MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

1 September 2023

IMMIGRATION NEW ZEALAND INSTRUCTIONS: Amendment Circular No. 2023-26

To: All Manual Holders

AMENDMENTS TO THE IMMIGRATION NEW ZEALAND OPERATIONAL MANUAL

Introduction

This circular outlines changes to 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 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.

Description of changes

Changes to Residence instructions

A5.25 Convictions, false information and other matters which may cause applicants not to meet character requirements for residence

The character provisions related to false, misleading and withheld information will be amended to:

- specify they only apply where the false, misleading or withheld information was an issue in a prior application, because the new chapter at A24 will cover false, misleading or withheld information in a current application
- set out that false or misleading information in a prior application is a character issue whether the information was submitted by the applicant personally or through an agent
- ensure false, misleading or withheld information is covered by character instructions where the provision or withholding of that information occurred in an Expression of Interest (EOI) that is not associated with the current residence application (SM3.10, F4.5 and SR3.5 set out instructions to be used with respect to false, misleading or withheld information when the EOI *is* associated with the current residence application)
- specify some exclusions from character instructions for false, misleading or withheld information in a prior application, for example where the applicant was under 18 when the issue occurred
- more fully define false, misleading and withheld information

Character waiver provisions related to false, misleading or withheld information will be updated to set out four factors an immigration officer must consider in assessing a character waiver where false, misleading or withheld information is an issue.

A new section will be added at A5.25.7 allowing an immigration officer to disregard any false, misleading or withheld information made in connection to a credible report of migrant exploitation. This replicates an existing section from temporary entry character instructions.

Additionally, a range of changes will be made to improve the clarity and usability of the instructions, including:

- creation of introductory provisions which set out the character assessment and waiver process
- new subheadings to make the section easier to navigate
- addition of a note and amending wording to make it clearer that convictions that occur during the processing of a residence application have to be considered

A5.35 Residence applications usually deferred

Minor updates have been made to clarify when deferral provision apply.

R5.15 Explaining discrepancies in family details

R5.20 Assessment of applications

These sections currently contain some instructions on the handling of applications where false, misleading or withheld information is an issue. Those provisions will be removed from these sections because the new chapter at A24 will provide a single location for all instructions for managing false, misleading or withheld information in the current application.

SM3.10 Provision of evidence

F4.5 Expression of interest (EOI) and invitation to apply for residence

***SR3.5 Applying for a Skilled Migrant Category Visa* (from 9 October 2023)**

These provisions deal with the potential decline of a residence application under the Parent Category or the current or future Skilled Migrant Category where the EOI associated with the application contains false or misleading information, or where prejudicial information was withheld. They have been amended to ensure consistency with the new chapter A24, in particular, to set out that:

- the application can be declined on the basis of false, misleading and withheld information in the associated EOI whether that information was provided by the applicant or by an agent
- where there is false, misleading or withheld information in the associated EOI an immigration officer should consider the circumstances of the application before declining it.

Changes to Residence and Temporary Entry instructions

A5.1 Visa applicants must meet character requirements

A5.15 Summary of character requirements

Y4.25 People who must be refused entry permission unless granted as an exception to instructions: unable to meet relevant immigration instructions

These three sections will have minor wording updates to improve clarity and consistency.

Changes to Temporary Entry instructions

A5.45 Convictions, charges and other matters which may cause applicants not to meet character requirements for temporary entry

This section will be amended in the same manner as the revised character instructions for residence applications at A5.25 with regard to false, misleading and withheld information.

Similar to character instructions for residence, a range of changes will be made to improve the clarity and usability of the instructions, including:

- creation of introductory provisions which set out the character assessment and waiver process
- new subheadings to make the section easier to navigate
- addition of a note and amending wording to make it clearer that convictions that occur during the processing of a residence application have to be considered

E7.15 Potentially prejudicial information

A note will be added to define ‘agent’.

E8.10 Temporary visas for refugee or protection status claimants

U8.20 Dependent children of holders of work visas

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

Cross referencing updates will be made to these sections.

A5.40 Applicants ineligible for a temporary entry class visa or entry permission

E2.40 Who is not eligible for a temporary entry class visa

E4.75 Obligation to inform of all relevant facts, including changed circumstances

These sections are being rescinded because their content is now replicated elsewhere.

Changes to Operational instructions

A5.20 Who must not be granted a visa or entry permission

Changes will be made to refer more comprehensively and clearly to the relevant parts of legislation.

A24 Considering false, misleading or withheld information under Section 58

This new chapter replicates section 58 of the Immigration Act. It will include guidance on assessing whether section 58(6) regarding false, misleading or withheld information applies to a particular application. It will also specify the requirement that an immigration officer must consider the circumstances of the application before declining the application on the basis of section 58(6).

R5.10 Verification

E7.5 Verification

These sections currently contain some instructions on the handling of applications where false, misleading or withheld information is an issue. Those provisions will be removed from these sections because the new chapter at A24 will provide a single location for all instructions for managing false, misleading or withheld information in the current application.

These changes will take effect on 25 September 2023, except for the changes to SR3.5, which take effect on 9 October 2023.

Appendix 1: Amendments to Residence instructions effective on and after 25 September 2023

A5.25 Convictions, false information and other matters which may cause applicants not to meet character requirements for residence

a. A person will not be granted a residence class visa, unless granted a character waiver, if one or more of the provisions at A5.25.5(a)-(d) below apply to one or more of the applicants included in the person's application for a visa.

b. An immigration officer assessing an application where these instructions apply to a person or application must follow a two stage process:

   i. In the first stage the immigration officer must record a determination that one or more of the provisions at A5.25.5(a)-(d) apply. In the case of A5.25.5(b)-(d), the officer must record reasons why they have determined the relevant provision applies.

   ii. If the immigration officer confirms that one or more of the provisions at A5.25.5(a)-(d) apply, then at the second stage an immigration officer must consider whether a character waiver should be granted. (See A5.25.10 Assessment of character waiver below.)

A5.25.5 Ineligibility due to convictions, false information, and other matters

a. A person will not be granted a residence class visa if they have been convicted:

   i. at any time of any offence against the immigration, citizenship or passport laws of any country; or
   ii. at any time of any offence involving prohibited drugs; or
   iii. at any time of any offence involving dishonesty; or
   iv. at any time of any offence of a sexual nature; or
   v. at any time of any offence for which they were sentenced to a term of imprisonment; or
   vi. (whether in New Zealand or not) of an offence committed at any time when the applicant was in New Zealand unlawfully or was the holder of a temporary entry class visa or held a temporary permit under the Immigration Act 1987 or was exempt under that Act from the requirement to hold a permit, being an offence for which the court has power to impose imprisonment for a term of three months or more (this includes, but is not limited to, potential sentences "not exceeding three months" or "up to and including three months"); or
   vii. at any time of any offence involving violence; or
   viii. at any time in the five years prior to the date the application is made, or convicted while the application is being processed, of an offence (including a traffic offence), involving dangerous driving, driving having consumed excessive alcohol (including drunk driving and driving with a blood or breath alcohol content in excess of a specified limit) or driving having consumed drugs.

Note:

- a conviction 'at any time' in (i)-(vii) includes one that occurs up to the date of the final decision (R5.60) of the application
- a 'sentence to a term of imprisonment' in (v) includes cases where the sentence was of immediate effect, was deferred or was suspended in whole or in part, or where the sentence is a 'fine or in default' term of imprisonment

b. A person will not be granted a residence class visa if they:

   i. in the course of a prior application for a New Zealand visa or entry permission (or a permit under the Immigration Act 1987) made any statement or provided any information, evidence or submission, either personally or through an agent, that was false or misleading, or withheld material information which may have affected the decision on the application; or
   ii. did not take reasonable steps, from the time their prior application was made until the time the application was decided, to ensure that an immigration officer was made aware of any relevant fact, including any material change in circumstances that occurred after a prior application for a New Zealand visa (or a permit under the Immigration Act 1987) was made, if that fact or change of circumstances may have affected the decision on the application, or may have affected a decision to grant entry permission in reliance on the visa for which the application was made; or
   iii. in support of any application by another person for a New Zealand visa or entry permission (or a permit under the Immigration Act 1987), made any statement or provided any information, evidence or submission that was false or misleading.

c. Applicants who will not be granted a residence class visa include any person who, either personally or through an agent, notified an expression of interest (EOI) in applying for a visa, or who was included in the EOI, and:

   i. the current application for a residence class visa is not associated to that EOI; and
   ii. false or misleading information was provided as part of the EOI, or associated submission; or
   iii. relevant, potentially prejudicial information was withheld from the EOI or associated submission.

