

29 May 2017

IMMIGRATION NEW ZEALAND INSTRUCTIONS: Amendment Circular No. 2017/07

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 29 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 29 May 2017

Sponsorship no longer allowed by a person whose deportation liability has been suspended

R4.5 Acceptable sponsors

E6.5 Acceptable sponsors

Since the introduction of the Immigration Act 2009 (the Act), immigration instructions have specified that a person who is liable for deportation is not eligible to sponsor a temporary or residence visa.

The generic residence and generic temporary instructions have been amended to also prevent people whose deportation liability has been suspended under section 172 of the Act from being an eligible sponsor.

Support for partners and children by people who are liable for deportation or whose deportation liability has been suspended

F2.10 Definitions

F5.1 How do dependent children qualify for a resident visa?

E4.5 Temporary entry class visa for partners and dependent children

Under both temporary and residence instructions, visa applications for partners or children of New Zealand citizens or residents must be supported by an eligible partner or parent. Immigration instructions have been amended so that:

- partners or parents who are liable for deportation are not eligible to support either residence or temporary visas,
- partners or parents whose deportation liability has been suspended will not be able to support residence class visas,
- partners or parents whose deportation liability has been suspended will only be able to support temporary applications if the person they are supporting already holds a temporary visa based on the relationship.

For example, John's deportation liability is suspended. His wife Mary already holds a partnership work visa based on their relationship. Mary can be granted further partnership work visas, however, she cannot be granted residence based on her partnership to John.

If Mary did not hold a partnership work visa at the time John's deportation liability was suspended, she could not be granted one until his deportation liability is cancelled.

**APPENDIX 1: AMENDMENTS TO THE OPERATIONAL MANUAL EFFECTIVE ON AND
AFTER 29 MAY 2017**

R4.5 Acceptable sponsors

See also Immigration Act 2009, s 48

- a. In order to sponsor an applicant for a residence class visa, a sponsor must be
 - i. deemed acceptable by the Minister of Immigration or an immigration officer; and
 - ii. meet the relevant eligibility criteria for acceptable sponsors set out in this chapter; and
 - iii. meet any further criteria imposed by the specific residence category the applicant is applying under.
- b. It is a matter for the absolute discretion of the Minister of Immigration or an immigration officer whether a person is acceptable as a sponsor.
- c. A sponsor may be a natural person, an organisation or a government agency. A specific residence category may specify restrictions regarding the types of entity that may sponsor under that category.
- d. If the sponsor is a natural person then they:
 - i. must be a New Zealand citizen or the holder of a current residence class visa that is not subject to conditions under section 49(1)(a) or section 50 of the Immigration Act 2009; and
 - ii. must have been a New Zealand citizen and/or the holder of a New Zealand residence class visa (or a residence permit or returning resident's visa under the Immigration Act 1987) for at least three years immediately preceding the date the application they wish to sponsor is made; and
 - iii. must be ordinarily resident in New Zealand and for each of the three 12 month portions within the three years immediately preceding the date the application they wish to sponsor is made, have spent a total of 184 days or more in New Zealand; and
 - iv. must not sponsor for the purpose of receiving a financial reward or fee; and
 - v. must not have been convicted at any time of an offence under immigration law; and
 - vi. must not have an outstanding debt to the Crown or other third parties as a result of another sponsorship arrangement; and
 - vii. must not sponsor a person if they have previously breached sponsorship obligations; and
 - viii. must not have entered insolvency procedures or be adjudicated bankrupt; and
 - ix. must not be liable for deportation; and
 - x. must not be a person whose liability for deportation is currently suspended; and
 - xi. must not be serving a custodial sentence or be awaiting sentencing after being convicted of a crime which carries a custodial sentence; and
 - xii. must not have arrived in New Zealand as a member of a mass arrival group, with the exception of a person who was an unaccompanied minor when they arrived (see [C8.5.5](#)) or a person acting as a sponsor under [RW3](#).
- e. If the sponsor is an organisation it:
 - i. must be registered in New Zealand as a company, incorporated society or charitable trust; and
 - ii. must identify a clear link between the organisation's activities and the purpose for which the applicant is coming to New Zealand; and

- iii. must not sponsor for the purpose of receiving a financial reward or fee; and
- iv. must not have been convicted of an offence under immigration law, and must not have any listed directors, trustees, or management, who have been convicted of an offence under immigration law; and
- v. must not have an outstanding debt to the Crown or other third parties as a result of another sponsorship arrangement; and
- vi. must not sponsor a person if they have previously breached sponsorship obligations; and
- vii. must not be in receivership or liquidation.

