



16 November 2021

**IMMIGRATION NEW ZEALAND INSTRUCTIONS: Amendment Circular No. 2021-52**

**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 from the effective date.

**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](http://www.immigration.govt.nz).

## Description of changes

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### ***Restricted Temporary Entry Instructions***

*H5.15 Approval in principle for other critical workers to travel to New Zealand*

*H5.30.5 Other critical workers*

*H5.30.50.1 Requirements for the temporary visa holder's employment*

*H5.31.25 Specialist marine worker*

Changes have been made to immigration instructions to expand decision-making to Immigration Officers for the following border exceptions:

- 'other critical worker'
- family of a 'highly-skilled worker'
- 'specialised marine worker'

## **Appendix 1: Amendments to Restricted Temporary Entry instructions effective on and after 15 November 2021**

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The amendments are a deletion of existing text so there is no highlighted text.

## H5.15 Approval in principle

### H5.15.1 Approval in principle for other critical workers to travel to New Zealand

See also *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, Reg 14A, 26AA*

- a. The employer or supporting agency of a person whose critical purpose to travel to New Zealand is to work as an 'other critical worker' ([H5.30.5](#)) may request approval in principle for that person and their partner and dependent children to travel to New Zealand by applying on an approved form provided for this purpose on the Immigration New Zealand website.
- b. A request for approval in principle may relate to one or more critical workers who will travel to New Zealand for the same purpose and to work for the same employer or supporting agency, and include the partner and dependent children of those workers (except where [H5.30.20](#) states that partners and dependent children are not eligible to be included).
- c. Where a request for travel to New Zealand is made for an 'other critical worker' ([H5.30.5](#)):
  - i. a notification of Expression of Interest to apply for a visa, or to request a variation of conditions, under these instructions, must be provided by the employer or supporting agency with the request on behalf of that 'other critical worker' and with their agreement; and
  - ii. the employer or supporting agency must confirm that the worker or workers agree to notification of an Expression of Interest made on their behalf, on the approved form provided for this purpose.
- d. A request for approval in principle must be accompanied by evidence that demonstrates the worker meets the requirements in [H5.30.5](#).
- e. An employer or supporting agency requesting approval in principle for a person and their family to travel to New Zealand as an 'other critical worker' must pay the prescribed fee (if any).
- f. Following a request for approval in principle from an employer or supporting agency, if an immigration officer agrees that a person has a critical purpose for travelling to New Zealand as an 'other critical worker' ([H5.30.5](#)), an immigration officer may invite that person to apply for a Critical Purpose visitor visa, another visa appropriate to the person's circumstances, or to request a variation of conditions.
- g. An immigration officer will invite a person to apply for a Critical Purpose visitor visa, another visa appropriate to their circumstances or request a variation of conditions if they are satisfied that:
  - i. the information available does not indicate any health, character or bona fide issues that would prevent that person being granted a visa or variation of conditions; and
  - ii. they are likely to meet funds or sponsorship and onward travel requirements; and
  - iii. the principal applicant has a critical purpose for travelling to New Zealand.
- h. A person who is invited to apply for a visa or to request a variation of conditions on the basis of having been determined to be an 'other critical worker' may be required to provide:
  - i. sufficient evidence to demonstrate that they meet the requirements of W2.10.1(b) as applicable; and
  - ii. a copy of the proposed employment agreement or a copy of the signed offer of employment (see W2.10.10).
- i. Following a request for approval in principle from an employer, an immigration officer may, at their discretion, invite a person to apply for a Critical Purpose visitor visa, another visa appropriate to their circumstances, or to request a variation of conditions if they are satisfied that:
  - i. they are the partner or dependent child of a person invited to apply as an 'other critical worker' (except where [H5.30.20](#) states that partners and dependent children are not eligible to be included); and
  - ii. an immigration officer who is a National Manager in the Border and Visa Operations Branch agrees that their presence in New Zealand is necessary for the critical worker to carry out their work.
- j. When considering a request for approval in principle under these instructions an immigration officer may seek advice from relevant Government agencies or other authorities.