d. A person will not be granted a residence class visa if they:

   i. at any time in a public speech or public comments, or public broadcast, or in publicly distributing or publishing a document, argued that one race or colour is inherently inferior or superior to another race

or colour; or used language intended to encourage hostility or ill will against any person or group of persons on the basis of colour, race or ethnic or national origins of that person or group; or

ii. have been, or are, a member of (or adheres or has adhered to) any organisation or group of people which (at the time of the person's membership or adherence) had objectives or principles based on:

- hostility against people or groups of people on the basis of colour, race, or ethnic or national origins; or
- an assumption that persons of a particular race or colour are inherently inferior or superior to other races or colours.

e. The disqualifying criteria at (b) and (c) above do not apply if an immigration officer recorded a determination that the relevant incident(s) of false, misleading or withheld information was or were not an issue of character that required a character waiver.

f. The disqualifying criteria at (b) and (c) above do not apply to an applicant who was less than 18 years old at the time that (as the case may be):

i. the prior application was made; or

ii. the EOI was submitted; or

iii. the statement was made; or

iv. the information, evidence, or submission was provided.

g. The disqualifying criteria at (b) and (c) above do not apply to a person who was a non-principal applicant or submitter included in the prior application or EOI as a dependent child, provided that information (which was false, misleading or withheld) is not regarding that applicant.

Note:
- The obligation of the person in (b)(ii) above to advise an immigration officer of a change of circumstances does not extend beyond the time they are granted a visa.
- Withholding material information or a material change of circumstances 'which may have affected the decision' in (b)(i) or (b)(ii) does not mean that the information, if previously known by INZ, would necessarily have led to a decline decision; it only means that the concealment of the information deprived INZ of a relevant line of inquiry.

A5.25.6 Clarifications regarding false, misleading or withheld information

a. An 'application for a New Zealand visa (or a permit under the Immigration Act 1987)' in A5.25.5(b) includes an application for a variation of conditions, an application for a variation of travel conditions, or an application for reconsideration (E7.35.1).

b. A decision that A5.25.5(b) or (c) applies, due to the provision of false or misleading information, does not require an immigration officer to determine whether or not the applicant personally:

i. knew that the information was false or misleading; or

ii. knew that such information was provided to INZ (for example by their agent); or

iii. intended to deceive Immigration New Zealand through their actions or inaction.

c. A decision that A5.25.5(b) or (c) applies, due to the withholding of relevant information or the failure to advise of a material change of circumstances:

i. requires an immigration officer to be satisfied that the applicant, or their agent, knew that information, but

ii. does not require an immigration officer to determine whether or not the applicant personally intended to withhold information, or deceive INZ through their actions or inaction.

d. In cases where an applicant had an agent acting on their behalf in submitting, supporting or sponsoring a prior visa application, and that agent provided false or misleading information, a decision that A5.25.5(b) or (c) applies does not require an immigration officer to determine whether or not the agent knew that the information was false or misleading.

e. A document that is found to be forged or altered in an unauthorised manner will be considered false information, even if an immigration officer is satisfied that the substantive information contained in the document is true.

A5.25.7 Information, evidence or submission connected to a report of migrant exploitation

a. Despite A5.25.5(b) above, an immigration officer may disregard any false or misleading statement, information, evidence or submission, or withheld information, in a person's application for a New Zealand visa or variation of conditions, where:
   i. an immigration officer is satisfied the incident(s) of false, misleading or withheld information is or are connected to a report of exploitation made to the Ministry of Business, Innovation and Employment (MBIE); and
   ii. the report was assessed as credible, as evidenced by a Report of Exploitation Letter issued by MBIE (see WI20.10(a)(ii)).

b. For the avoidance of doubt, A5.25.5(b) does apply to an applicant who provides any false, misleading or forged statement, information, evidence or submission, or withholds material information in the course of applying for a Migrant Exploitation Protection Visa, including in the report of exploitation.

A5.25.10 Assessment of character waiver

a. Despite A5.25.5(a)-(d), an immigration officer must consider the surrounding circumstances of the application to decide whether or not they are compelling enough to justify the grant of a character waiver. The circumstances include but are not limited to the following factors as appropriate:
   i. if applicable, the seriousness of the criminal offence or offences (generally indicated by the term(s) of imprisonment or size of the fine(s));
   ii. whether there is more than one criminal offence or whether more than one provision at A5.25.5(a)-(d) applies;
   iii. how long ago the relevant event or events occurred;
   iv. whether the applicant has any immediate family lawfully and permanently in New Zealand;
   v. the extent of the applicant's other connections to New Zealand;
   vi. whether the applicant's potential contribution to New Zealand will be significant.

b. Where A5.25.5(b) or (c) applies, officers must consider, in addition to any relevant matters listed in A5.25.10(a) above, the following:
   i. the significance of the false or misleading information provided, or the information withheld, with respect to the outcome of the application or EOI; and
   ii. the nature and extent of the applicant's intentions and involvement in the provision of the false or misleading information, or in the withholding of relevant information; and
   iii. the extent to which the applicant exercised reasonable diligence in ensuring that INZ was provided with complete and accurate information; and
   iv. whether Article 31 of the Convention Relating to the Status of Refugees applies.

c. Where (A5.25.5(d)) applies, officers must consider, in addition to any relevant matters listed in A5.25.10(a) above, the following:
   i. the length of time since the applicant publicly expressed the views, or was a member or adherent of the group or organisation; and
   ii. whether the applicant still holds the views or still belongs or adheres to the group or organisation, and any evidence of a change in views; and
   iii. the extent to which the applicant was involved in publishing or distributing the views, or the extent of involvement in the group or organisation; and
   iv. the nature of the views, or the nature of the group or organisation.

d. Officers must make a decision only after they have considered all relevant factors, including (if applicable):
   i. any advice from the National Office of INZ; and
   ii. compliance with fairness and natural justice requirements (see A1).

e. Officers must record:
   i. their consideration of the surrounding circumstances, (see paragraphs (a)-(c) above), noting all factors taken into account; and
   ii. the reasons for their decision to grant or not grant a character waiver.

Any decision to grant a character waiver must be made by an immigration officer with Schedule 1-3 delegations.

A5.35 Residence applications usually deferred

Applications for a residence class visa will usually be deferred for up to six months if, at the time the application is assessed:

a. any of the applicants included in the application has an arrest warrant (or the equivalent) outstanding in any country; or

b. any of the applicants:

   i. has been charged with any offence which, on conviction, would make A5.25.5(a) apply to that applicant; or

   ii. is under investigation for such an offence; or

   iii. is wanted for questioning about such an offence; or

c. the principal applicant is applying for residence under the Family or Special Categories on the basis of their relationship to a person whose residence status is under investigation at the time of assessment of the Family or Special Category application. In such cases, if the investigation cannot be finalised within the initial six month deferral period the application may continue to be deferred until it is.

Note: if a resident visa holder is applying for a permanent resident visa, and the travel conditions on the resident visa are about to expire, further travel conditions can be granted for the same duration as the deferral period.

A5.35.1 Action

The immigration officer must:

a. defer the decision on the application for up to six months; and

b. inform the applicant of the decision to grant a deferral and the period of the deferral, in writing; and

c. await the outcome of the charge, investigation or questioning, or await cancellation or execution of the arrest warrant; and

d. if removal of the character impediment is confirmed, continue processing the application normally; and

e. if the character impediment is not removed, refer to the Head of Operations or Visa Operations Manager for their decision on whether to grant a second or subsequent deferral under the provisions at A5.35.5.

A5.35.5 Second and subsequent deferral periods

a. In cases where the deferral period is coming to an end and the applicant is still awaiting the outcome of the charge, investigation or questioning, or awaiting cancellation or execution of the arrest warrant, a second or subsequent deferral period may be imposed.

b. A decision on a second or subsequent deferral will only be made after appropriate consultation with National Office and the Legal Services of the Ministry of Business, Innovation and Employment about:

   i. whether a second or subsequent deferral is justified in the circumstances; and

   ii. whether the deferral period is reasonable, given the likely timeframe of any outcome being reached and the efforts the applicant is making to reach an outcome.

c. A decision to grant a second deferral must be made by an Head of Operations or Visa Operations Manager or above.

d. If the character impediment is not removed by the end of the second deferral period, the Head of Operations or Visa Operations Manager may impose a subsequent deferral.

e. The length of the subsequent deferral period will be decided according to the length of time it is expected for a decision on the charge, investigation or questioning, cancellation or execution of the arrest warrant to be made.

f. The applicant must be informed of any decision to impose a second or subsequent deferral and the period of the deferral, in writing.

g. If the subsequent deferral period comes to an end without the character impediment being removed or an outcome to the case, officers must assess the application as in A5.25.10.

