23 April 2019

Immigration New Zealand Instructions: Amendment Circular No. 2019/01

To: All Manual Holders

Amendments to the Immigration New Zealand Operational Manual

Introduction

This circular outlines changes to the immigration and operational 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 24 April 2019.

Note

The amendments described in this circular will be published in the Immigration New Zealand Operational Manual in due course.

Information about these changes is available on our website www.immigration.govt.nz.
Description of changes

Permanent resident visas for people directly affected by attacks in Christchurch

RA5 Who may not apply for a residence class visa
R5.65 Approved applications for residence class visas
RV2.16 Permanent resident visas for residents affected by terrorist attacks on 15 March 2019
A4.20 Medical and Chest X-ray certificates: residence class visa applications
A4.60 Medical waivers (applicants for residence class visas)
A4.30 Completion of medical certificates
A16.1 General Instructions as to the order and manner of processing residence applications

Immigration instructions have been amended to allow people directly affected by recent terrorist attacks on two Christchurch mosques and their immediate families living in New Zealand to be granted permanent resident visas.

The Christchurch Response (2019) Category allows applicants to be granted permanent resident visas if they were based in New Zealand on 15 March 2019, meet health and character requirements, and were either present at the Masjid al-Noor or Linwood Masjid during the attacks, or if they are the immediate family member of someone present.

People wishing to apply under the Christchurch Response (2019) Category must first submit an expression of interest (EOI). Those who meet requirements will be invited to apply for a permanent resident visa.

Those people directly affected by the attacks who hold a resident visa, and their immediate families living in New Zealand who also hold a resident visa, may apply directly for a permanent resident visa under new immigration instructions at RV2.16.

Immigration instructions relating to health have also been amended to allow health requirements to be waived where a person does not have an acceptable standard of health due to injuries sustained during the attacks.

This amendment circular also includes an update to the operational instructions reflecting the order and manner of processing of residence applications.
Appendix 1 - Amendments to Residence instructions effective on and after 24 April 2019
RA5 Who may not apply for a residence class visa

a. Under section 71(4) of the Immigration Act 2009, no limited visa holder, interim visa holder, transit visa holder or person who is liable for deportation (including people who are unlawfully in New Zealand) may apply for a residence class visa.

b. However, the Minister of Immigration or appropriately delegated immigration officer, in his or her absolute discretion may grant a residence class visa to a person to whom (a) above applies. In such cases:
   i. the Minister or appropriate immigration officer is not obliged to consider a purported application from such a person; and
   ii. whether the purported application is considered or not, the Minister or immigration officer is not obliged to give reasons for any decision on it, other than that section 11 applies; and
   iii. section 23 of the Official Information Act 1982 and section 27 of the Immigration Act 2009 (concerning the right of access to reasons for decisions) do not apply.

c. In some cases a person may only apply for a residence class visa if they have earlier been invited to apply for residence by an immigration officer. An invitation to apply for residence is sought through the completion and lodgement of an Expression of Interest. An invitation to apply is required for all applications for residence under the Parent Category, Skilled Migrant Category, Investor 2 Category and Christchurch Response (2019) Category of residence instructions.
**R5.65 Approved applications for residence class visas**

a. Unless otherwise stated, an approved application for a residence class visa will result in the grant of a resident visa.

b. The travel conditions to be granted on a resident visa are set out at R5.66.

c. A permanent resident visa may be granted as a result of an approved application for a:
   
i. permanent resident visa, by a resident visa holder who meets the requirements set out in RV2;
   
ii. residence class visa under Partnership Category, by a person who meets the requirements set out F2.5.1;
   
iii. residence class visa under the Talent (Accredited Employer) Category, by a person who meets the requirements set out at RW2.1;
   
iv. residence class visa by a quota refugee, asylum seeker or protected person (S3.10), or community organisation sponsored refugee (see S4.25);

v. a permanent resident visa under the Christchurch Response (2019) Category, by a person who meets the requirements set out at S4.30.

