

21 June 2017

IMMIGRATION NEW ZEALAND INSTRUCTIONS: Amendment Circular No. 2017/08

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 on and after 19 June 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 residence and temporary entry instructions effective on and after 19 June 2017

Transitional provisions under the Investor 2 category

BJ3.10 Investment funds

BJ3.15.1 Definitions

BJ4.25.1 Further invitations to apply for people selected from the pool before 22 May 2017

BJ5.5 Approval of applications under then Investor 2 Category

BJ5.25 Age

BJ6 Summary of points form the Investor 2 category

Transitional provisions have been added to the Investor 2 Category instructions to enable holders of an 'invitation to apply' and current applicants the ability to be considered under the previous or existing investor instructions.

A provision limiting the maximum amount of total investment funds to 15 percent that can be placed into philanthropic donations has also been added along with a number of minor formatting changes and cross-reference corrections.

Non-compliant employer provisions in limited visa instructions

WH1.15 Recognised Seasonal Employer (RSE) Limited Visa Instructions

To align with the recent non-compliant employer changes introduced in April 2017, the Recognised Seasonal Employer instructions have been amended to ensure that employers who have an existing agreement to recruit and have received an employment related penalty to recruit cannot employ RSE workers.

Other changes to the Operational Manual

A9.1 Immigration New Zealand's Complaint and Feedback Process

E2.1 People to whom a visa waiver applies

E2.95 Temporary entry class visas deemed to be held

M2 members of a visiting force (including members of the civilian component of the visiting force), or crew members of any military craft transporting such people to New Zealand

D2.15 Deportation liability: other grounds

D7.40.1 Prosecution under section 350

These changes reflect amendments to the Immigration Act 2009, the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, and changes to operational processes.

Specifically, these include the following:

- updated provisions for aircraft crew on a private or commercial aircraft to New Zealand to be deemed to hold a temporary visa for 21 days, provided the flight is not a scheduled international service

- changes to ensure alignment with Immigration Act amendments made in 2015 concerning liability for deportation and
- an update to where clients may send complaints against Immigration New Zealand.

**APPENDIX 1: AMENDED IMMIGRATION INSTRUCTIONS EFFECTIVE ON AND AFTER
19 JUNE 2017**

A9.1 Immigration New Zealand's Complaint and Feedback Process

Immigration New Zealand's (INZ) Complaint and Feedback Process (CFP) provides clients with an avenue to seek resolution of a complaint relating to the service they received from INZ. The CFP 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 CFP can be found on the [INZ website Complaints and Feedback Process page](#).

- a. INZ's expectation is that clients will access the CFP to seek resolution of a complaint before approaching the Office of the Ombudsmen.
- b. INZ endeavours to respond to all complaints within 25 working days of receipt.
- 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. Submitting a complaint under the CFP

Complaints must be made in writing using the Online Feedback Page, by email to INZComplaintsandFeedback@mbie.govt.nz, or sent by post to:

Central Feedback Team
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

Note: The Online Feedback Page can also be used to submit compliments and suggestions on how INZ can improve its service and/or processes.

BJ3.10 Investment funds

- a. The principal applicant must invest a minimum of NZ\$10 million in New Zealand for a period of three years.
- b. The principal applicant must:
 - i. nominate funds and/or assets equivalent in value to NZ\$10 million; and
 - ii. demonstrate ownership of these funds and/or assets (see BJ3.10.1); and
 - iii. demonstrate that the nominated funds and/or assets have been earned or acquired legally (see BJ3.10.1 (c) below).
- c. All invested funds must meet the conditions of an acceptable investment as set out under BJ3.10.25.

BJ3.10.1 Ownership of nominated funds and/or assets

- a. Nominated funds and/or assets may be owned either:
 - i. solely by the principal applicant; or
 - ii. jointly by the principal applicant and partner and/or dependent children who are included in the resident visa application, provided a business immigration specialist 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](#) and [R2.1.15.1 \(b\)](#) and [R2.1.15.5 \(a\)\(i\)](#)). 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 or dependent child, 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 were earned lawfully by the person/s gifting the funds and/or assets.
- d. The nominated funds and/or assets must be unencumbered.
- e. The nominated funds and/or assets must not be borrowed.

BJ3.10.5 Definition of 'funds earned or acquired legally'

- a. Funds and/or assets earned or acquired legally are funds and/or assets earned or acquired in accordance with the laws of the country in which they were earned or acquired.
- b. Business immigration specialists have discretion to decline an application if they are satisfied that, had the funds and/or assets been earned or acquired in the same manner in New Zealand, they would have been earned or acquired contrary to the criminal law of New Zealand.

BJ3.10.10 Definition of 'unencumbered funds'

Unencumbered funds are funds that are not subject to any mortgage, lien, charge and/or encumbrance (whether equitable or otherwise) or any other creditor claims.

BJ3.10.15 Funds already held in New Zealand

- a. Funds held in New Zealand at the time the application is made may be included in investment funds. However, periods of investment in New Zealand before approval in principle cannot be taken into account when calculating the three-year investment period.
- b. Funds held in New Zealand must originally have been transferred to New Zealand through the banking system, or a foreign exchange company that uses the banking system from the country or countries in which they were earned or acquired legally, or have been earned or acquired lawfully in New Zealand (see [BJ7.10](#)).

BJ3.10.20 Evidence of the principal applicant's nominated funds and assets

- a. Principal applicants must provide evidence of net funds and/or assets to the value of the required investment funds.
- b. Principal applicants must provide evidence to the satisfaction of a business immigration specialist that the nominated funds and/or assets were earned or acquired legally.
- c. All documents provided as valuations of assets must be:
 - i. no more than three months old at the date the resident visa application is made; and

- ii. produced by a reliable independent agency.
- d. A business immigration specialist may seek further evidence if they:
 - i. are not satisfied that the nominated funds and/or assets were earned or acquired legally; or
 - ii. consider that the nominated funds and/or assets may have been gifted or borrowed without being declared; or
 - iii. are not satisfied with the valuation provided; or
 - iv. consider that the nominated funds and/or assets fail in some other way to meet the rules for investment funds.

BJ3.10.25 Definition of 'acceptable investment'

- a. An acceptable investment means an investment that:
 - i. is capable of a commercial return under normal circumstances; and
 - ii. is not for the personal use of the applicant(s) (see [BJ3.10.30](#)); and
 - iii. is invested in New Zealand in New Zealand currency; and
 - iv. is invested in lawful enterprises or managed funds (see [BJ3.10.35](#)) that comply with all relevant laws in force in New Zealand; and
 - v. has the potential to contribute to New Zealand's economy; and
 - vi. is invested in either one or more of the following:
 - bonds issued by the New Zealand government or local authorities; or
 - bonds issued by New Zealand firms traded on the New Zealand Debt Securities Market (NZDX); or
 - bonds issued by New Zealand firms with at least a BBB- or equivalent rating from internationally recognised credit rating agencies (for example, Standard and Poor's); or
 - equity in New Zealand firms (public or private including managed funds and venture capital funds); or
 - bonds issued by New Zealand registered banks; or
 - equities in New Zealand registered banks; or
 - residential property development(s) (see [BJ3.10.40](#)); or
 - commercial property (see [BJ3.15.5](#)); or
 - bonds in finance companies (see [BJ3.10 \(d\)](#)); or
 - eligible New Zealand venture capital funds (see [BJ3.10.45](#)); or
 - philanthropic investment (see [BJ3.15.10](#)); or
 - 'Angel funds or networks' investments.
- Note:** New Zealand registered banks are defined by the New Zealand Reserve Bank Act 1989.
- b. For private equity investments to be acceptable, the business immigration specialist must be satisfied that the funds being invested are to be actively used by the company to, for example, fund company growth, pay down company debt or purchase capital items.
 - c. Notwithstanding (a) above, where an investment fails to meet one of the acceptable investment requirements, a business immigration specialist may consider, on a case by case basis, whether the failure was beyond the control of the principal applicant and if satisfied that this was the case, may consider the investment acceptable.
 - d. A Business Immigration Specialist may consider bonds in finance companies as an acceptable investment where the finance company:
 - i. is a wholly-owned subsidiary of,

- ii. raises capital solely for, and
- iii. has all its debt securities unconditionally guaranteed by a New Zealand Stock Exchange listed company or a local authority.