Note: A deferral does not require granting the applicant a temporary entry class visa.

R5.15 Explaining discrepancies in family details

a. Under the principles of fairness and natural justice, applicants must be given an opportunity to explain any discrepancies in the details of their immediate family, if those discrepancies are materially relevant to the application.

b. Applicants, or other relevant parties, may be required to provide the explanation in writing and/or at an interview, and if given at interview the explanation must be recorded in writing.

c. If applicants or other relevant parties are required to provide the explanation in writing, they must be given a reasonable time in which to do so and must know what it is they are expected to explain.

d. If, as the result of an explanation, the immigration officer is satisfied that the details provided by the applicant are correct, or that the applicant has genuinely misunderstood the requirements, the officer should continue to assess the application.

R5.20 Assessment of applications

a. Immigration officers need only assess applications under the category the principal applicant nominates.

b. Officers are not obliged to seek further information to determine whether the principal applicant may be eligible under another category.

c. However, officers should request further information to enable the application to be assessed under another category if:

   i. an application does not meet the criteria for approval under the category in which it was made; and

   ii. information contained in the application form or accompanying documents clearly indicates that the principal applicant may be eligible under that other category.

Note: In the event a nominated category requires an invitation to apply, a person can be considered for the grant of a visa under that category only if they have received such an invitation and apply under the category within the specified timeframe in the letter of invitation. See section 71(2) of the Immigration Act 2009 and RA5(c).

R5.20.1 Further information

a. Further information may be submitted at any time before a final decision is made on an application. Immigration officers must take into account any relevant information submitted by applicants before a final decision is made.

b. Immigration officers should also take into account any relevant information held about previous applications.

c. If applicants do not respond within the specified time to a request from an immigration officer for further information, evidence or documents, or an interview, the application may be assessed on the relevant information then available to INZ, unless it is reasonable to enquire further.

R5.20.5 Potentially prejudicial information

In accordance with the principles of fairness and natural justice set out in the Administration chapter (A1), applicants for a residence class visa will be given the opportunity to comment before a decision is made to decline to grant a visa on the basis of any potentially prejudicial information that they are not necessarily aware of.

R5.20.10 Documenting decisions

All immigration officers must observe the following procedures to ensure that decisions on applications for a residence class visa are properly documented:

a. make all file records (particularly file notes and instructions) accurate, clear, complete and factual; and

b. give all decisions on applications in writing to applicants (or their representatives); and

c. state the full reasons for the decisions (without prejudicing any risk profiles); and

d. if an applicant does not meet the criteria set out in the instructions on several grounds, the letter declining their application must state why the applicant fails on each count.

SM3.10 Provision of evidence

a. Applicants must provide sufficient evidence to demonstrate that:

   i. the principal and any secondary applicants meet health, character and English language requirements, and

   ii. the principal applicant qualifies for points claimed for employability and capacity building factors.

b. An application must be declined if an immigration is not satisfied that sufficient evidence (as set out in (a) above), has been provided.

SM3.10.1 False or misleading information in an Expression of Interest

a. It is sufficient grounds to decline a Skilled Migrant Category resident visa application made under SM instructions if:

   i. false or misleading information was provided as part of the associated Expression of Interest (EOI); or

   ii. relevant, potentially prejudicial information was withheld from the associated EOI; or

   iii. an applicant or their agent failed to advise an immigration officer of any fact or material change in circumstances that occurs after an EOI is submitted that may affect a decision to invite the person to apply for a resident visa or to grant a resident visa.

b. A decision that false or misleading information was provided does not require an immigration officer to determine whether or not the applicant personally:

   i. knew that the information was false or misleading; or

   ii. knew that such information was provided to INZ (for example by their agent); or

   iii. intended to deceive Immigration New Zealand through their actions or inaction.

c. A decision that relevant, potentially prejudicial information was withheld requires an immigration officer to be satisfied that the applicant, or their agent, knew that information, but does not require an immigration officer to determine whether or not the applicant personally intended to withhold information, or deceive Immigration New Zealand through their actions or inaction.

d. In cases where an applicant had an agent acting on their behalf, a decision that false or misleading information was provided does not require an immigration officer to determine whether or not the agent knew that the information was false or misleading.

SM3.10.2 Deciding whether to decline a Skilled Migrant Category (SM) application for false, misleading or withheld information in the associated Expression of Interest

a. Where an immigration officer determines that false or misleading information was provided, or relevant, potentially prejudicial information was withheld, in an associated EOI, the residence application under the Skilled Migrant Category (SM instructions) is to be normally declined.

b. Despite SM3.10.2(a), an immigration officer must not decline the application under SM.3.10.1(a) without considering the circumstances of the application.

F4.5 Expression of interest (EOI) and invitation to apply for residence

F4.5.1 EOI Pools and the currency of EOIs

a. Two Pools will contain Parent Category EOIs:

   i. a Queued Pool will contain EOIs submitted in the prescribed manner on or before 11 October 2022; and

   ii. a Ballot Pool will contain EOIs submitted in the prescribed manner on or after 12 October 2022.

b. An EOI submitted into the Ballot Pool is current for a period of two years from the date of initial submission to the Ballot Pool, unless no selections have occurred within those two years. Where this is the case, a Ballot Pool EOI is current until a selection from the Ballot Pool has occurred.

c. A Ballot Pool EOI that is no longer current will expire and be removed from the Ballot Pool.

d. A Ballot Pool EOI will also be removed from the Ballot Pool if:

   i. it is selected and the people included on the EOI are invited to apply; or

   ii. it is selected and an immigration officer is not satisfied that the person(s) who submitted the EOI meets the requirements to be granted a resident visa and as a result no invitation to apply is issued; or

   iii. the EOI includes a person who is included in more than one EOI in the Ballot Pool (because a person may only have one EOI in the Ballot Pool at any one time).

Note: An EOI submitted into the Queued Pool has no expiry date

F4.5.3 EOI Submission

a. A person notifies that they are interested in being invited to apply for a resident visa under the Parent Category by submitting an EOI to Immigration New Zealand (INZ) in the prescribed manner. In order to submit an EOI in the prescribed manner, a person must submit to an immigration officer:

   i. a completed Parent Category EOI form; and

   ii. the prescribed fee (if any).

b. By completing an EOI, a person provides a declaration about their and their partner's:

   i. identity, health and character; and

   ii. English language ability or an intention to agree to pre-purchase English for Speakers of Other Languages (ESOL) tuition (F4.25); and

   iii. relationship to their sponsoring adult children and any other children the applicants have (see F4.30); and

   iv. sponsor's or joint sponsors' eligibility to sponsor them for New Zealand residence under the Parent Category (see F4.35.1); and

   v. sponsor's or joint sponsors' income for the past three years (see F4.35.5).

c. At any time, a principal applicant and/or secondary applicant may have:

   i. only one EOI in the Queued Pool; and

   ii. only one EOI in the Ballot Pool.

d. An EOI will be removed from the Ballot Pool if it includes a person already included in an EOI in the Ballot Pool.

e. It is the responsibility of the person submitting the EOI to ensure that the information given is correct in all material respects.

Note: If the partner of a principal applicant is considered to be eligible for inclusion in a Parent Category EOI but was not included, the partner will not be granted residence under the Partnership Category if the partner applies at a later date (see F2.40.5). A partner is considered eligible for inclusion in an EOI even if it appears the sponsor/s may not meet the income requirement to sponsor multiple Parent category applicants if invited to apply for residence.

F4.5.3.1 Submission of previously withdrawn EOIs to the Queued Pool

a. Despite F4.5.1(a)(i), EOIs submitted on or after 12 October 2022 will be included in the Queued Pool, rather than the Ballot Pool, if:

   i. any person included in that EOI was included in a Parent Category EOI that was in the pool on 7 October 2019; and

   ii. that earlier EOI was withdrawn by the submitter before 12 October 2022.

b. For the purposes of selection, any EOIs submitted to the Queued Pool on the basis of (a) above will be selected based on the date that the previously withdrawn EOI was submitted (i.e. the submitter will re-gain their previous place in the queue).

c. To resubmit an EOI that was previously withdrawn, a person must complete the prescribed form and pay the EOI fee (see F4.5.3(a)).

