidate the nominated assets eg sell a business.
- c. The investment funds that are transferred to New Zealand and subsequently into an acceptable investment must be from the same source of funds as nominated in the resident visa application.

**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 that country.

### **F3.25.15 Evidence of the transfer of the nominated funds to New Zealand**

- a. Acceptable evidence of the transfer of the nominated funds must be provided by way of the telegraphic transfer documentation together with a current bank statement showing the transfer(s).
- b. A business immigration specialist may request any other information to satisfy them that the above requirements have been met.

### **F3.25.20 Time frame for investing funds in New Zealand**

- a. Principal applicants must meet the requirements for transferring and investing the nominated funds within 12 months of the date of the letter advising of approval in principle.
- b. Applications for residence must be declined if principal applicants do not present acceptable evidence of having transferred and invested the nominated funds within 12 months from the date of approval in principle.
- c. Principal applicants must provide acceptable evidence of having transferred and invested the nominated funds to the Business Migration Branch no later than three months after the expiry of the approved timeframe to transfer and invest the funds (i.e. three months after the 12-month timeframe from the date of approval in principle).

### **F3.25.25 When the investment period begins**

- a. If the investment already meets the investment requirements, the required investment period begins on the date of the letter advising approval in principle.
- b. If the investment is made after approval in principle, the required investment period will begin on the date the investment requirements are met.
- c. The date the investment period begins is specified in the letter to the successful principal applicant that advises of the conditions on their resident visa (see [F3.30.10](#)).

### **F3.25.30 Evidence of the principal applicant's investment**

- a. Principal applicants must submit the following information and documentation as evidence of having invested funds:
  - i. the full name of the investor; and
  - ii. the amount invested in New Zealand dollars; and
  - iii. the date the investment was made; and
  - iv. the type of investment (in the case of shares or bonds in companies, the names of the companies invested in and the number of shares or bonds purchased must be listed); and
  - v. documentary evidence of the investment; and
  - vi. a letter from a reliable independent professional (for example, a solicitor or chartered accountant), confirming that the funds have been invested.
- b. A business immigration specialist, at their discretion, may require any other form of evidence.

### **F3.25.35 Temporary visa to arrange transfer and/or investment of funds**

- a. After approval in principle, and upon application, a work visa may be granted to allow the principal applicant to arrange the transfer to, and investment of funds in, New Zealand.
- b. The work visa will be valid for multiple entries to New Zealand for 12 months after Approval in Principle has been given.
- c. A work visa may be granted for the same period on application to the principal applicant's partner (see [WS2.1.1\(d\)](#)).

## F4.1 Summary of requirements

### F4.1.1 Objective

The objective of the Parent Category is to support family connections, in order to:

- a. progress New Zealand Government economic objectives for immigration; and
- b. attract and retain skilled and productive migrants, while also limiting the costs of New Zealand Government benefits.

### F4.1.5 Ability to apply

A person may only apply for a resident visa under the Parent Category (see [F4.10](#)) if:

- a. they have been issued an invitation to apply under the Parent Category; and
- b. they apply for a resident visa under the Parent Category within four months of the date of the letter inviting them to apply; and
- c. that invitation has not been revoked.

### F4.1.10 Health, character and English language requirements

Applicants under the Parent Category must meet:

- a. the health and character requirements specified at [A4](#) and [A5](#); and
- b. a minimum standard of English, or pre-purchase English for Speakers of Other Languages tuition to the specified level (see [F4.15](#)).

### F4.1.15 Family relationships

- a. In each case, the parent(s) must:
  - i. be sponsored by the adult child referred to in F4.1.15(c) below, who is an acceptable sponsor as set out at [R4.5](#).
  - ii. demonstrate they meet the family relationship requirements at [F4.20](#).
- b. An applicant under Parent Category must have no dependent children (see [F4.20.5](#)).
- c. The applicant's sponsor must have been a New Zealand citizen and/or New Zealand resident for at least three years immediately preceding the date the application they wish to sponsor is made (see [F4.25](#)); and
- d. The applicant's sponsor must meet the undertakings set out at R4.10 for the first **ten** years of the applicant's stay in New Zealand as a resident.

**Note:** Parents sponsored by children who INZ determines to be dependent will not meet the requirements to be granted residence.

### F4.1.20 Two tiered system

Applicants under the Parent Category must either:

- a. meet one of the requirements for tier one at [F4.30](#) that they:
  - i. have a sponsor (and, if applicable, that sponsor's partner) who meets a minimum annual income level for tier one (see [F4.30.1](#)); or
  - ii. have a sufficient guaranteed lifetime minimum income (see [F4.30.5](#)); or
  - iii. bring sufficient settlement funds to New Zealand (see [F4.30.10](#)); or
- b. meet the requirements for tier two at [F4.35](#) that:
  - i. they have a sponsor (and, if applicable, that sponsor's partner) who meets a minimum income for tier two (see [F4.35.1](#)); and
  - ii. the applicants' other adult children (if any) live lawfully and permanently outside the country in which the applicant lives lawfully and permanently (see [F4.35.5](#)).

### F4.1.25 Evidential requirements

All applicants under the Parent Category must meet the evidential requirements set out at [F4.40](#).

## SM5.20 Pre-purchase of ESOL tuition

- a. Instead of meeting the minimum standard of English, non-principal applicants may pre-purchase ESOL tuition. ESOL tuition must be pre-purchased from TEC (Tertiary Education Commission) by paying the required charge to INZ (who collect this charge on behalf of TEC).
- b. Applicants must pay any ESOL charge due, sign the ESOL Agreement and return it to INZ within the time specified by INZ before a resident visa is granted.

### SM5.20.1 TEC to arrange ESOL tuition

- a. The applicant is entitled to tuition to the value of the ESOL entitlement component of the ESOL tuition charge. This does not include the INZ and TEC administration costs.
- b. TEC advises the applicant of the list of suitable ESOL tuition providers in New Zealand, from which the applicant may nominate one of their own choice.
- c. TEC will manage the contract between the ESOL tuition provider and the applicant.
- d. The applicant must advise TEC of their New Zealand address.

### SM5.20.5 Applicant's agreement with TEC

- a. Each applicant who pre-purchases ESOL tuition must sign an Agreement with TEC by which they agree, among other things, that they understand the rules for taking up ESOL tuition in New Zealand and the refund provisions.
- b. The content of the Agreement is determined by INZ and TEC.
- c. Included with the Agreement is a Schedule that sets out the personal details of the applicant and the amount of tuition to be purchased.

### SM5.20.10 Completion of Agreement

- a. When an application for a resident visa is approved in principle, applicants will be given 2 copies of the Agreement to complete for each person in the application undertaking the English language training.
- b. After completion of the Agreement, one copy is retained by the applicant, and the other copy is returned to INZ processing office with the tuition fee(s).
- c. If the Agreement is not signed and returned to INZ within the time specified by INZ, the resident visa application must be declined.
- d. The INZ copy of the Agreement should be sent to the TEC.

### SM5.20.15 The amount of ESOL tuition to be pre-purchased by non-principal applicants

- a. The amount of ESOL tuition to be pre-purchased is determined by the applicant's English language test results according to the following table.

Test	Overall score	Charge to be paid	ESOL entitlement
International English Language Testing System (IELTS) - General or Academic Module	4.5 or more but less than 5.0	NZ\$1,735	NZ\$1,531.82
Test of English as a Foreign Language Internet-based Test (TOEFL iBT)	32 to 34		
Pearson Test of English Academic (PTE Academic)	30 to 35		
Cambridge English: First (FCE) or Cambridge English: First (FCE) for Schools	147 to 153		
Occupational English Test (OET)	Not applicable (see SM5.10.5)		
IELTS - General or Academic Module	4.0 or more, but less than 4.5	NZ\$3,420	NZ\$3,063.64

TOEFL iBT	31		
PTE Academic	29		
FCE or FCE for Schools	142 to 146		
OET	Failed to achieve Grade C or higher in all four skills (Listening, Reading, Writing and Speaking), but achieved at least Grade D in all four skills*		
IELTS - General Academic Module	3.5 or more, but less than 4.0	NZ\$5,110	NZ\$4,600.00
TOEFL iBT:	Not applicable		
PTE Academic	Not applicable		
FCE or FCE for Schools	Not applicable		
OET	Not applicable		
IELTS - General Academic Module	Less than 3.5	NZ\$6,795	NZ\$6,131.82
TOEFL iBT	Not applicable		
PTE Academic	Not applicable		
FCE or FCE for Schools	Not applicable		
OET	Not applicable		

\* A score in all four skills is required for the OET as there is no overall grade for this test.

- b. The charge includes the applicant's ESOL tuition entitlement, as well as the INZ and TEC administration costs.
- c. If an applicant has not submitted English language test results when requested, the maximum charge of NZ\$6,795 applies.

#### **SM5.20.20 Failure to pre-purchase ESOL tuition**

Any ESOL tuition charge due must be paid before the grant of a resident visa. If it is not paid to the INZ within the specified time, the resident visa application must be declined.

#### **SM5.20.25 Limited period to use ESOL tuition**

- a. If ESOL tuition is purchased, the applicant must complete the tuition within 5 years from the date of payment.
- b. ESOL tuition will not be available without further payment, nor will refunds be given, to applicants who do not take up ESOL tuition within the time limits specified in paragraph (a).

#### **SM5.20.30 Refunds of ESOL tuition money**

- a. If ESOL tuition money is paid but the principal applicant and partner and dependent children do not take up residence, a refund may be granted upon request to INZ. The request must be made in writing.
- b. Requests for refunds must be declined if they are made more than six months after the expiry of the travel conditions allowing travel to New Zealand.
- c. Immigration officers considering requests for refunds must be satisfied that the principal applicant and partner and dependent children included in the application:
  - i. have not entered New Zealand as residents; and
  - ii. do not hold resident visas with current travel conditions.

- d. The person who paid the fee will be refunded only the ESOL entitlement. INZ and TEC administration costs will not be refunded.

## RV1.10 Lodging an application

### RV1.10.1 Where to lodge an application

Applications under this chapter may be lodged at an INZ office, or an authorised New Zealand Visa Application Centre and certain MFAT posts. Receiving Offices can be found on the INZ website.

### RV1.10.5 How an application must be lodged

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 5*

- a. Applications must be lodged in the prescribed manner.
- b. The prescribed manner is the manner that meets the mandatory requirements set out in the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010.
- c. Applications that are not lodged in the prescribed manner will not be considered to be made.
- d. While under no obligation to do so, INZ may, at its discretion, hold applications that are not lodged in the prescribed manner for a period of time until any outstanding requirements are met (see [R2.50](#)).

### RV1.10.10 Mandatory requirements for lodging an application for a variation of travel conditions, permanent resident visa or second or subsequent resident visa

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 6*

An application for a variation of travel conditions, a permanent residence visa or a second or subsequent resident visa made outside of an immigration control area must be:

- a. made an approved form; and
- b. completed in English; and
- c. signed by the applicant (unless the applicant is less than 18 years old, in which case it must be signed by a parent or guardian of the applicant); and
- d. given to an immigration officer, together with:
  - i. evidence of the applicant's current or previous resident visa or visas; and
  - ii. the applicant's passport (or a certified copy) or certificate of identity (or a certified copy), or if that is unavailable, his or her original full birth certificate (or certified copy) or other identity document (or certified copy); and
  - iii. two passport sized photos of the applicant's head and shoulders; and
  - iv. the information and evidence required by the relevant immigration instructions to demonstrate that the applicant fits the category or categories of under which the application is being made; and
  - v. any other information, evidence, or submissions that the applicant considers shows that he or she is eligible to be granted a new residence class visa or variation of travel conditions in terms of the immigration instructions; and
  - vi. the appropriate fee (if any).
- e. Before determining the application, an immigration officer may require the applicant to produce any photographs, documents and information that the officer thinks necessary or require the applicant to be interviewed by an immigration officer, to help in determining whether the applicant meets the requirements to be granted a variation of travel conditions or a new residence class visa.

**Note:** The passports (or certified copies of passports) of **all** persons included in the application must be submitted with the application.

## RW5.40 The amount of ESOL tuition to be pre-purchased

- a. The amount of ESOL tuition to be pre-purchased is determined by the applicant's English language test results according to the following table.

Test	Overall score	Charge to be paid	ESOL entitlement
International English Language Testing System (IELTS) - General or Academic Module	4.5 or more but less than 5.0	NZ\$1,735	NZ\$1,531.82
Test of English as a Foreign Language Internet-based Test (TOEFL iBT)	32 to 34		
Pearson Test of English Academic (PTE Academic)	30 to 35		
Cambridge English: First (FCE) or Cambridge English: First (FCE) for Schools	147 to 153		
Occupational English Test (OET)	Not applicable (see RW5.1.1)		
IELTS - General or Academic Module	4.0 or more, but less than 4.5	NZ\$3,420	NZ\$3,063.64
TOEFL iBT	31		
PTE Academic	29		
FCE or FCE for Schools	142 to 146		
OET	Failed to achieve Grade C or higher in all four skills (Listening, Reading, Writing and Speaking), but achieved at least Grade D in all four skills*		
IELTS - General or Academic Module	3.5 or more, but less than 4.0	NZ\$5,110	NZ\$4,600.00
TOEFL iBT:	Not applicable		
PTE Academic	Not applicable		
FCE or FCE for Schools	Not applicable		
OET	Not applicable		
IELTS - General or Academic Module	Less than 3.5	NZ\$6,795	NZ\$6,131.82
TOEFL iBT	Not applicable		
PTE Academic	Not applicable		
FCE or FCE for Schools	Not applicable		

OET	Not applicable		
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\* A score in all four skills is required for the OET as there is no overall grade for this test.

- b. The charge includes the applicant's ESOL tuition entitlement, as well as INZ and TEC administration costs.
- c. If an applicant has not submitted an English language test result when requested, the maximum charge of NZ\$6,795 applies.

## **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 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 S1.10.30(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 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.

## S1.45 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.

#### **S1.45.15 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 any dependants.

b. The gross minimum income requirement for the purposes of this category is \$25,585.

c. The salary or wages specified in the acceptable offer of employment (see S1.45.10) must be equal to or more than the gross minimum income requirement.

d. However, if the principal applicant does not have a job offer or if their income does not meet (b) above, their partner's acceptable job offer may be taken into account when determining if the minimum income requirement is met. An immigration officer must be satisfied (at the time the application is assessed) that 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). The offers of employment must meet all the requirements in S1.45.10, except that only one has to meet the requirement that the offer be for full-time employment.

#### **S1.45.20 Minimum English language requirement**

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

i. read English; and

ii. understand and respond to questions in English; and

iii. maintain an English language conversation about themselves, their family or their background.

## 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.

#### **S1.50.15 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 any dependants.
- b. The gross minimum income requirement for the purposes of this category is \$25,585.
- c. The salary or wages specified in the acceptable offer of employment (see S1.50.10) must be equal to or more than the gross minimum income requirement.
- d. However, if the principal applicant does not have a job offer or if their income does not meet (b) above, their partner's acceptable job offer may be taken into account when determining if the minimum income requirement is met. An immigration officer must be satisfied (at the time the application is assessed) that 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). The offers of employment must meet all the requirements in S1.50.10, except that only one has to meet the requirement that the offer be for full-time employment.

#### **S1.50.20 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.

## S4.10 Refugee Family Support Category

### S4.10.1 Objective

The objective of the International/Humanitarian Stream is to enable New Zealand to meet its international and humanitarian obligations.

The objective of the Refugee Family Support Category (RFSC) is to facilitate the successful resettlement of refugees and protected people resident in New Zealand by providing them with an opportunity to sponsor family members who do not qualify for residence under any other category of residence instructions.

**Note:** The RFSC replaces the Refugee Family Quota.

### S4.10.5 Number of places available under RFSC

- a. The number of places available for sponsored persons under RFSC (including any family members included in their registration) is set at 300 per year.
- b. For the purposes of these instructions, a year consists of the 12-month period from 1 July to 30 June.

### S4.10.10 How do people qualify for residence under the RFSC?

- a. A principal applicant and their partner and dependent children qualify for residence under the RFSC if their sponsor's registration is selected from the RFSC queues under tier one (see S4.10.30) or tier two (see S4.10.40); and
  - i. they are not eligible for a residence class visa in New Zealand under any other category of Government residence instructions; and
  - ii. they meet health and character requirements (see [A4](#) and [A5](#)); and
  - iii. their application is made within 12 months of Immigration New Zealand's (INZ) advice to their sponsor that the sponsor's registration has been selected from the RFSC tier one or tier two queue.
- b. In each case, their sponsor must meet 'eligible sponsor' requirements set out at S4.10.15; and
  - i. the requirements for tier one sponsors (see S4.10.20(e)); or
  - ii. the requirements for tier two sponsors (see S4.10.20(g)).
- c. Despite [A4.20\(a\)](#), [R2.40\(e\)\(vi\)](#) and [R2.40\(e\)\(vii\)](#), an applicant is not required to provide a Medical Certificate or Chest X-ray Certificate for the purposes of lodging an application under the RFSC.
- d. In order to determine whether the applicant(s) meets health requirements at [A4](#), the applicant(s) must submit the following when requested by an immigration officer:
  - i. a completed *General Medical Certificate (INZ 1007)*; and
  - ii. a completed *Chest X-ray Certificate (INZ 1096)* (except for pregnant women and children under the age of 11).
- e. Unless [A4.20\(d\)](#) applies, the *General Medical Certificate (INZ 1007)* and *Chest X-Ray Certificate (INZ 1096)* must have been issued less than three months before the date they are received by an immigration officer.