Note: The value of an investment is based on the net purchase price (for example, less any accrued interest, commission, brokerage and/or trade levy), not on the face value of the investment.

BJ3.10.30 Personal use of investment funds

Personal use includes investment in assets such as a personal residence, car, boat or similar.

BJ3.10.35 Managed funds

- a. For the purposes of these instructions managed funds are defined as either:
 - i. a managed fund investment product offered by a financial institution; or
 - ii. funds invested in equities that are managed on an investor's behalf by a fund manager or broker.
- b. In order to be acceptable as a form of investment managed funds must be invested only in New Zealand companies. Managed fund investments in New Zealand with international exposure are acceptable only for the proportion of the investment that is invested in New Zealand companies.

Example: Only 50% of a managed fund that equally invests in New Zealand and international equities would be deemed to be an acceptable investment as set out in BJ3.10.

BJ3.10.40 Residential property development

For the purposes of these instructions, residential property development(s) is defined as property(ies) in which people reside and is subject to the following conditions:

- a. the residential property must be in the form of new developments on either new or existing sites; and
- b. the residential property(ies) cannot include renovation or extension to existing dwellings; and
- c. the new developments must have been approved and gained any required consents by any relevant regulatory authorities (including local authorities), or if consents are not yet granted, evidence must be submitted that consents have been requested; and
- d. the purpose of the residential property investments must be to make a commercial return on the open market; and
- e. neither the family, relatives, nor anyone associated with the principal investor, may reside in the development.

BJ3.10.45 Venture capital funds

- a. For the purposes of these instructions, a venture capital fund is defined as a fund that invests capital in an early-stage or start-up (or seed) company or companies in exchange for an equity stake in that company or companies.
- b. In order for a venture capital fund investment to be deemed acceptable by a business immigration specialist, nominated funds can be placed in approved on-call accounts or venture capital funds, subject to the following conditions:
 - i. applicants must have entered into a binding fund investment contract with an approved venture capital fund manager and into an approved fund structure (for example a New Zealand limited partnership), to supply an agreed amount of funds as committed capital; and
 - ii. the committed funds are a fixed commitment, managed on an applicant's behalf by a fund manager or broker, to be drawn down over a stated period; and
 - iii. nominated funds can either be committed to an acceptable investment or placed into on-call accounts which meet the specifications in BJ3.10.45(e); and
 - iv. applicants must maintain a level of funds in any approved on-call account equal to the nominated amount minus any funds already committed to the venture capital fund; and
 - v. applicants must be able to demonstrate that all funds placed into on-call accounts are in those accounts pending call-up by their nominated venture capital fund.
- c. In order to be approved, all on-call accounts or venture capital funds must be managed on an applicant's behalf by a fund manager or broker and held in New Zealand in New Zealand dollars.

- d. Funds and fund administrators or managers must be able to provide confirmation that both funds and managers are fully compliant with any legislative and regulatory obligations, applicable codes of practice and licensing or registration requirements under New Zealand law, including any requirements imposed by the Financial Markets Authority.
- e. For the purposes of these instructions, acceptable on-call accounts are defined as an investment that can be liquidated to meet the needs of the venture capital fund, including trusts, bonds, or shares in equities.

BJ3.15 Definitions

BJ3.15.1 Growth investments

For the purposes of these instructions, growth investments are defined as acceptable investments, see (BJ3.10.25), other than:

- a. bonds; and
- b. philanthropic investments.

Note: For the purpose of growth investments, convertible notes are considered to be bonds.

BJ3.15.5 Commercial Property

For the purposes of Investor 1 Category instructions, commercial property is considered to be an acceptable investment if:

- a. the property(ies) is not residential or for domestic use; and
- b. the property(ies) is used for business purposes, in that it is:
 - i. capable of a commercial return; and
 - ii. not used for land banking ; and
- c. the purpose of the commercial property investments must be to make a commercial return on the open market; and
- d. neither the family, relatives, nor anyone associated with the principal applicant may reside in the development; and
- e. if a new development, the property(ies) must have been approved and gained any required consents by any relevant regulatory authorities (including local authorities).

Note: Commercial property can include empty land if plans for development are submitted to regulatory authorities and/or work has commenced.

BJ3.15.10 Philanthropic Investments

- a. For Philanthropic investments to be considered acceptable, a Business Immigration Specialist must be satisfied the investment is genuine (see (b) below) and is in:
 - i. a registered charity with at least two years annual returns and Inland Revenue donee status; or
 - ii. a not-for-profit organisation that provides social, cultural or economic benefits approved by the Business Migration Branch Operations Manager.
- b. In determining whether a philanthropic investment is genuine, the factors a Business Immigration Specialist may consider include, but are not limited to:
 - i. the length of time the entity has been operating; and
 - ii. the constitutional arrangement of the entity; and
 - iii. the entity's track record.
- c. **A maximum of 15 percent of total investment funds can be invested in philanthropic donations.**

BJ4.25 Invitation to Apply for a resident visa under the Investor 2 Category

See also Immigration Act 2009 s 94

- a. People whose Expressions of Interest (EOI) have been selected from the Pool may be issued with an Invitation to Apply (ITA) for a resident visa under the Investor 2 Category if:
 - i. the information provided does not indicate the presence of any health, character or fit and proper person (BM1) issues which may adversely affect their ability to be granted a resident visa under the Investor 2 Category; and
 - ii. a business immigration specialist considers the person's claims in regards to points for age, business experience, English language ability and investment funds, including bonus points for proposed growth investments which were the basis for selection from the Pool, are credible.
- b. A business immigration specialist may seek further evidence, information or submissions from a person whose EOI has been selected from the Pool, for the purpose of determining whether to issue them with an ITA under the Investor 2 Category.
- c. A business immigration specialist's decision to issue an ITA for a resident visa under the Investor 2 Category (based on information, evidence and submissions provided prior to application) does not guarantee:
 - i. that the points claimed by the applicant will be awarded; or
 - ii. a positive assessment in respect of health, character, English language, or any other requirements, of any subsequent application for a resident visa; or
 - iii. that the person will be granted a resident visa.
- d. The selection of an EOI from the Pool may not result in an ITA for a resident visa under the Investor 2 Category.

BJ4.25.1 Further invitations to apply for people selected from the pool before 22 May 2017

- a. Despite not having a current EOI in the pool, a further ITA may be issued to a person who has already been invited to apply on the basis of an EOI that was selected before 22 May 2017, provided any application they made on the basis of that EOI has not already been decided. Further ITAs of this type can be issued to people who were invited to apply on the basis of an EOI selected before 22 May 2017 and who:
 - i. made an application before 22 May 2017; or
 - ii. had a valid ITA on 22 May 2017 (regardless of whether they subsequently made an application based on that ITA).
- b. Any ITA issued to people described at (a) above will invite them to choose to make an application under either:
 - i. the instructions in place at the time their ITA was issued, or
 - ii. the instructions in place at the time their application is made.
- c. Further ITAs issued under these instructions will have the following validity:
 - i. ITAs issued to people with applications already under process will be valid for one month (if no response is received the application will continue to be processed under the instructions in place at the time of application);
 - ii. ITAs issued to people who have not yet applied will expire one month beyond the expiry date of their original ITA.