F4.5.5 Selections from the EOI Pools

EOIs are selected from the Queued Pool and the Ballot Pool periodically on the Government's behalf by the Ministry of Business, Innovation and Employment.

F4.5.5.1 Ballot Pool Selections

a. EOIs will be randomly selected from the Ballot Pool until the appropriate number of potential applicants to fill the available number of visas within the annual period have been selected.

b. To be eligible for selection, an EOI must be submitted in the prescribed manner before the first day of the month of selection.

F4.5.5.5 Selections from the Queued Pool

a. EOIs will be selected from the Queued Pool based on the date the EOIs were submitted into the Pool, with the earliest submitted EOIs selected first.

b. EOIs will be selected from the Queued Pool until the appropriate number of potential applicants to fill the number of available visas within the annual period have been selected.

F4.5.10 Invitation to apply (ITA) for a resident visa under the Parent Category

a. People whose EOIs have been selected may be issued an ITA for a resident visa under the Parent Category.

b. An immigration officer may invite a person to apply for a resident visa under the Parent Category if they are satisfied that:

   i. the information provided does not indicate the presence of any health or character issues which may adversely affect their ability to be granted a resident visa under the Parent Category; and

   ii. claims about English language are credible or the applicant has the intention to pre-purchase ESOL tuition (see F4.25); and

   iii. it is credible that the parent's relationship to their sponsoring adult child(ren) and any other children they have will meet requirements when the parent/s are granted residence (see F4.15.1); and

   iv. it is credible that the sponsor(s) will meet the sponsorship requirements when the parent/s are granted residence (see F4.35); and

   v. the sponsor(s) is likely to meet the minimum income threshold for two 12-month periods within the 3 years prior to ITA date (see F4.35.5); and

   vi. if joint income is considered, it is credible that the requirements for joint sponsorship will be met when the parent/s are granted residence.

c. An immigration officer may decide not to issue an ITA for a resident visa under the Parent Category if they are not satisfied claims made within the EOI are:

   i. credible; or

   ii. sufficient to meet the requirements of the Parent Category.

d. An immigration officer may seek further evidence, information and submissions from a person whose EOI has been selected for the purpose of determining whether their claims are credible and whether there are any health or character issues that may adversely affect their ability to be granted a resident visa under the Parent Category.

e. In any particular case, the selection of an EOI may not result in an invitation to apply for a resident visa under the Parent Category. No person is entitled as of right to an invitation to apply for a visa and the decision to issue or revoke an invitation is a matter for the discretion of the Minister of Immigration or, subject to any special direction, an immigration officer.

Note: A decision to invite a person to apply for a resident visa under the Parent Category does not guarantee in any subsequent application for a resident visa a positive assessment of any requirements for the Parent Category or generic residence (including health and character).

F4.5.15 False or misleading information in an Expression of Interest

a. It is sufficient grounds to decline a Parent Category resident visa application if:

   i. false or misleading information was provided as part of the associated Expression of Interest (EOI); or

   ii. relevant, potentially prejudicial information was withheld from the associated EOI; or

   iii. an applicant or their agent failed to advise an immigration officer of any fact or material change in circumstances that occurs after an EOI is submitted that may affect a decision to invite the person to apply for a resident visa or to grant a resident visa.

b. A decision that false or misleading information was provided does not require an immigration officer to determine whether or not the applicant personally:

   i. knew that the information was false or misleading; or

   ii. knew that such information was provided to INZ (for example by their agent); or

   iii. intended to deceive Immigration New Zealand through their actions or inaction.

c. A decision that relevant, potentially prejudicial information was withheld requires an immigration officer to be satisfied that the applicant, or their agent, knew that information, but does not require an immigration officer

to determine whether or not the applicant personally intended to withhold information, or deceive Immigration New Zealand through their actions or inaction.

d. In cases where an applicant had an agent acting on their behalf, a decision that false or misleading information was provided does not require an immigration officer to determine whether or not the agent knew that the information was false or misleading.

F4.5.16 Deciding whether to decline a Parent Category application for false, misleading or withheld information in the associated Expression of Interest

a. Where an immigration officer determines that false or misleading information was provided, or relevant, potentially prejudicial information was withheld, in an associated EOI, the residence application under the Parent Category is to be normally declined.

b. Despite F4.5.16(a), an immigration officer must not decline the Parent Category application under F4.5.15(a) without considering the circumstances of the application.

Appendix 2: Amendments to Residence instructions effective on and after 9 October 2023

SR3.5 Applying for a Skilled Migrant Category Visa

SR3.5.1 Ability to apply

a. A person who is interested in applying for a resident visa under the Skilled Migrant Category must complete an expression of interest (EOI) form in the prescribed manner.

b. An automated electronic system may determine whether an applicant meets the requirements to be invited to apply under the Skilled Migrant Category.

c. An automated electronic system may issue or refuse to issue an invitation to apply under these instructions based on the claims made in a person's EOI and set out in SR3.5.1(e) below.

d. Where a decision to issue or refuse to issue an invitation to apply for a visa is made by way of an automated electronic system, that decision must for all purposes be treated as a decision of an immigration officer who is authorised to make the decision under the Immigration Act 2009.

e. A person may only be invited to apply for a resident visa under the Skilled Migrant Category if the person expressing interest has:

   i. confirmed that they are aged 55 or younger; and

   ii. confirmed that none of the people included in the EOI are described in sections 15 or 16 of the Immigration Act 2009 (see A5.20) concerning character; and

   iii. confirmed that none of the people included in the EOI would be ineligible for a medical waiver (see A4.60); and

   iv. confirmed that all people included in the EOI meet the minimum standard of English or, where instructions allow, intend to pre-purchase English for Speakers of Other Languages tuition (see SR2.10); and

   v. confirmed they meet the skilled employment requirements (see SR3.20); and either

   vi. claimed they qualify for 6 points from one skill category (see SR3.25); or

   vii. claimed they qualify for 6 points from a combination of one skill category and their skilled work experience in New Zealand (see SR3.35).

SR3.5.5 False and misleading information in an Expression of Interest

a. It is sufficient grounds to decline a Skilled Migrant Category resident visa application made under SR instructions if:

   i. false or misleading information was provided as part of the associated Expression of Interest (EOI); or

   ii. relevant, potentially prejudicial information was withheld from the associated EOI; or

   iii. an applicant or their agent failed to advise an immigration officer of any fact or material change in circumstances that occurs after an EOI is submitted that may affect a decision to invite the person to apply for a resident visa or to grant a resident visa.

b. A decision that false or misleading information was provided does not require an immigration officer to determine whether or not the applicant personally:

   i. knew that the information was false or misleading; or

   ii. knew that such information was provided to INZ (for example by their agent); or

   iii. intended to deceive Immigration New Zealand through their actions or inaction.

c. A decision that relevant, potentially prejudicial information was withheld requires an immigration officer to be satisfied that the applicant, or their agent, knew that information, but does not require an immigration officer to determine whether or not the applicant personally intended to withhold information, or deceive Immigration New Zealand through their actions or inaction.

d. In cases where an applicant had an agent acting on their behalf, a decision that false or misleading information was provided does not require an immigration officer to determine whether or not the agent knew that the information was false or misleading.

SR3.5.5.1 Deciding whether to decline a Skilled Migrant Category (SR) application for false, misleading or withheld information in the associated Expression of Interest

a. Where an immigration officer determines that false or misleading information was provided, or relevant, potentially prejudicial information was withheld, in an associated EOI, the residence application under the Skilled Migrant Category (SR instructions) is to be normally declined.

b. Despite SR3.5.5.1(a), an immigration officer must not decline the application under SR3.5.5(a) without considering the circumstances of the application.

SR3.5.10 Making an application

Applicants for a visa under the Skilled Migrant Category may only apply if:

a. they have been invited to apply under the Skilled Migrant Category SR3 instructions; and

b. they make their application within 4 months of the date that invitation is made; and

c. their invitation has not been revoked.

Appendix 3: Amendments to Residence and Temporary Entry instructions effective on and after 25 September 2023

A5.1 Visa applicants must meet character requirements

Applicants for all visas must:

a. be of good character; and

b. not pose a potential security risk.

If any person included in the application fails to meet the necessary character requirements and the character requirements are not waived (or a special direction is not granted, or the discretion available at A5.30.1(c) or (d) to grant a visa is not applied, as the case may be), the application may be declined.