### S4.10.15 Eligible sponsors under RFSC

*See also Immigration Act 2009, s 48*

- a. For the purpose of RFSC, an 'eligible sponsor' is a New Zealand citizen or resident who:
  - i. was granted a residence class visa in New Zealand on the basis of their status as a refugee or protected person or as an Afghan interpreter, or as a partner or dependent child of an Afghan interpreter who accompanied them to New Zealand; and
  - ii. has not sponsored any other principal applicant who has obtained a resident visa in New Zealand under RFSC (or Refugee Family Quota); and
  - iii. is in New Zealand; and
  - iv. is aged 18 years or over; and
  - v. be an acceptable sponsor as set out at [R4.5](#), except for the requirements at [R4.5\(d\)\(ii\)](#) and (iii).
- b. Sponsors aged 18 to 24 must be able to satisfy an immigration officer that they are able to meet the undertakings given in the sponsorship form.
- c. For the purposes of these instructions, people granted residence on the basis of being an Afghan interpreter are people who have worked with the New Zealand Defence Force, the New Zealand Police or the New Zealand Special Air Service (SAS) in Afghanistan and were granted a residence class visa by the Minister of Immigration as an exception to instructions under section 72(3) of the Immigration Act 2009.

### S4.10.20 Two tier registration system for sponsors

- a. Registrations from tier one sponsors (see (e) below) will be given first access to available places under RFSC by entry into the tier one queue.

- b. Registrations will be selected from the tier one queue in order of their entry to that queue until the annual number of places available under RFSC is met.
- c. If the places available annually under RFSC are not filled by people included in tier one registrations selected from the queue, registrations required to fill the remaining places will be selected from the tier two queue.
- d. If the places available annually under RFSC are not filled by people included in tier one registrations and the registrations in the tier two queue are insufficient to fill the remaining quota of places, INZ will call for tier two sponsors to submit registrations (see S4.10.20(g) and S4.10.35 below).
- e. A tier one sponsor is an 'eligible sponsor' who:
  - i. is a New Zealand citizen or the holder of a current residence class visa; and
  - ii. wants to sponsor their parent, grandparent, grandchild, uncle, aunt, nephew, niece, adult sibling or adult child, and that person's partner and/or dependent children for a resident visa under RFSC; and
  - iii. has no other 'family member' who is eligible for residence in New Zealand under any other category of residence instructions; and either
  - iv. has no 'immediate family' living lawfully and permanently in New Zealand; or
  - v. is the 'sole carer' (see S4.10.55.15) of a dependent relative or dependent relatives in New Zealand and the sponsor has no other 'immediate family' living lawfully and permanently in New Zealand apart from the dependent relative who is under care.
- f. For the purpose of S4.10.20(e)(v), the 'dependent relative' who requires on-going care must have no 'immediate family' in New Zealand other than the sponsor.
- g. A tier two sponsor is an 'eligible sponsor' who:
  - i. has 'immediate family' in New Zealand; and
  - ii. wants to sponsor their parent, adult sibling, adult child, or grandparent (if that grandparent is the sponsor's legal guardian, see S4.10.55.20), and that person's partner and dependent children for residence under RFSC; and
  - iii. has no other 'family member' who is eligible for residence in New Zealand under any other category of residence instructions; and
  - iv. is a New Zealand citizen or the holder of a current residence class visa; and
  - v. has been a New Zealand citizen and/or the holder of a residence class visa for at least three years immediately preceding the date the Registration Form for RFSC sponsor is lodged; and
  - vi. in each of the three 12-month portions within that three-year period, has spent a total of 184 days or more in New Zealand.
- h. For the purposes of S4.10.20(e), (f), and (g), to be an eligible sponsor under tier one or two of RFSC, a sponsor must meet the particular requirements that were in force at the time their registration was selected from the queue.

**Note:** For the purposes of these instructions 'immediate family' means a sponsor's partner, parent, or child (excluding any dependent child in terms of R2.1.30). For the purposes of these instructions, 'family member' means a sponsor's partner, parent, child, grandparent, grandchild, uncle, aunt, nephew, niece or adult sibling.

#### **S4.10.25 Registration process for tier one sponsors**

- a. Eligible sponsors who meet the requirements for tier one sponsors set out at S4.10.20(e) above may register with INZ to sponsor their parent, grandparent, grandchild, uncle, aunt, nephew, niece, adult sibling or adult child, and that person's partner and/or dependent children for residence under the RFSC tier one queue.
- b. Registrations must be made on the registration form for the appropriate RFSC tier.
- c. Registrations must be submitted by mail to the address specified on the applicable registration form.
- d. A fee is payable for registration.
- e. Subject to the provisions of S4.10.50, registrations from sponsors who meet the tier one sponsorship requirements set out at S4.10.20(e) above may be entered into the RFSC tier one queue if the form is fully completed, signed by the sponsor, and accompanied by any documents or evidence as required by the registration form.

#### **S4.10.30 Selection process for tier one sponsors**

- a. Registrations will be selected from the tier one queue in chronological order from the date that the registration was entered into the tier one queue until the appropriate number of potential applicants to meet the number of available places within the annual period has been met.
- b. If the number of potential applicants included in registrations in the tier one queue exceeds the number of available places within the annual period, INZ will delay the selection of further registrations until places become available in the next annual period.

- c. Tier one sponsors with registrations entered into the tier one queue must notify INZ of any change in their circumstances.
- d. Sponsors whose registrations have been selected from the tier one queue and appear to meet the relevant registration requirements will be notified by INZ that their registration has been successful. Sponsors must advise the potential applicants whom they are sponsoring to lodge a full application under RFSC to the appropriate receiving office of INZ. Such applications must be made within 12 months after the date of the INZ notification to the sponsor. Any applications received outside that time limit will not be accepted.

#### **S4.10.35 Registration process for tier two sponsors**

- a. Eligible sponsors who meet the requirements for tier two sponsors set out at S4.10.20(g) above may register with INZ within a set registration period to sponsor their parent, adult sibling or adult child, or grandparent (if that grandparent is the sponsor's legal guardian, see S4.10.55.20), and that person's partner and dependent children for residence under RFSC tier two queue.
- b. INZ will announce that tier two will open for registration prior to its opening, if and when places are available for tier two potential applicants (places will be available if the number of potential applicants included in registrations in the tier one queue is less than the number of available places within the annual period). Registrations will then open for a set period as determined by INZ.
- c. Registrations must be made on the appropriate registration form for the tier under which the registration is made.
- d. Registrations must be submitted during the registration period by mail to the address specified on the appropriate Registration Form for RFSC
- e. A fee is payable for registration.
- f. Subject to the provisions of S4.10.50, registrations that are received by INZ before the end of the registration period from sponsors who meet the tier two sponsorship requirements set out at S4.10.20(g) above may be entered into RFSC tier two queue, if the form is fully completed, signed by the sponsor, and accompanied by any documents or evidence as required by the registration form.

#### **S4.10.40 Selection process for tier two sponsors**

- a. Registrations will be selected from the tier two queue in chronological order from the date the registration was entered into the queue, until the appropriate number of potential applicants to meet the number of available places in the annual period has been met.
- b. If the number of potential applicants included in registrations in the tier one queue exceeds the number of available places within the annual period, INZ will delay the selection of further registrations from tier two until places become available.
- c. Sponsors with registrations entered into the tier two queue must notify INZ of any change in their circumstances.
- d. Sponsors whose registrations have been selected from the tier two queue and appear to meet the relevant requirements will be notified by INZ that their registration has been successful. Sponsors must advise the potential applicants whom they are sponsoring to lodge a full application under RFSC the appropriate receiving office of INZ. Such applications must be made within 12 months after the date of the INZ notification to the sponsor. Any applications received outside that time limit will not be accepted.

#### **S4.10.45 Inclusion in registration of immediate family members of the sponsored principal applicant**

- a. Where the sponsored person has a partner and/or dependent children, all of those people must be included in the registration made by the sponsor.
- b. Despite R2.1 concerning the inclusion of family members in an application, an application under RFSC can only include the partner and/or dependent children included in the preceding sponsor registration.
- 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.

#### S4.10.50 Number of registrations that may be submitted

- a. Sponsors must have only one registration in the tier one or two queues at any time. Each registration must be in respect of one potential principal applicant and that person's partner and/or dependent children. If a single sponsor lodges more than one registration, the second and subsequent registrations will not be accepted.
- b. A registration under RFSC will not be accepted if:
  - i. any of the potential applicants included in that registration have a current application for a residence class visa lodged with INZ under any other category of residence instructions; or
  - ii. any of the potential applicants included in that registration are eligible for a residence class visa in New Zealand under any other category of residence instructions (see S4.10.10(a)(i)).
- c. A registration under RFSC will not be accepted if, at the time the registration is lodged, any of the potential applicants included in the registration are unlawfully in New Zealand or subject to section 150 of the Immigration Act 2009 (concerning refugee or protection status claimants).

#### Notes:

~ Potential applicants in New Zealand should also be aware that they must be lawfully in New Zealand and not subject to section 150 of the Immigration Act 2009 in order to lodge an application under RFSC.

~ Where a registration is not accepted for any of the reasons set out in this provision, the registration fee will be returned to the sponsor.

#### S4.10.55 Definitions

##### S4.10.55.1 Definition of 'refugee'

For the purpose of RFSC, 'refugee' means a person who was granted a residence class visa in New Zealand under residence instructions by virtue of being either:

- a. a mandated or quota refugee (people determined to be refugees by the United Nations High Commissioner for Refugees (UNHCR)) before arrival in New Zealand; or
- b. a Convention refugee (people recognised as refugees by the New Zealand Government under the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees (see [C2.5](#) and [C5.15](#))).

##### S4.10.55.5 Definition of 'protected person'

For the purpose of RFSC, 'protected person' means a person who was granted a residence class visa in New Zealand under residence instructions by virtue of being recognised as having protection status in accordance with New Zealand's obligations under the:

- a. 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; or
- b. 1966 International Covenant on Civil and Political Rights.

##### S4.10.55.10 Definition of 'adult child'

In the context of a resident visa application under RFSC, 'adult child' means a child of 18 or older, unless they are dependent (see [R2.1.30](#)).

##### S4.10.55.15 Definition of 'sole carer' for tier one sponsorship purposes

- a. For tier one sponsorship purposes, a sponsor will be considered to be the sole carer of a dependent relative or relatives in New Zealand if they have the primary responsibility for the day-to-day care of a dependent relative or relatives in New Zealand, on an ongoing basis.

**Note:** A dependent relative can be a sponsor's partner, parent, child, grandparent, grandchild, uncle, aunt, nephew, niece or adult sibling.

- b. Evidence that a sponsor is the sole carer includes but is not limited to:
  - i. evidence of Accident Compensation Corporation (ACC) payments made to the sponsor (where the sponsor is considered by ACC to be a provider of home help to a sick or injured relative or relatives); and/or
  - ii. evidence from a District Health Board, General Practitioner or other Health agency which specifies the sponsor as a carer of a dependent relative or relatives; and/or
  - iii. evidence from Work and Income that the dependent relative or relatives are on an invalid's benefit; and/or
  - iv. evidence that the dependent relative or relatives are totally or substantially reliant on the sponsor for financial support whether living with them or not (where the dependent relative(s) are 17 or younger).

##### S4.10.55.20 Definition of 'grandparent' as a legal guardian for tier two sponsorship purposes

For tier two sponsorship purposes, a sponsor's grandparent will be considered as the sponsor's legal guardian if:

- a. both the sponsor's parents died before the sponsor attained the age of 20 years; and
- b. the grandparent had custody of the sponsor and the right to control the sponsor's upbringing, before the sponsor attained the age of 20 years.

#### **S4.10.60 Evidence**

The items listed in S4.10.60.1 to S4.10.60.15 below are examples of relevant evidence. Other documents may also be relevant.

##### *S4.10.60.1 Evidence of identity of applicant(s)*

- a. For the purposes of the registration process, INZ may accept the statutory declaration made by the sponsor on the RFSC registration form submitted by the sponsor that the details they have provided of the person(s) being sponsored is true and correct as being sufficient evidence of identity.
- b. Other evidence of identity may also be sought by INZ during the registration process.

##### *S4.10.60.5 Evidence of immigration status of sponsors*

- a. When lodging a registration under RFSC, sponsors must provide evidence of their immigration status as follows:
- b. Evidence that sponsors are New Zealand citizens may include but is not limited to original or certified copies of:
  - i. a valid New Zealand passport; or
  - ii. a Certificate of New Zealand Citizenship; or
  - iii. a recent official statement of citizenship from the Department of Internal Affairs.
- c. Evidence that sponsors are New Zealand residence class visa holders may include but is not limited to original or certified copies of a current New Zealand residence class visa, or evidence they are considered to hold a residence class visa in their passport or travel document.

##### *S4.10.60.10 Evidence of time spent in New Zealand as a citizen and/or holder of a residence class visa*

- a. When determining the amount of time spent in New Zealand, INZ may refer to INZ records of sponsors' entry to and exit from New Zealand.
- b. Other evidence of time spent in New Zealand may also be provided by a sponsor or sought by INZ.
- c. When lodging a registration under RFSC tier two queue, sponsors may be required to provide current and previous passports as evidence of time spent in New Zealand as a citizen and/or holder of a residence class visa.

**Note:** Periods during which a person is in New Zealand are calculated inclusive of both arrival and departure dates.

##### *S4.10.60.15 Evidence of relationship to sponsor*

- a. When lodging their application for a resident visa under RFSC, principal applicants must provide all available evidence of their relationship to their sponsor.
- b. Evidence of parent's, grandparent's, grandchildren's, nephews', nieces', aunts', uncles', siblings' or adult children's, relationship to their sponsor includes but is not limited to original or certified copies of:
  - birth certificates establishing the relationship of the sponsor to the principal applicant; or
  - household registration documents, if these establish the relationship of the sponsor to the principal applicant; or
  - evidence of adoption (see [R3](#)), which establishes the relationship of the sponsor to the principal applicant; or
  - documents issued by the United Nations High Commissioner for Refugees (UNHCR) and/or other internationally recognised agencies if these establish the relationship of the sponsor to the principal applicant; or
  - other evidence establishing the relationship of the sponsor to the principal applicant.
- c. If satisfied that evidence necessary to establish an applicant's relationship to their sponsor is not available or would be unduly difficult to obtain, immigration officers may:
  - i. specify another type of evidence to be submitted, such as a statutory declaration; and/or
  - ii. interview the principal applicant, those included in the application, or other parties involved in the application to verify identity and/or the relationship claimed by the applicant(s); and/or
  - iii. have the requirements waived by an appropriately delegated immigration officer if, due to the circumstances of the applicant(s), this is considered appropriate.

#### **S4.10.65 Verification of family details**

Immigration officers may refer to former applications lodged by applicants, family members of applicants or sponsors, in order to verify declarations made by applicants about their family details (such as the number of family members, the whereabouts of family members, or an applicant's or partner's marital status).

#### **S4.10.70 Undertakings of sponsors**

- a. A sponsor must undertake to ensure that adequate accommodation for their relatives is available upon arrival in New Zealand and continues to be available during the first 24 months of their relatives' residence in New Zealand.
- b. An immigration officer must be satisfied that the sponsor will be able to fulfil their undertakings provided under (a). A sponsor may demonstrate this by providing a completed Questionnaire for Refugee Family Support Category sponsor undertakings, outlining a credible accommodation plan.
- c. The application may be declined if an immigration officer is not satisfied a sponsor has the ability to meet their undertaking obligations set out at S4.10.70(a) above.

## E3.10 Currency of visas

*See also Immigration Act 2009 ss 6, 62, 63, 77*

- a. Temporary entry class visas with travel conditions must not be granted unless the applicant's passport or travel document is current for:
  - i. at least three months beyond the expiry date of the proposed visa; or
  - ii. one month, if the issuing Government has consular representation in New Zealand that is able to issue and renew passports.
- b. Despite (a) above, if an applicant has been approved a work visa for 24 months or longer, they may be granted the full duration of their visa, regardless of the applicant's passport expiration date. If a visa is granted beyond the expiry of the passport, the holder must be informed in writing that their visa must be transferred into their new passport if they wish to travel in or out of New Zealand on their new passport.
- c. The entry for the visa must specify, as appropriate:
  - i. the start date (which may be the date of its grant or a future or past date);
  - ii. any conditions of the visa that relate to travel, including:
    - o whether the visa allows travel to New Zealand on a later occasion;
    - o if the visa allows travel to New Zealand, the period during which the holder may travel to New Zealand;
    - o if the visa allows travel to New Zealand, whether the visa gives permission to travel to New Zealand on a single journey, multiple journeys, or a set number of journeys;
  - iii. in relation to the holder's stay in New Zealand, the date or event on which the visa will expire, or the period after which it will expire;
  - iv. any other conditions of the visa;
  - v. for those persons granted entry permission, the date or dates the entry permission was granted.
  - vi. such other matters as may be required or approved by the Chief Executive.
- d. If the holder of a visa is in New Zealand, the visa expires on the earliest of:
  - i. the beginning of the day after the date specified in the visa as the expiry date; or
  - ii. the beginning of the day after the day on which an event specified in the visa as the event on the occurrence of which the visa will expire occurs; or
  - iii. the beginning of the day after the last day of the period for which the visa grants stay in New Zealand to the holder;
  - iv. the beginning of the day that is three months after the day on which an epidemic management notice expires, if the visa:
    - o is a temporary entry class visa deemed to be extended as a result of an epidemic management notice; and
    - o has not been cancelled earlier.
- e. If the holder of a visa is outside New Zealand, the visa expires on the earlier of:
  - i. the day and time the holder left New Zealand, if the conditions of the visa do not allow further travel to New Zealand;
  - ii. the beginning of the day after the date that is specified by the conditions of the visa as the last day of the period of time within which travel is allowed to New Zealand.
- f. Unless an appropriately delegated officer makes an exception to instructions (see E7.25) or immigration instructions state otherwise, an individual visa must not be granted for a period longer than:
  - i. (in the case of a visitor visa) 12 months; or
  - ii. (in the case of a work visa) 5 years; or
  - iii. (in the case of a student visa) 4 years; or
  - iv. (in the case of an interim visa) 6 months.
- g. There is no maximum length of stay for:
  - i. a Diplomatic, Consular or Official Visa (see [section H](#));
  - ii. a Military visa (see [section M](#)).
- h. Since the periods listed in paragraph E3.10(f) above relate to individual visas and not the maximum length of stay, further individual visas may be granted, provided that relevant temporary entry class visa instructions are met.