BJ5.5 Approval of applications under the Investor 2 Category

- a. Principal applicants under the Investor 2 category are assessed against:
 - i. age, health, character and English language requirements; and
 - ii. investment requirements; and
 - iii. business experience requirements.
- b. For an application under the Investor 2 category to be approved:
 - i. the principal applicant must qualify for the points on the basis of which their EOI was selected from the Pool; and
 - ii. the principal applicant and family members included in the application must meet health and character requirements; and
 - iii. the principal applicant must be aged 65 years or younger; and
 - iv. the principal applicant must have a minimum of three years of business experience; and
 - v. the principal applicant must qualify for at least 1 point for English language ability (see BJ5.35); and
 - vi. the principal applicant must nominate investment funds and/or assets equivalent in value to at least NZ\$3.0 million; and
 - vii. the principal applicant must demonstrate ownership of the nominated funds and/or assets and that they have been legally earned or acquired; and
 - viii. the principal applicant must meet fit and proper person requirements (see BM1).
- c. Despite BJ5.5(b)(i) above, if a principal applicant does not qualify for the points for business experience and nominated investment funds on the basis of which their EOI was selected from the Pool (see BJ4.15), a business immigration specialist may, on a case by case basis, determine that the application may nevertheless be approved, where the principal applicant has satisfied a business immigration specialist that there was a reasonable basis for making the claim for points in the Expression of Interest and that in making that claim there was no fraud, or intent to provide false or misleading information.

BJ5.5.1 Applications made on the basis of a further ITA

- a. Despite BJ5.5 and BJ2.5.10, an application under the Investor 2 category can be approved if:
 - i. it is made on the basis of a further ITA issued in line with BJ4.25.1;
 - ii. the requirements of either (b) or (c) below are met.
- b. An application based on a further ITA can be approved if the principal applicant has chosen to be assessed against the immigration instructions in place at the time their EOI was selected and they meet those instructions.
- c. An application made on the basis of a further ITA issued can be approved if the principal applicant has chosen to be assessed against the instructions in place at the time their application is made and:
 - i. the principal applicant meets the requirements of BJ5.5 above, except for BJ5.5(b)(i); and
 - ii. if the applicant nominated investment funds and/or assets equivalent to more than NZ\$3.0 million in their EOI, they have nominated at least the same amount of funds and/or assets in the application.
- d. Where an application is made on the basis of a further ITA and the applicant already made an application under Investor 2, medical, chest X-ray and police certificates from the first application may be used to determine whether applicants meet health and character requirements, despite the requirements setting out the validity of such certificates in A4.20 and A5.10

BJ5.25 Age

- a. Principal applicants under the Investor 2 Category must be aged 65 years or younger at the time of application.
- b. A principal applicant's age under the Investor 2 Category qualifies for points as follows:

Age	Points
60 - 65	0
50 - 59	5
40 - 49	10
30 - 39	15
Less than 30	20

BJ5.25.1 Evidence of age

Evidence of age may include, but is not limited to, original or certified copies of:

- a. a birth certificate; or
- b. a passport or other travel document; or
- c. an identity document (from countries which require these and where birth details are confirmed before the document is issued).

BJ5.40 Investment funds

- a. The principal applicant must nominate a minimum of NZ\$3.0 million to invest in New Zealand.
- b. Points can be claimed for the amount of funds the principal applicant intends to invest in New Zealand.
- c. The principal applicant must:
 - i. nominate funds and/or assets equivalent to the amount that they wish to invest in New Zealand; and
 - ii. demonstrate ownership of the nominated funds and/or assets (see BJ5.40.1); and
 - iii. demonstrate that the nominated funds and/or assets have been earned or acquired legally (see BJ5.40.5 below).
- d. All invested funds must meet the conditions of an acceptable investment set out in BJ5.50.
- e. Investment funds qualify for points as follows:

Investment Amount (NZ\$M)	Points	Investment Amount (NZ\$M)	Points
\$3	10	\$6.5	80
\$3.25	15	\$6.75	85
\$3.5	20	\$7	90
\$3.75	25	\$7.25	95
\$4	30	\$7.5	100
\$4.25	35	\$7.75	105
\$4.5	40	\$8	110
\$4.75	45	\$8.25	115
\$5	50	\$8.5	120
\$5.25	55	\$8.75	125
\$5.5	60	\$9	130
\$5.75	65	\$9.25	135
\$6	70	\$9.5	140
\$6.25	75	\$9.75	145

BJ5.40.1 Ownership of nominated funds and/or assets

- a. Nominated funds and/or assets may be owned either:
 - i. solely by the principal applicant; or
 - ii. jointly by the principal applicant and partner who are included in the resident visa application, provided a business immigration specialist 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 and R2.1.15.1 (b) and R2.1.15.5 (a)(i)); or
 - iii. jointly by the principal applicant and dependent children who are included in the resident visa application.

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 or dependent child, 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 were earned lawfully by the person/s gifting the funds and/or assets.
- d. The nominated funds and/or assets must be unencumbered.
- e. The nominated funds and/or assets must not be borrowed.

BJ5.40.5 Definition of 'funds earned or acquired legally'

- a. Funds and/or assets earned or acquired legally are funds and/or assets earned or acquired in accordance with the laws of the country in which they were earned or acquired.
- b. Business immigration specialists have discretion to decline an application if they are satisfied that, had the funds and/or assets been earned or acquired in the same manner in New Zealand, they would have been earned or acquired contrary to the criminal law of New Zealand.

BJ5.40.10 Definition of 'unencumbered funds'

Unencumbered funds are funds that are not subject to any mortgage, lien, charge and/or encumbrance (whether equitable or otherwise) or any other creditor claims.

BJ5.40.15 Funds already held in New Zealand

- a. Funds held in New Zealand at the time the application is made may be included in investment funds, however, periods of investment in New Zealand before approval in principle cannot be taken into account when calculating the four-year investment period.
- b. Funds held in New Zealand must originally have been transferred to New Zealand through the banking system, or a foreign exchange company that uses the banking system from the country or countries in which they were earned or acquired legally, or have been earned or acquired legally in New Zealand.

BJ5.40.20 Evidence of the principal applicant's nominated funds and assets

- a. Principal applicants must provide evidence of net funds and/or assets to the value of the required investment funds.
- b. Principal applicants must provide evidence to the satisfaction of a business immigration specialist that the nominated funds and/or assets were earned or acquired legally.
- c. All documents provided as valuations of assets must be:
 - i. no more than three months old at the date the resident visa application is made; and
 - ii. produced by a reliable independent agency.
- d. A business immigration specialist may seek further evidence if they:
 - i. are not satisfied that the nominated funds and/or assets were earned or acquired legally; or
 - ii. consider that the nominated funds and/or assets may have been gifted or borrowed; or
 - iii. are not satisfied with the valuation provided; or
 - iv. consider that the nominated funds and/or assets fail in some other way to meet the rules for investment funds.

BJ5.50 Definition of 'acceptable investment'

- a. An acceptable investment means an investment that:
- i. is capable of a commercial return under normal circumstances; and
 - ii. is not for the personal use of the applicant(s) (see BJ5.50.1 below); and
 - iii. is invested in New Zealand in New Zealand currency; and
 - iv. is invested in lawful enterprises or managed funds (see BJ5.50.5) that comply with all relevant laws in force in New Zealand; and
 - v. has the potential to contribute to New Zealand's economy; and
 - vi. is invested in either one or more of the following:
 - o bonds issued by the New Zealand government or local authorities; or
 - o bonds issued by New Zealand firms traded on the New Zealand Debt Securities Market (NZDX); or
 - o bonds issued by New Zealand firms with at least a BBB- or equivalent rating from internationally recognised credit rating agencies (for example, Standard and Poor's); or
 - o equity in New Zealand firms (public or private including managed funds and venture capital funds); or
 - o bonds issued by New Zealand registered banks; or
 - o equities in New Zealand registered banks; or
 - o residential property development(s) (see BJ5.50.10) or
 - o commercial property (see BJ5.50.20); or
 - o bonds in finance companies (see BJ5.50 (d)); or
 - o eligible New Zealand venture capital funds (see BJ5.50.15); or
 - o philanthropic investment (see BJ5.40.1); or
 - o 'Angel funds or networks' investments.