A5.15 Summary of character requirements

Instructions in the remainder of chapter A5 describe:

a. applicants who must not be granted a visa under the Immigration Act 2009 (see A5.20), unless granted a special direction;

b. applicants who will not be granted a residence class or temporary entry class visa (see A5.25 and A5.45 respectively), unless granted a character waiver;

c. applicants who will not normally be granted a residence class or temporary entry class visa where they pose a risk to New Zealand's international reputation (see A5.30), unless a visa is granted in accordance with A5.30.1; and

d. applicants whose applications for a residence class visa will usually be deferred (see A5.35).

Note: With the exception of A5.20 (which is a replication of a part of the Immigration Act 2009), the instructions in the remainder of chapter A5 constitute immigration instructions as described in section 22 of the Immigration Act 2009.

Y4.25 People who must be refused entry permission unless granted as an exception to instructions: unable to meet relevant immigration instructions

See also Immigration Act 2009 ss 22 and 107

Entry permission must be refused to any person, except a person listed in Y3.10(a), who is not otherwise dealt with under Y4.1 and:

a. is unable to meet the requirements for entry permission or a visa under relevant instructions including (but not limited to):
   i. having expired travel documents or no travel documents; or
   ii. having no visa, an inappropriate visa or an expired visa; or
   iii. having insufficient funds and no sponsorship; or
   iv. having no outward ticket; or
   v. being previously refused entry permission to New Zealand; or
   vi. failing to meet the bona fide applicant requirement; or
   vii. failing to meet character requirements (see A5); or

b. no longer meets the requirements or purpose of the visa held (e.g. job no longer available).

Appendix 4: Amendments to Temporary Entry instructions effective on and after 25 September 2023

A5.45 Convictions, charges and other matters which may cause applicants not to meet character requirements for temporary entry

a. A person will not be granted a temporary entry class visa, unless granted a character waiver, if one or more of the provisions at A5.45.5 below apply to one or more of the applicants included in the person's application for a visa.

b. An immigration officer assessing an application where these instructions apply to a person or application must follow a two stage process:

   i. In the first stage the immigration officer must record a determination that one or more of the provisions at A5.45.5(a)-(d) apply. In the case of A5.45.5(c) or (d), the officer must record reasons why they have determined the relevant provision applies.

   ii. If the immigration officer confirms that one or more of the provisions at A5.45.5(a)-(d) below apply, then at the second stage an immigration officer must consider whether a character waiver should be granted. (See A5.45.10 Assessment of character waiver (temporary entry) below.)

A5.45.5 Ineligibility due to convictions, charges, investigations and false information

a. A person will not be granted a temporary entry class visa if they have been convicted at any time (which includes up to the date of the final decision of the application) of:

   i. an offence against the immigration, citizenship or passport laws of any country; or

   ii. any offence for which they have been imprisoned

   iii. an offence in New Zealand for which the court has the power to impose imprisonment for a term of three months or more (which includes, but is not limited to, potential sentences "not exceeding three months" or "up to and including three months").

b. A person will not be granted a temporary entry class visa if, as at the time of making the application or during its processing, they:

   i. have been charged with an offence, which on conviction, could make section 15 of the Immigration Act 2009 apply to that applicant; or

   ii. are under investigation for, or wanted for questioning about, an offence described in (b)(i) above.

c. A person will not be granted a temporary entry class visa if they:

   i. in the course of a prior application for a New Zealand visa or entry permission (or a permit under the Immigration Act 1987) made any statement or provided any information, evidence or submission, either personally or through an agent, that was false or misleading, or withheld material information which may have affected the decision on the application; or

   ii. did not take reasonable steps, from the time their application was made until the time the application was decided, to ensure that an immigration officer was made aware of any relevant fact, including any material change in circumstances that occurred after a prior application for a New Zealand visa (or a permit under the Immigration Act 1987) was made, if that fact or change of circumstances may have affected the decision on the application, or may have affected a decision to grant entry permission in reliance on the visa for which the application was made; or

   iii. in support of any application by another person for a New Zealand visa or entry permission (or a permit under the Immigration Act 1987), made any statement or provided any information, evidence or submission that was false or misleading.

d. Applicants who will not be granted a temporary entry class visa include any person who, either personally or through an agent, notified an expression of interest (EOI) in applying for a visa, or who was included in the EOI, and:

   i. the EOI was one in which the applicant was expressing interest in applying for residence, or the current application for a temporary entry class visa is not associated to that EOI; and

   ii. false or misleading information was provided as part of the EOI, or associated submission; or

   iii. relevant, potentially prejudicial information was withheld from the EOI or associated submission.

e. The disqualifying criteria at (c) and (d) above do not apply to an applicant who was less than 18 years old at the time that (as the case may be):

   i. the prior application was made; or

   ii. the EOI was submitted; or

   iii. the statement was made; or

   iv. the information, evidence, or submission was provided

f. The disqualifying criteria at (c) and (d) above do not apply if an immigration officer recorded a determination that the relevant incident(s) of false, misleading or withheld information was or were not an issue of character that required a character waiver.

g. The disqualifying criteria at (c) and (d) above do not apply to a person who was a non-principal applicant or submitter included in the prior application or EOI as a dependent child, provided that information (which was false, misleading or withheld) is not regarding that applicant.

Note:
- Withholding material information or a material change of circumstances 'which may have affected the decision' in (c)(i) or (c)(ii) does not mean that the information, if previously known by INZ, would necessarily have led to a decline decision; it only means that the concealment of the information deprived INZ of a relevant line of inquiry.
- The obligation of the person in (c)(ii) above to advise an immigration officer of a change of circumstances does not extend beyond the time they are granted a visa.

A5.45.6 Clarifications regarding false, misleading or withheld information

a. An 'application for a New Zealand visa (or a permit under the Immigration Act 1987)' in A5.45.5(c) includes an application for a variation of conditions, an application for a variation of travel conditions, or an application for reconsideration (E7.35.1).

b. A decision that A5.45.5(c) applies, due to the provision of false or misleading information, does not require an immigration officer to determine whether or not the applicant personally:

   i. knew that the information was false or misleading; or

   ii. knew that such information was provided to INZ (for example by their agent); or

   iii. intended to deceive Immigration New Zealand through their actions or inaction.

c. A decision that A5.45.5(c) applies, due to the withholding of relevant information or the failure to advise of a material change of circumstances:

   i. requires an immigration officer to be satisfied that the applicant, or their agent, knew that information; but

   ii. does not require an immigration officer to determine whether or not the applicant personally intended to withhold information, or deceive INZ through their actions or inaction.

d. In cases where an applicant had an agent acting on their behalf in applying, supporting or sponsoring a prior application, and that agent provided false or misleading information, a decision that A5.45.5(c) applies does not require an immigration officer to determine whether or not the agent knew that the information was false or misleading.

e. A document that is found to be forged or altered in an unauthorised manner will be considered false information, even if an immigration officer is satisfied that the substantive information contained in the document is true.

A5.45.7 Information, evidence or submission connected to a report of migrant exploitation

a. Despite A5.45.5(c) above, an immigration officer may disregard any false or misleading statement, information, evidence or submission, or withheld information, in a person's application for a New Zealand visa or variation of conditions, where:

   i. an immigration officer is satisfied the incident(s) of false, misleading or withheld information is or are connected to a report of exploitation made to the Ministry of Business, Innovation and Employment (MBIE); and

   ii. the report was assessed as credible, as evidenced by a Report of Exploitation Letter issued by MBIE (see WI20.10(a)(ii).

b. For the avoidance of doubt, A5.45.5(c) does apply to an applicant who provides any false, misleading or forged statement, information, evidence or submission, or withholds material information in the course of applying for a Migrant Exploitation Protection Visa, including in the report of exploitation.

A5.45.10 Assessment of character waiver (temporary entry)

a. Despite A5.45.5(a) to (d) above, an immigration officer must consider whether the following factors are compelling enough to justify the grant of a character waiver:

   i. the applicant's reason for travelling to, or remaining in, New Zealand; and

   ii. any surrounding circumstances; and

   iii. the public interest.

b. If A5.45.5(c) or (d) applies, immigration officers must also consider:

   i. the significance of the false or misleading information provided, or the information withheld, with respect to the outcome of the application or EOI; and

   ii. the nature and extent of the applicant's intentions and involvement in the provision of the false, misleading or forged information, or in the withholding of relevant information; and

   iii. the extent to which the applicant exercised reasonable diligence in ensuring that INZ was provided with complete and accurate information; and

   iv. whether Article 31 of the Convention Relating to the Status of Refugees applies.

c. Immigration officers must record the reasons for their decision to grant or not grant a character waiver.

d. Any decision to grant a character waiver must be made by an immigration officer with Schedule 1-3 delegations.