S4.30.1 Objective
The Christchurch Response (2019) Category provides certainty to the New Zealand-based individuals directly affected by terrorist attacks at the Masjid Al Noor and Linwood mosques in Christchurch on 15 March 2019 (the attacks) and to their family living in New Zealand about their ability to remain in New Zealand permanently.

S4.30.5 Overview
a. Application for a permanent resident visa under the Christchurch Response (2019) Category is a two-stage process: people wishing to apply for a permanent resident visa under the Christchurch Response (2019) Category must first submit an expression of interest (EOI).

b. EOIs may result in an invitation to apply for residence if the claims made in the EOI concerning health, character, being based in New Zealand, and being either directly affected by the attacks, or the family member of a person directly affected by the attacks are assessed as credible by an immigration officer.

c. A Christchurch Response (2019) Category application will be approved if the requirements for being based in New Zealand, and being either directly affected by the attacks, or the family member of a person directly affected by the attacks are met, and the requirements for health and character are either met or waived.

S4.30.10 Expression of interest and invitation to apply for a Christchurch Response (2019) permanent resident visa
See also Immigration Act 2009 ss 92, 93 and 95.
See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 Regulations 9 and 20.

a. A person may express interest in applying for a Christchurch Response (2019) Category permanent resident visa if she or he:
   i. was based in New Zealand on 15 March 2019 (S4.30.25.10); and
   ii. was directly affected by the attacks (S4.30.25.5) or is the eligible family member of a person directly affected by the attacks (S4.30.25.1).

b. An immigration officer may invite a person to apply if the information provided in an EOI indicates:
   i. no health or character issues that may adversely affect the ability of any person included in the expression of interest to be granted a Christchurch Response (2019) permanent resident visa; and
   ii. the principal applicant was based in New Zealand on 15 March 2019; and
   iii. the principal applicant was either:
       o directly affected by the attacks; or
       o is the eligible family member of a person directly affected by the attacks.

S4.30.15 Making an application
See also Immigration Act 2009 ss 93 and 94.
See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 Regulations 5 and 20.

a. A person may only apply for a Christchurch Response (2019) Category permanent resident visa if she or he is invited to do so.

b. Applications for residence under the Christchurch Response (2019) Category must be made in the prescribed manner (see R2).

c. Applications made under these instructions must be lodged on or before 23 April 2021.

Note:
The prescribed fee for applications under these instructions has been waived by the Minister of Immigration by special direction.

S4.30.20 Determining a Christchurch Response (2019) Category permanent resident visa application
a. Permanent resident visas may be granted if an immigration officer is satisfied that the applicant:
   i. meets health and character requirements for residence (A4 and A5); and
   ii. on 15 March 2019 was based in New Zealand (S4.30.25.10); and
   iii. was directly affected by the attacks (S4.30.25.5).

b. Permanent resident visas may also be granted if an immigration officer is satisfied that the applicant:
i. meets health and character requirements for residence (A4 and A5); and
ii. on 15 March 2019 was based in New Zealand (S4.30.25.10); and
iii. is the eligible family member of a person who was directly affected by the attacks (S4.30.25.1 and S4.30.25.5).

S4.30.25 Definitions

S4.30.25.1 Family members eligible for residence under these instructions

The following table describes which family members of people directly affected by the attacks are eligible for residence under these instructions.

<table>
<thead>
<tr>
<th>Column A: The person who was directly affected:</th>
<th>Column B: The family members eligible are:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. was a dependent child</td>
<td>The directly affected person’s:</td>
</tr>
<tr>
<td></td>
<td>i. Parents</td>
</tr>
<tr>
<td></td>
<td>ii. Grandparents</td>
</tr>
<tr>
<td></td>
<td>iii. Siblings who are dependent children</td>
</tr>
<tr>
<td>b. was not a dependent child</td>
<td>The directly affected person’s:</td>
</tr>
<tr>
<td></td>
<td>i. Partner</td>
</tr>
<tr>
<td></td>
<td>ii. Dependent children</td>
</tr>
<tr>
<td></td>
<td>iii. Partner’s dependent children</td>
</tr>
<tr>
<td></td>
<td>iv. Parents</td>
</tr>
<tr>
<td></td>
<td>v. Partner’s parents</td>
</tr>
</tbody>
</table>

S4.30.25.5 People who were directly affected by the attacks

A person will be considered to have been directly affected by the attacks if an immigration officer is satisfied they are recorded on the official New Zealand Police list of:

a. people killed in the attacks; or
b. people injured in the attacks; or

c. people present at either mosque during the attacks.