Note: New Zealand registered banks are defined by the New Zealand Reserve Bank Act 1989.

- b. For private equity investments to be acceptable, the business immigration specialist must be satisfied that the funds being investigated are to be actively used by the company to, for example, fund company growth, pay down company debt or purchase capital items.
- c. Notwithstanding (a) above, where an investment fails to meet one of the acceptable investment requirements, a business immigration specialist may consider, on a case by case basis, whether the failure was beyond the control of the principal applicant and if satisfied that this was the case, may consider the investment acceptable.
- d. A Business Immigration Specialist may consider bonds in finance companies as an acceptable investment where the finance company:
- i. is a wholly-owned subsidiary of,
 - ii. raises capital solely for, and
 - iii. has all its debt securities unconditionally guaranteed by a New Zealand Stock Exchange listed company or a local authority.

Note: The value of an investment is based on the net purchase price (for example, less any accrued interest, commission, brokerage and/or trade levy), not on the face value of the investment.

BJ5.50.1 Personal use of investment funds

Personal use includes investment in assets such as a personal residence, car, boat or similar.

BJ5.50.5 Managed funds

- a. For the purposes of these instructions, managed funds are defined as either:
- i. a managed fund investment product offered by a financial institution; or
 - ii. funds invested in equities that are managed on an investor's behalf by a fund manager or broker.
- b. In order to be acceptable as a form of investment managed funds must be invested only in New Zealand companies. Managed fund investments in New Zealand with international exposure are acceptable only for the proportion of the investment that is invested in New Zealand companies.

Example: Only 50% of a managed fund that equally invests in New Zealand and international equities would be deemed to be an acceptable investment as set out in BJ5.50.5

BJ5.50.10 Residential property development

For the purposes of these instructions, residential property development(s) is defined as property(ies) in which people reside and is subject to the following conditions:

- a. the residential property must be in the form of new developments on either new or existing sites; and
- b. the residential property(ies) cannot include renovation or extension to existing dwellings; and
- c. the new developments must have been approved and gained any required consents by any relevant regulatory authorities (including local authorities), or if consents are not available, evidence must be submitted that consents have been requested; and
- d. the purpose of the residential property investments must be to make a commercial return on the open market; and
- e. neither the family, relatives, nor anyone associated with the principal applicant, may reside in the development.

BJ5.50.15 Venture capital funds

- a. For the purposes of these instructions, a venture capital fund is defined as a fund that invests capital in an early-stage or start-up (or seed) company or companies in exchange for an equity stake in that company or companies.
- b. In order for a venture capital fund investment to be deemed acceptable by a business immigration specialist, nominated funds can be placed in approved on-call accounts or venture capital funds, subject to the following conditions:
 - i. applicants must have entered into a binding fund investment contract with an approved venture capital fund manager and into an approved fund structure (for example a New Zealand limited partnership), to supply an agreed amount of funds as committed capital; and
 - ii. the committed funds are a fixed commitment, managed on an applicant's behalf by a fund manager or broker, to be drawn down over a stated period; and
 - iii. nominated funds can either be committed to an acceptable investment or placed into on-call accounts which meet the specifications in BJ5.50.15(e); and
 - iv. applicants must maintain a level of funds in any approved on-call account equal to the nominated amount minus any funds already committed to the venture capital fund; and
 - v. applicants must be able to demonstrate that all funds placed into on-call accounts are in those accounts pending call-up by their nominated venture capital fund.
- c. In order to be approved, all on-call accounts or venture capital funds must be managed on an applicant's behalf by a fund manager or broker and held in New Zealand in New Zealand dollars.
- d. Funds and fund administrators or managers must be able to provide confirmation that both funds and managers are fully compliant with any legislative and regulatory obligations, applicable codes of practice and licensing or registration requirements under New Zealand law, including any requirements imposed by the Financial Markets Authority.
- e. For the purposes of these instructions, acceptable on-call accounts are defined as an investment that can be liquidated to meet the needs of the venture capital fund, including trusts, bonds, or shares in equities.

BJ5.50.20 Definition of 'Commercial Property'

For the purposes of Investor 2 Category instructions, commercial property is considered to be an acceptable investment if:

- a. the property(ies) is not residential or for domestic use; and
- b. the property(ies) is used for business purposes, in that it is:
 - i. capable of a commercial return; and
 - ii. not used for land banking ; and
- c. the purpose of the commercial property investments must be to make a commercial return on the open market; and
- d. neither the family, relatives, nor anyone associated with the principal applicant may reside in the development; and
- e. if a new development, the property(ies) must have been approved and gained any required consents by any relevant regulatory authorities (including local authorities).

Note: Commercial property can include empty land if plans for development are submitted to regulatory authorities and/or work has commenced

BJ5.50.25 Definition of 'Philanthropic Investment'

- a. For Philanthropic investments to be considered acceptable, a Business Immigration Specialist must be satisfied the investment is genuine (see (b) below) and is in:
 - i. a registered charity with at least two years annual returns and Inland Revenue donee status; or
 - ii. a not-for-profit organisation that provides social, cultural or economic benefits approved by the Business Migration Branch Operations Manager.
- b. In determining whether a philanthropic investment is genuine, the factors a Business Immigration Specialist may consider include, but are not limited to:
 - i. the length of time the entity has been operating; and
 - ii. the constitutional arrangement of the entity; and
 - iii. the entity's track record.
- c. A maximum of 15 percent of total investment funds can be invested in philanthropic donations.

BJ6 Summary of points for the Investor 2 category

Age	Points
60 - 65	0
50 - 59	5
40 - 49	10
30 - 39	15
Less than 30	20

Business Experience years	Points
3	9
4	12
5	15
6	18
7	21
8	24
9	27
10	30
11	33
12	36
13	39
14	42
15+	45

Test	Required Score	Points
International English Language Testing System (IELTS) - General or Academic Module	Overall score of 3.0 or more but less than 4.0	1
IELTS - General or Academic Module	Overall score of 4.0 or more but less than 5.0	4
TOEFL iBT	Overall score of 31 to 34	
PTE Academic	Overall score of 29 to 35	
FCE or FCE for Schools	Overall score of 142 to 153	
OET	Grade D in all four skills (Listening, Reading, Writing and Speaking)*	
IELTS - General or Academic Module	Overall score of 5.0 or more	10
TOEFL iBT	Overall score of 35 or more	
PTE Academic	Overall score of 36 or more	
FCE or FCE for Schools	Overall score of 154 or more	
OET	Grade C or higher in all four skills (Listening, Reading, Writing and Speaking)*	
IELTS - General or Academic Module	Overall score of 6.0 or more	13
TOEFL iBT	Overall score of 60 or more	
PTE Academic	Overall score of 50 or more	
FCE or FCE for Schools	Overall score of 169 or more	
OET	Grade C or higher in all four skills (Listening, Reading, Writing and Speaking)*	
IELTS - General or Academic Module	Overall score of 7.0 or more	17
TOEFL iBT	Overall score of 94 or more	
PTE Academic	Overall score of 65 or more	
FCE or FCE for Schools	Overall score of 185 or more	
OET	Grade B or higher in all four skills (Listening, Reading, Writing and Speaking)*	
IELTS - General or Academic Module	Overall score of 8.0 or more	20
TOEFL iBT	Overall score of 110 or more	
PTE Academic	Overall score of 79 or more	

FCE or FCE for Schools	Overall score of 200 or more	
OET	Grade A or higher in all four skills (Listening, Reading, Writing and Speaking)*	

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

Investment Amount (NZ\$M)	Points	Investment Amount (NZ\$M)	Points
\$3	10	\$6.5	80
\$3.25	15	\$6.75	85
\$3.5	20	\$7	90
\$3.75	25	\$7.25	95
\$4	30	\$7.5	100
\$4.25	35	\$7.75	105
\$4.5	40	\$8	110
\$4.75	45	\$8.25	115
\$5	50	\$8.5	120
\$5.25	55	\$8.75	125
\$5.5	60	\$9	130
\$5.75	65	\$9.25	135
\$6	70	\$9.5	140
\$6.25	75	\$9.75	145