### E3.10.1 Pregnant Applicants

- a. This section applies to pregnant applicants for temporary entry class visas who:

- i. intend to be in New Zealand for more than six months; and
  - ii. are considered to have risk factors for tuberculosis (TB) (see [A4.25.5](#)); and
  - iii. otherwise meet immigration instructions for the grant of a temporary entry visa.
- b. These applicants may only be granted a visa for up to three months from the date that they are due to give birth, unless (c) below applies.
- c. An applicant may be granted a visa for the length of their intended stay:
  - i. if they have provided a Chest X-ray Certificate (INZ 1096) with an earlier application and [A4.25\(c\)](#) or [A4.25.1\(d\)](#) applies; or
  - ii. where a Chest X-ray Certificate (INZ 1096) has been provided in accordance with [A4.25.1\(f\)](#).
- d. Applicants who are granted a visa in line with (b) above may apply for a further visa for the remainder of their intended stay if they provide:
  - i. a completed application form; and
  - ii. a completed Chest X-ray Certificate (INZ 1096); and
  - iii. any associated medical or laboratory reports required for the Chest X-ray Certificate; and
  - iv. their current passport (or a certified copy) or certificate of identity (or a certified copy); and
  - v. the appropriate fee and immigration levy (if any).
- e. If the applicant is assessed as not having an acceptable standard of health based on the Chest X-ray Certificate they provide, a further visa may not be granted unless [A4.25.1\(h\)](#) or [A4.65](#) applies.

## 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 a certified copy) or travel document (or a certified copy);
  - 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**

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](#)).

## **E4.50 Requirements for lodging an application for a temporary entry class visa**

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 reg 10, 11, 13, 14, 23A*

- a. These requirements apply to the lodgement of the following types of temporary entry class visa applications:
  - i. Applications lodged on an approved paper form (E4.50.1, E4.50.15).
  - ii. Applications lodged under a Working Holiday Scheme (WI2) and under Silver Fern instructions (WL) which must be made online using the electronic form provided on the Immigration website (<https://www.immigration.govt.nz/secure>) (E4.50.2, E4.50.15).
  - iii. Applications not covered by (a)(ii), made on an electronic form (E4.50.2, E4.50.15).
  - iv. Applications lodged otherwise than on an approved form (E4.50.5, E4.50.10, E4.50.15).
  - v. Applications for a temporary entry class visa or entry permission in an immigration control area (E4.50.35, E4.50.40).
- b. The requirements for applications for Diplomatic, consular, and official staff, and their dependants are at H4.
- c. The requirements for the reconsideration of decision to decline further temporary entry class visa are at E7.35.1.

### **E4.50.1 Mandatory requirements for applications lodged on an approved paper form**

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 10*

For the purposes of temporary entry instructions, mandatory requirements for applications lodged on an approved paper form means that applications must be made on the application form relevant to the type of visa required which must be completed in English, in full and submitted to an immigration officer, together with:

- a. the applicant's passport (or a certified copy) or certificate of identity (or a certified copy), or if this is unavailable, his or her original birth certificate (or a certified copy) or other identity document (or a certified copy); and
- b. two passport-sized photographs of the applicant's head and shoulders; and
- c. the appropriate fee and immigration levy (if any); and
- d. (all temporary entry class applications apart from military visa applications (see M2.1)) evidence of funds for maintenance in New Zealand or evidence of sponsorship (see E6); and
- e. such information and evidence as is required by the relevant immigration instructions to demonstrate that the applicant fits the category or categories of immigration instructions under which the application is being made; and
- f. any other information, evidence and submissions the applicant considers show that he or she is eligible to be granted a temporary entry class visa in terms of the relevant immigration instructions.

Applications must be signed by the applicant (unless the applicant is less than 18 years old, in which case it must be signed by a parent or guardian of the applicant).

### **E4.50.2 Mandatory requirements for applications made on an electronic form**

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 23A*

- a. Applications for a second Working Holiday Scheme work visa (where a scheme allows for this) must be lodged according to E4.50.1.
- b. An application made on an electronic form must be completed in English, and requires the applicant to:
  - i. state his or her full name; and
  - ii. state his or her date and place of birth; and
  - iii. state the details of his or her passport or other certificate of identity; and
  - iv. if prompted by the online system, upload a photograph of the applicant's head and shoulders, that complies with the standards specified for the purpose; and
  - v. produce the information and evidence required by immigration instructions to demonstrate he or she fits the category under which the application is being made; and
  - vi. acknowledge that the details supplied in support of their application are true and correct to the best of their knowledge; and
  - vii. agree that if their circumstances change before a visa is granted or before the application is determined, they will notify an immigration officer of the change; and
  - viii. pay the prescribed fee for the type of visa applied for or arrange for its payment in a manner acceptable to the immigration officer processing the application; and
  - ix. pay the immigration levy that is payable (if any), or arrange for its payment in a manner acceptable to the immigration officer processing the application.

**Note:** The specified standards for the photograph can be obtained from the INZ website.

#### **E4.50.5 Mandatory requirements for applications lodged otherwise than on an approved form**

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 21, 22*

- a. Despite E4.50.1, a person or their advisor may request an immigration officer to consider an application for a visa made without using the relevant approved form and an immigration officer may agree to the request.
- b. Where an immigration officer agrees to that request, the applicant must supply the following information in English and in any way appropriate to the circumstances:
  - i. his or her full name; and
  - ii. his or her date and place of birth; and
  - iii. details of his or her passport or certificate of identity, including country of citizenship; and
  - iv. details of any current or previous visa (or permit as the case may be) held by him or her; and
  - v. details of the type of visa he or she is applying for; and
  - vi. any other information that he or she considers shows that the temporary entry class visa application should be granted; and
  - vii. such information and evidence that the immigration officer thinks necessary for him or her to determine the application.
- c. The application must be completed by the applicant:
  - i. acknowledging that the details supplied in support of the application are true and correct to the best of his or her knowledge; and
  - ii. agreeing that if his or her circumstances change before a visa is granted, he or she will notify an immigration officer of the change in circumstances; and
  - iii. paying the prescribed fee (if any) for the type of visa applied for, or arranging for the payment of that fee in a manner satisfactory to the immigration officer; and
  - iv. paying the immigration levy that is payable by the applicant (if any), or arranging for its payment in a manner acceptable to the immigration officer processing the application; and
  - v. signing the application (except if the application is made in an electronic format).
- d. If the applicant is less than 18 years old, (c)(iv) does not apply. Instead, the application must be signed by his or her parent or guardian, except if the application is made in an electronic format or at an immigration control area (in which case the form must be signed by the parent or guardian only if the applicant is accompanied by that person).

#### **E4.50.10 Processing of applications made otherwise than on an approved form**

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 reg 22*

- a. Where an immigration officer has agreed to a request to consider an application for a visa made otherwise than on an approved form, the immigration officer may at any time before a visa is granted as a result of the application:
  - i. refuse to consider the application, or continue to consider the application; and
  - ii. inform the applicant that if he or she wishes to pursue the application, he or she must do so using the relevant approved form.
- b. If an immigration officer refuses to consider an application for a visa made otherwise than on an approved form then:
  - i. the application will be treated as not having been made; and
  - ii. the applicant must apply for the visa in the normal way; and
  - iii. in the event the person pursues an application for a visa in the normal way, the mandatory requirements as set out at E4.50.1 and E4.50.5 will apply; and
  - iv. any application fee or immigration levy will either be refunded or applied towards any visa application made by the same person.
- c. In the event an application for a visa is made otherwise than on an approved form and has been accepted for processing but cannot be finalised without further information or documentation being obtained, an immigration officer may transfer the application to another INZ office for finalisation. In such cases the application may, at the discretion of the immigration officer considering it, continue to be finalised without the applicant needing:
  - i. to complete the approved form; or
  - ii. pay any additional fee and immigration levy.

#### **E4.50.15 Additional requirements**

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 10, 21, 23A*

Before determining an application made on an approved paper form or on an electronic form or otherwise than on an approved form, the immigration officer processing the application may do one or more of the following:

- a. require the applicant to be interviewed by an immigration officer;
- b. require the applicant to produce further information or evidence (including photographs) that the officer thinks necessary for him or her to determine the application;
- c. require the applicant to undergo a medical examination or another medical examination, as the case may be;
- d. require the applicant to produce travel tickets to a country that the person has right of entry to or evidence of onward travel arrangements that the officer thinks necessary for him or her to determine the application;
- e. require the applicant to produce evidence of the applicant's funds for maintenance while in New Zealand or evidence of the applicant's sponsorship that the officer thinks necessary for him or her to determine the application;
- f. if not already provided, require the applicant to produce his or her passport or other certificate of identity.

#### **E4.50.20 Children under the age of 16 travelling alone or with one parent**

If a child under the age of 16 years is travelling to New Zealand alone or with one parent only, officers may request evidence that both the child's parents have consented to the child being removed from the child's country of residence.

#### **E4.50.25 No acceptance of immigration applications or requests from unlicensed immigration advisers**

*See also Immigration Advisers Licensing Act 2007 s 9*

- a. No immigration application or request put forward on behalf of another person by an unlicensed immigration adviser may be accepted, unless the immigration adviser is exempt from the requirement to be licensed under the Immigration Advisers Licensing Act 2007.
- b. Where an immigration application or request on behalf of another person is not accepted because it contravenes E4.50.25 (a) the relevant person or body must notify that person in writing of that fact, and advise the person as to how the application or request may be re-lodged or advanced in an acceptable manner.

#### **E4.50.30 Persons exempt from licensing**

*See also Immigration Advisers Licensing Act 2007 ss 11, 12*

The following persons are exempt from the requirement to be licensed under the Immigration Advisers Licensing Act 2007:

- a. a person who provides immigration advice in an informal or family context only, where the advice is not provided systematically or for a fee;
- b. a Member of Parliament, or their staff, who provides immigration advice within the scope of their employment agreement;
- c. a foreign diplomat or consular staff accorded protection as such under the Diplomatic Privileges and Immunities Act 1968 or the Consular Privileges and Immunities Act 1971;
- d. an employee of the New Zealand public service who provides immigration advice within the scope of their employment agreement;
- e. a lawyer who holds a current practising certificate as a barrister or as a barrister and solicitor of the High Court of New Zealand;
- f. a person employed by or working as a volunteer for a New Zealand community law centre, as defined in section 6 of the Lawyers and Conveyancers Act 2006, where at least one lawyer is on the employing body of the community law centre or is employed by or working as a volunteer for the community law centre in a supervisory capacity;
- g. a person employed by or working as a volunteer for a New Zealand citizens advice bureau; or
- h. a person who provides immigration advice only in respect of applications for temporary entry class visas with conditions authorising study in New Zealand, but subject to any regulations made under section 12(1)(b) of the Immigration Advisers Licensing Act 2007; or
- i. a person exempted by regulations made under section 12 of the Immigration Advisers Licensing Act 2007.

#### **E4.50.35 Requirements for lodging an application for a temporary entry class visa or entry permission in an immigration control area**

*See also Immigration Act 2009 ss 103, 382*

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 reg 11, 25, 28C*

- a. An application for a temporary entry class visa or entry permission made at an immigration control area must:
  - i. be made on the approved form; and
  - ii. be completed in English; and
  - iii. relate to only one person; and
  - iv. be signed by the applicant.
- b. E4.50.35 (a)(iv) applies unless the applicant is less than 18 years old, in which case:
  - i. the arrival card must be signed by a parent or guardian of the applicant, if the applicant is accompanied by that person; or
  - ii. the arrival card is not required to be signed, if the applicant is not accompanied by a parent or guardian.
- c. The application must be given to an immigration officer at an immigration control area, together with the applicant's passport or certificate of identity and, if appropriate, evidence of any temporary entry class visa that the applicant holds (except in the case of an application for a military visa in which case M2.1 will apply).
- d. A person who is eligible to use the automated electronic system may meet the requirements at (c) above by giving their passport to the automated electronic system.

#### **E4.50.40 Additional requirements**

Before determining the application, the immigration officer processing the application may do one or more of the following:

- a. require the applicant to be interviewed by an immigration officer; or
- b. require the applicant to produce further information or evidence (including photographs) that the officer thinks necessary for him or her to determine the application; or
- c. require the applicant to undergo a medical examination or another medical examination, as the case may be; or
- d. require the applicant to produce travel tickets to a country that the person has right of entry to or evidence of onward travel arrangements that the officer thinks necessary for him or her to determine the application; or
- e. require the applicant to produce evidence of the applicant's funds for maintenance while in New Zealand or evidence of the applicant's sponsorship that the officer thinks necessary for him or her to determine the application.

#### **E4.50.45 Applicant to specify address for communication**

*See also Immigration Act 2009 ss 57(2), (3) and (4), 110, 387*

- a. Everyone who applies for a visa or entry permission must specify in their application for a visa a physical address in New Zealand to which any communication relating to the application, or to which advice of any visa that may be granted pursuant to that application may be sent, or at which any notice may be served under the Immigration Act 2009.
- b. An applicant for or holder of a visa or entry permission may at any time, by written notice to an immigration officer, substitute a different address for that specified under E4.50.45 (a).
- c. An applicant for a visa or entry permission may also specify in an application an electronic address to which any communication relating to the application, or to which advice of any visa that may be granted pursuant to the application, may be sent.

## E7.45 Character requirements for partners supporting 'partnership-based temporary entry applications'

- a. The following people will not meet the character requirement for supporting partners, unless granted a character waiver (see E7.45.10 below), if they have been convicted of any offence involving domestic violence or of a sexual nature whether in New Zealand or overseas:
  - i. New Zealand citizen or resident class visa holder at any time since turning 17; or
  - ii. work (WF3) or student (WF4) visa holders in the seven years prior to the date the partnership application is made
- b. If the supporting partner does not meet the character requirement for partners supporting 'partnership-based temporary entry applications', the application may be declined.

**Note:** For the purpose of these instructions, 'domestic violence' has the meaning set out in s.3 of the Domestic Violence Act 1995.

### E7.45.1 'Partnership-based temporary entry applications'

- a. For the purpose of these instructions 'partnership-based temporary entry applications' are applications made under the following immigration instructions (except where the principal applicant is a dependent child):
  - i. Entry to New Zealand for the purpose of a culturally arranged marriage (see [V3.35](#));
  - ii. Partners of New Zealand citizens or residence class visa holders (see [V3.15](#) and [WF2](#));
  - iii. Partners and dependent children of student or work visa holders (see [E4.5](#));
  - iv. Work instructions for dependants (see [WF2](#), [WF4](#));
  - v. Student instructions for partners and dependent children of diplomatic consular or official staff ([U8.10](#));
  - vi. Visitor instructions for dependants (see [V3.10](#), [V3.15](#)).
- b. Despite E7.45.1 (a) above, partners of military visa holders do not need to meet the character requirement.

### E7.45.5 Evidence that partners supporting 'partnership-based temporary entry applications' meet the character requirement

- a. Character checks may be carried out if there is an indication that a partner (aged 17 and over) who is supporting a 'partnership-based temporary entry application' may not meet character requirements.
- b. Where a character check is required in terms of (a) above, an immigration officer may obtain a New Zealand police certificate on behalf of the supporting partner and/or request the partner provide an overseas police certificate to meet the character requirements of E7.45(a).
- c. If a police certificate is not available from a particular country, the supporting partner must provide a separate statutory declaration in both English and the partner's first language, which must:
  - i. detail the supporting partner's attempts to obtain a police certificate; and
  - ii. state whether they have been convicted or found guilty of or charged with any offences against the law of that country; and
  - iii. be corroborated by other information confirming their character.

#### Notes:

~ For full information on police certificates see [A5.10](#).

~ Instructions in respect of how to obtain police certificates from specific countries can be obtained from the INZ website at [www.immigration.govt.nz/policecertificate](http://www.immigration.govt.nz/policecertificate).

### E7.45.10 Action

- a. Immigration officers must not automatically decline 'partnership-based temporary entry applications' on the basis that the supporting partner does not meet the supporting partner character requirement.
- b. Officers must consider the surrounding circumstances of the application to decide whether or not they are compelling enough to justify waiving the supporting partner character requirement. The circumstances include but are not limited to the following factors as appropriate:
  - i. if applicable, the seriousness of the offence (generally indicated by the term of imprisonment or size of the fine); and/or
  - ii. whether there is more than one offence; and/or
  - iii. how long ago the offending occurred.
- c. Officers must make a decision only after they have considered all relevant factors, including (if applicable):

- i. any advice from the National Office of INZ; and
  - ii. any submissions and information provided by the applicant or supporting partner in respect of whether a waiver should be granted.
- d. Officers must record:
- i. their consideration of the surrounding circumstances, (see paragraph (b) above), noting all factors taken into account; and
  - ii. the reasons for their decision to waive or decline to waive the partner character requirement.
- e. Any decision to waive the character requirement for supporting partners must be made by either:
- i. a seconded immigration officer; or
  - ii. an officer with Schedule 1–3 delegations

**E7.45.15 Impact of Criminal Records (Clean Slate) Act on the assessment of whether the character requirement for partners supporting 'partnership-based temporary entry applications' is met**

- a. When assessing whether the supporting partner meets the character requirements of E7.45(a), an immigration officer must be aware that a supporting partner's New Zealand convictions may be covered by the Criminal Records (Clean Slate) Act 2004 (Clean Slate Scheme) and that, if so, the supporting partner is not required to declare those convictions.
- b. If Immigration New Zealand (INZ) holds any information that the supporting partner has convictions, and those convictions are covered by the Clean Slate Scheme, this information cannot be used when assessing whether the supporting partner meets the character requirements of E7.45(a).

**Note:** The information referred to in (b), above, includes any prior police certificates, any information INZ holds in its records (including its application management system), and any other information which may have been gathered from a public source.