E7.15 Potentially prejudicial information

In accordance with the principles of fairness and natural justice set out in the Administration chapter (see A1), applicants will be given the opportunity to comment before a decision is made on the basis of any potentially prejudicial information (PPI).

E7.15.1 Applicants outside New Zealand

For the purpose of assessing an application for a temporary entry class visa from an applicant who is outside New Zealand, PPI is factual information or material that:

a. was not obtained from the applicant or their agent; and

b. is not publicly available, or that the applicant is not necessarily aware of; and

c. will or may adversely affect the outcome of an application; and

d. the applicant has not previously had an opportunity to comment on.

Note: For the avoidance of doubt, an 'agent' is any person or organisation who is acting on behalf of the applicant with respect to the visa application and may include student agents, licensed immigration advisers, lawyers, travel agents or family members. Where there are multiple applicants in an application, the principal applicant (or their agent) is considered the agent representing the non-principal applicants.

E7.15.5 Applicants in New Zealand

For the purpose of assessing an application for a temporary entry class visa from an applicant who is in New Zealand, PPI is factual information or material that will or may adversely affect the outcome of an application.

E8.10 Temporary visas for refugee or protection status claimants

The requirements for lodging temporary visa applications are different if the applicant is a person who is also claiming refugee or protection status in New Zealand. A claimant who meets the requirements in E8.10.1 may be granted a temporary visa.

E8.10.1 General requirements

See also Immigration Act 2009 s 393

a. A refugee or protection status claimant awaiting a decision on their claim, who holds a current temporary visa may submit an application for a further temporary visa at any INZ office in New Zealand.

b. Applications must be made on the approved application form and submitted together with the applicant's travel document (or identity document in which the current visa is held), and a passport-sized photograph of the applicant's head and shoulders.

c. Such applicants do not have to pay a fee provided they apply while their claim (or appeal) is being determined and are exempt from paying the Immigration Levy and the International Visitor Conservation and Tourism Levy.

d. Applicants must provide a completed Chest X-Ray Certificate with their application unless they have provided a Chest X-ray Certificate with an earlier visa application less than 36 months ago (see A4.25.e).

e. The applicant must ensure that they submit each application before any existing visa expires (see E2.10).

f. Normally, claimants for refugee or protection status will be granted visitor visas (see V3.90). For information on when claimants may be granted other visas see E8.10.15 below, WI6 (work), U3.35 (student) and L6.1 (limited).

E8.10.5 Conditions of temporary visas granted to refugee or protection status claimants

See also Immigration Act 2009 ss 142, 239

a. A visa granted to a refugee or protection status claimant before their claim or appeal is determined will not normally include travel conditions because New Zealand's obligations to refugee or protection status claimants cease when they leave New Zealand.

b. Despite E8.10.5(a) above, applications will be considered on a case by case basis to see whether the particular circumstances justify granting a visa with travel conditions to return to New Zealand.

c. Claimants wishing to travel overseas should be advised that their claim or any subsequent claim or appeal will be treated as withdrawn if they leave New Zealand.

d. Each time a temporary visa is granted to a refugee or protection status claimant, they must be advised in writing that their visa is subject to the following conditions:
   i. at all times they keep INZ informed of any change of their New Zealand residential address; and
   ii. that they may become liable for deportation, if:
      - their claim is declined, and they fail to appeal, or have appealed unsuccessfully, to the Tribunal; or
      - they withdraw their claim.

E8.10.10 Granting temporary visas to refugee or protection status claimants on arrival in New Zealand

See also Immigration Act 2009 ss 14, 15, 16, 103, 378

a. If a person indicates an intention to claim refugee or protection status on arrival in New Zealand and they complete a claim form for refugee or protection status, a visitor visa current for 6 months from the date of arrival may be granted, unless there are reasons not to grant a visa, such as:
   i. the individual is a person to whom section 15 or 16 of the Immigration Act 2009 applies (see A5.20); or
   ii. the person's identity cannot be established to the satisfaction of INZ.

b. Appropriately delegated officers may give special directions to waive the following requirements that usually apply to persons travelling to New Zealand:
   i. the requirement to travel to New Zealand as the holder of a visa granted under the Immigration Act 2009; and
   ii. the relevant requirements arising under section 103(1) of the Immigration Act 2009.

c. The fact that a claimant entered New Zealand on a false passport does not mean that they should not be granted a temporary visa.

d. If the claimant entered New Zealand on their own genuine passport, the visitor visa should be endorsed in that passport.

e. If the claimant entered New Zealand on a false passport, the visitor visa should be endorsed in an INZ certificate of identity form (see A2.20.5), and INZ should retain the false passport.

f. If the claimant entered New Zealand without a travel document, the visitor visa should be endorsed in an INZ certificate of identity form (see A2.20.5) unless these are reasons not to grant a visa.

g. If the claim form for refugee or protection status has not been completed at the border, a visitor visa current for one month from the date of arrival may be granted unless there are reasons not to grant a visa and the refugee or protection status claimant should be told that:
   i. an application for a further temporary visa will only be considered after they have confirmed their claim in the prescribed manner (see C3.25); and
   ii. they should submit any application for a further temporary visa at an INZ office in New Zealand before the existing visa expires.

Note: Guidance concerning the continuing treatment of persons claiming refugee or protection status on arrival at the border, including in a mass arrival context, is contained in Operational Instructions A16.2.

E8.10.15 Refugee or protection status claimants granted temporary entry class visas

See also Immigration Act 2009 ss 61, 150, 187

a. Any claimant to whom a temporary entry class visa has been granted, (whether before or after the person became a claimant) or any temporary entry class visa holder who ceases to be a refugee or protection status claimant by virtue of his or her claim or appeal being declined may not, either before or after the expiry of the temporary entry class visa:
   i. apply for a further visa of any class or type while in New Zealand; or
   ii. while in New Zealand, request a special direction or make a request for the grant of a visa under A23; or
   iii. bring any appeal under section 187 of the Immigration Act 2009 to the Tribunal.

b. Despite (a)(i) above, a refugee or protection claimant may apply for a further temporary entry class visa for such period as may be required for the claimant to be lawfully in New Zealand while his or her claim is determined.

c. Nothing in E8.10.15 prevents a person from bringing an appeal to the Tribunal, arising from a decision made under part 5 and 6 of the Immigration Act 2009.

d. This section ceases to apply to a person if and when:
   i. the person is recognised as a refugee or a protected person; or
   ii. the person leaves New Zealand; or
   iii. the person is granted a visa (other than a temporary entry class visa granted in (b) above).

E8.10.20 Applications for further temporary visas by refugee or protection status claimants

See also Immigration Act 2009 s378

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 reg 34

a. To be eligible for the grant of a further temporary visa, claimants or refugee or protected persons must:
   i. be in New Zealand; and
   ii. submit their application before their existing visa expires.

b. Claimants or refugee or protected persons must apply for temporary visas in the prescribed manner (see E4.50.1), but when the applications are submitted, appropriately delegated immigration officers may waive, by special direction, any requirements specified for each type of visa.

c. Temporary visas valid for 12 months may be granted to successful applicants.

d. Immigration officers may grant visas valid for less than 12 months, where they expect the refugee or protection status claim to be determined in significantly less than 12 months.

e. Further visas will not normally be granted to those who make subsequent claims, but in each case applications will be considered to see whether the particular circumstances justify granting a visa.

E8.10.25 Situation of claimants in New Zealand unlawfully

See also Immigration Act 2009 s61

a. A refugee or protection status claimant unlawfully in New Zealand may be eligible to be considered for a temporary visa under section 61 of the Immigration Act 2009 (see A23).

Note: Such persons who have been granted a temporary entry visa under the Immigration Act 2009 or temporary permit under the Immigration Act 1987 on or after 1 October 1999 are covered by section 150 of the Immigration Act 2009 (see E8.10.15).

b. Before seeking approval to grant a visa under section 61, an immigration officer must first:
   i. establish the reasons why the claimant's original visa (if any) expired; and
   ii. obtain supporting evidence confirming the claimant's circumstances; eg, a medical certificate or financial circumstances.

If the claimant is in New Zealand unlawfully, no deportation action will be taken until the claim for refugee or protection status and any appeal to the Tribunal have been finally determined or the claimant withdraws the claim or appeal.

E8.10.30 Renewal of temporary visas for Immigration and Protection Tribunal appellants

If a claimant has appealed to the Tribunal, based on a decision made under part 5 and part 6 of the Immigration Act 2009, they are eligible to apply for further temporary visas until the final outcome of the appeal.