Investment in Growth Investments	Bonus points
Investment of NZ\$750,000 or more in growth investments	20

BJ8.15 Section 49(1) condition: minimum period of time in New Zealand

As set out at BJ8.10(a), the principal applicant under each category of the Migrant Investment Categories must spend a minimum period of time in New Zealand during the required investment period. The time periods are:

- a. Investor 1 Category:
 - i. 12% of each of the final two years of the three year investment period (44 days per year); or
 - ii. 88 days over the three year investment period if a minimum of \$2.5 million (25% of the NZ\$10 million investment amount) is invested in 'growth investments' (see BJ3.15.1).
- b. Investor 2 Category:
 - i. 40% of each of the final three years of the four year investment period (146 days per year); or
 - ii. 438 days over four years from their first day in New Zealand as a resident if a minimum of NZ\$750,000 (25% of NZ\$3 million) is invested in 'growth investments' (see BJ5.45).

D2.15 Deportation liability: other grounds

D2.15.1 Deportation liability if person's visa granted in error

See also Immigration Act 2009 s 155

A person is liable for deportation if the Minister of Immigration (the Minister) or an immigration officer determines that:

- a. their visa was granted as a result of an administrative error; and
- b. the visa was not cancelled under section 67 of the Immigration Act 2009; and
- c. no visa was granted under section 68 of the Immigration Act 2009.

D2.15.5 Meaning of granting visa or entry permission as result of administrative error

See also Immigration Act 2009 s 8

A visa is granted as a result of an administrative error if:

- a. it is granted to a New Zealand citizen (unless the person is a New Zealand citizen entering New Zealand in the circumstances described in section 13(4)(b) of the Immigration Act 2009); or
- b. it is granted to an excluded person (unless section 17 of the Immigration Act 2009 applies); or
- c. the person granting it intended to grant a visa of a type other than the one that was actually granted; or
- d. it is granted for a period exceeding the period specified in **regulations or** immigration instructions for visas of that type (unless the Minister or an immigration officer deliberately and properly granted it as an exception to the immigration instructions); or
- e. it is granted on the basis of the person holding a visa that was granted as a result of an administrative error; or
- f. it is granted in contravention of:
 - i. a special direction; or
 - ii. immigration instructions (unless the Minister or an immigration officer deliberately and properly granted it as an exception to immigration instructions); or
 - iii. an instruction of a kind referred to in section 378(7) of the Immigration Act 2009.

D2.15.10 Deportation liability if visa held under false identity

See also Immigration Act 2009 s 156

- a. A person is liable for deportation if:
 - i. the person is convicted of an offence where their identity is established and that identity is different to the identity under which the person holds a visa; or
 - ii. the Minister determines that the person holds a visa under a false identity.
- b. A person to whom a visa has been granted in a false identity is deemed to have been unlawfully in New Zealand since:
 - i. the date the person arrived in New Zealand, if they have held a visa in a false identity since that date; or
 - ii. the day after the date on which a visa granted in the person's actual identity expired, or was cancelled without another visa being granted, if they have held a visa in their actual identity after arriving in New Zealand.

D2.15.15 Deportation liability of temporary entry class visa holder for cause

See also Immigration Act 2009 s 157

- a. A temporary entry class visa holder is liable for deportation if the Minister or an immigration officer determines that there is sufficient reason to deport them.
- b. Sufficient reason includes but is not limited to:
 - i. breach of conditions of the person's visa;
 - ii. criminal offending;
 - iii. other matters relating to character;
 - iv. **concealing** relevant information in relation to the person's application for a visa;
 - v. a situation where the person's circumstances no longer meet the rules or criteria under which the visa was granted.

D2.15.20 Making the holder of a temporary entry class visa liable for deportation

See also Immigration Act 2009 s 155, 156, 157, 170, 171

- a. If an immigration officer determines that a person, who holds a temporary entry class visa, is liable for deportation under sections 155, 156, or 157, a deportation liability notice may be served on the person. D2.31 and D2.32 set out the matters that must be included in a deportation liability notice and how it must be served.
- b. Only officers holding the appropriate delegation (see A15.5) have authority to determine that the holder of a temporary visa is liable for deportation.

D2.15.25 Deportation liability of residence class visa due to fraud, forgery, etc

See also Immigration Act 2009 s 158

A residence class visa holder is liable for deportation if:

- a. the person is convicted of an offence where it is established that:
 - i. any of the information provided in relation to the person's application, or purported application, for a residence class visa or entry permission was fraudulent, forged, false, or misleading, or any relevant information was concealed; or
 - ii. any of the information provided in relation to the person's, or any other person's, application, or purported application, for a visa on the basis of which the residence class visa was granted was fraudulent, forged, false, or misleading, or any relevant information was concealed; or
- b. the Minister determines that:
 - i. any of the information provided in relation to the person's application, or purported application, for a residence class visa or entry permission was fraudulent, forged, false, or misleading, or any relevant information was concealed; or
 - ii. any of the information provided in relation to the person's, or any other person's, application, or purported application, for a visa on the basis of which the residence class visa was granted was fraudulent, forged, false, or misleading, or any relevant information was concealed.
- c. A former citizen who is deemed by section 75 of the Immigration Act 2009 to hold a resident visa is liable for deportation if:
 - i. the person was deprived of his or her citizenship under section 17 of the Citizenship Act 1977 on the grounds that the grant, or grant requirement, was procured by fraud, false representation, or wilful concealment of relevant information; and
 - ii. that fraud, false representation, or wilful concealment of relevant information occurred in the context of procuring the immigration status that enabled the person to meet a requirement, or requirements, for the grant of New Zealand citizenship.

D2.15.30 Deportation liability of resident if visa conditions breached

See also Immigration Act 2009 s159

- a. A resident is liable for deportation if the Minister determines that:
 - i. the conditions of his or her visa have not been met; or
 - ii. the resident has materially breached the conditions of his or her visa.

D2.15.35 Deportation liability of residence class visa holder if new information as to character becomes available

See also Immigration Act 2009 s 160

- a. A residence class visa holder is liable for deportation if, not later than 5 years after the date the person first held a residence class visa:
 - i. new information becomes available that:
 - o relates to the character of the person; and
 - o was relevant at the time the visa was granted; and
 - ii. the Minister determines that the person would not have been eligible for the grant of the visa under the Immigration Act 2009 or immigration instructions if that information had been available at the time the visa was granted.
- b. The new information may relate to whether the person was, or should have been, an excluded person, or to rules and criteria relating to character contained within immigration instructions.
- c. For the purposes of this section, the date that a person first held a residence class visa must be calculated in accordance with section 161(5) of the Immigration Act 2009.