If a person's convictions are covered by the Clean Slate Scheme, immigration officers cannot, under any circumstances, request or require that an individual disregard the effect of the Clean Slate Scheme when answering questions about his or her criminal record, or disregard the effect of the Clean Slate Scheme and disclose, or give consent to the disclosure of, his or her criminal record. Doing so is an offence under the Criminal Records (Clean Slate) Act 2004. However, if the supporting partner voluntarily declares criminal convictions that are subject to the Clean Slate Scheme, this information can be used to assess whether the supporting partner meets the character requirements of E7.45(a).

## E9 Trade commitments

- a. One of the objectives of New Zealand's temporary entry instructions is to contribute to building strong international links. Part of this includes supporting New Zealand's position in a global trade environment, and ensuring that New Zealand's trade commitments with respect to immigration are being met.
- b. Immigration plays an important role in ensuring New Zealand's trade commitments are met through immigration instructions providing for the mobility (temporary entry) of bona fide business people into New Zealand.
- c. New Zealand has committed itself to a range of undertakings through different agreements. To date the following agreements have been signed:
  - General Agreement on Trade in Services (GATS)
  - New Zealand and Singapore Closer Economic Partnership Agreement (CEPA)
  - New Zealand and Thailand Closer Economic Partnership
  - Trans-Pacific Strategic Economic Partnership
  - Asia-Pacific Economic Cooperation (APEC)
  - New Zealand and China Free Trade Agreement
  - ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA)
  - Agreement Between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation (ANZTEC)
  - Korea-New Zealand Free Trade Agreement (KNZFTA)
- d. Details of some of these trade agreements are available on the Ministry of Foreign Affairs website at the following address: Ministry of Foreign Affairs and Trade - Trade Relationships and Agreements
- e. Specific provisions throughout immigration instructions enable New Zealand to meet the commitments that have been made in these trade agreements. These provisions are:
  - [A4.65.1](#) Seconded business people
  - [N4](#) Group Transit Visa for Chinese nationals
  - [V3.5](#) Business visitors
  - [V3.105](#) APEC Business Travel Cardholders
  - [WS2.1.1](#) (a), (b), (c), (g) and (j) Specific purposes or event
  - [WI11](#) Thai chefs
  - [WI12](#) China Special Work Instructions
  - [WI13](#) China Skilled Workers Instructions
  - [WI14](#) Philippines Special Work Instructions
  - [WI15](#) Vietnam Special Work Instructions
  - [WI17](#) Indonesia Special Work Instructions
  - [WI18](#) Primary sector trainees
  - [WI19](#) Korea Special Work Instructions

### **E11.20 Making a proposal to establish an approved work exchange scheme**

Any formal proposal to INZ to establish an approved work exchange scheme must **include** details of the proposed scheme under each of the headings in the Work Exchange Scheme Profile (see [E11.25](#)).

### V3.15 Partners of New Zealand citizens or residence class visa holders

Partners (see [E4.1.20](#)) of New Zealand citizens or residence class visa holders may be granted a visitor visa provided that:

- a. they are living together in a genuine and stable relationship (see [E4.5.25](#), [E4.5.30](#) and [E4.5.5](#)); and
- b. the New Zealand partner intends to be in New Zealand during the same period of time applied for by the applicant; and
- c. the New Zealand partner supports the application; and
  - i. complies with the minimum requirements for recognition of partnerships (see [E4.5.15](#) and [F2.15](#)); and
  - ii. meets the character requirement for partners supporting 'partnership-based temporary entry applications' set out at [E7.45](#).

#### V3.15.1 Instructions on duration of visas for partners of New Zealand citizens or residence class visa holders

- a. The duration of any visa granted under these instructions is dependent on the time spent living together in a partnership, **but must not exceed 24 months from:**
  - i. the date the first partnership visa was granted if it was granted onshore; or
  - ii. the first date of arrival if the partnership visa was granted offshore.
- b. **If the couple has lived together in a partnership for 12 months or more at the time the application is assessed, a visitor visa may be granted for the length of the couple's intended stay, up to a maximum of 24 months.**
- c. If the couple has lived together in a partnership for less than 12 months at the time the application is assessed, then the first visa granted under these instructions must not exceed 12 months' duration. Further visas may be granted upon application for up to a maximum of 24 months from the date the first partnership visa was granted **if the visa was granted onshore or the first date of arrival if the partnership visa was granted offshore** if:
  - i. during the validity of the first visa an application for a residence class visa under Partnership Category is made and the principal applicant wishes to remain in New Zealand pending a decision on their application; or
  - ii. the couple wish to spend more time in New Zealand and an immigration officer is satisfied they are still living together in a genuine and stable partnership.

#### V3.15.5 New Zealand citizen or residence class visa holder partner must be eligible to support under Partnership instructions

- a. When determining the eligibility of the New Zealand partner to support a partnership-based visitor visa application, immigration officers must consider whether the New Zealand resident partner will be eligible to support a partnership-based residence class visa application (see [F2.10.10](#)) within 12 months of the grant of the visa.
- b. If the New Zealand partner would not be eligible to support a partnership-based residence class visa application within 12 months of the grant of the visa, the application for the visitor visa may be declined (see [F2.10.10](#)).

#### V3.15.10 Evidential requirements for partners of New Zealand citizens or residence class visa holders

- a. Immigration officers must sight evidence of the following:
  - i. the supporting partner's New Zealand citizenship or New Zealand residence status; and
  - ii. the applicant's relationship with their New Zealand partner; and
  - iii. that the applicant and their New Zealand partner are living together in a genuine and stable partnership at the time the application is made (see [E4.5.35](#) for the type of evidence required); and
  - iv. the *Form for Partners Supporting Partnership-Based Temporary Entry Applications (INZ 1146)* completed by the New Zealand partner; and
  - v. that the applicant and their New Zealand partner are intending to live in New Zealand for the same period of time.
- b. If requested by an immigration officer, applicants must also provide a written declaration from their New Zealand partner confirming
  - i. they are eligible to support; or
  - ii. they comply with the minimum requirements for recognition of partnerships (see [E4.5.15](#) and [F2.15](#)).

### **V3.45 Applicants wanting to obtain occupational registration in New Zealand**

- a. Applicants who seek entry to obtain New Zealand occupational registration may be granted a visitor visa or, in the case of a Philippines nurse, a work visa (see [WS2.1.1\(f\)](#)) provided that the relevant practical or educational training lasts less than 3 months.
- b. Applicants who have applied for residence while in New Zealand on a temporary visa and who need to exceed the maximum stay in New Zealand to meet registration requirements, may be granted a further visitor visa, provided that the practical or educational training lasts less than 3 months.
- c. If the training will take longer than 3 months, applicants must apply for a student visa and must provide satisfactory evidence of the time required to complete registration requirements.
- d. Applicants may be granted a visa to stay in New Zealand for longer than 3 months if they provide satisfactory evidence that doing so is necessary to complete registration requirements.

#### **V3.45.1 Confirmation from registration body**

Immigration officers must sight written confirmation from the appropriate registration body that the applicant:

- a. is eligible to undertake the registration process in New Zealand; and
- b. has completed any enrolment requirements, including meeting applicable English language requirements.

### **V3.140 Approved arts or music festival**

*See also Immigration Act 2009, s 4*

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 Schedule 2*

- a. Performers and/or immediate support crews may be granted a visitor visa to participate in an 'approved' arts or music festival.
- b. Visiting performers and/or immediate support crew from countries whose nationals are people to whom a visa waiver applies (see [E2.1](#)), may be granted a three-month visitor visa and entry permission on arrival in New Zealand.
- c. Visiting performers and/or immediate support crew from countries whose nationals are required to hold a visitor visa to travel to New Zealand must apply for an approved arts or music festival visitor visa before travelling to New Zealand.
- d. Applicants must meet temporary entry class requirements for:
  - i. lodging an application as set out at [E4](#); and
  - ii. bona fide applicants as set out at [E5](#); and
  - iii. funds and onward travel requirements as set out at [V2.20](#) and [V2.25](#); and
  - iv. health and character requirements as set out at [A4.5](#) and [A5.5](#).
- e. Applicants must provide a letter of invitation from the organisers of the 'approved' arts or music festival confirming their participation in the festival. This should include:
  - i. the name of the applicant; and
  - ii. the activity or activities the applicant will undertake while in New Zealand; and
  - iii. the dates or duration of the activity or activities to be undertaken.

#### **V3.140.5 Definition of an 'approved' arts or music festival**

For the purpose of these instructions, an 'approved' arts or music festival is a festival hosted in New Zealand which has had a formal proposal accepted by Immigration New Zealand.

#### **V3.140.10 Approved arts and music festival requirements**

- a. To become an approved arts or music festival, festival organisers must submit a proposal to Immigration New Zealand demonstrating that they meet the following requirements.
  - i. The festival has been established in New Zealand for at least three years; and
  - ii. The festival intends engaging at least 10 international participants (performers and/or direct support crew).
- b. Immigration New Zealand may consult with relevant organisations including the Ministry for Culture and Heritage, Creative New Zealand, and the Music Commission.
- c. Approval will be valid for four years. It may be renewed, upon application, where Immigration New Zealand is satisfied that the festival organiser still meets the requirements for approval set out in (a) above.
- d. INZ will rescind a festival's approval where it considers that festival organisers' conduct has created an unacceptable risk to the integrity of New Zealand's immigration or employment laws or policies.

## WF2.1 Instructions on duration of visa for partners of New Zealand citizens or residence class visa holders

- a. The duration of any visa granted under these instructions is dependent on the time spent living together in a partnership but must not exceed 24 months from:
  - i. the date the first partnership visa was granted if it was granted onshore; or
  - ii. the first date of arrival if the partnership visa was granted offshore.
- b. If the couple has lived together in a partnership for 12 months or more at the time the application is assessed, a work visa may be granted for the length of the couple's intended stay, up to a maximum of 24 months.
- c. If the couple has lived together in a partnership for less than 12 months at the time the application is assessed, then the first visa granted under these instructions must not exceed 12 months' duration. Further visas may be granted upon application for up to a maximum of 24 months from the date the first partnership visa was granted or the first date of arrival if the partnership visa was granted offshore if:
  - i. during the validity of the first visa an application for a residence class visa under Partnership Category is made and the principal applicant wishes to remain in New Zealand pending a decision on their application; or
  - ii. the couple wish to spend more time in New Zealand and an immigration officer is satisfied they are still living together in a genuine and stable partnership.

## **WH1.25 Requirements for acceptable medical insurance under RSE Instructions**

### **WH1.25.1 Minimum requirements for acceptable medical insurance under RSE Instructions**

Workers employed under RSE Instructions must hold health insurance which:

- a. is provided by a company with
  - i. representation in New Zealand; and
  - ii. experience in health and/or travel insurance business; and
  - iii. a credit rating of no lower than A from Standard and Poors or B+ from AM Best.
- b. guarantees to cover the full costs of:
  - i. all medical expenses including diagnosis and treatment, prescribed medicines, ambulance, hospital and post hospital discharge care, home nursing care; and
  - ii. emergency dental care, including provision of antibiotics and treatment for the relief of sudden and acute pain; and
  - iii. evacuation/return home in the event of serious illness or disability; and
  - iv. return of remains to the country of origin in the event of death.
- c. is provided by a company which will inform the **Ministry of Business, Innovation and Employment** if the insurance is cancelled or lapsed, excluding cancellation or lapse because the worker has left New Zealand.

### **WH1.25.5 Allowable exclusions for acceptable medical insurance under RSE Instructions**

Despite WH1.25.1(b) above, acceptable medical insurance under RSE Instructions may exclude costs related to:

- a. suicide, attempted suicide; or
- b. sexually transmitted disease; or
- c. any situation or action when under the influence of alcohol or non prescribed drugs; or
- d. Human Immunodeficiency Virus (HIV) and/or HIV- related illness including Acquired Immune Deficiency Syndrome (AIDS); or
- e. childbirth or pregnancy unless they arise from medical complications that occur before the end of the 24th week of pregnancy; or
- f. pre-existing conditions.

### **WH1.25.10 Evidence of acceptable medical insurance under RSE Instructions**

Applicants must provide evidence of holding, or approval for, acceptable medical insurance.

### 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 [Ministry of Business, Innovation and Employment](#) 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 [groups of the Ministry of Business, Innovation and Employment, Worksafe New Zealand](#), 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.

## WI2.1 Requirements for all working holiday scheme applicants

As well as meeting the specific requirements for the relevant working holiday scheme, applicants must also meet the requirements under Generic Temporary Entry Instructions, and the conditions below.

### WI2.1.1 General conditions

- a. The objective of working holiday schemes is to allow young citizens of approved countries, whose primary intention is to holiday in New Zealand, to undertake employment and study during their stay in accordance with their scheme.
- b. To be eligible for a work visa under these schemes, applicants, in addition to meeting the requirements of the particular scheme they are applying under, must:
  - i. hold a valid passport from the country whose scheme they are applying under; and
  - ii. be aged no less than 18 years of age and no more than 30 years of age, unless their scheme allows a different age limit; and
  - iii. not be accompanied by children; and
  - iv. meet onward travel requirements (see [W2.20](#)); and
  - v. submit an application in the prescribed manner (see [E4.50](#)); and
  - vi. pay the appropriate fee and immigration levy (if any); and
  - vii. meet health and character requirements as set out at [A4](#) and [A5](#); and
  - viii. be the holder of a valid temporary visa if applying from within New Zealand; and
  - ix. not previously have been approved a visa under a working holiday scheme, except where their scheme allows a second application (see [WI2.20\(e\)](#) and [WI2.160\(f\)](#)).
- c. Applicants are not required to provide evidence of a job offer.
- d. Where a scheme has an 'ordinarily resident' requirement the applicant's usual place of permanent residence must be that country. This requirement is considered to be met if the applicant has not been absent from that country for more than two years immediately preceding the application.
- e. Successful applicants must not undertake permanent employment unless they apply for and obtain a work visa that enables this.
- f. Successful applicants may enrol in one or more courses of training or study of up to 6 months' duration in total during their visit to New Zealand.

### WI2.1.5 Applying using the online system

**See also *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 Regs 23AA***

Applications for a working holiday scheme work visa must be made online using the electronic form provided through the **Immigration website's** Online Services ([www.immigration.govt.nz](http://www.immigration.govt.nz)).

## WI2.94 Luxembourg Working Holiday Scheme

- a. This scheme is available to 50 young citizens of Luxembourg annually.
- b. To be eligible for a work visa under this scheme, applicants must:
  - i. be citizens of Luxembourg; and
  - ii. have a minimum of NZ\$4,200 available funds for their maintenance during the period of stay in New Zealand; and
  - iii. agree to hold medical and comprehensive hospitalisation insurance that will remain current throughout their stay in New Zealand; and
  - iv. meet the requirements at [WI2.1.1\(b\)](#).
- c. Successful applicants will be granted a work visa with the following conditions:
  - i. if the applicant is outside New Zealand, first entry to New Zealand must be made within 12 months of the visa being granted, and the visa will allow work and multiple entries to New Zealand for 12 months from first arrival; or
  - ii. if the applicant is in New Zealand, the visa will allow work and multiple entry to New Zealand for 12 months.
- d. Participants in this scheme must not work for the same employer for a period exceeding three months.
- e. Applicants under this scheme must lodge their application in the prescribed manner ([E4.50](#)).

## WI2.175 Vietnam Working Holiday Scheme

- a. This scheme is available to 100 young citizens of the Socialist Republic of Vietnam annually.
- b. To be eligible for a work visa under this scheme, applicants must:
  - i. be a citizen of the Socialist Republic of Vietnam; and
  - ii. have a minimum of NZ\$4,200 available funds for their maintenance during the period of stay in New Zealand; and
  - iii. agree to hold medical and comprehensive hospitalisation insurance to remain in force throughout their stay in New Zealand; and
  - iv. meet the requirements at [WI2.1.1\(b\)](#); and
  - v. have a tertiary qualification granted in respect of a minimum of three years' full-time university study; and
  - vi. show that they have a level of proficiency in English that is deemed to be at least functional, by providing acceptable English language test results, as set out at WI2.175.1 (no more than 2 years old at the time the application is lodged).
- c. Successful applicants will be granted a work visa with the following conditions:
  - i. if the applicant is outside New Zealand, first entry to New Zealand must be made within 12 months of the visa being granted, and the visa will allow work and multiple entries to New Zealand for 12 months from first arrival; or
  - ii. if the applicant is in New Zealand, the visa will allow work and multiple entry to New Zealand for 12 months.
- d. Participants in this scheme must not work for the same employer for a period exceeding three months.
- e. Applicants under this scheme must lodge their application in the prescribed manner ([E4.50](#)).

### WI2.175.1 Acceptable English language test results

The following English language test results are acceptable:

Test	Minimum score required
International English Language Testing System (IELTS) - General or Academic Module	Overall score of 4.5 or more
Test of English as a Foreign Language Internet-based Test (TOEFL iBT)	Overall score of 32 or more
Pearson Test of English Academic (PTE Academic)	Overall score of 30 or more
Cambridge English: First (FCE) or Cambridge English: First (FCE) for Schools	Overall score of 147 or more
Occupational English Test (OET)	Grade C or higher in all four skills (Listening, Reading, Writing and Speaking)*

\* A score of Grade C or higher in all four skills is required for the OET as there is no overall grade for this test.

### WI14.5 Philippines Nurses

- a. These instructions allow up to 100 Philippines nurses at any one time to work in New Zealand for a period of up to three years provided that they:
  - i. have a full-time job offer as a registered nurse from a New Zealand employer; and
  - ii. hold a qualification which has been assessed as equivalent to a New Zealand Bachelor of Nursing or Diploma in Comprehensive Nursing (diploma or hospital based certificate); and
  - iii. hold New Zealand registration; and
  - iv. meet the requirements set out in [WI14.20](#).
- b. An applicant who is a nurse and who is applying for a work visa under these instructions is not required to be resident in the Philippines at the time of application, and may lodge their application at their nearest receiving office (see [E4.15](#)).
- c. An applicant who is a nurse and is in New Zealand under the instructions at [WS2.1.1\(j\)](#) may lodge an application under [WI14](#) once they have obtained their registration.