Note: Sponsoring an employee for the purpose of employment that is expected to result in a profit being made for the sponsor is not considered to be 'financial reward'.

- f. If the sponsor is an a government agency, it must be a government department under the State Sector Act 1988, or a Crown entity as defined in section 7(1) of the Crown Entities Act 2004.

Note: for the purpose of sponsorship requirements, a Crown entity as defined in section 7(1) of the Crown Entities Act 2004 includes Crown agents, autonomous Crown entities and independent Crown entities, Crown entity companies, Crown entity subsidiaries, school boards of trustees, and tertiary institutions.

- g. If a sponsor is not a natural person they must nominate an individual as the authorised contact for the purposes of sponsorship.
- h. If a sponsor does not meet the criteria to be an acceptable sponsor, the reasons for this decision must be put to the applicant to allow the sponsor to respond.

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 (see (b) below); 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](#)
 - v. must not be liable for deportation, or be a person whose deportation liability has been suspended;.
- 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.

F5.1 How do dependent children qualify for a resident visa?

- a. Principal applicants meet Dependent Child Category if their parent(s) are eligible to support a residence class visa under the Dependent Child Category (F5.1.5) and the applicant is:
- i. aged 21 to 24,
 - o with no child(ren) of their own,
 - o single (see [F5.5](#)), and
 - o totally or substantially reliant on an adult (whether their parent or not) for financial support, whether they live with them or not; or
 - ii. aged 18 to 20,
 - o with no child(ren) of their own and
 - o single (see [F5.5](#)); or
 - iii. aged 17 or younger and single (see [F5.5](#)).
- b. Where the parent(s) has previously applied for a residence class visa, principal applicants under Dependent Child Category must also:
- i. have been born to, or adopted by (see R3), their parent(s) before their parent(s) made their own application for a residence class visa, and have been declared as dependent children on their parent(s) application for a residence class visa; or
 - ii. have been born to their parent(s) after their parent(s) made their own application for a residence class visa; or
 - iii. have been adopted by (see R3) their parent(s) after their parent(s) made their own application for a residence class visa, by a New Zealand adoption order made under the Adoption Act 1955, or an overseas adoption order which, under section 17 of the Adoption Act 1955, has the same effect as a New Zealand adoption order.
- c. Unless an immigration officer is satisfied that the provisions at (d) below are met, applications for residence under Dependent Child Category will be declined if:
- i. the parent(s) of the principal applicant has previously applied for a residence class visa; and
 - ii. the principal applicant was born to, or adopted by, their parent(s) before their parent(s) application was decided; and
 - iii. the principal applicant was not declared as a dependent child on the parent(s) application for a residence class visa.
- d. An application may be approved, however, if all other requirements are met and an immigration officer is satisfied that the parent(s) non-declaration of the child occurred with:
- i. no intent to mislead on the part of either parent; and
 - ii. the outcome of the parent's residence class visa application would not have been different had the dependent child been declared.

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

- e. When determining whether a child of 21 to 24 years of age is totally or substantially reliant on an adult (whether their parent or not) for financial support, immigration officers must consider the whole application, taking into account all relevant factors including:

- whether the child is in paid employment, whether this is full time or part time, and its duration;
 - whether the child has any other independent means of financial support;
 - whether the child is living with its parents or another family member, and the extent to which other support is provided;
 - whether the child is studying, and whether this is full time or part time.
- f. Principal applicants under Dependent Child Category must meet health and character requirements (see A4 and A5).

F5.1.5 Eligibility to support a residence class visa application under the Dependent Child Category

Parent(s) are eligible to support a residence class visa application under the Dependent Child Category if they are:

- a. lawfully and permanently in New Zealand (F5.5.5); and
- b. not liable for deportation, or a person whose deportation liability has been suspended.