Note: For the purposes of this policy, first responders such as police and medical staff are not considered to be people who were directly affected by the attacks.

S4.30.25.10 Based in New Zealand

a. A person is considered to be 'based in New Zealand' where an immigration officer is satisfied that on 15 March 2019 they were living primarily in New Zealand.

b. Unless there is evidence to the contrary, a person will be considered to be based in New Zealand under these instructions if on 15 March 2019 she or he held any visa except:

   i. a visitor visa; or
   ii. a working holiday visa; or
   iii. a limited visa; or
   iv. an interim visa where the holder had applied for a visitor or limited visa.

c. When considering if a person is based in New Zealand, factors an immigration officer may consider include (but are not limited to):

   • the length of time a person has been living in New Zealand;
   • the frequency and duration of absences from New Zealand;
   • whether a person is working or studying in New Zealand;
   • the strength of family, social, economic or civic ties to New Zealand.

S4.30.25.15 Family relationships
a. A person will be considered to be the partner of a person directly affected by the attacks if they meet the requirements for partnership specified in R2.1.

b. A person will be considered to be a dependent child of a person directly affected by the attacks if they meet the requirements for dependent children specified in R2.1.

c. A person will be considered to be the parent of a person if they are the:
   i. biological parent of the affected person; or
   ii. parent through adoption of the affected person.

d. A person will be considered to be the grandparent of a person directly affected by the attacks if they are the:
   i. biological parent of a parent of the affected person; or
   ii. parent through adoption of the parent of the affected person.

S4.30.30 Evidence

S4.30.30.1 Evidence that a person is based in New Zealand

Evidence that an immigration officer may refer to or request when considering whether a person is based in New Zealand may include, but is not limited to:

- travel records held by Immigration New Zealand;
- correspondence addressed to the person;
- employment records;
- records of benefit payments from the Ministry of Social Development;
- banking records;
- rates demands;
- Inland Revenue records;
- mortgage documents;
- tenancy and utility supply agreements;
- documents showing that the person’s household effects have been moved to New Zealand.

Note:
The presence or absence of any of the documents listed above is not determinative. Each case will be decided on the basis of all the evidence provided.

S4.30.30.5 Evidence a person was directly affected by the attacks

Immigration New Zealand will confirm directly with the New Zealand Police that a person is on the official Police lists of people who died, were injured, or were present at either mosque during the attacks.

S4.30.30.10 Evidence of relationship

a. Evidence of an applicant's relationship to a person who was directly affected by the attacks (see S4.30.25.5) includes, but is not limited to:
   i. birth certificates establishing the relationship;
   ii. marriage certificates establishing the relationship;
   iii. household registration documents that establish the relationship;
   iv. evidence of adoption (see R3) that establishes the relationship;
   v. documents issued by the United Nations High Commissioner for Refugees (UNHCR) and/or other internationally recognised agencies that establish the relationship;
   vi. evidence of partnership (see F2.20.15);
   vii. other evidence establishing the relationship to the satisfaction of an immigration officer.

b. If satisfied that evidence necessary to establish an applicant's relationship to a person who was directly affected by the attacks on mosques in Christchurch is not available or would be unduly difficult to obtain, immigration officers may:
   i. specify another type of evidence to be submitted, such as a statutory declaration; and/or
   ii. interview the principal applicant, those included in the application, or other parties involved in the application to verify identity and/or the relationship claimed by the applicant(s).