D2.15.40 Deportation liability of residence class visa holder convicted of criminal offence

See also Immigration Act 2009 s 161

A residence class visa holder is liable for deportation if they are convicted, in New Zealand or elsewhere:

- a. of an offence for which the court has the power to impose imprisonment for a term of 3 months or more if the offence was committed at any time:

- i. when the person was unlawfully in New Zealand; or
 - ii. when the person held a temporary entry class visa; or
 - iii. not later than 2 years after the person first held a residence class visa; or
- b. of an offence for which the court has the power to impose imprisonment for a term of 2 years or more, if the offence was committed not later than 5 years after the person first held a residence class visa; or
- c. of an offence and sentenced to imprisonment for a term of 5 years or more (or for an indeterminate period capable of running for 5 years or more), if the offence was committed not later than 10 years after the person first held a residence class visa; **or**
- d. of an offence against section 350(1)(a) or 351, if the offence was committed not later than 10 years after the person first held a residence class visa, and whether that visa was granted before or after this provision came into force.
- e. A person liable for deportation under this section may, not later than 28 days after being served with a deportation liability notice, appeal to the Tribunal
- i. on humanitarian grounds against his or her liability for deportation; and
 - ii. if he or she is a refugee or a protected person, against any decision of a refugee and protection officer that he or she may be deported.
- f. For the purposes of subsection (1)(a)(iii), (b), (c), and (d), the periods of 2 years, 5 years, and 10 years after a person first held a residence class visa are to be determined exclusive of any time spent by the person in imprisonment following conviction for any offence.
- g. D2.15.40(c) applies:
- i. whether the sentence is of immediate effect or is deferred or is suspended in whole or in part;
 - ii. if a person has been convicted of 2 or more offences on the same occasion or in the same proceedings, and any sentences of imprisonment imposed in respect of those offences are cumulative, as if the person had been convicted of a single offence and sentenced for that offence to the total of the cumulative sentences; or
 - iii. if a person has been convicted of 2 or more offences, and a single sentence has been imposed in respect of those offences, as if that sentence had been imposed in respect of a conviction for a single offence.

D2.15.45 Determining periods from which person first held residence class visa

- a. For the purposes of D2.15.40(a)-(c), the periods of 2 years, 5 years, and 10 years after a person first held a residence class visa are to be determined exclusive of any time spent by the person in imprisonment following conviction for any offence.
- b. For the purposes of D3.35(c) and D2.15.35, a person first holds a residence class visa:
- i. on the date on which the person is first granted a residence class visa of any type in New Zealand; or
 - ii. if the visa was granted outside of New Zealand, on the first occasion on which the person arrives in New Zealand and is granted entry permission as the holder of the residence class visa; or
 - iii. if the person arrives in New Zealand and is granted entry permission as the holder of a residence class visa following a continuous period of absence from New Zealand of at least 5 years, on the date the person first re-enters New Zealand after the continuous period of absence; or
 - iv. if the person is a person to whom a visa waiver applies and arrives in New Zealand following a continuous period of absence from New Zealand of at least 5 years, on the date the person first re-enters New Zealand (and is granted a residence class visa) after the continuous period of absence.
- c. If a person was exempt from the requirement to hold a permit under the Immigration Act 1987 but is deemed to hold a residence class visa under section 417(3) of the Immigration Act 2009, for the purposes of this section, the person first holds a residence class visa:
- i. on the date they first entered New Zealand and were exempt from the requirement to hold a residence permit under the Immigration Act 1987; or
 - ii. on the date they first re-entered New Zealand and were exempt from the requirement to hold a residence permit under the Immigration Act 1987 following a continuous period of absence from New Zealand of at least 5 years.

D2.15.50 Deportation liability if refugee or protection status cancelled under section 146

See also Immigration Act 2009 s 162

A person who is not a New Zealand citizen and who was previously recognised as a refugee or a protected person is liable for deportation if his or her recognition is cancelled under section 146 of the Immigration Act 2009.

D2.15.55 Deportation liability of persons threatening security

See also Immigration Act 2009 s 163

- a. Where the Minister certifies that a person constitutes a threat or risk to security, the Governor-General may, by Order in Council, order the deportation from New Zealand of that person.
- b. The person named in the order is accordingly liable for deportation.
- c. The Governor-General may, by Order in Council, revoke that order.

E2.1 People to whom a visa waiver applies

See also *Immigration Act 2009, ss 4, 69*

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

A visa waiver means a waiver of the requirement to hold a visa permitting travel to New Zealand in relation to any class of persons. A visa waiver applies to, but is not limited to, the following people:

- a. citizens of the Commonwealth of Australia; and
- b. people who hold:
 - i. a current permanent residence visa issued by the Government of Australia; or
 - ii. a current resident return visa issued by the Government of Australia; and
- c. people granted a visa waiver by special direction; and
- d. members of a visiting force (including members of the civilian component of the visiting force) but only if:
 - i. each person is travelling to New Zealand in the ordinary course of the person's duty or employment; and
 - ii. each person is seeking a temporary entry class visa at an immigration control area; and
 - iii. the craft transporting the visiting force is a commercial craft; and
- e. members of, or any person associated with, a scientific programme or expedition under the auspices of a Contracting Party to the Antarctic Treaty (within the meaning of the Antarctica Act 1960) or any person to whom section 5 of that Act applies, but only if:
 - i. the person concerned is seeking a temporary entry class visa; and
 - ii. the application is made at an immigration control area; and
- f. British citizens, and other British passport holders who produce evidence of the right to reside permanently in the United Kingdom, but only if the person concerned is seeking a visitor visa current for not more than six months and the purposes of the visit do not include medical consultation or treatment; and
- g. people travelling on a United Nations (UN) laissez-passer who are seeking a visitor visa current for not more than three months; and
- h. any other class of persons specified in the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010; and
- i. citizens of the following countries, but only if the person concerned is seeking a visitor visa current for not more than three months and the purposes of the visit is not for medical consultation or treatment:

Andorra	Hungary	Oman
Argentina	Iceland	Poland
Austria	Ireland	Portugal ⁵
Bahrain	Israel	Qatar
Belgium	Italy	Romania
Brazil	Japan	San Marino
Brunei	Korea (South)	Saudi Arabia
Bulgaria	Kuwait	Seychelles
Canada	Latvia ¹	Singapore
Chile	Liechtenstein	Slovak Republic
Croatia	Lithuania ¹	Slovenia
Cyprus	Luxembourg	Spain
Czech Republic	Macau ⁴	Sweden
Denmark	Malaysia	Switzerland
Estonia ¹	Malta	Taiwan ⁶
Finland	Mauritius	United Arab Emirates
France	Mexico	United States of America ⁷
Germany	Monaco	Uruguay
Greece ²	Netherlands	Vatican City
Hong Kong ³	Norway	

¹ Visa waiver does not apply to people travelling on alien's (non-citizen's) passports issued by these countries.

² Greek passport holders whose passports were issued on and after 1 January 2006. (Greek passports issued before 1 January 2006 are not acceptable for travel after 1 January 2007, see A2.10.50.)

³ Residents of Hong Kong travelling on Hong Kong Special Administrative Region or British National (Overseas) passports.

⁴ Residents of Macau travelling on Macau Special Administrative Region passports.

⁵ Portuguese passport holders must also have the right to live permanently in Portugal.

⁶ Permanent residents of Taiwan travelling on Taiwan passports. A personal identity number printed within the visible section of the biographical page of the Taiwan passport demonstrates that the holder is a permanent resident of Taiwan (see A2.10.40).

⁷ Including nationals of the USA.

E2.95 Temporary entry class visas deemed to be held

See also Immigration Act 2009 ss 4, 62(4)

No electronic record is required to be created for a visa that is deemed to be granted by or under the Immigration Act 2009.