E6.5 Acceptable sponsors

See also Immigration Act 2009, ss 4, 48, 49, 55

- a. Whether sponsorship is required for any type of temporary entry class application will be determined in immigration instructions for that type of application (see [V2.20](#) and [V2.25](#) for visitors, [U3.20](#) and [U3.25](#) for students, [W2.15](#), [W2.20](#), [WM3](#) and [WR2.15](#) for workers).
- b. A sponsor for a temporary entry class application must be deemed acceptable by the Minister of Immigration or an immigration officer.
- c. An acceptable sponsor must either be a natural person, an organisation, or a government agency (including Crown entities and State Owned Enterprises), defined as follows:
 - i. a natural person must be a New Zealand citizen or the holder of a current residence class visa that is not subject to conditions under section 49(1)(a) or section 50 of the Immigration Act 2009; or
 - ii. an organisation must be registered in New Zealand as a company, incorporated society or charitable trust; or
 - iii. a government agency must be a government department named in Schedule 1 of the State Sector Act 1988, or a Crown entity as defined in section 7(1) of the Crown Entities Act 2004.
- d. Whether natural persons, organisations or government agencies can sponsor a specific type of application will be determined in immigration instructions for that type of application.
- e. A sponsor who is not a natural person must nominate an individual as the authorised contact for the purpose of sponsorship.
- f. All acceptable sponsors must:
 - i. provide written undertakings for the maintenance, the accommodation, and the cost of deportation or repatriation of the applicant (see [E6.15](#)); and
 - ii. meet any other sponsorship requirements specified in the relevant immigration instructions (if any).
- g. It is a matter for the absolute discretion of the Minister of immigration or the immigration officer whether a person (or organisation or government agency) is acceptable as a sponsor, and no appeal lies against their decision, whether to any court, the Tribunal, the Minister of Immigration, or otherwise.

Note: for the purpose of sponsorship requirements, Crown entities as defined in section 7(1) of the Crown Entities Act 2004 include Crown agents, autonomous Crown entities and independent Crown entities, Crown entity companies, Crown entity subsidiaries, school boards of trustees, and tertiary institutions.

E6.5.1 Additional criteria for natural persons

- a. In addition to the requirement of E6.5(c)(i), to be an acceptable sponsor for a temporary entry class visa application a natural person must:
 - i. be ordinarily resident in New Zealand during the term of sponsorship, unless stated otherwise in specific instructions; and
 - ii. not sponsor for the purpose of receiving a financial reward or fee; and
 - iii. not have been convicted at any time of an offence under immigration law; and
 - iv. not have an outstanding debt to the Crown or other third parties as a result of another sponsorship arrangement; and

- v. not sponsor a person if they have previously breached sponsorship obligations; and
- vi. not have entered insolvency procedures or be adjudicated bankrupt; and
- vii. not be liable for deportation; and
- viii. not be a person whose liability for deportation is currently suspended; and
- ix. not be serving a custodial sentence or be awaiting sentencing after being convicted of a crime which carries a custodial sentence.

E6.5.5 Additional criteria for organisations

- a. In addition to the requirement of E6.5(c)(ii), to be an acceptable sponsor for a temporary entry class visa application an organisation must:
 - i. identify a clear link between the organisation's activities and the purpose for which the applicant is coming to New Zealand; and
 - ii. not sponsor for the purpose of receiving a financial reward or fee; and
 - iii. not have been convicted of an offence under immigration law; and
 - iv. not have any listed directors, trustees or management who have been convicted of an offence under immigration law; and
 - v. not have an outstanding debt to the Crown or other third parties as a result of another sponsorship arrangement; and
 - vi. not have previously breached sponsorship obligations; and
 - vii. not be in receivership or liquidation.

Note: financial reward does not preclude an employer from sponsoring an employee where the financial reward is the expected profit the employer will make from the employee's work.

E4.5 Temporary entry class visa for partners and dependent children

E4.5.1 Eligibility of dependent children for temporary entry class visas

- a. A dependent child (see [E4.1.10](#)) may be eligible for a temporary entry class visa if their parent is:
 - i. a principal applicant in an application for a temporary entry class visa; or
 - ii. a non-principal applicant partner included in an application (i.e. they are not a dependent child of the principal applicant); or
 - iii. a New Zealand citizen or residence class visa holder.
- b. A dependent child may be granted a temporary entry class visa of a type appropriate to their needs as specified in:
 - i. Student instructions for dependants (see [U8](#)); or
 - ii. Visitor instructions for dependants (see [V3.10](#), [V3.20](#) and [V3.125](#)).
- c. Where the parent is an applicant for a temporary entry class visa, a dependent child may only be granted a temporary entry class visa if their parent's application is approved.
- d. A dependent child will not normally be granted a temporary visa on the basis of their relationship with a parent who is liable for deportation, or currently has their deportation liability suspended.
- e. Despite (d) above, a further temporary visa can be granted to a dependent child on the basis of their relationship with a parent who currently has their deportation liability suspended, if that child already held a temporary visa on the basis of that relationship at the time the parent became liable for deportation.