S4.30.35 Verification of family details

Immigration officers may refer to former applications lodged by applicants, family members of applicants or sponsors, in order to verify declarations made by applicants about their family details (such as the number of family members, the whereabouts of family members, or an applicant’s or partner's marital status).
S4.30.40 Grant of a permanent resident visa

Successful applicants under the Christchurch Response (2019) Category will be granted a permanent resident visa.
RV2.16 Permanent resident visas for residents affected by terrorist attacks on 15 March 2019

a. A resident visa holder may be granted a permanent resident visa if they meet the requirements at S4.30 (with the exceptions of the health requirements at S4.30.5 and being invited to apply).

b. Applications for permanent resident visas made under these instructions must be lodged in the prescribed manner (RV1.10).

c. Applicants under these instructions must provide evidence they meet requirements for residence described in S4.30, with the exception of the health requirements.

d. Applications for permanent resident visas made under these instructions must be lodged on or before 23 April 2021.

e. Despite RV2.20, applicants who apply for a permanent resident visa under these instructions and do not meet the requirements above will not normally be considered for the grant of travel conditions (RV3) or a second or subsequent resident visa (RV4), or a permanent resident visa under other instructions (RV2.5).

Note:
The prescribed fee for applications under these instructions has been waived by the Minister of Immigration by special direction.
A4.20 Medical and Chest X-ray Certificates: residence class visa applications

a. Applications for residence class visas must include, at the time the application is lodged, evidence that a Medical Certificate and Chest X-ray Certificate (INZ 1096) have been completed (see A4.20(f)) for every person included in the application.

Note: Pregnant women and children under 11 years of age are not required to have an X-ray examination.

b. The Medical Certificate that may be required with a residence class visa application, includes the:
   i. General Medical Certificate (INZ 1007) which must be provided by all applicants other than those listed in (ii) below, or
   ii. Limited Medical Certificate (INZ 1201) which must be provided by:
      o applicants who are the partner of a New Zealand citizen or residence class visa holder and who meet the requirements of the Partnership Category (see F2.5(a)), and any dependent child(ren) included in their application made under the Partnership Category, unless R5.96 applies; or
      o applicants who are the dependent child of a New Zealand citizen or residence class visa holder and who meet the requirements of the Dependent Child Category (see F5.1(a)) unless R5.96 applies; or
      o applicants who have been recognised as having refugee or protection status in New Zealand and are thereby eligible to apply for a permanent resident visa (see S3) and their partner and dependent child(ren), (if any); or
      o applicants who are applying under the Refugee Quota Family Reunification (RQFR) Category (S4.20); or
      o mandated refugees who have been selected as candidates for New Zealand’s Refugee Quota Programme (S3.5(a)(i)); or
      o applicants who are applying under the Christchurch Response (2019) Category (S4.30).

Note: For the avoidance of doubt, applicants under the Community Organisation Refugee Sponsorship category (S4.25) must provide a General Medical Certificate (INZ 1007).

c. All Medical and Chest X-ray Certificates must have been issued less than three months before the date the application for a residence class visa is made, unless (d) below applies.

Notes:
   ~ The issue date of a Medical Certificate is the date of the declaration by the examining physician concerning the overall findings of the medical examination, or the date that the Medical Certificate was submitted to Immigration New Zealand if submitted by the physician electronically.
   ~ The issue date of a Chest X-ray Certificate is the date of the declaration by the radiologist, or the date that the Chest X-ray Certificate was submitted to Immigration New Zealand if submitted by the physician electronically.

d. Applicants for a residence class visa may provide a Medical Certificate and Chest X-ray Certificate, which was issued more than three months before the date that their application is made, if:
   i. they have provided a Medical Certificate and Chest X-ray Certificate with an earlier visa application; and
   ii. they were assessed as having an acceptable standard of health based on those certificates; and
   iii. those certificates were issued less than 36 months prior to the current application.