Immigration officers may grant a temporary visa in such cases to cover the period it is likely to take to determine the appeal.

U8.20 Dependent children of holders of work visas

a. Dependent children (see E4.1) of work visa holders who wish to study in New Zealand may be granted student visas unless the work visa holder has been granted a work visa under any one of the following categories:

   i. Foreign crew of fishing vessels (see WJ); or
   ii. Recognised Seasonal Employer (RSE) Work instructions (see WH1); or
   iii. Supplementary Seasonal Employment (SSE) instructions (see WH3); or
   iv. Silver Fern Job Search Instructions (see WL2); or
   v. Skilled Migrant Category Job Search Instructions (see WR5); or
   vi. Working Holiday Scheme instructions (see WI2); or.
   vii. domestic staff of diplomatic, consular or official staff (see WI4).

b. Dependent children of work visa holders as defined in (a) above are regarded as domestic students (see U3.35) for the purpose of all tuition fees at primary and secondary schools for the period of the parent's work visa.

c. Dependent children (see E4.1) of work visa holders may be granted student visas without the need to produce evidence of enrolment.

d. Guarantees of accommodation and/or maintenance for dependent children may be waived provided this is covered by the income of the work visa holder parent or by evidence of funds or guarantees submitted with the work visa application of the parent (see W2.15).

e. Dependent children of people granted work to residence visas must meet health and character requirements for residence class visa applications as set out at A4 and A5.

f. Dependent children of people granted a Migrant Exploitation Protection work visa (MEPV) must be holding a visa based on their relationship to the MEPV holder to be eligible for a further visa under these instructions.

U8.20.1 Tertiary aged dependent children of people who may be eligible for a 2021 Resident Visa

a. Between 1 January 2022 and 31 December 2023, dependent children (see E4.1) of work visa holders who wish to undertake tertiary study in New Zealand may be granted student visas if they are:

   i. residing in New Zealand; and
   ii. aged 25 years or under as at 1 January 2022; and
   iii. the child of a person who held one of the following visa types as at 29 September 2021:
      - Essential Skills Work Visa
      - Approval in Principle
      - Work to Residence (all categories)
      - Skilled Migrant Category Job Search
      - Religious Worker
      - Post Study Work Visa
      - Work Visa granted under section 61 of the Immigration Act 2009 (provided the applicant held another eligible visa type within 6 months of being granted a visa under section 61)
      - Special work visa for victims of people trafficking
      - Migrant Exploitation Protection
      - Special work visa for victims of family violence
      - Silver Fern Practical Experience
      - Other Critical Workers visitor visas (provided the visa was granted for a minimum of 6 months)
      - Critical Health Workers visitor visa (provided the visa was granted for a minimum of 6 months)
      - a Critical Purpose Visitor Visa granted under H5.25.15(j) on the basis of holding an Essential Skills or Work to Residence visa; or
   iv. the child of a person who was granted a visa between 30 September 2021 and 31 July 2022 if it is:
      - an Other Critical Workers visa (provided the visa was granted for a minimum of 6 months); or
      - a Critical Health Workers visa (provided the visa was granted for a minimum of 6 months).

b. People defined in (a) above are considered to be domestic students (see U3.35), and can be granted a visa provided they meet the criteria to be considered a dependent child, being that they are single and:

   i. aged 17 or younger; or
   ii. aged 18 to 20 with no child(ren) of their own; or
   iii. aged 21 to 24 with no child(ren) of their own and are totally or substantially reliant on their parent or their parent's partner for financial support, whether living with them or not; or
   iv. aged 25 or older and meets instructions to be included as a dependent child aged 25 years or older as per S6.10.10. 1

c. Applicants may be granted a student visa for the duration of their parent's visa, as outlined in (a) above, or until 31 December 2023 (whichever is sooner).

d. Applicants under these instructions do not need to produce evidence of enrolment (unless are required to do so to qualify for working rights under U13.15.1(g)(i)).

U8.20.5 Dependent children of Essential Skill work visa holders

See also Immigration Act 2009 ss 56, 157

a. Dependent children (see E4.1.10) of holders of work visas granted under the Essential Skills work instructions (WK) after 30 November 2009 will only be granted a student visa if their parent(s) meet a minimum income threshold.

b. The minimum income threshold is NZ$43,322.76 gross per annum and must be met and maintained wholly by the salary or wages of a parent or parents holding an Essential Skills work visa.

c. Evidence must be provided of the Essential Skills work visa holder's current salary or wages to satisfy an immigration officer that the applicant's parent(s) meet the minimum income threshold.

d. Despite (b) above, dependent children of Essential Skills work visa holders whose parents have an application being considered under the Samoan Quota or Pacific Access Category must meet the minimum income requirements of those instructions (see S1.10.35 or S1.40.35) to be eligible for a student visa under these instructions.

e. Dependent children are not required to be assessed against the Essential Skills minimum income threshold if their parent(s):
   i. have held any temporary work visa before 30 November 2009; and
   ii. have remained on a valid visa from 30 November 2009 until the date of the dependent child's application under U8.20.

f. If a visa application is declined under these instructions and the dependent child becomes unlawful the parent(s) may become liable for deportation.

g. If the parent(s) do not maintain the minimum income threshold for the duration of their or their dependent child's visa both the parent(s) and child may become liable for deportation.

Note: Where both parents hold Essential Skills work visas, their income may be combined to meet the minimum income threshold.

U8.20.10 Dependent children of work visa holders under Religious Worker instructions

See also Immigration Act 2009 ss 56, 157

a. Dependent children of a holder of a work visa under Religious Worker instructions (WM) will only be granted a student visa if the:
   i. minimum income threshold is met by the Religious Worker visa holder and their partner; or
   ii. religious organisation sponsoring the principal applicant agrees to sponsor the dependent children.

b. Under (a)(i) above:
   i. the minimum income threshold is NZ$43,322.76 gross per annum; and
   ii. the minimum income threshold must be met and maintained by the salary, wages or a stipend received by the Religious Worker visa holder and their partner; and
   iii. evidence must be provided of the current salary, wages or stipend of the Religious Worker visa holder and their partner; and
   iv. if a visa application is declined under these instructions and the dependent child becomes unlawful the parents may become liable for deportation; and
   v. if the parents do not maintain the minimum income threshold for the duration of their visa or their dependent child's visa, both the child and the parents may become liable for deportation.

Note: The income of both parents may be combined to meet the minimum income threshold.

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

See also Immigration Act 2009 s 150

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

L6.1.1 General requirements

See also Immigration Act 2009 ss 61, 150

a. A refugee or protection status claimant, a refugee or a protected person who holds a limited visa may submit an application for a further limited visa at any INZ office in New Zealand.

b. Applications must be made on the application form *Visitor Visa Application (INZ 1017) or Student Visa Application (INZ 1012)* (depending on the nature of the express purpose), and submitted together with the applicant's passport (or a certified copy) or travel document (or a certified copy) and a passport-sized photograph.

c. Applicants are exempt from paying the application fee and immigration levy.

d. The applicant must ensure that they submit each application before any current limited visa expires (see L2.1).

e. The following refugee or protection status claimants, refugees or protected persons who require further time in order to achieve the express purpose for which they were granted a limited visa should normally be granted an appropriate temporary visa rather than a further limited visa where:
   i. claimants who apply to be lawfully in New Zealand while their claim is determined;
   ii. refugees or protected people who have yet to be granted a residence class visa.

f. Refugee or protection status claimants, a refugee or a protected person whose express purpose has been achieved or abandoned or is no longer achievable may not be granted a further limited visa because no further time is required in order to achieve the express purpose. However such applicants should be advised that although as the holder of a limited visa they have no right to apply for a further visa, they may nevertheless be eligible for the grant of a visa under section 61 after their limited visa expires, at the discretion of the Minister or an immigration officer.

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

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

a. that at all times they keep INZ informed of any change of residential address; and

b. that they may be liable for deportation if:
   i. their claim for refugee or protection status is declined and they fail to appeal, or have appealed unsuccessfully, to the Tribunal; or
   ii. they withdraw their claim.

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

See also Immigration Act 2009 ss 15, 16

a. If the holder of a limited visa claims refugee or protection status at the border, the holder, unless subject to sections 15 or 16 of the Immigration Act 2009 (see A5.20), should be granted entry permission for the period required to achieve the express purpose for which they were originally issued the limited visa.

b. If the claimant does not confirm their claim in the prescribed manner (see C3.25) at the border, they should be told that an application for a further limited visa will only be considered after they have confirmed their claim in the prescribed manner.