## WJ1 Overview

- a. These instructions provide for the grant of work visas and entry permission to foreign crew on fishing vessels within New Zealand fisheries waters.
- b. To recruit seven or more overseas crew members for a single New Zealand vessel for a specified period up to a maximum of 12 months, the New Zealand employer must request an Approval in Principle (AIP) from Immigration New Zealand (INZ).
- c. Where less than seven overseas crew members are required on a vessel during a 12-month period, an AIP is not required and foreign crew can apply directly for visas under WJ6.

## WJ1.5 Objective

- a. The objectives of the Foreign Crew of Fishing Vessels instructions are to:
  - i. allow the New Zealand fishing industry to supplement the New Zealand workforce with non-New Zealand citizen or residence class visa holder workers;
  - ii. promote best practice in the fishing industry to support economic growth and productivity of the industry as a whole, while ensuring that the employment conditions of both New Zealand and non-New Zealand citizen or residence class visa holder workers are protected and supported;
  - iii. ensure workers recruited under these instructions are adequately paid;
  - iv. ensure outcomes which promote the integrity, credibility and reputation of the New Zealand immigration and employment relations systems; and
  - v. protect New Zealand's international reputation.
- b. To ensure these objectives are met:
  - i. work visas for foreign fishing crew will be granted only where immigration officers are satisfied the New Zealand employer will comply with the requirements specified for such activity;
  - ii. a high standard of proof is required to satisfy officers that such requirements and the requirements of immigration instructions will be and are being met;
  - iii. immigration officers must consider the compliance history and particular arrangements (including crew recruitment practices) of individuals associated with the New Zealand employer; and
  - iv. permission to use foreign labour will be withdrawn and further permission refused where there is any breach of requirements other than of a minor nature, that has not been remedied to the satisfaction of Immigration New Zealand.

## **WJ1.15 Exemptions from the requirement to be a New Zealand ship**

*See also Fisheries Act 1996, s103A*

- a. Section 103A of the Fisheries Act 1996 details situations in which the chief executive can exempt a vessel from the requirement to be a New Zealand ship. In situations where an exemption to this requirement has been granted and the employer has made an AIP application or is supporting a work visa application for foreign crew, the application should be considered as an exception to instructions.
- b. Where WJ1.15(a) applies, immigration officers should give consideration to whether the employer meets the requirements that a New Zealand employer would need to meet under WJ instructions.

## 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 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 are 'fit and proper' people (WJ2.10);
  - v. it is an acceptable sponsor (see E6.5 and WJ5.10);
  - vi. it will comply with all the requirements and obligations set out at WJ5; and
  - vii. it agrees to the conditions as specified at WJ3.
- c. INZ will determine whether the New Zealand employer 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).

### **WJ2.1 Genuine attempts to fill crew positions**

Evidence that an employer has made genuine attempts to find suitably qualified and experienced New Zealand citizens or residence class visa holders to fill the vacant crew positions includes, but is not limited to:

- a. listing the vacancies with Work and Income;
- b. evidence of advertising;
- c. using a recruitment agency;
- d. consulting with the New Zealand Fishing Industry Guild, the New Zealand Industry Training Organisation, and the Council for Trade Unions.

## **WJ2.5 Sound financial position evidential requirements**

Evidence that an employer is in a sound financial position includes, but is not limited to:

- a. a statement from a chartered accountant confirming the business is financially sound and is able to meet all outstanding obligations;
- b. an authenticated set of accounts showing a sound financial position;
- c. annual reports;
- d. business plan.

## WJ2.10 Fit and proper person test

For the purpose of determining whether or not a director or senior manager of the New Zealand employer or NZCP is a fit and proper person, INZ will take into account:

- a. whether the person:
  - i. at any time, has been declared bankrupt or been a director of a company that has been put into receivership or liquidation;
  - ii. at any time, has been a director or senior manager of a company that has failed to meet its obligations under relevant New Zealand employment and immigration law, and immigration instructions;
  - iii. has been convicted of an offence involving dishonesty in New Zealand or a foreign country;
  - iv. has been involved in business fraud or financial impropriety; or
  - v. has ever been **convicted of** any offence arising in the course of, or resulting from, business dealings; and
- b. any relevant feedback received from the Ministry for Primary Industries or Maritime New Zealand, (see [WJ2\(d\)](#)); and
- c. whether, bearing in mind all available evidence, there is reason to believe that the person will not meet their obligations under the foreign crew of fishing vessels instructions.

### WJ2.10.1 Applications usually deferred

- a. Applications for an Approval in Principle to recruit foreign crew of fishing vessels will usually be deferred for up to six months if, at the time the application is assessed, a director or senior manager of the New Zealand employer or NZCP:
  - i. has been charged with any offence which, on conviction, would make WJ2.10(a)(iii) apply to that person; or
  - ii. is under investigation for such an offence.
- b. At the time an application for is assessed, immigration officer must:
  - i. defer the decision on the application for up to six months; and
  - ii. inform the applicant of the decision to grant a deferral and the period of the deferral, in writing; and
  - iii. await the outcome of the charge or investigation; and
  - iv. if removal of the character impediment is confirmed, continue processing the application; and
  - v. if the character impediment is not removed, refer to the Area or Operations Manager for their decision on whether to grant a second or subsequent deferral.

### WJ2.10.5 Second and subsequent deferral periods

- a. In cases where the deferral period is coming to an end and the director or senior manager is still awaiting the outcome of the charge or investigation, a second or subsequent deferral period may be imposed.
- b. A decision on a second or subsequent deferral will only be made after appropriate consultation with Operations Support, Visa Services and the Legal Services of the Ministry of Business, Innovation and Employment about:
  - i. whether a second or subsequent deferral is justified in the circumstances; and
  - ii. whether the deferral period is reasonable, given the likely timeframe of any outcome being reached and the efforts the applicant is making to reach an outcome.
- c. A decision to grant a second deferral must be made by an Area or Operations Manager or above.
- d. If the character impediment is not removed by the end of the second deferral period, the Area or Operations Manager may impose a subsequent deferral under the provisions at WJ2.10.5.
- e. The length of the subsequent deferral period will be decided according to the length of time it is expected for a decision on the charge or investigation to be made.
- f. The applicant must be informed in writing of any decision to impose a second or subsequent deferral and the period of the deferral.

### WJ3 Granting of an Approval in Principle

Before an Approval in Principle (AIP) is granted, the New Zealand employer must agree to meet the following conditions for the duration of the AIP. They must agree to:

- a. comply with inspections as required by Maritime New Zealand and the Ministry of Business, Innovation and Employment (the Ministry) to ensure adherence to the Immigration Instructions for Foreign Crew of Fishing Vessels;
- b. ensure that they use only acceptable manning agents for the recruitment and placement of foreign crew (WJ5.5);
- c. ensure that a representative meets each arriving foreign crew member in New Zealand and transports them to the vessel, their onward domestic flight or their accommodation (WJ5.15);
- d. educate and inform foreign crew of their rights and obligations in respect of employment and immigration matters (WJ5.20);
- e. implement measures to assist in managing the risk of desertion while the vessel is in port (WJ5.25);
- f. advise Immigration New Zealand (INZ) as soon as practicable of any information:
  - i. that may assist to prevent any desertion or to apprehend foreign crew who have deserted; and
  - ii. of those people who encourage or assist foreign crew to desert in breach of their work visa conditions (WJ5.25.5);
- g. undertake a full investigation of any complaints or concerns raised by foreign crew and co-operate fully with any investigation of complaints by the Ministry (WJ5.30);
- h. keep and make available accurate employment records (WJ5.35);
- i. make employment records available to the Ministry, or any auditors engaged by the Ministry, at the commencement of any regularly scheduled audit (WJ5.40);
- j. adhere to all the conditions for the employment of crew as set out in WJ5.45 including the ability to pay crew wages into New Zealand bank accounts;
- k. have out-going foreign crew transported to their airport of departure and give sufficient notice of at least 24 hours of crew departure to allow crew members the opportunity to contact and meet with their authorised representative before departing New Zealand (WJ5.50).

### WJ3.1 Significant non-compliance of Approval in Principle conditions

- a. Where an audit identifies significant non-compliance with the conditions listed under WJ3 by the New Zealand employer or individuals associated with them (such as manning agents), the following process will occur:
  - i. INZ will suspend the processing of any existing requests for AIP and any work visa applications related to an existing AIP immediately.
  - ii. The non-compliant company will be advised in writing of the suspension and sent a report detailing the non-compliance, and will be given 30 days to remedy the non-compliance.

**Note:** the suspension does not apply to onshore based employees of the non-compliant company.

- iii. 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 requests for AIPs and related work visa applications will resume.
- iv. A follow up audit will be conducted 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.
- v. If INZ is not satisfied that the significant non-compliance has been addressed or satisfactory progress has been made towards resolution within the 30 day period, the suspension of AIP and related work visa processing will continue (until resolution occurs).
- vi. Failure to address or make satisfactory progress towards resolving the non-compliance may result in current AIPs being rescinded, current work visa holders becoming liable for deportation, and any future AIP requests being declined.

## **WJ5 Employer responsibilities and obligations**

## **WJ5.10 Sponsorship**

The New Zealand employer must sponsor every foreign crew member employed on their vessel.

### **WJ5.10.1 Breach of sponsorship obligations**

A breach of sponsorship obligations by the New Zealand employer will exclude them from being an acceptable sponsor and as a result, would prevent them from being granted any future AIP for foreign crew of fishing vessels (see [E6.5](#)).

### **WJ5.15 Arrival of crew in New Zealand**

The New Zealand employer must ensure that a representative meets each arriving foreign crew member after they have cleared Customs and Immigration, and transports them to the vessel, their onward domestic flight or their accommodation.

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**Note:** Where Foreign Crew arrive with the vessel, as opposed to via a foreign flight, compliance with this section is not required.

## **WJ5.20 Foreign crew education**

The New Zealand employer must:

- a. educate and inform foreign crew of their rights and obligations in respect of employment and immigration matters; and
- b. ensure all new foreign crew are briefed on their rights and responsibilities before their first voyage, and that they are provided with the minimum educational literature, translated into their own language (the minimum educational literature is the *Important Information for Foreign Fishing Crews working in New Zealand Waters Guide (INZ 1214)*, available on the INZ website in 11 languages).

## WJ5.25 Desertion

### WJ5.25.1 Prevention of Ship desertion risk

The employer must implement measures to assist in managing the risk of desertion while the vessel is in port. This may include, as appropriate:

- a. ensuring foreign crew have, at minimum, the identification required by port company security;
- b. using port company security systems to monitor activity to and from the vessel;
- c. briefing vessel watchmen to record the number plates of unidentified vehicles seen around the vessel; and
- d. implementing a foreign crew shore leave policy and other similar measures to maintain contact with foreign crew while ashore.

**Note:** In implementing a shore leave policy and otherwise managing foreign crew desertion risks it is acknowledged that foreign crew are entitled to shore leave and it is not the intent of this section to prevent foreign crew from being able to take appropriate shore leave.

### WJ5.25.5 Notification of desertion & related information

- a. The employer must advise Immigration New Zealand (INZ) as soon as practicable of any information that may assist to prevent any desertion or to apprehend foreign crew who have deserted and those people who encourage or assist foreign crew to desert in breach of their work visa conditions.
- b. This information should be forwarded to the Compliance Operations branch of INZ in Christchurch.
- c. Where crew desert ship, the employer must abide by a two stage notification process:
  - i. Stage one: When it is determined by an employer that a foreign crew member has deserted, the employer must notify INZ as soon as practicable within 48 hours, using the form *Formal Notification of Crew Deserter (INZ 1212)*.
  - ii. The employer must at this time surrender the foreign crew member's passport and Seaman's Book to INZ (if in the Employer's possession). At this point the foreign crew member will be considered in breach of the conditions of their work visa, and INZ may commence with compliance action against the individual crew member and the employer if appropriate. The personal details of the ship deserter will be added to ship deserter statistics.
  - iii. Stage two: In the case of a foreign crew member missing at vessel departure, notification must be made as soon as practicable within 48 hours of the time the vessel leaves port, or within 24 hours of the time the foreign crew member is noted as missing during transit to/from a vessel.

### WJ5.25.10 Records of desertion & associated companies

An employer who has been recorded as associated with a deserter under the process above, may apply in writing for that record to be removed from the record of ship deserters in the following circumstances:

- a. the foreign crew member subsequently returns to their vessel, leaves New Zealand, surrenders to Immigration New Zealand or contacts the employer before any deportation liability notice against them becomes effective; and
- b. the employer can otherwise show good cause why the foreign crew member should not be considered a deserter.

**Note:** INZ will advise the employer in writing of the acceptance or rejection (including reasons for such rejection) of the request for desertion record removal.

## WJ5.30 Complaints by crew

### WJ5.30.1 Investigation of complaints

- a. The employer must undertake a full investigation of any complaints or concerns raised by foreign crew and co-operate fully with any Ministry of Business, Innovation and Employment (the Ministry) investigation of complaints.
- b. The employer must ensure that foreign crew involved in any such complaint are made aware that they have the option of advice or representation from New Zealand Fishing Industry Guild (NZFIG) or any other employee representative party that they have nominated (that is not their manning agent).

### WJ5.30.5 Notification of complaints

The **employer** must inform the Ministry and the NZFIG of any serious complaints, allegations or investigations concerning employment conditions and/or non-compliance with Immigration Instructions for Foreign Crew of Fishing Vessels.

**Note:** The Ministry and the NZFIG or other employee representative will inform the employer of any complaints, allegations or investigations as they become aware of them, such that the employer has the right and ability to conduct its own investigation.

## **WJ5.40 Audits**

### **WJ5.40.1 Provision of information**

- a. The employer must make the records detailed at WJ5.35 (a) above available to the Ministry of Business, Innovation and Employment (the Ministry), or any auditors engaged by the Ministry, at the commencement of any regularly scheduled audit, duly translated into English by an independent translator. The Ministry will endeavour to give reasonable notice of four weeks for any upcoming audit.
- b. Where an urgent audit or investigation is necessary, the employer must make the requested documents available within the timeframes set by the Ministry or its auditors.
- c. The employer must comply with any request for further information or records by the Ministry or its auditors within the timeframes specified at the time of the request.

### **WJ5.40.5 Failure to provide information**

Failure to provide records or information requested by the Ministry or its auditors within the specified timeframes may result in a failed audit and affect the status of any current and future AIP.

## WJ5.45 Conditions of employment for crew

### WJ5.45.1 Vessel Working and Living Conditions

The employer must ensure that facilities and provisions for the working and living conditions of foreign crew on board vessels at least meet:

- a. New Zealand safety standards, including the legislative and regulatory standards in the Health and Safety at Work Act 2015, and
- b. any applicable safety, marine protection, crew living and hygiene standards required by the Director of Maritime New Zealand, including (but not limited to) that:
  - i. all crew have access to sufficient fresh water for their needs, including hot water;
  - ii. adequate food (quantity and type) is provided;
  - iii. crew accommodation is clean and dry;
  - iv. all crew have their own bed and suitable bedding;
  - v. washing facilities and toilets are sufficient for the number of crew on board;
  - vi. the vessel carries adequate medical stores;
  - vii. at least one crew member holds suitable "ship's medic" qualifications;
  - viii. crew are provided with suitable protective clothing and equipment to perform their duties; and
  - ix. vessel safety and emergency drills are carried out on a regular basis.

### WJ5.45.5 Foreign Crew Welfare

- a. The New Zealand employer must ensure that foreign crew have access to the following services:
  - i. the manning agent (where applicable);
  - ii. medical and dental treatment;
  - iii. assistance with banking services, if requested;
  - iv. translation services, if requested;
  - v. mail service; and
  - vi. NZ government agencies (i.e. the Ministry of Business, Innovation, and Employment, Police, Customs, Primary Industry) if requested.
- b. The employer must ensure that their representative is present at the vessel for port calls, and that the representative is accessible to foreign crew at that time.

### WJ5.45.10 Employment Agreements

The employer must ensure that the foreign crew members' employment agreements are made in accordance with the Employment Relations Act 2000.

### WJ5.45.15 Minimum remuneration

- a. Foreign crew must be paid at least the New Zealand minimum statutory hourly wage plus \$2 per hour:
  - i. for all hours worked; and
  - ii. never for less than 42 hours per week averaged over the course of their engagement.

**Note:** These provisions do not supersede the need for applications to meet the requirements of W1 and W2.10

The current New Zealand minimum statutory hourly wage under the Minimum Wage Act 1983 can be found at [www.employment.govt.nz/hours-and-wages/pay/minimum-wage/](http://www.employment.govt.nz/hours-and-wages/pay/minimum-wage/)

- b. The only allowable deductions that can be taken from foreign crew remuneration are:
  - i. food (calculated at a maximum of 10% of hours worked multiplied by the minimum wage);
  - ii. airfares to and from New Zealand; and
  - iii. Immigration New Zealand work visa application fees.

**Note:** Deductions must be based on actual, reasonable, verified expenses. Genuine and verified personal expenses such as cigarettes, phone cards and non-protective clothing (effectively personal wage advances and not connected with the work) are allowed and will not be treated as deductions.

- c. Allowable deductions cannot bring the hourly wage below the New Zealand minimum statutory wage for all hours worked.

#### **WJ5.45.20 Frequency of remuneration payments**

- a. Crew must receive at least the minimum remuneration guaranteed under WJ5.45.15(a)(ii), less deductions provided for in WJ5.45.15(b), in regular periodic payments, either monthly or at every port call as specified in each crew's employment agreement.
- b. Where crew have only received the minimum remuneration at (a), they must be paid all outstanding wages for any hours worked above the 42 hours per week, in line with WJ5.45.15(a)(i), at least 24 hours before departing New Zealand.