e. Despite (d) above:
   i. Applicants who have spent six consecutive months in any one or more countries not listed in A4.25.10, since their previous Chest X-ray Certificate was issued, must provide a Chest X-ray Certificate which is less than three months old with their application.
   ii. Applicants who provided a Limited Medical Certificate (INZ 1201) with a previous visa application but no longer fall within the criteria listed at A4.20(b)(i), must provide a General Medical Certificate (INZ 1007), which is less than three months old with their application.
   iii. Applicants must provide a Chest X-ray Certificate and specified tests, if:
   iv. they did not provide a Chest X-ray Certificate or specified tests with a Medical Certificate provided in the past 36 months because of their age, or because they were pregnant; and
   v. their age would now require them to undertake the specified tests or provide a Chest X-ray Certificate, or they are no longer pregnant.
   vi. An immigration officer may require a Medical Certificate and Chest X-ray Certificate which is less than three months old, if they consider this is necessary to establish whether the applicant has an acceptable standard of health.

f. Evidence of completion of a Medical Certificate and Chest X-ray Certificate includes:
   i. a completed Medical Certificate and Chest X-ray Certificate; or
   ii. an eMedical reference code (NZER); or
   iii. confirmation in the applicant’s visa application form that a physician is directly submitting the applicant’s Medical Certificate and Chest X-ray Certificate to Immigration New Zealand.

Note: These instructions do not apply to people applying for a further residence class visa under RV2 or RV4.
A4.60 Medical waivers (applicants for residence class visas)

a. Applicants for residence class visas in New Zealand who are assessed as not having an acceptable standard of health and whose applications meet all other requirements for approval under the relevant Government residence instructions may be considered for the grant of a medical waiver unless they:

i. require dialysis treatment, or an Immigration New Zealand medical assessor has indicated that they will require such treatment within a period of five years from the date of the medical assessment; or

ii. have severe haemophilia; or

iii. have a physical, intellectual, cognitive and/or sensory incapacity that requires full time care, including care in the community; or

iv. currently have tuberculosis (TB) (any form including pulmonary and non-pulmonary TB, Multidrug-Resistant (MDR)-TB and Extensively Drug-Resistant (XDR)-TB) and have not completed full treatment for TB as outlined in the New Zealand Guidelines for TB Treatment; or

v. have had a history, diagnostic findings or treatment for MDR-TB or XDR-TB, unless they have been cleared by a New Zealand Respiratory or Infectious Diseases specialist upon review of their file or review of the applicant as outlined in the New Zealand Guidelines for TB.

b. Medical waivers will also not be granted to people who:

i. are applying for residence under one of the Family Categories; and

ii. were eligible to be included in an earlier application for a residence class visa (or a residence visa or residence permit issued or granted under the Immigration Act 1987) as the partner of a principal applicant or the dependent child of a principal applicant or their partner; and

iii. were not declared in that earlier application; or

iv. were not included in that earlier application; or

v. were withdrawn from that earlier application.

c. Applicants (and dependants included in their application) who have been recognised as having refugee or protection status (except those invited to apply under the Community Organisation Refugee Sponsorship category (see S4.25)) will be granted medical waivers, unless (a) above applies.

d. An applicant who is the partner or dependent child of a New Zealand citizen or residence class visa holder, who would otherwise meet the criteria for residence under Partnership (see F2.5(a)) or Dependent Child (see F5.1(a)) instructions, will be granted a medical waiver unless (a) or (b) above apply.

e. Applicants for residence class visas under the Christchurch Response (2019) Category (S4.30) who otherwise meet the criteria for residence under those instructions will be granted a medical waiver unless (a) above applies.

f. Despite A4.60 (a) above, applicants for residence class visas under the Christchurch Response (2019) Category who otherwise meet the criteria for residence will be granted a medical waiver if they have a condition described in A4.60(a) above which was caused by injuries or trauma suffered in the attacks on the Masjid Al Noor or Linwood mosques in Christchurch on 15 March 2019.