**Note:** For the purposes of these instructions, a 'supporting agency' is the organisation seeking to bring a person to New Zealand as an 'other critical worker' and who will be directly responsible for that person's work while they are in New Zealand

#### H5.15.5 Approval in principle for marine crew arriving by the maritime border to travel to New Zealand

- a. The owner of a ship, authorised agent (such as a shipping agent), or employer or principal of marine crew of a ship which has a compelling need to travel to New Zealand may request approval in principle for any marine crew who are required for the running of the ship to travel to New Zealand by emailing [maritime.arrivals@mbie.govt.nz](mailto:maritime.arrivals@mbie.govt.nz).
- b. A request for approval in principle may relate to one or more marine crew who will travel to New Zealand for the same purpose.
- c. Where a request for travel to New Zealand is made for a marine crew member or members
  - i. a notification of Expression of Interest to apply for a visa, or to request a variation of conditions, under these instructions, must be provided by the owner of a ship, authorised agent (such as a shipping agent), or employer or principal of marine crew of a ship, with the request, on behalf of that marine crew member or members, and with their agreement; and
  - ii. the owner of a ship, authorised agent (such as a shipping agent), or employer or principal of marine crew of a ship must confirm that the marine crew member or members agree to notification of an Expression of Interest made on their behalf.
- d. A request for approval in principle must be accompanied by evidence that the marine crew meet the requirements in [H5.31](#).
- e. The owner of a ship, authorised agent (such as a shipping agent), or employer or principal of marine crew of a ship requesting approval in principle for marine crew to travel to New Zealand must pay the prescribed fee (if any).
- f. Following a request for approval in principle, an immigration officer may, at their discretion, invite a person to apply for a Critical Purpose visitor visa, another visa appropriate to the person's circumstances, or a variation of conditions if they are satisfied the person has a critical purpose for travelling to New Zealand as marine crew ([H5.31](#)); and
- g. When considering a request for approval in principle under these instructions an immigration officer may seek advice from relevant Government agencies or other authorities.
- h. Despite (f) above, for marine crew seeking to enter New Zealand as a specialist marine worker ([H5.31.25](#)), an immigration officer must agree that H5.31.25 is met before an invitation to apply may be issued.

**Note:** An "authorised agent" refers to the person or business nominated by the ship owner or operator as authorised to act as agent for the owner or operator of the ship

### H5.30.5 Other critical workers

- a. An 'other critical worker' is a person who is required to come to New Zealand for up to six months and:
  - i. has unique experience and technical or specialist skills that are not readily obtainable in New Zealand; or
  - ii. is undertaking a time-critical role:
    - o for the delivery of an approved major infrastructure project (as defined in H5.30.10); or a government approved event or a major government-approved programme (as defined in H5.30.15); or
    - o in support of an approved government-to-government agreement (as defined in H5.30.15); or
    - o for work which brings significant wider benefit to the national or regional economy; or
  - iii. meets the requirements of an approved class of worker listed at H5.30.20.
- b. Where H5.30.5(a) applies, the 'other critical worker' may be granted a visa or variation of conditions for up to six months.
- c. However, a visa or variation of condition as an 'other critical worker' may be granted for more than six months (up to a maximum of 12 months), if the person meets the criteria at H5.30.5(a)(i) or (ii), is required to stay in New Zealand for more than six months to achieve their critical purpose, and also:
  - i. earns at least twice the median salary, (currently \$106,080 per annum); or
  - ii. has a role that is essential for the completion or continuation of a science programme under a government funded or partially government-funded contract, including research and development exchanges and partnerships, and has the support of MBIE Science, Innovation and International Branch to travel to New Zealand to carry out their work; or
  - iii. has an essential role for delivery or execution of an approved major infrastructure project (as defined in H5.30.10); or for a government approved event or a major government-approved programme (as defined in H5.30.15).
- d. Despite, (b) and (c) above, a person may be granted a visa or variation of conditions for less or more than six months, if the person is an 'other critical worker' approved on the basis of being part of a class of workers, and a maximum duration is specified at H5.30.20.
- e. When considering H5.30.5 (a)(i) and (ii), an immigration officer will determine who is an 'other critical worker' and whether they are eligible for a visa of up to six months under H5.30.5 (a) (i) or (ii) or a visa of up to 12 months under H5.30.5 (c).
- f. Factors an immigration officer may take into account when determining whether a person is an 'other critical worker' as defined in H5.30.5 (a)(i) and (ii), include:
  - i. why that person is needed to ensure the delivery, continuity or execution of the work or service, and the effect on the work or service if the person was unable to come; and
  - ii. why it is not possible to re-deploy workers already in New Zealand (this could include time constraints or the specific nature of the work or service to be done); and
  - iii. the situation of the staff (if any) currently performing the role(s), and whether they can remain or not in the roles; and
  - iv. the length of the visa required and the reason for that length of visa.
- g. Any partners or dependent children (see E4.1) of an 'other critical worker' who has been granted a visa or a variation of conditions on the basis of this critical purpose, may be granted a visa to travel to New Zealand together with, or separately from, the 'other critical worker' (except where H5.30.20(c) states that partners and dependent children are not eligible to be included).
- h. When considering H5.30.5 (a)(i), the factors that an immigration officer may take into consideration when assessing:
  - i. "unique experience and technical or specialist skills" include, but are not limited to, whether these skills or experience:
    - o have been gained in a specialist training institution or by working in a highly-specialist firm
    - o can be demonstrated through global experience
    - o are inherent to a person
  - ii. "not readily obtainable" include, but are not limited to, whether:
    - o there are no workers in the country who could perform the role, or
    - o there is a very limited pool of available workers who could perform the role and they are not available to the employer.