E4.5.5 Eligibility of partners for temporary entry class visas

- a. A person may be eligible for a temporary entry class visa on the basis of being the partner (see [E4.1.20](#)) of:
 - i. a principal applicant in an application for a temporary entry class visa; or
 - ii. a person who is a New Zealand citizen or residence class visa holder; or
 - iii. a person who is an applicant for, or the holder of a student, work or military visa.
- b. A person applying as a partner may be granted a temporary entry class visa of a type appropriate to their needs as specified in:
 - i. Family Stream Work instructions (see [WF](#)); or
 - ii. Student instructions for dependants (see [U8](#)); or
 - iii. Visitor instructions for dependants (see [V3.10](#), [V3.15](#) and [V3.125](#)); or
 - iv. Special work visas for partners of holders of military visas (see [WI8](#)).
- c. A partner may only be granted a temporary entry class visa, if an immigration officer is satisfied that:
 - i. they are living together with their partner in a genuine and stable partnership (see E4.5.25 and E4.5.30); and
 - ii. they comply with the minimum requirements for recognition of partnerships (see E4.5.15 and [F2.15](#)); and
 - iii. their partner supports the application; and
 - iv. their partner meets the character requirements for partners supporting 'partnership-based temporary entry applications' set out at [E7.45](#); and
 - v. if their partner is a New Zealand citizen or residence class visa holder, their partner will be eligible to support a partnership-based residence class visa application within 12 months of the grant of the visa (see [F2.10.10](#)).

- d. In each case the onus of proving that a partnership is genuine and stable lies with the couple involved.
- e. A person will not normally be granted a temporary visa on the basis of their relationship with a partner who is liable for deportation, or currently has their deportation liability suspended.
- f. Despite (c) and (e) above, a further temporary can be granted to a person on the basis of their relationship with a partner who currently has their deportation liability suspended, if that person already held a temporary visa on the basis of that relationship at the time their partner became liable for deportation.

E4.5.10 Evidential requirements for dependent children

If dependent children are included in an application, or are applying in their own right as the dependent child of a temporary entry class visa holder, New Zealand citizen, or residence class visa holder, evidence of their relationship to the parent must be provided in the following form:

- a. the original birth certificate showing the names of the parent(s); or
- b. original adoption papers showing that the child has been legally adopted (see [R3.5.1](#)) by the principal applicant or partner, or temporary entry class visa holder, New Zealand citizen, or residence class visa holder; or
- c. in the case of a child adopted by custom, a declaration by the adoptive parent(s) separate from, and in addition to, any similar declaration made on an application form. (The declaration must state that the child has been adopted by the adoptive parent(s), as well as the date of the adoption, and the country in which the adoption took place.)

E4.5.15 Minimum requirements for recognition of partnerships

For the purposes of these instructions, a partnership meets the minimum requirements for recognition of partnerships if an immigration officer is satisfied that:

- a. the couple were both aged 18 years or older at the time the application for a temporary entry class visa was made, or if aged 16 or 17 years old have their parent(s) or guardian(s) support for the application being lodged; and
- b. the couple have met prior to the application being made; and
- c. they are not close relatives (see [F2.15\(d\)](#)).

E4.5.20 Evidential requirements for partners

- a. If a partner is included in an application, or is applying in their own right as the partner of a temporary entry class visa holder, a New Zealand citizen, or residence class visa holder, the following must be provided:
 - i. evidence of their relationship, and
 - ii. evidence that demonstrates they are living together with that partner in a genuine and stable relationship (E4.5.35 sets out the types of evidence that are required).
- b. Where a person is applying for a temporary entry class visa on the basis of partnership, their partner must provide a completed *Form for Partners Supporting Partnership-based Temporary Entry Applications (INZ 1146)*.
- c. Despite (a) above for the purposes of visitor visa instructions, where an application includes a partner as a secondary applicant, a declaration from both parties may be accepted as evidence that they are living together in a genuine and stable partnership (see E4.5.35(b)).