#### **WJ5.45.25 Payment of crew wages**

- a. The employer must make a personal, individual New Zealand bank account available to each foreign crew member.
- b. The default wage payment method in foreign crew's employment agreements must be direct credit into the New Zealand bank account detailed above.
- c. Foreign crew members who elect to receive wage payments in cash instead of using the New Zealand bank account provided, must notify the employer of their decision in writing in their own language.

**Note:** It is solely at the foreign crew member's discretion to refuse to use this New Zealand bank account.

- d. The employer, manning agents, crew representatives, and any person associated with them, may not have access to, or Power of Attorney over, any foreign crew member's New Zealand bank account.
- e. Where a foreign crew member refuses to use the available New Zealand bank account, payment of wages must be made directly to them in cash, in New Zealand.
- f. Where payment is made in cash in a foreign currency, the exchange rate used must be recorded, and notified to the foreign crew member at the time the payment is made.
- g. Foreign crew members must receive a final payslip at least 24 hours before their departure from New Zealand so that they have the opportunity to contact and meet with their authorised representative before departing New Zealand (see [WJ5.50](#)).

### WJ5.50 Departure procedure

- a. Wherever possible, the New Zealand employer must endeavour to have out-going foreign crew transported to their airport of departure.
- b. The employer must give sufficient notice of at least 24 hours of crew departure to allow crew members the opportunity to contact and meet with their authorised representative before departing New Zealand.

**Note:** Where foreign crew depart with the vessel, as opposed to via a foreign flight, compliance with (a) above is not required.

## 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 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.

### WJ6.1 Application requirements

The applicant must:

- a. provide a copy of the Approval in Principle (AIP) letter (if applicable);
- b. meet the standard requirements for a temporary visa (see [W2.10](#));
- c. have at least 12 months' work experience in a similar position;
- d. have any other required qualifications and experience for the position as specified in the employer's AIP (or job description for non-AIP applications);
- e. provide an employment agreement, in English and their own language, that meets WJ5.45.10; and
- f. provide the form *Sponsorship for Temporary Entry (INZ 1025)* completed by **the New Zealand employer**.

**Note:** The NZ employer must meet the acceptable sponsor requirements set out at [E6.5](#) and [E6.5.1](#).

### **WJ6.5 Additional requirements for non-Approval in Principle applicants**

- a. Where WJ6(a)(ii) applies, before any work visa is granted for foreign crew, the New Zealand employer must:
  - i. meet the AIP requirements as set out at WJ2(b); and
  - ii. agree to comply with all the requirements and obligations set out at WJ5.
- b. provide the completed form *Supplementary Form for Foreign Crew of a Fishing Vessel (INZ 1213)*; and
- c. INZ will determine whether the New Zealand employer 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.

### **WJ6.15 Conditions of the work visa**

Any work visa granted under the Foreign Crew of Fishing Vessels instructions will be limited to work on the named New Zealand-flagged vessel in New Zealand waters, up to a maximum of 12 months.

## 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 [WS2.1.1\(i\)](#)), 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](#)).

## 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](#)).
- g. 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.
- h. 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.
- i. 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.
- j. Approved employers will be granted accreditation for a period of 12 months.
- k. 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.
- l. 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; and
  - iv. 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.

### **WS1 Objective**

The objective of the Specific Purpose or Event Instructions is to facilitate entry to New Zealand for a specific purpose or event for which the applicant has demonstrated skills, expertise or attributes that are likely to benefit individuals and/or New Zealand and where there is no risk of a negative impact on opportunities for New Zealand **citizens or residents.**

**WS2 Requirements for the grant of a Specific Purpose or Event visa**

## WS2.1 Who is eligible for a Specific Purpose or Event Work visa

- a. Applicants may be granted a work visa and entry permission under specific purpose or event instructions, if an immigration officer is satisfied:
- i. the applicant will be in New Zealand to complete a specific purpose or event described in Column A of the table at WS2.1.1; and
  - ii. the applicant has demonstrated they meet the work visa requirements set out in Column B of the table at WS2.1.1 by providing the evidence specified; and
  - iii. the work is time-bound (not open-ended or permanent); and
  - iv. the applicant is suitably qualified to undertake the work; and
  - v. the applicant meets health and character requirements as specified at A4 and A5.
- b. The currency of a specific purpose or event visa must be consistent with the time required for the holder to complete the specific purpose or event, up to the maximum durations indicated in Columns C and D.
- c. Applications for a further Specific Purpose or Event work visa by a person holding a Specific Purpose or Event work visa must be declined, unless:
- i. a further specific purpose or event visa is allowed for by Column D of WS2.1.1; and
  - ii. the immigration officer is satisfied that the grant of a further visa is necessary in order to complete the original specific purpose or event.
- d. Applications for work visas made under this category from applicants who currently hold a visitor visa granted under V3.100 (Guardians accompanying students to New Zealand) must not be approved (see V3.100.35).

### WS2.1.1 Acceptable specific purposes and events, evidence and maximum visa durations

	Column A: <b>People who are considered to be undertaking a Specific Purpose or event</b>	Column B: <b>Evidence required</b>	Column C: <b>Initial visa duration that may be granted</b>	Column D: <b>Further visa duration that may be granted</b>
a.	Senior or specialist business people on short-term secondments who have a job offer either in a substantial New Zealand company or a New Zealand subsidiary of an overseas company.	<ol style="list-style-type: none"> <li>i. Evidence of a job offer that meets the requirements of W2.10.10 and W2.10.15 from the New Zealand company or subsidiary; and</li> <li>ii. A completed Employer Supplementary Form (INZ 1113); and</li> <li>iii. Evidence the applicant is senior manager or specialist personnel (see WS2.5.5); and</li> <li>iv. Terms of the secondment, including duration; and</li> <li>v. Evidence of funds as required by W2.15</li> </ol>	Up to 12 months	One further visa of up to 12 months
b.	A business person seconded to New Zealand as an intra-corporate transferee to take up a position in a multinational company as: <ul style="list-style-type: none"> <li>○ an executive; or</li> <li>○ a senior manager; or</li> <li>○ specialist personnel</li> </ul>	<ol style="list-style-type: none"> <li>i. Evidence the applicant is a senior manager, executive or specialist personnel (see WS2.5.5); and</li> <li>ii. Terms of the secondment, including duration; and</li> <li>iii. Evidence of funds as required by W2.15</li> </ol>	Up to 36 months	One further visa of up to 36 months
c.	Business people wishing to undertake business activities in	<ol style="list-style-type: none"> <li>i. Evidence of the amount of time the applicant needs to be in</li> </ol>	Up to 12 months	No further visa if applicant currently holds a Specific

	New Zealand who can satisfy an immigration officer that they have genuine reasons to be in New Zealand for a period or periods exceeding 3 months in any one year.	New Zealand; and ii. Evidence of the applicant's business activities in New Zealand. Business activities are described in <u>V3.5 Business Visitors</u> .		Purpose or Event visa
d.	Principal applicants under the Migrant investment instructions or the Parent Retirement Category who have been approved in principle and are investigating investment opportunities and making direct investments in New Zealand (see <u>BJ7.40</u> and <u>F3.25</u> )	No additional evidence required	12 months	<ul style="list-style-type: none"> <li>• One further visa of 12 months for Investor 1 applicants; or</li> <li>• One further visa of 6 months for investor 2 applicants</li> </ul>
e.	Referees or judges of sports events, shows, displays or exhibitions	i. Invitation, or schedule of events setting out the duration the applicant is required to be in New Zealand; and ii. Evidence of funds as required by <u>W2.15</u>	For the period of their engagement, not normally more than 6 months	No further visa if applicant currently holds a Specific Purpose or Event visa
f.	Dance and music examiners of recognised international teaching institutions	i. Invitation, or schedule of events setting out the duration the applicant is required to be in New Zealand; and ii. Evidence of funds as required by <u>W2.15</u>	For the period of their engagement, not normally more than 6 months.	No further visa if applicant currently holds a Specific Purpose or Event visa
g.	Installers or servicers of specialised machinery or equipment supplied by an overseas company where installing or servicing the equipment in New Zealand is a condition of purchase.	i. Evidence that installing or servicing the equipment in New Zealand is a condition of the purchase of the machinery or equipment; and ii. Evidence of funds as required by <u>W2.15</u>	Up to 3 months in any 12 month period	No subsequent visa within a 12 month period
h.	Sports players and professional sports coaches taking up a paid position in a New Zealand sports club	i. Evidence of a job offer that meets the requirements of <u>W2.10.10</u> and <u>W2.10.15</u> from the New Zealand club, if the applicant is professional player or coach; and ii. A completed Employer Supplementary Form (INZ 1113); and iii. Evidence of the terms of the engagement with the club, if the applicant is not a professional player; and iv. Evidence of funds as required by <u>W2.15</u>	For the period of their job offer or engagement, up to: <ul style="list-style-type: none"> <li>• 12 months for players; or</li> <li>• 36 months in the case of coaches employed at national or regional level</li> </ul>	No further visa if applicant currently holds a Specific Purpose or Event visa

i.	Entertainment industry sector workers (entertainers, performing artists, film and video production crew, and associated support personnel), who intend to engage in any form of private or public performance in New Zealand or work on any film or video production in New Zealand.	Evidence required by <u>WS3</u> .	For the period of their engagement	Further visas can be granted for the period required if the engagement is extended.
j.	Philippines nurses seeking entry to obtain New Zealand occupational registration who have a job offer from a District Health Board and have been accepted for the Nursing Council's Competence Assessment Programme	<ul style="list-style-type: none"> <li>i. Evidence of a job offer that meets the requirements of <u>W2.10.10</u> and <u>W2.10.15</u> from a District Health Board; and</li> <li>ii. A completed Employer Supplementary Form (INZ 1113); and</li> <li>iii. Evidence of acceptance for the Nursing Council's Competence Assessment Programme; and</li> <li>iv. Evidence of funds as required by <u>W2.15</u></li> </ul>	3 months	No further visa if applicant currently holds a Specific Purpose or Event visa
k.	Principal applicants for residence under the Entrepreneur Residence Visa Category instructions who currently hold a valid visa granted under the Entrepreneur Work Visa Category or Long Term Business Visa Category instructions (see <u>BH8</u> ).	No additional evidence required	9 months	No further visa if applicant currently holds a Specific Purpose or Event visa
l.	People who need to come to New Zealand for any other specific purpose or event where they meet the objective of these instructions ( <u>WS1</u> ) and the circumstances justify the grant of a work visa.	<ul style="list-style-type: none"> <li>i. Evidence of the specific purpose or event that the person will be undertaking in New Zealand; and</li> <li>ii. Evidence that satisfies an immigration officer that the nature of the work or the circumstances surrounding the work are such that it is not possible and/or appropriate for a New Zealand citizen or resident to take up the work (see note 1 below); and</li> <li>iii. Evidence of funds as required by <u>W2.15</u>; and</li> <li>iv. If the person will be employed in</li> </ul>	For the period of their engagement	Further visas can be granted for the period required if the engagement is extended.

		<p><b>New Zealand:</b></p> <ul style="list-style-type: none"> <li>o Evidence of a job offer that meets the requirements of <u>W2.10.10</u> and <u>W2.10.15</u>; and</li> <li>o A completed Employer Supplementary Form (INZ 1113)</li> </ul>		
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**Note:**

1. The factors an immigration officer may take into account in determining whether it would be possible and/or appropriate for New Zealand citizens or residents to take up the work include, but are not limited to, whether the work:

- requires a person to be primarily based in New Zealand on a long-term or permanent basis,
- will be for a New Zealand employer and be covered by a New Zealand employment agreement,
- requires attributes that automatically exclude New Zealand citizens or residents (for example, the requirement for foreign security clearance, or a special programme only offered to nationals of certain countries).

It is not relevant whether the employer has been unable to recruit New Zealanders to take up the work. If it is appropriate for a New Zealand citizen or resident to take up the work but the employer has not been able to find a suitable New Zealander, an application may be made under the Essential Skills (WK).

2. Provisions WS2.1.1 (a),(b),(c),(g), and (j) reflect New Zealand's trade commitments with respect to immigration (see E9).

## WS2.5 Definitions

- a. For the purpose of WS instructions 'senior manager' or 'executive' means a person who:
  - i. is a senior employee of an organisation; and
  - ii. has been employed by that organisation for at least 12 months before their proposed transfer to New Zealand; and
  - iii. is responsible for the entire organisation's operations in New Zealand, or a substantial part of it, while receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the business.
- b. For the purpose of these instructions 'specialist personnel' means a person:
  - i. who is being transferred to undertake a specific or specialist task at a senior level within the company; and
  - ii. possesses knowledge of the organisation's service, research equipment, techniques or management.

## WS2.10 Currency and conditions of specific purpose or event visa

A Specific Purpose or Event work visa must be granted with the following currency and conditions:

- a. a first entry date sufficient to allow the applicant time to travel to New Zealand, if the applicant is outside New Zealand (generally up to six months); and
- b. a stay in New Zealand for sufficient time to complete their purpose, up to the maximum stated in Column C or D of WS2.1.1, starting from either:
  - i. the applicant's first arrival in New Zealand if the applicant is outside New Zealand; or
  - ii. from the date the visa is granted if the applicant is in New Zealand; and
- c. multiple entries for the duration of the visa; and
- d. the conditions appropriate to the holder's work in New Zealand (i.e. *The holder may only work as [occupation] for [employer or New Zealand entity] in [New Zealand location of the work]*).

## **WS3 Performing Artists, Entertainers and Entertainment Industry workers**

### WS3.1 Requirements

- a. Employers, promoters, agents or producers must complete the Performing Artists, Entertainers and Entertainment Industry Work Visa Application Supplementary Form (INZ 1187) and provide evidence that:
  - i. the applicant is of international distinction, or particular ethnic significance, or is manifestly essential to the presentation or production; or
  - ii. the applicant's engagement does not put at risk the engagement of New Zealand entertainers or professionals in equivalent work unless the wider benefits to be obtained from the applicant's employment outweigh the loss of job opportunities for New Zealanders; or
  - iii. they have given appropriate consideration to engaging available New Zealand entertainers or professionals.
- b. Employers, promoters, agents or producers must also provide:
  - i. the full names, nationalities, dates and places of birth of each applicant; and
  - ii. production information; and
  - iii. a guarantee of accommodation and repatriation for each applicant.
- c. If applicable, evidence must be provided of an applicant's engagement:
  - i. on an official co-production; or
  - ii. with an accredited company ([WS3.15](#)); or
  - iii. with a company that has been granted approval in principle to recruit entertainment industry workers ([WK2.1](#)).

**Note:** Employment, as defined under section 4 of the Immigration Act 2009, includes engagement of an independent contractor under a contract for services.

### **WS3.5 Referral to the relevant New Zealand performers' union or professional association**

The employer must obtain agreement of the relevant New Zealand performers' union or professional association as set out at [WS3.10](#) unless an applicant's engagement in New Zealand:

- a. is 14 days or less; or
- b. will be undertaken on an official co-production; or
- c. is with a company that holds entertainment industry accreditation (see [WS3.15](#)).

### **WS3.10 Obtaining the agreement of the relevant New Zealand performers' union or professional association**

- a. Immigration officers must sight evidence that the information required in [WS3.1\(a\)](#) has been supplied to the relevant performers' union(s) or professional association(s) depending on the specific occupations of all those involved in the performance or production.

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**Note:** Details of the relevant unions/professional associations are published on the Immigration New Zealand website.

- b. If the relevant union or professional association does not object to the application, an immigration officer may grant a work visa.
- c. If the relevant union or professional association objects to the application, the union must notify Immigration New Zealand (INZ) within three working days of receiving the information required by [WS3.1\(a\)](#) from the promoter, agent or producer.
- d. INZ will then consult with the parties to resolve the disagreement as quickly as possible.
- e. If the parties cannot reach an agreement, INZ will refer the application to the Minister of Immigration for a decision.

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**Note:** In the case of film production, INZ may also seek advice from the New Zealand Film Commission or any other appropriate industry or government organisation.

### WS3.15 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 section 4 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.

#### WS3.15.1 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 other parts of MBIE, Worksafe 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.

#### WS3.15.5 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 WS3.15.1(a).
- b. A fee is payable for an application for accreditation. A lower fee is payable for a renewal of accreditation.

#### WS3.15.10 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.

#### WS3.15.20 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.

**WS3.15.15 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.

#### **U4.20 Vocational trainees**

- a. Only the following applicants may be granted a student visa as a vocational trainee:
  - i. Air New Zealand trainees that meet the requirements set out at [U6.35.5](#);
  - ii. Nautical students that meet the requirements set out at [U9.5](#);
  - iii. New Zealand Aid Programme Short-Term Training Award (STTA) trainees that meet the requirements set out at [U9.15](#).
- b. Applicants who intend to undertake industry training or a modern apprenticeship, not listed at [U4.20\(a\)](#) above, or U9, must apply for a work visa (see [WK](#)).

## 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\$37,090.68 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.

## U5.1 Status of education providers and programmes

- a. All education providers must certify in their offers of places to foreign students (see [U3.5](#)) that the programme of study or training scheme offered complies with foreign student requirements for different kinds of education providers (see [U5.5–U5.20](#)).
- b. All education providers offering places to foreign students must be signatories to the Ministry of Education's Education (Pastoral Care of International Students) Code of Practice 2016.
- c. Any queries on the status of programmes or training schemes offered by private training establishments should be referred to the Service Delivery Unit, Quality Assurance Division, New Zealand Qualifications Authority (NZQA), PO Box 160, Wellington.
- d. Students **will not be granted a student visa** to **undertake** a programme of study or training scheme offered at an education provider that holds a Category Four status under the NZQA's External Evaluation Review (EER) quality assurance system.
- e. Immigration New Zealand (INZ) may suspend the processing of applications for student visas for study at an education provider where at least one of the following applies:
  - i. the offered programme of study or training scheme does not comply with foreign student requirements as set out in [U5.5 to U5.20](#);
  - ii. the education provider is not complying with its obligations under the Immigration Act, immigration regulations, or immigration instructions;
  - iii. INZ has been informed by education agencies that the education provider is not complying with its obligations under the Education Act and education regulations.
- f. Before a decision is made to suspend the processing of student visas, the following will be taken into account:
  - i. evidence of the non-compliance; and
  - ii. reasons for the non-compliance; and
  - iii. the duration, frequency, and severity of the non-compliance.
- g. INZ may resume the processing of student visas if it is satisfied that the education provider is complying with its obligations.