- i. When considering H5.30.5 (a)(i), applications for seasonal workers will generally not be approved under these instructions. The only exceptions will be if the nature of the work is highly skilled or uniquely specialised.
- j. "Time critical" in H5.30.5 (a)(ii) includes if the person does not come to New Zealand, the project, work or event will cease or be severely compromised, or significant costs will be incurred.
- k. A person enrolled in, or with an offer to study, a Doctoral Degree at a New Zealand university, may be determined to be an 'other critical worker', if the person:
  - i. has a role that is essential for the completion or continuation of a science programme under a government funded or partially government-funded contract, including research and development exchanges and partnerships, and has the support of MBIE Science, Innovation and International Branch to travel to New Zealand to carry out their work, and
  - ii. has unique experience and technical or specialist skills that are not readily obtainable in New Zealand or
  - iii. is undertaking a time-critical role:
    - o for the delivery of an approved major infrastructure project (as defined in H5.30.10); or a government approved event or a major government-approved programme (as defined in H5.30.15); or
    - o in support of an approved government-to-government agreement (as defined in H5.30.15); or
    - o for work which brings significant wider benefit to the national or regional economy.
- l. A student who is assessed as meeting the criteria in (k) can be invited to apply for a:
  - i. student visa, and if their visa application is approved, may be granted a student visa for more than six months (up to a maximum of 12 months); or
  - ii. variation of conditions, if they already hold a student visa for their study for a Doctoral Degree.

**Notes:**

- Examples of workers meeting this standard may include: some highly specialist veterinarians, vendor-appointed engineers required to install major equipment, or an actor in a key film role.
- For the absence of doubt, co-owners of America's Cup syndicates may be considered other critical workers under H5.30.5(a)(ii).
- For the avoidance of doubt, a person outside of New Zealand who is required for more than six months must meet the relevant criteria at H5.30.5(c) if they are an 'other critical worker' as defined at H5.30.5(a)(i) or (ii).

#### H5.30.50.1 Requirements for the temporary visa holder's employment

- a. The current employment of the temporary visa holder described in H5.30.50(c) must be paid at least twice the median salary (NZD \$106,080 per year).
- b. Their current employment must also meet one (or more) of:
  - i. they have unique experience and technical or specialist skills not readily obtainable in New Zealand; or
  - ii. they have a role essential for the completion or continuation of a science programme under a government funded or partially government funded contract, including research and development exchanges and partnerships, and have the support of the Science, Innovation and International Branch at MBIE; or
  - iii. their role is essential for the delivery or execution of one of the following:
    - an approved major infrastructure project, or a government approved event or a major government approved programme, or
    - an approved government-to-government agreement, or
    - work with significant wider benefit to the national or regional economy.

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**Notes:**

- For the absence of doubt, 'current employment' in H5.30.50.1 above does not include an offer of employment.
- When considering H5.30.50.1(b), an immigration officer may determine if the current employment of the temporary visa holder meets the requirements of H5.30.50.1(b) for the person in H5.30.50 to be eligible to be invited to apply for a visa.



#### **H5.31.25 Specialist marine worker**

- a. A specialist marine worker is any person who:
  - i. is travelling to New Zealand on a vessel that has been granted permission by the Ministry of Health to arrive in New Zealand for the purpose of delivering the ship to a business under the Maritime Border Order; and
  - ii. has unique experience and technical or specialist skills that are not readily obtainable in New Zealand and those experience and skills are related to the same purpose for which the vessel has been approved to travel to New Zealand, as outlined in (i).
- b. An immigration officer will determine who is a "specialist marine worker".