E4.5.25 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.

E4.5.30 Definition of 'living together'

For the purposes of these instructions:

- a. the principal applicant and their partner are considered to be living together if they are sharing the same home as partners (as defined in [E4.1.20](#)).
- b. Living together does not include:
 - i. time spent in each other's homes while still maintaining individual residences; or
 - ii. shared accommodation during holidays together; or
 - iii. flatmate arrangements; or
 - iv. any other living arrangements that are not reflective of the factors set out at E4.5.35(a).

E4.5.35 Determining if the couple are living together in a partnership that is genuine and stable

- a. Factors that have a bearing on whether two people are living together in a partnership that is genuine and stable may include, but are not limited to:
 - i. the duration of the parties' relationship;
 - ii. the existence, nature, and extent of the parties' common residence;
 - iii. the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties;
 - iv. the common ownership, use, and acquisition of property by the parties;
 - v. the degree of commitment of the parties to a shared life;
 - vi. children of the partnership, including the common care and support of such children by the parties;
 - vii. the performance of common household duties by the partners; and
 - viii. the reputation and public aspects of the relationship.
- b. Evidence that the couple are living together may include, but is not limited to, original or certified copies of documents showing a shared home, such as:
 - i. joint ownership of residential property
 - ii. joint tenancy agreement or rent book or rental receipts
 - iii. correspondence (including postmarked envelopes) addressed to both principal applicant and partner at the same address.
- c. Evidence about whether the partnership is genuine and stable may include, but is not limited to, original or certified copies of documents and any other information, such as:
 - i. a marriage certificate for the parties;
 - ii. a civil union certificate for the parties;
 - iii. birth certificates of any children of the parties;
 - iv. evidence of communication between the parties;
 - v. photographs of the parties together;
 - vi. documents indicating public recognition of the partnership;

- vii. evidence of the parties being committed to each other both emotionally and exclusively, such as evidence of:
 - o joint decision making and plans together
 - o sharing of parental obligations
 - o sharing of household activities
 - o sharing of companionship/spare time
 - o sharing of leisure and social activities
 - o presentation by the parties to outsiders as a couple.
 - viii. evidence of being financially interdependent, such as evidence of:
 - o shared income
 - o joint bank accounts operated reasonably frequently over a reasonable time
 - o joint assets
 - o joint liabilities, such as loans or credit to purchase real estate, cars, major home appliances
 - o joint utilities accounts (electricity, gas, water, telephone)
 - o mutually agreed financial arrangements.
- d. Satisfactory and sufficient proof (from documents, other corroborating evidence, or interviews) of all four of the following elements being met:
- i. 'Credibility': the principal applicant and the partner both separately and together, must be credible in any statements made and evidence presented by them.
 - ii. 'Living together': the principal applicant and partner must be living together unless there are genuine and compelling reasons for any period(s) of separation (see E4.5.35(f) and E4.5.35(g) below).
 - iii. 'Genuine partnership': the principal applicant and partner must both be found to be genuine as to their:
 - iv. reasons for marrying, entering a civil union or entering into a de facto relationship; and
 - v. intentions to maintain a long term partnership exclusive of others.
 - vi. 'Stable partnership': the principal applicant and partner must demonstrate that their partnership is likely to endure.
- e. A temporary entry class visa must not be granted unless the immigration officer is satisfied, having considered each of the four elements in E4.5.35(d) above (both independently and together) that the couple is living together in a partnership that is genuine and stable.
- f. If a principal applicant and their partner have lived apart for periods during their partnership, the application should not automatically be declined. Instead, immigration officers should determine whether there are genuine and compelling reasons for any period(s) of separation:
- i. either partner's family, education or employment commitments;
 - ii. the duration of the partnership and the length of time the couple has spent apart;
 - iii. the extent to which the couple has made efforts to be together during the time apart.
- g. Despite E4.5.35(f) above, immigration officers will only consider whether there are genuine and compelling reasons for any period(s) of separation if the couple is able to satisfactorily demonstrate that they have lived together prior to the period(s) of separation.

- h. The presence or absence of any of the documents, information or evidence listed at E4.5.35(b) and (c) above is not determinative. Each case will be decided on the basis of all the evidence provided. Evidence about these matters may also be obtained at interview and can be considered up until the date of final decision.