**Note:** Despite (d), where an applicant fails to meet the requirements under Generic Temporary Entry Class instructions for health, character or bona fide applicants, the application may be declined.

#### **U14 Pathway student visas pilot**

- a. For the purposes of these instructions, a pathway is defined as a progression of up to three consecutive programmes of study, offered by qualifying education providers, either within their institution or in conjunction with other qualifying education providers.
- b. Pathway study can be undertaken on a single student visa.
- c. Any application for a pathway student visa made after 7 June 2018 must be declined.

## U14.15 Changing and complying with pathway student visa conditions

*See also Immigration Act 2009 ss 49, 52, 56*

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

### U14.15.5 Breaching visa conditions

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

## U14.20 Provider requirements

### U14.20.1 Pathway pilot entry criteria

- a. To qualify for entry to the Pathway student visa pilot, an education provider must:
  - i. be invited by Immigration New Zealand to be a pilot participant; and
  - ii. have signed the Pathway Student Visas - Pilot Participation Declaration agreeing to the requirements as set out at U14.20.10; and
  - iii. be either a school, a university or hold a Category One or Two rating under New Zealand Qualifications Authority's (NZQA) External Evaluation and Review framework; and
  - iv. have a minimum 90% student visa application approval rate over the 2014/15 financial year or 2016 calendar year (12 month period); and
  - v. comply with the legislative requirements as set out under the Education Act 1989 to offer programmes of study to foreign students (U5.5 to U5.20); and
  - vi. be a signatory to the Ministry of Education's Education (Pastoral Care of International Students) Code of Practice 2016.

### U14.20.5 Eligible pathways

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

### U14.20.10 Formal agreement between qualifying education providers

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

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

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

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

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

## L6.1 Limited visas for some refugee or protection status claimants, refugees or protected people

*See also Immigration Act 2009 s 150*

A limited visa may be granted to a refugee or protection status claimant, a refugee or a protected person **only if** that person is at the time a holder of a current limited visa and only if a visa is required for the claimant to be in New Zealand lawfully while their claim is being determined.

### L6.1.1 General requirements

*See also Immigration Act 2009 ss 61, 150*

- a. A refugee or protection status claimant, a refugee or a protected person who holds a limited visa may submit an application for a further limited visa at any INZ office in New Zealand.
- b. Applications must be made on the application form *Visitor Visa Application (INZ 1017)* or *Student Visa Application (INZ 1012)* (depending on the nature of the express purpose), and submitted together with the applicant's passport (or a certified copy) or travel document (or a certified copy) and a passport-sized photograph.
- c. Such applicants do not have to pay a fee.
- d. The applicant must ensure that they submit each application before any current limited visa expires (see [L2.1](#)).
- e. The following refugee or protection status claimants, refugees or protected persons who require further time in order to achieve the express purpose for which they were granted a limited visa should normally be granted an appropriate temporary visa rather than a further limited visa where:
  - i. claimants who apply to be lawfully in New Zealand while their claim is determined;
  - ii. refugees or protected people who have yet to be granted a residence class visa.
- f. Refugee or protection status claimants, a refugee or a protected person whose express purpose has been achieved or abandoned or is no longer achievable may not be granted a further limited visa because no further time is required in order to achieve the express purpose. However such applicants should be advised that although as the holder of a limited visa they have no right to apply for a further visa, they may nevertheless be eligible for the grant of a visa under section 61 after their limited visa expires, at the discretion of the Minister or an immigration officer.

### L6.1.5 Conditions of limited visas granted to refugee or protection status claimants

In addition to any of the conditions listed in [L2.40](#), each time a limited visa is granted to a refugee or protection status claimant, they must be advised in writing that their visa is subject to the following conditions:

- a. that at all times they keep INZ informed of any change of residential address; and
- b. that they may be liable for deportation if:
  - i. their claim for refugee or protection status is declined and they fail to appeal, or have appealed unsuccessfully, to the Tribunal; or
  - ii. they withdraw their claim.

### L6.1.10 Granting limited visas to refugee or protection status claimants at the border

*See also Immigration Act 2009 ss 15, 16*

- a. If the holder of a limited visa claims refugee or protection status at the border, the holder, unless subject to sections 15 or 16 of the Immigration Act 2009 (see [A5.40](#)), should be granted entry permission for the period required to achieve the express purpose for which they were originally issued the limited visa.
- b. If the claimant does not confirm their claim in the prescribed manner (see [C3.25](#)) at the border, they should be told that an application for a further limited visa will only be considered after they have confirmed their claim in the prescribed manner.

### L6.1.15 Grant of limited visa in relation to criminal matters

*See also Immigration Act 2009 s 83*

- a. A limited visa may be granted to a person if:
  - i. a certificate has been issued in respect of the person under section 13 or 42(5) of the Mutual Assistance in Criminal Matters Act 1992; and
  - ii. the limited visa is granted for the sole purpose of enabling the person:
    - o to be in New Zealand for the purposes of giving or providing evidence or assistance pursuant to a request made under section 12 of the Mutual Assistance in Criminal Matters Act 1992; or
    - o to be transported through New Zealand pursuant to section 42 of the Mutual Assistance in Criminal Matters Act 1992.

- b. A limited visa may also be granted to a person for the sole purpose of enabling the person to return to New Zealand to face any charge in New Zealand or to serve any sentence imposed on the person in New Zealand.

## Y2.25 Carrier responsibilities prior to departure

*See also Immigration Act 2009 ss 96, 101(1)*

*See also Immigration (Carriers' Information Obligations) Regulations 2010, reg 5*

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations, reg 11(3), 29)*

- a. The Immigration Act 2009 requires that the carrier or the person in charge of any craft en route to New Zealand, or that berths, lands or arrives in New Zealand is responsible for ensuring all persons boarding the craft have the appropriate immigration documentation. The Immigration (Carrier's Information Obligations) Regulations 2010 prescribe the immigration documentation which includes:
  - i. a valid passport or certificate of identity (unless exempt); and
  - ii. a visa (if required) or an endorsement indicating New Zealand citizenship.

**Note:** The check for a visa or endorsement is not required if the carrier or person in charge of a commercial craft obtains the Advance Passenger Processing information as detailed in Y2.20 from every person who intends to board the craft for the purpose of travelling to New Zealand and provides that information to the Chief Executive of the **Ministry of Business, Innovation and Employment**.

- b. A carrier or person in charge of a commercial craft who, without reasonable excuse, fails to ensure that all persons boarding the craft have the appropriate immigration documentation except where a person is exempt under regulation 11(3) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 from holding certain documentation, commits an offence and may:
  - i. incur an infringement fee; or
  - ii. be prosecuted; or
  - iii. have other action may be taken against them utilising any appropriate enforcement tools in order to encourage compliance.

### Y2.25.1 Carrier responsibilities for ensuring or facilitating compliance with the Immigration Act 2009

- a. Carriers are responsible on arrival for:
  - i. once inside the territorial limits of New Zealand and for the purpose of ensuring or facilitating compliance with the Immigration Act 2009, preventing, with such reasonable force as may be necessary, any person landing in New Zealand other than:
    - o in an immigration control area; or
    - o for the purpose of complying with the responsibilities in Y2.1(a) and (b); and
  - ii. providing, as may be required by an immigration officer, any details about any persons who may have been on board the craft since its last port of call; and
  - iii. if the craft is unable to land at an immigration control area, to make appropriate arrangements for all persons on board to report to an immigration officer at an immigration control area, within 72 hours of arriving in New Zealand; and
  - iv. reporting to an immigration officer as soon as practicable, the existence of any stowaway on board.
- b. A carrier who, without reasonable excuse, fails to meet the responsibilities set out above commits an offence and appropriate action will be taken against them utilising any appropriate enforcement tools in order to encourage compliance, including prosecution.

### Y2.25.5 Definition of 'craft'

*See also Immigration Act 2009 s 4*

'Craft' means any form of aircraft, ship, or other vehicle or vessel capable of being or intended to be used to transport any person to or from New Zealand from or to any country outside New Zealand.

### Y2.25.10 Definition of 'carrier'

*See also Immigration Act 2009 s 4*

'Carrier', in relation to a craft:

- a. means the owner or charterer of the craft; and
- b. if the owner or charterer is not in New Zealand, includes the agent in New Zealand of the owner or charterer; and
- c. if there is no agent in New Zealand, includes the person in charge of the craft.

## Y2.35 Requirement to provide further information

*See also Immigration Act 2009 s 102*

*See also Immigration (Carriers' Information Obligations) Regulations 2010, reg 6(2)*

- a. Airlines are required to provide information to the **Ministry of Business, Innovation and Employment** about passengers. This data assists the Department of Labour in the protection of border security.
- b. If the Chief Executive of the **Ministry of Business, Innovation and Employment** (the Chief Executive) has requested information about a person who intended to or did travel to New Zealand not more than 14 days before or after the arrival of the craft, regulation 6(2) of the Immigration (Carriers' Information Obligations) Regulations 2010 requires that the relevant carrier or person in charge of the craft must provide the Chief Executive with information about:
  - i. where and on what date the person booked the intended travel; and
  - ii. with whom, if anyone, the person intended to travel; and
  - iii. with whom the person has previously travelled; and
  - iv. whether or not the person paid for their own intended travel, and the manner of payment; and
  - v. the person's travel movements before the intended travel; and
  - vi. whether the route of the person's previous travel has changed from the way that he or she originally booked the travel, and if so, in what way; and
  - vii. whether the person failed to undertake travel on a previous occasion; and
  - viii. whether the person has unchecked baggage.
- c. The Chief Executive must have access to the information specified in (b) (i)-(viii) for the period from the date specified by the Chief Executive until 14 days after the arrival in New Zealand of the craft on which the person to whom the requested information relates intended to, or did, travel to New Zealand.
- d. The information specified in (b) (i)-(viii) above must be provided whether or not the person whom the information is about actually boarded the craft.
- e. The Chief Executive must have access to the information specified in (b)(i) -(viii) above directly from the airline's database in an approved form and manner for a period of 14 days before or after the arrival in New Zealand of the craft on which the person whom the information is about intended to, or did, travel to New Zealand.
- f. Information specified in (b) (i)-(viii) above may be retained by the Chief Executive if:
  - i. the Chief Executive decided that the person to whom it relates may not board a craft for the purpose of travelling to New Zealand; or
  - ii. the person has been refused a visa and entry permission on arrival or in a place designated by the Chief Executive outside New Zealand; or
  - iii. the information needs to be retained as part of a record of a particular action having been taken in relation to the person to whom it relates (e.g. a record that a person was interviewed on arrival); or
  - iv. the information gives the Chief Executive good cause to suspect that an offence against this Act is being, or may have been, committed; or
  - v. the information gives the Chief Executive good cause to suspect that a risk to border security exists.
- g. A carrier or person in charge of a commercial craft who fails, without reasonable excuse, to meet the responsibilities set out in (b)-(e) above commits an offence and may:
  - i. incur an infringement fee; or
  - ii. be prosecuted; or
  - iii. have other action taken against them, utilising any appropriate enforcement tools in order to encourage compliance.

## C2.25 Confidentiality to be maintained

*See also Immigration Act 2009 ss 151, 354, 355(3)*

- a. All persons must keep confidential the fact that a person is a claimant, a refugee, or a protected person, as well as the details of their case and status, at all times, both during and after the determination of the claim or other matter.
- b. Compliance with C2.25(a) may require confidentiality be maintained as to the very fact or existence of a claim or case, if disclosing its fact or existence would tend to identify the person concerned or be likely to endanger anyone.
- c. Despite C2.25(a) and (b) the fact of a claim or particulars relating to a claim may be disclosed:
  - i. for the purposes of determining a claim or matter, administering the Immigration Act 2009, or determining any obligations, requirements, or entitlements of the claimant or other person concerned under any other enactment; or
  - ii. for the purposes of the maintenance of the law, including for the prevention, investigation and detection of offences in New Zealand or elsewhere; or
  - iii. to the United Nations High Commissioner for Refugees or his or her representative; or
  - iv. if the particulars of the claim are published in a way that is unlikely to allow identification of the person concerned; or
  - v. if, in the circumstances of the particular case, there is no serious possibility that the safety of the claimant or any other person would be endangered by the disclosure of the information.
- d. A refugee and protection officer may disclose information under C2.25(c)(i) when carrying out his or her functions under the Immigration Act 2009.
- e. When determining if information may be released in circumstances covered by C2.25(c)(v), the person considering whether to disclose the information may have regard to how the person, agent or body to whom information is disclosed may protect the information including any applicable requirements of the Privacy Act 1993, any orders of the Tribunal or a court and any protection mechanisms the recipient must or may apply.
- f. If information relating to a particular claim is able to be released after considering C2.25(c)(v) and (e), the chief executive of the **Ministry of Business, Innovation and Employment** may publish a decision of the refugee and protection officer relating to the claim, if the chief executive determines in the circumstances of the particular case, it is in the public interest to do so.
- g. Nothing in C2.25 prevents the disclosure of the fact that a person is a claimant, a refugee, or a protected person, or disclosure of particulars in relation to a claimant, a refugee, or a protected person, to the extent that the person concerned:
  - i. has expressly waived his or her right to confidentiality under section 151 of the Immigration Act 2009; or
  - ii. by his or her words or actions, impliedly waived his or her right to confidentiality under section 151 of the Immigration Act 2009.
- h. Anyone who without reasonable excuse breaches C2.25(a) or (b) or publishes information released in breach of C2.25(a) or (b) or commits an offence under section 354 of the Immigration Act 2009 and, if convicted, is liable to imprisonment for a term not exceeding 3 months, a fine not exceeding \$10,000, or both.

**APPENDIX 2: AMENDMENTS TO THE OPERATIONAL MANUAL EFFECTIVE ON AND AFTER 22 MAY 2017**

### V3.1 Group visas

- a. Group visas may be granted to groups of people who will be arriving in, and visiting New Zealand together, for the same purpose.
- b. Group visas should name each member of the group and be current for travel within one month of the applicants' intended date of arrival in New Zealand, unless the immigration officer considers the applicants' circumstances warrant a longer or shorter period.
- c. A leader must take charge of the group visa, and:
  - i. present it on arrival with the passports or travel documents of the people named in it; and
  - ii. ensure that the group stays together as a single unit on arrival and completes all necessary arrival formalities.
- d. A leader may also be considered an international tour escort under V3.150.

### V3.150 International Tour Escorts

- a. Tour escorts accompanying tour groups may undertake their duties in New Zealand while holding a visitor visa.
- b. A tour escort is a person who:
  - i. arrives, leaves and travels within New Zealand with a tour group; and
  - ii. resides offshore; and
  - iii. is employed by an employer outside New Zealand (e.g. an overseas travel agent); and
  - iv. has the primary role of providing pastoral care, facilitating arrival and departure formalities, translation, logistical support and organisation for the tour group rather than leading activities or providing in-depth local knowledge.
- c. Tour escorts from countries whose nationals are people to whom a visa waiver applies (E2.1), may be granted a three-month visitor visa and entry permission on arrival in New Zealand.
- d. Tour escorts from countries whose nationals are required to hold a visitor visa to travel to New Zealand must apply for a visitor visa before travelling to New Zealand.
- e. Applicants must hold a letter from their employer containing the information set out at (f) below. This must be provided either:
  - i. with a visitor visa application, where the applicant makes an application before travelling to New Zealand, or
  - ii. upon request by an immigration officer, if the applicant is applying for a visitor visa at an immigration control area having travelled to New Zealand as a person to whom a visa waiver applies.
- f. The letter from the tour escort's employer must be no more than 12 months old from the date of arrival of the tour escort and must:
  - i. include the name of the applicant; and
  - ii. include the passport number, nationality and expiry date of the passport the applicant will be travelling on; and
  - iii. include the activities, duties and responsibilities the applicant will undertake while in New Zealand; and
  - iv. include a copy of the tour itinerary for the current tour they will be escorting
  - v. be on the employers letterhead; and
  - vi. include the contact details of the employer, such as contacts names, contact phone numbers, email and address; and
  - vii. be signed by the employer; and
  - viii. be written or translated in English.

**Note:** Persons intending to travel to New Zealand as a **tour guide** are required to obtain a work visa. For the purposes of these instructions, 'tour guides' are distinct from 'tour escorts' as follows:

Tour guides generally lead tours in New Zealand providing in-depth local knowledge of New Zealand culture, history, society, geography etc and are generally employed by New Zealand employers. Tour guides may also be licensed or accredited.

If a tour escort also performs some or all of the role or duties of a tour guide they will be required to obtain a work visa.

## W2.2 Definitions

*See also Immigration Act 2009, s 4*

### W2.2.1 Definition of 'work'

- a. Work means any activity undertaken for gain or reward, but does not include:
  - i. visits by persons undertaking business activities detailed in [V3.5\(b\)](#);
  - ii. official business in the service of any government, or of any inter-governmental or international organisation that is entitled to any privileges and immunities under the Diplomatic Privileges and Immunities Act 1968 (see [H2](#));
  - iii. study or training under a scholarship or other award recognised by the Minister;
  - iv. visits by guests of government (guest of government status is granted by the Visits and Ceremonial Office, Department of Internal Affairs);
  - v. visits by persons who meet the special requirements under [V3.55](#), [V3.85](#), [V3.130](#), [V3.140](#) or [V3.150](#);
  - vi. volunteer work for the Department of Conservation.
- b. 'Gain or reward' includes any payment or benefit that can be valued in terms of money, such as board and lodging, goods (e.g. food or clothing) and services (e.g. transport).