Note: These instructions do not apply to people applying for a permanent resident visa who currently hold resident visas.
Appendix 2 - Amendments to operational instructions effective on and after 24 April 2019
A4.30 Completion of medical certificates

a. The Medical Certificate and Chest X-ray Certificate must be completed:
   i. by an Immigration New Zealand-appointed panel physician and radiologist if required (see A4.30.5 below);
   ii. a registered medical practitioner and radiologist if there is no New Zealand-appointed panel in that country and in English, if possible.

b. If it is not possible to complete the Medical Certificate and Chest X-ray Certificate in English, they must be submitted with a certified translation, as must any accompanying laboratory or specialist reports.

A4.30.1 Cost of undergoing medical and X-ray examinations

The New Zealand Government pays for the medical examinations of some approved refugee and protection applicants and of some applicants for the Christchurch Response (2019) Category visa but is not responsible for meeting the costs of other applicants’ medical and X-ray examinations or any associated specialist or laboratory tests or reports.

A4.30.5 Panel physicians and radiologists

a. In most countries Immigration New Zealand selects and requires the use of a panel of reputable registered physicians and radiologists.

b. All applicants within such countries must have their Medical Certificate and Chest X-ray Certificate completed by a panel physician or radiologist.

c. A list of countries for which there are panel physicians and radiologists is contained in Appendix 1. Applicants who are resident in one of these countries should consult the Immigration New Zealand website, or the nearest branch of Immigration New Zealand for details of panel physicians and radiologists in their area.

A4.30.10 Role of Immigration New Zealand medical assessors and Ministry of Education

a. Immigration New Zealand medical assessors are appointed to examine medical and chest X-ray certificates that are referred to them by Immigration New Zealand.

b. The Immigration New Zealand medical assessor assesses an applicant’s health on the basis of their Immigration New Zealand Medical Certificate and Chest X-ray Certificate and associated specialist tests and reports (having regard to Government health requirements and the Immigration New Zealand Guidelines for Medical Assessors), and may refer to any source of relevant guidelines or advice, including the Ministry of Health and Ministry of Education (MoE).

c. In addition, Immigration New Zealand medical assessors provide advice concerning any medical factors that may pertain to the grant of a medical waiver.

d. The MoE assesses whether an applicant would be eligible for Ongoing Resourcing Scheme (ORS) funding in cases where an immigration officer or Immigration New Zealand medical assessor requests advice on this matter. MoE assesses whether an applicant would be eligible for ORS funding on the basis of the applicant’s Immigration New Zealand Medical Certificate and Chest X-ray Certificate and associated reports.
A16.1 General Instructions as to the order and manner of processing residence applications

See also Immigration Act 2009 ss 26(4), 411

Pursuant to section 26(4) of the Immigration Act 2009 and acting under delegated authority from the Chief Executive of the Ministry of Business, Innovation and Employment, I hereby give the following general instructions as to the order and manner of processing residence class visa applications under Government residence instructions:

a. First priority will be given to the following types and categories of applications for residence class visas in preference to applications under other types and categories:
   i. Christchurch Response (2019) Category will have priority;
   ii. Skilled Migrant Category (SMC) applications with job offers;
   iii. All business categories;
   iv. Residence from Work category applications:
      - Talent (Accredited Employer);
      - Talent (Arts, Culture and Sport);
      - Long Term Skill Shortage List;
   v. Refugee Policy;
   vi. Partnership and Dependent Child applications where the partner or parent is:
      - a New Zealand citizen, or
      - the holder of a permanent resident visa, and who has been absent from New Zealand for a period of at least two years prior to the date of the application being accepted for consideration apart from short visits within that period. (Note that in the case of a partnership application the New Zealand partner and the applicant must have been living together for 12 months or more in a partnership that is genuine and stable).

b. Second priority will be given to the following types and categories of applications for residence class visas:
   i. Partnership and Dependent Child applications (other than those in instruction (a)).

c. Third Priority will be given to the following types and categories of applications for residence class visas:
   i. Parent category.

d. These instructions do not prevent immigration officers according urgency to the processing of any particular residence class visa application when the individual circumstances so warrant that.

e. The previous General Instructions made pursuant to section 26(4) of the Immigration Act 2009 are revoked.

Greg Patchell
Deputy Chief Executive - Immigration
Date: 18 / April / 2019