E2.95.1 Visas deemed to be held by people granted visas, permits or exemptions under the Immigration Act 1987

See also Immigration Act 2009 ss 415, 417

- a. A person who, immediately before the commencement of the Immigration Act 2009, held a visa or a permit granted under the Immigration Act 1987 (or was deemed to hold a permit under the Immigration Act 1987) described in the first column of Schedule 5 of the Immigration Act 2009, is deemed on and from the commencement of the Immigration Act 2009 to hold a visa of the corresponding type described in the second column of Schedule 5 of the Immigration Act 2009.
- b. A person who immediately before the commencement of the Immigration Act 2009:
 - i. held a permit under the Immigration Act 1987 (or was deemed to hold a permit under the Immigration Act 1987) is deemed on and from the commencement of the Immigration Act 2009 to have been granted entry permission. The 2009 Act applies with any necessary modifications.
 - ii. held a visa (other than a transit visa) and a permit under the Immigration Act 1987, is deemed on and from the commencement of the Immigration Act 2009 to hold a single visa for the duration, and subject to conditions (if any), of the visa and the permit combined (as determined under Schedule 5). The 2009 Act applies with any necessary modifications.
- c. A person in New Zealand who immediately before the commencement of the Immigration Act 2009, was under section 11 of the Immigration Act 1987, exempt from the requirement to hold a permit is deemed to hold a temporary visa on and from the commencement of the Immigration Act 2009:
 - i. that is current for the period for which the exemption would have applied under section 11 of the Immigration Act 1987 (calculated including any time that has elapsed before the commencement of the Immigration Act 2009); and
 - ii. subject to conditions that allow the purpose for which the exemption applied to be pursued; and
 - iii. with entry permission granted on the basis of the temporary visa.
- d. A person in New Zealand who immediately before the commencement of the Immigration Act 2009 was, under section 12(2) the Immigration Act 1987, exempt from the requirement to hold a permit by special direction is deemed to:
 - i. hold a temporary visa that is current for the period (calculated including any time that has elapsed before the commencement of the Immigration Act 2009) and subject to the conditions (if any) specified in the special direction;
 - ii. have been granted entry permission on the basis of the temporary visa.
- e. An Australian citizen in New Zealand who under the Immigration Act 1987 was exempt from the requirement to hold a permit is deemed on and from commencement of the Immigration Act 2009 to hold a resident visa under the Immigration Act 2009 allowing stay in New Zealand only.
- f. Without limiting other provisions in E2.95.1, the period of currency of a visa deemed to be held under the Immigration Act 2009 must be calculated including any time that has elapsed before the commencement of section 404 of the Immigration Act 2009.

E2.95.5 Other visas deemed to be held

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 19, 25, 31, schedule 3

- a. The people described below under E2.95.5(c) are deemed to hold a visa and entry permission.
- b. People deemed to hold temporary entry class visas must be able to provide evidence of their entitlement to a deemed visa on request.
- c. People listed below are deemed to hold a visa in New Zealand for the period specified. A visa must be applied for if a longer stay is required:
 - i. crew or passengers (including cruise ship passengers) on any ship carrying passengers or cargo or both (in the ordinary course of business of the ship) between any foreign port and New Zealand, will be deemed to hold a visitor (for passengers) or work (for crew) visa from the time the ship arrives at a port of entry in New Zealand until whichever of the following occurs first:
 - the ship is given clearance to leave its last port of entry in New Zealand for that voyage; or
 - 28 days have expired, beginning with the day the ship arrived at its first port of entry in New Zealand on that voyage.
 - ii. crew on any foreign ship authorised by the Minister of Transport under section 198(2) of the Maritime Transport Act 1994 to carry coastal cargo (within the meaning of subsection (6) of that section) will

be deemed to hold a work visa for a period of 28 days (the first day being the day on which the ship first arrives in New Zealand).

- iii. aircraft crew on an aircraft flying between any other country and New Zealand in the course of a scheduled international service will be granted entry permission and deemed to hold a work visa valid for 7 days, beginning with the day on which the aircraft arrived in New Zealand.
- iv. aircraft crew of a private or commercial aircraft on a flight between any other country and New Zealand that is not in the course of a scheduled international service will be granted entry permission and deemed to hold a work visa for 21 days, beginning with the day on which the aircraft arrived in New Zealand.
- v. members of, or a person associated with, any scientific programme or expedition under the auspices of a Contracting Party to the Antarctic Treaty within the meaning of the Antarctica Act 1960, or a person to whom section 5 of that Act applies who enter the Ross Dependency from a country other than mainland New Zealand, will be deemed to hold a visitor visa for the duration of their stay in the Ross Dependency.
- vi. members of, or a person associated with, any scientific programme or expedition under the auspices of a Contracting Party to the Antarctic Treaty within the meaning of the Antarctica Act 1960, or a person to whom section 5 of that Act applies who:
 - o have entered the Ross Dependency from a country other than mainland New Zealand, and
 - o subsequently travel to another area of New Zealandwill be deemed to hold a visitor visa on arrival to mainland New Zealand valid for 3 months upon arrival (see V3.50.1).
- vii. guests of government who have been granted a visa waiver to travel by special direction will be deemed to hold a visitor visa valid for 3 months from arrival, guest of government status is granted by the Visits and Ceremonial Office, Department of Internal Affairs.
- viii. members of a visiting force (including members of the civilian component of the visiting force as defined in the Visiting Forces Act 2004, or crew members of any craft transporting such people to New Zealand who arrived in New Zealand, and are in New Zealand at the request or with the consent of the Government of New Zealand and in the ordinary course of the member's duty or employment, will be deemed to hold a military visa valid until the earliest of:
 - o the day the holder ceases to be a member of a visiting force of any country, a member of its civilian component, or a crew member of any craft transporting such people to New Zealand; or
 - o the conclusion of the holder's duties or employment in New Zealand.
- ix. a person born in New Zealand on or after 1 January 2006, who is determined by the Department of Internal Affairs not to be a New Zealand citizen will be deemed, from the time of birth, to initially have the same immigration status as the most favourable immigration status of either of the person's parents at the time of their birth (see A17.1).

M2 members of a visiting force (including members of the civilian component of the visiting force), or crew members of any military craft transporting such people to New Zealand

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 schedules 2 and 3

Despite the visa waiver for travel provision (see E2.1(d)) and the deemed visa provision (see E2.95.5(viii)), members of a visiting force (including members of the civilian component of a visiting force) as defined in the Visiting Forces Act 2004, or crew members of any military craft transporting such people to New Zealand who will be in New Zealand:

- a. at the request or with consent of the Government of New Zealand, and
- b. in the ordinary course of the member's duty or employment,

may apply for and be granted a military visa with multiple entry travel conditions for the duration of their duties or employment in New Zealand.

Note: for the purpose of these instructions a 'member of a visiting force' can be an individual travelling alone.

WH1.15 Recognised Seasonal Employer (RSE) Limited Visa Instructions

Applications for RSE limited visas must be considered under WH1.15 RSE Limited Visa Instructions in addition to the Limited Visa Instructions.

- a. All visas granted under the RSE instructions for the purpose of working for an RSE must be granted as a limited visa.
- b. An RSE limited visa has travel conditions allowing a single journey to New Zealand (see L2).
- c. An RSE limited visa has further conditions allowing a person to be in New Zealand for the express purposes of undertaking seasonal employment in the horticulture and viticulture industries for a specified RSE (see L3).
- d. For the purposes of these instructions 'seasonal work in the horticulture and viticulture industries' means planting, maintaining, harvesting, and packing crops in the horticulture and viticulture industries.

WH1.15.1 Who is eligible for an RSE limited visa?

- a. Applicants for visas under the RSE Limited Visa Instructions must:
 - i. be aged 18 or older; and
 - ii. have an employment agreement (which meets the requirements set out at WH1.20) with an employer who has RSE status and holds a current ATR; and
 - iii. meet the health and character requirements as set out at A4 and A5 with any necessary modifications and WH1.15.10; and
 - iv. meet the requirements for bona fide applicants as set out at E5; and
 - v. hold, or be approved for, acceptable medical insurance (WH1.25); and
 - vi. have an employer that is not included on a list of non-compliant employers maintained by the Labour Inspectorate (see Appendix 10).

Note: The employment agreement provided to workers must be the same as that which is provided to INZ at the ATR stage, unless the terms and conditions are more beneficial to the worker.

- b. To be granted a limited visa under RSE Limited Visa Instructions applicants must be offshore at the time of application.
- c. Holders of RSE limited visas granted entry permission may apply for a further RSE limited visa, provided they meet the requirements set out at WH1.15.1 or WH1.15.6. A subsequent RSE limited visa granted under these instructions may not allow further travel.

WH1.15.5 Who is eligible to transfer employment from one RSE to another RSE?