**Note:** This definition does not require work as an 'employee'. It also covers self-employment.

### W2.2.5 Definition of 'New Zealand' for work purposes

- a. A person is considered to be undertaking work in New Zealand if at any time they are working:
  - i. on or in relation to any craft, artificial island, installation, or structure anywhere within the territorial sea of New Zealand; or
  - ii. on or in relation to any artificial island, installation, or structure anywhere within the exclusive economic zone of New Zealand or on or above the continental shelf of New Zealand; or
  - iii. on board any craft that is registered in New Zealand and is engaged in activities anywhere:
    - o within the New Zealand exclusive economic zone; or
    - o on or above the New Zealand continental shelf.
- b. A person is considered to be undertaking work in New Zealand whether or not a New Zealand or overseas resident is providing the payment or benefit for the activity.

### W2.2.10 Definition of 'full-time employment'

Unless otherwise specified, full-time employment is considered to be at least 30 hours of work per week for the purpose of all work instructions.

### W2.2.15 Definition of 'New Zealand market rate'

- a. For the purposes of work instructions (with the exception of [WH1](#) Recognised Seasonal Employer instructions), the New Zealand market rate is the rate of pay which would be required to recruit a New Zealand citizen or residence class visa holder to do equivalent work.
- b. When assessing the New Zealand market rate, factors immigration officers may consider, include, but are not limited to:
  - i. the typical rate of pay a New Zealand citizen or residence class visa holder receives for equivalent work;
  - ii. rates of pay provided by collective agreements for the relevant industry;
  - iii. the region of employment;
  - iv. the period of employment;
  - v. the other terms and conditions of employment (such as the hours of work);
  - vi. the level of training and experience required for the position.

**APPENDIX 3: RESCINDED INSTRUCTIONS EFFECTIVE ON AND AFTER 8 MAY 2017**

### A12.10 Printing

A supply agreement exists between INZ and Blue Star Group for printing and/or supplying:

- a. all leaflets; and
- b. application forms; and
- c. most other forms.

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**Note:** No office may print their own numbered forms or leaflets without first consulting Service Design and Performance Branch.

### **F2.35 Deferring the final decision if the partnership is genuine and stable but less than 12 months duration**

- a. An application can only be deferred if the applicant has been assessed as living together in a genuine and stable partnership with their New Zealand citizen or resident partner but the 12 month qualifying period has not been met.
- b. If, after assessing an application, an immigration officer is satisfied the couple are living together in a partnership that is genuine and stable, but the duration of that partnership is less than the 12 months required, (see [F2.5\(a\)](#)) they may defer the final decision to enable the qualifying period to be met.
- c. If the principal applicant wishes to be in New Zealand with their partner during the deferral period, they may be granted a work visa (once an application has been made) for a period sufficient to enable the qualifying period to be met and any further assessment of their residence class visa application to be completed.

### **WF2.15 Principal applicants of residence applications under Partnership Category whose application has been deferred**

Principal applicants of residence applications under Partnership Category, whose applications have been deferred (see [F2.35](#)) and who wish to be in New Zealand with their partner during the deferral period may be granted a work visa (once an application has been made) for a period sufficient to enable the qualifying period for residence to be met and any further assessment of their residence application to be completed.

#### **WJ4.1 Authorised agent**

An “authorised agent” refers to the person nominated by the vessel owner and/or New Zealand Company as authorised to act as agent for the foreign owner of the vessel, as defined in section 103A of the Fisheries Act 1996.

#### **WJ4.5 Employer**

- a. For the purpose of Immigration Instructions on Foreign Crew of Fishing Vessels, "Employer" is defined as the person or company with the direct employment relationship with foreign crew.
- b. Where the employer is not a New Zealand company, the New Zealand Charter Party (NZCP) with which the employer has a Charter Agreement is responsible for monitoring the employer's compliance with the relevant Immigration Instructions.

## WJ4.10 Fisheries Act 1996

*See also Fisheries Act 1996, s103(5)*

- a. For the purposes of the Minimum Wage Act 1983 and the Wages Protection Act 1983, and any other enactment as are necessary to give full effect those Acts:
  - i. the holder of a Foreign Charter Vessel (FCV) work visa employed or engaged to work on a FCV is deemed to be an employee; and
  - ii. the employer of such an employee to deemed to be the-
    - o operator of the vessel (if the operator is the employer or contractor of those persons); or
    - o the person from whom the operator has, by virtue of a lease, a sublease, a charter, a subcharter or otherwise, obtained possession and control of the vessel.
- b. For the purposes of determining whether the payment to any employee to work on a FCV meets the requirements of the Minimum Wage Act 1983 and the Wages Protection Act 1983, the hours of work and the payment received (and the entitlements to payment) shall be assessed in relation to the whole of the period of such engagement or employment in New Zealand fisheries waters.
- c. Labour Inspectors may exercise their powers under the Employment Relations Act 2000 and the Minimum Wage Act 1983 and the Wages Protection Act 1983 within New Zealand fisheries waters in respect of any person deemed to be an employee or employer.
- d. If the operator of any vessel is not the employer, the authorised agent shall be responsible under the Minimum Wage Act 1983 and the Wages Protection Act 1983 for providing any information and records to any Labour Inspector.
- e. The authorised agent may be served with any documents requiring service under the Minimum Wage Act 1983 and the Wages Protection Act 1983, and such service shall be deemed to be service on the employer.
- f. The Employment Relations Authority and the Employment Court may exercise jurisdiction in respect of any relations that arises through being deemed an employee and employer as if there was a lawful employment relationship subject to New Zealand law.

#### **WJ4.25 New Zealand Charter Partner**

A 'New Zealand Charter Partner' is a New Zealand company that enters into a formal fishing charter arrangement with a Foreign Charter Partner to conduct fishing operations in New Zealand territorial waters.

### **WJ4.30 Foreign Charter Partner**

A 'Foreign Charter Partner' is a foreign company that owns and operates a foreign chartered vessel (FCV) as part of a formal fishing charter arrangement with a New Zealand Charter Partner, and generally employs the crew on the FCV.

### WS1.5 Who is eligible for a Specific Purpose or Event Visa

- a. Applicants may be granted a work visa and entry permission under specific purpose or event instructions, if an immigration officer is satisfied that they:
  - i. are coming to New Zealand for a specific purpose or event for a particular period; and
  - ii. are skilled in areas relevant to that specific purpose or event.

**Note:** Unless specified in WS2 there is no need for a labour market test.

- b. Applications for work visas made under this category from applicants who currently hold a visitor visa granted under V3.100 (Guardians accompanying students to New Zealand) must not be approved (see V3.100.35).

#### WS4 Currency of specific purpose or event visa

- a. The currency of a specific purpose or event visa must be consistent with the time required for the holder to complete the specific purpose or event.
- b. Applicants approved entry for a specific purpose or event may be granted a multiple entry visa if appropriate. The maximum stay, including a short grace period within which the visa holder can leave New Zealand after they have completed their specific purpose or event, is:
  - i. Senior or specialist business people on short term secondments – 12 months, with the the specific purpose;
  - ii. Business people seconded to New Zealand as an intra-corporate transferee of a multi-national company – three years, with the ability to be granted a further visa for three years to complete the specific purpose;
  - iii. Business visitors wishing to undertake business activities in New Zealand for more than 3 months in any one year – 12 months;
  - iv. ability to be granted a further visa for 12 months to complete
  - v. Principal applicants under Migrant Investment Instructions - for 12 months from the date approval in principle was given. A further visa may be granted upon application for up to a further 12 months for Investor 1 applicants, or a further 6 months for Investor 2 applicants (see [BJ7.20.1](#));
  - vi. Show judges and sports referees – for the period of their engagement and not usually more than six months;
  - vii. Dance and music examiners – for the period of their examinations and not usually more than six months;
  - viii. Installers and servicers of machinery – no more than 90 days in any 12 month period;
  - ix. Entertainers, performing artists, film and video production crew, and associated support personnel – for the period requested;
  - x. Sports players and professional sports coaches – for the period of their job offer, up to a maximum of 12 months for players, or three years in the case of coaches employed at national or regional level;
  - xi. Philippines nurses – up to three months to enable them to work while meeting their registration requirements.

**Note:** Philippines nurses who have been granted a work visa in order to obtain registration as a nurse will not be granted a further work visa other than for an occupation which is ANZSCO Skill Level 1 or 2.

- xii. Principal applicants for residence under the Entrepreneur Residence Visa Category instructions who currently hold a valid visa granted under the Entrepreneur Work Visa Category or Long Term Business Visa Category instructions – up to nine months.

## WS5 Conditions of specific purpose or event work visas

- a. Work visas granted to applicants approved under these instructions will be endorsed with conditions appropriate to the needs of the applicant in undertaking their specific purpose or event.

**Example:** A work visa for an applicant applying as an entertainer should be endorsed as follows:  
i

- As Musician (Violinist)  
ii *For* New Zealand Symphony Orchestra  
iii *At* New Zealand

**WS6 Performing Artists, Entertainers and Entertainment Industry workers**

*See also Immigration Act 2009, s 4*

## WS6.1 Requirements

- a. Employers, promoters, agents or producers must complete the *Performing Artists, Entertainers and Entertainment Industry Work Visa Application Supplementary Form (INZ 1187)* and provide evidence that:
  - i. the applicant is of international distinction, or particular ethnic significance, or is manifestly essential to the presentation or production; or
  - ii. the applicant's engagement does not put at risk the engagement of New Zealand entertainers or professionals in equivalent work unless the wider benefits to be obtained from the applicant's employment outweigh the loss of job opportunities for New Zealanders; or
  - iii. they have given appropriate consideration to engaging available New Zealand entertainers or professionals.
- b. Employers, promoters, agents or producers must also provide:
  - i. the full names, nationalities, dates and places of birth of each applicant; and
  - ii. production information; and
  - iii. a guarantee of accommodation and repatriation for each applicant.
- c. If applicable, evidence must be provided of an applicant's engagement:
  - i. on an official co-production; or
  - ii. with an accredited company ([WS6.15](#)); or
  - iii. with a company that has been granted approval in principle to recruit entertainment industry workers ([WK2.1](#)).

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

### **WS6.5 Referral to the relevant New Zealand performers' union or professional association**

The employer must obtain agreement of the relevant New Zealand performers' union or professional association as set out at [WS6.10](#) unless an applicant's engagement in New Zealand:

- a. is 14 days or less; or
- b. will be undertaken on an official co-production; or
- c. is with a company that holds entertainment industry accreditation (see [WS6.15](#)).

### **WS6.10 Obtaining the agreement of the relevant New Zealand performers' union or professional association**

- a. Immigration officers must sight evidence that the information required in WS6.1(a) has been supplied to the relevant performers' union(s) or professional association(s) depending on the specific occupations of all those involved in the performance or production.

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**Note:** Details of the relevant unions/professional associations are published on the Immigration New Zealand website.

- b. If the relevant union or professional association does not object to the application, an immigration officer may grant a work visa.
- c. If the relevant union or professional association objects to the application, the union must notify Immigration New Zealand (INZ) within three working days of receiving the information required by WS6.1(a) from the promoter, agent or producer.
- d. INZ will then consult with the parties to resolve the disagreement as quickly as possible.
- e. If the parties cannot reach an agreement, INZ will refer the application to the Minister of Immigration for a decision.

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**Note:** In the case of film production, INZ may also seek advice from the New Zealand Film Commission or any other appropriate industry or government organisation.

## 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.

## Appendix 9 - Foreign Charter Fishing Vessels - Foreign Crew Employment Agreements

### Introduction

To provide all parties with accountability, consistency, transparency and certainty in negotiated employment agreements, the following standard principles must apply to all employment agreements **for foreign crew working on foreign charter fishing vessels in New Zealand fisheries waters, where the employer is not a New Zealand company.**

### Standard Principles

All employment agreements must contain the following provisions, conditions and requirements (hereafter referred to as "standard principles"). Where an employer believes a standard principle is not applicable, the reason for this must be stated in the supporting documentation provided with their Approval in Principle application to Immigration New Zealand.

1. The identity and address of the employer.
2. The name and date of birth of the employee.
3. The home address and contact details of the employee (this includes phone numbers and email addresses).
4. The contact details of the employee's agent (if applicable).
5. The identity, address and contact details of the New Zealand Charter Partner (NZCP).
6. If the employment agreement is for a fixed term, the term of employment and reason for it being fixed term.
7. The employment position, rank or other designation in which the employee will be employed as well as the name of the vessel on which the employee will be employed.
8. The duties of the employee for the position in which the employee is employed (at least in general terms).
9. The expected minimum number of hours of work, being at least 42 hours per week on average in relation to the whole of each period of employment in New Zealand fisheries water.
10. A clause which states that the employer will keep accurate records of hours worked by the employee.
11. The remuneration terms and rates (which must as a minimum meet the standard at [WJ5.45.10](#) of the Operational Manual).
12. If deductions are to be made by the employer, they will be listed and it will be acknowledged in the employment agreement that the employee accepts those deductions, including the amount. The employment agreement must also specify how/when these deductions are to be made and what supporting documentation will be retained for audit purposes.
13. The currencies of all dollar amounts in the employment agreement.
14. The timing, manner and method of payment of remuneration under the employment agreement – whether payments are made into a New Zealand bank account or directly to the Foreign Crew.
15. The fact that a Deed of Guarantee has been entered by the New Zealand Charter Party and that the New Zealand Charter Party is available and required to ensure that Foreign Crew are paid to the minimum level of remuneration under WJ5.45.10 of the Operational Manual in the event of failure by the employer to do so.

A failure may occur if the employer will not submit to the claim process outlined in the employment agreement (detailed at paragraph 19 below) or where they will not pay any monies awarded following that claims process. The process for recovering minimum levels of remuneration from the New Zealand Charter Party should also be specified as per paragraph 19 below.

16. Causes for dismissal of the employee by the employer.
17. A plain language explanation of employment and immigration rights and responsibilities. At a minimum, the leaflet *Important Information for Foreign Crews working in New Zealand Fisheries Waters (INZ1214)*, (available in 11 languages on the Immigration New Zealand website) must be attached as a schedule to the employment agreement.
18. That the relevant New Zealand employment institutions under the Employment Relations Act 2000 shall have jurisdiction in relation to problems or disputes arising under the employment agreement.
19. A process for resolving employment problems or disputes in accordance with the following;
  - a. *First Step: Resolution with the Captain:* Employees should first take the claim or problem to the Captain. By doing this, it is hoped that the claim or problem will be dealt with in a manner that is appropriate to both parties, with the emphasis on allowing the employee to continue on in employment with the employer having resolved his/her claim or problem or to end employment with

the correct employment related conditions being met, including payment of wages at the level required by the employment agreement.

- b. *Second Step: Resolution With Employer:* If resolution with the Captain is not achieved, then the employee should take the claim to the employer and notify the employer directly NZCP. By doing this, it is hoped that the claim will be dealt with in a manner that is appropriate to both parties, with the emphasis on allowing the employee to continue on in employment with the employer having resolved his/her claim or to end employment with the correct employment related conditions being met, including payment of wages at level required by the employment agreement. If the employer does not resolve this issue with the employee, then the following steps can be taken:
    - i. Labour Inspectorate: the employee may utilise the services of a Labour Inspector as provided for under the Employment Relations Act 2000.
    - ii. Mediation Service of the Ministry of Business, Innovation and Employment (the Ministry): The employee or the employer may refer this claim or problem to the Mediation Service of the Ministry. This is an informal institution that provides confidential mediation services to employees and employers and those in work related relationships alike.
    - iii. Employment Relations Authority/Employment Court: If the employee's claim is not resolved to his/her satisfaction at mediation, or if the employer is unwilling or refuses to attend mediation, then the employee or the employer may refer this claim or problem to the Employment Relations Authority. This is a formal institution that provides an investigation process, resulting in a binding decision, to employees and employers. Either party may file a challenge within 28 days from an unsuccessful Employment Relations Authority determination to the Employment Court. Matters that relate to the minimum or contractual entitlements owed to employees may be brought by the employees themselves to this institution.
  - c. *Third Step: Resolution With New Zealand Guarantor (the NZCP) in Respect of Minimum Remuneration:* If in respect of a claim to remuneration, resolution is not achieved with the employer, by way of the above two steps, then the employee should take the claim to the New Zealand Guarantor under the Deed of Guarantee in so far as the claim concerns remuneration at the minimum specified levels. The process to follow where the New Zealand Guarantor does not resolve the employees claim to his/her satisfaction, is as follows look into pursuing the claim through the following agencies:
    - i. *Labour Inspectorate:* The employee may utilise the services of a Labour Inspector as provided for under the Employment Relations Act 2000. (This role would be restricted to providing some analysis of the situation and some information to both the employee and the New Zealand Company to clarify the obligations under the Deed of Guarantee and the consequences of not meeting them)
    - ii. *Mediation Service of the Ministry:* The employee or the New Zealand Guarantor may refer this to the Mediation Service of the Ministry.
    - iii. *Independent Arbitration:* If mediation is not successful, then the employee or the New Zealand Guarantor may seek arbitration of the complaint. A panel of arbitrators has been established by NZFIG, SEAFIC and the Ministry that the employee and the New Zealand Guarantor may select an appropriate arbitrator.
    - iv. *District Court:* The employee or New Zealand Employer Guarantor may only seek an appeal to the District Court from the binding arbitration on procedural matters.
  - d. *General:*
    - i. The employee may use the services of a representative, including a union, the NZFIG, Community Law Centre or Citizens Advice Bureau, to assist in the above process.
    - ii. The employer, the NZCP of the employer, and the employee (and their representative) must act in good faith in the raising of, and pursuing a claim.
    - iii. The employer, the NZCP of the employer and the employee must comply with the procedures developed under the Employment Relations Act 2000 and Deed of Guarantee Relating to Payment of Crew Wages in Circumstances of Default by Foreign Charter Partner, for the process of pursuing a claim.
20. Specification of the country law which is to be applied to the employment agreement (subject to clauses 18 and 19).
  21. A record that before signing the employment agreement, the employee has had the opportunity to obtain independent advice on its terms and conditions and that they clearly understand the terms and conditions of the employment agreement.
  22. Signatures of both parties and the date of signing.