- a. An RSE limited visa holder may transfer from one RSE to another, provided that the worker has a current employment agreement with the second or subsequent RSE who holds a current ATR and INZ is satisfied that the transfer is consistent with the objectives of RSE instructions. Situations when transfers may be appropriate include, but are not limited to, where:
 - i. the status of the first employer as an RSE has been rescinded (see WH1.15.35); or
 - ii. the RSE limited visa holder is no longer able to work for the first RSE and INZ is satisfied that this situation is due to circumstances beyond the control of that RSE; or
 - iii. the RSE limited visa holder is currently employed by an RSE who has jointly submitted ATRs with second or subsequent RSEs as set out in WH1.10.1(e); or
 - iv. the RSE limited visa holder has been granted a visa to work for more than one employer, under WH1.10.1(e);
- b. In all transfer cases the period of work for the second or subsequent RSE:
 - i. must fall within the second or subsequent RSE's approved ATR period; and
 - ii. will not take the worker beyond the maximum period of stay allowed in New Zealand (see WH1.15.20(c)).
- c. In cases where INZ has determined a worker is eligible to transfer to another RSE the worker may apply:
 - i. for a variation of conditions (VOC) if the new employment agreement is for a period of work that will end on the same date as the expiry date of their current RSE limited visa; or
 - ii. for a new RSE limited visa if the new employment agreement is for a period of work that does not end on the same date as the expiry date of the current RSE limited visa.
- d. Any applications for a VOC or further limited visa for the purposes of transferring from one RSE to another will only be approved where both RSEs have provided written consent to the transfer.
- e. Despite (c) above, in cases where the transfer is occurring because:
 - i. the status of the previous employer as an RSE has been rescinded; or

- ii. the worker is not currently employed by an RSE;
 - a VOC or further visa may be granted without the consent of the previous employer.
- f. VOC and further RSE limited visa will only be granted where the terms and conditions of employment meet all RSE requirements.

WH1.15.6 Who is eligible to apply for an RSE limited visa to extend the period to be worked for an RSE?

- a. In cases where an RSE requires a worker to remain in New Zealand for a further period to achieve the express purpose of undertaking seasonal work for that RSE, the worker may apply for a further limited visa if:
 - i. INZ is satisfied that the RSE has exceptional circumstances or there are circumstances beyond the control of that RSE that require them to extend the period of work for an RSE worker (e.g. due to bad weather); or
 - ii. the RSE has indicated the potential need to extend the period of work for a limited number of RSE workers at the ATR stage, and INZ is satisfied that this is necessary and will not undermine the integrity of RSE instructions.
- b. In all cases:
 - i. the extended period of work must fall within an approved ATR period; and
 - ii. INZ must be satisfied that the employer has a genuine need to employ the worker(s) in question, for longer than the original duration of the employment agreement; and
 - iii. the extended period of work will not take the worker beyond the maximum period of stay allowed in New Zealand (see WH1.15.20(c)).

WH1.15.10 Specific health requirements for RSE limited visa applicants

- a. Applicants for visas under these instructions must:
 - i. undergo screening for pulmonary tuberculosis if they have risk factors as set out in A4.25.1 and A4.25.5, regardless of their intended length of stay in New Zealand; and
 - ii. undergo screening for HIV/AIDS if they are from a country with risk factors for HIV/AIDS (see WH1.15.15).
- b. Despite A4.15, applicants for an RSE limited visa who are HIV positive will not be eligible for a limited visa under RSE Limited Visa Instructions.

WH1.15.15 Applicants from countries with high risk factors for HIV/AIDS

- a. All RSE limited visa applicants who are citizens of, or are normally resident in, a country listed below must provide the results of an HIV test with their RSE limited visa application.
- b. The following is a list of countries with an estimated adult HIV/AIDS prevalence of 1% or more:

Angola	Ethiopia	Nigeria
Bahamas	Gabon	Papua New Guinea
Barbados	Gambia	Republic of Moldova
Belize	Ghana	Russian Federation
Benin	Guinea	Rwanda
Botswana	Guinea-Bissau	Sierra Leone
Burkina Faso	Guyana	South Africa
Burundi	Haiti	Sudan
Cambodia	Honduras	Suriname
Cameroon	Jamaica	Swaziland
Central African Republic	Kenya	Thailand
Chad	Lesotho	Togo
Congo	Liberia	Trinidad and Tobago
Côte d'Ivoire	Malawi	Uganda
Democratic Republic of Congo	Mali	Ukraine
Djibouti	Mozambique	Tanzania
Dominican Republic	Myanmar	Zambia
Equatorial Guinea	Namibia	Zimbabwe
Eritrea	Niger	

WH1.15.20 Currency and conditions of an RSE limited visa

- a. Visas will be granted to allow arrival in New Zealand no earlier than 14 days before, and no later than 14 days after, the expected commencement of work as stated in the employment agreement.
- b. No limited visa will be granted beyond the term of the relevant ATR.
- c. Limited visas will only be granted for a maximum stay in New Zealand of up to seven months in any 11-month period, with the exception of limited visas for citizens of Tuvalu or Kiribati who are normally resident in Tuvalu or Kiribati, which may be granted for a maximum stay of up to nine months in any 11 month period. The maximum period of stay includes any time required for internal travel and induction arrangements.
- d. Limited visas granted under RSE Limited Visa Instructions will be subject to the condition that RSE limited visa holders may undertake employment only for the RSE who holds the relevant ATR and with whom they have entered into an employment agreement.
- e. Where the non-New Zealand citizen or residence class visa holder worker ceases to be employed by an RSE, they may become liable for deportation.
- f. Limited visas granted under RSE Limited Visa Instructions will be subject to the condition that RSE limited visa holders obtain and hold acceptable health insurance (WH1.25) for the duration of their stay in New Zealand.
- g. Limited visas granted under RSE Limited Visa Instructions will be subject to the condition that RSE limited visa holders may undertake training with an industry training organisation with whom they have entered into a valid training agreement, if authorised by their employer as part of their employment.
- h. Limited visas granted to allow work for more than one employer under WH1.10.1 (e), must specify the start and end dates of employment with each employer within the validity of the limited visa.
- i. Where a limited visa allows employment for more than one employer and specifies start and end dates of employment with each employer, it is a condition of the visa that;
 - i. the worker starts and ends employment for each employer on the dates specified on the visa; or
 - ii. the worker starts and ends employment for each employer no earlier than 14 days before the start date specified and no later than 14 days after the end date specified for employment with each employer, as specified in the employment agreement, where all employers have agreed to the amended dates.

WH1.15.25 Ineligibility for other visas

Applications from the holder of an RSE limited visa for any other type of temporary entry class visa, or a residence class visa will be declined.

WH1.15.30 Applying for a limited visa under RSE Limited Visa Instructions

Applications for an RSE for limited visa must:

- a. be made on the Application to Work for a Recognised Seasonal Employer (INZ 1142) form; and meet all the requirements under Generic Temporary Entry instructions for lodging an application for a temporary entry class visa as set out at E4; and
- b. meet all the requirements for eligibility under WH1.15.1; and
- c. include an employment agreement from an employer with RSE status (or an employment agreement from each employer if the visa is to cover work for more than one employer, under WH1.10.1(e)) that meets the requirements for employment agreements set out in WH1.20; and
- d. include the results of an HIV test if the applicant is from a country listed as having high risk factors for HIV/AIDS (see WH1.15.15(b)) on the RSE Instructions Supplementary Medical Certificate (INZ 1143); and
- e. include the results of pulmonary tuberculosis screening on the X-ray Certificate for Temporary Entry (INZ 1096) if the applicant has risk factors as set out in A4.25.1 and A4.25.5.

WH1.15.35 Workers whose employers lose RSE status

- a. If during the currency of an RSE limited visa the employer has their RSE status rescinded, or not renewed, the holder of that visa may seek employment with another employer with RSE status (see WH1.15.5).
- b. Where no further offer of employment under the RSE Limited Visa Instructions is obtained, the worker may become liable for deportation (see D2.15.15 and E3.5.50) and must leave New Zealand (see also L2.25(b)).