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

See also Immigration Act 2009 s 83

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

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

Appendix 5: Revocation of Temporary Entry instructions effective 25 September 2023

A5.40 Applicants ineligible for a temporary entry class visa or entry permission

Any person described in section 15 or 16 of the Immigration Act 2009 (see A5.20(b) and A5.20(c)) must not be granted a temporary entry class visa or entry permission, and their application will be declined. The only exceptions are where:

a. the person is otherwise eligible for the grant of a visa and entry permission under temporary entry immigration instructions, and

b. a special direction under section 17 of the Immigration Act 2009 has been given to that person, authorising the grant of a visa and entry permission.

E2.40 Who is not eligible for a temporary entry class visa

See also Immigration Act 2009 ss 15, 16, 17, 83, 210(4)

People to whom section 15(1) and (2) and section 16 of the Immigration Act 2009 apply (see A5.40) are not eligible for a temporary entry class visa or entry permission unless:

a. they have been given a special direction under section 17(1)(a) of the Immigration Act 2009 as an exception to the non-eligibility for a visa (see A5.45); or

b. they are granted a limited visa for the sole purpose of enabling the person:

   i. to be in New Zealand to give or provide evidence or assistance pursuant to a request made under section 12 of the Mutual Assistance in Criminal Matters Act 1992; or

   ii. to be transported through New Zealand pursuant to section 42 of the Mutual Assistance in Criminal Matters Act 1992 (see L6.1.15); or

c. they are granted a limited visa for the sole purpose of enabling them to return to New Zealand to face any charge in New Zealand or to serve any sentence imposed on them in New Zealand; or

d. the Tribunal has allowed their appeal against deportation from New Zealand under section 210 of the Immigration Act 2009 and has ordered the grant of a temporary visa or residence class visa; or

e. they have diplomatic or consular immunity.

A decision to grant a visa under E2.40 (a) (b) (c) or (e) is in the absolute discretion of the decision maker.

E4.75 Obligation to inform of all relevant facts, including changed circumstances

See also Immigration Act 2009 ss 58, 157

a. It is the responsibility of an applicant for a visa to ensure that all information, evidence, and submissions that the applicant wishes to have considered in support of the application are provided when the application is made.

b. The Minister or immigration officer considering the application:
   i. is not obliged to seek any further information, evidence, or submissions; and
   ii. may determine the application on the basis of the information, evidence, and submissions provided; and
   iii. in accordance with the principles of fairness and natural justice, (see A1), will give the applicant the opportunity to comment before a decision is made on the basis of any potentially prejudicial information that they are not necessarily aware of.

c. It is also the responsibility of an applicant for a visa to inform the Minister or an immigration officer of any relevant fact, including any material change in the circumstances that occurs after the application is made, if that fact or change in circumstances:
   i. may affect the decision on the application; or
   ii. may affect a decision to grant entry permission in reliance on the visa for which the application is made.

d. Without limiting scope of the expression 'material change' in circumstances in E4.75 (c), such a change may relate to the applicant or another person included in the application, and may relate to any matter relevant to the Immigration Act 2009 or immigration instructions.

e. Failure to comply with the obligation set out in E4.75 (c) amounts to concealment of relevant information for the purposes of section 157 of the Immigration Act 2009.

f. It is sufficient ground for the Minister or an immigration officer to decline to grant a visa to a person if the Minister or officer is satisfied that the person:
   i. whether personally or through an agent, in applying for the visa submitted false or misleading information or withheld relevant information that was potentially prejudicial to the grant of the visa; or
   ii. did not ensure that an immigration officer was informed of any material change in circumstances to which E4.75 (c) applies between the time of making the application and the time of a decision on the application.

Appendix 6: Operational instructions effective on and after 5 September 2023

A5.20 Who must not be granted a visa or entry permission

See also Immigration Act 2009 ss 11, 15, 16, 17, 73, 74, 83, 378

a. Any person with specified convictions or who has been deported or excluded (see (b) below), or is likely to commit an offence or be a threat to the public order or interest (see (c) below) must not be granted a visa or entry permission, unless the person is a resident described in (d) or subject to immunity as described in (e), or unless the visa or entry permission is granted in accordance with:

   i. a special direction under section 17 of the Immigration Act 2009; or

   ii. section 83 of the Immigration Act 2009 (Grant of limited visa in relation to criminal matters).

b. Under section 15, the following people are not eligible for a visa or entry permission to enter or be in New Zealand:

   Any person who -

   i. at any time (whether before or after the commencement of the Immigration Act 2009), has been convicted of any offence for which that person has been sentenced to imprisonment for a term of five years or more, or for an indeterminate period capable of running for five years or more; or

   ii. at any time within the preceding 10 years (whether before or after the commencement of the Immigration Act 2009), has been convicted of any offence for which that person has been sentenced to imprisonment for a term of 12 months or more, or for an indeterminate period capable of running for 12 months or more; or

   iii. is subject to a period of prohibition on entry to New Zealand under section 179 or 180 of the Immigration Act 2009; or

   iv. at any time (whether before or after the commencement of the Immigration Act 2009) has been removed or deported from New Zealand under any enactment; or

> **Note:** This provision does not apply to persons: deported from New Zealand under section 158 of the Shipping and Seaman Act 1952; or, deported from New Zealand under section 20 of the Immigration Act 1964 on the grounds of being convicted of an offence against section 14(5) or 15(5) of that Act or, who were subject to a removal order under section 54 of the Immigration Act 1987, if the removal order has expired or had been cancelled; or, deported under the Immigration Act 2009, but is not, or is no longer, subject to a period of prohibition on entry under section 179 or 180.

   v. is excluded from New Zealand under any enactment; or

   vi. has, at any time, been removed, excluded, or deported from another country.

Paragraphs (b)(i) and (ii) above apply:

- Whether the sentence is of immediate effect or is deferred or is suspended in whole or in part
- Where a person has been convicted of two 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 offender had been convicted of a single offence and sentenced for that offence to the total of the cumulative sentences
- Where a person has been convicted of two 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.

c. Under section 16 of the Immigration Act 2009, the following people are not eligible for a visa or entry permission to enter or be in New Zealand:

   Any person who the Minister has reason to believe:

   - is likely to commit an offence in New Zealand that is punishable by imprisonment; or
   - is, or is likely to be, a threat or risk to security; or
   - is, or is likely to be, a threat or risk to public order; or
   - is, or is likely to be, a threat or risk to the public interest; or
   - is a member of a terrorist entity designated under the Terrorism Suppression Act 2002.

d. Despite sections 15 and 16 of the Immigration Act 2009, entry permission must be granted to the holder of a:

   - permanent resident visa; or
   - resident visa granted in New Zealand; or
   - the holder of a resident visa arriving in New Zealand for a second or subsequent time as the holder of the visa.

e. Despite section 15 or 16 of the Immigration Act 2009 a temporary entry class visa must be granted to a person who is for the time being entitled to any immunity from jurisdiction by or under the Diplomatic Privileges and Immunities Act 1968 (other than a person referred to in section 10D(2)(d) of that Act) or the Consular Privileges and Immunities Act 1971.

A24 Considering false, misleading or withheld information under Section 58

A24.1 Obligation on applicant to inform of all relevant facts including changed circumstances

A24.5 Assessing whether section 58(6) of the Immigration Act 2009 applies

A24.10 Deciding whether to decline an application under section 58(6) of the Immigration Act 2009

A24.1 Obligation on applicant to inform of all relevant facts including changed circumstances

See Immigration Act 2009 s 58

Note: This section includes a replication of section 58 of the Immigration Act 2009, and (at A24.5 and following) administrative instructions. None of the instructions in this section constitute immigration instructions certified under section 22 of the Immigration Act 2009.

a. It is the responsibility of an applicant for a visa to ensure that all information, evidence, and submissions that the applicant wishes to have considered in support of the application are provided when the application is made.

b. The Minister or immigration officer considering the application:

   i. is not obliged to seek any further information, evidence, or submissions; and

   ii. may determine the application on the basis of the information, evidence, and submissions provided.

c. It is also the responsibility of visa applicants to inform an immigration officer of any relevant fact, including any material change in circumstances that occurs after an application is made, if that fact or change in circumstances:

   i. may affect the decision on the application; or

   ii. may affect a decision to grant entry permission in reliance on the visa for which the application is made.

d. Without limiting the scope of the expression 'material change in circumstances' in (c) above, such a change may relate to the applicant or another person included in the application and may relate to any matter relevant to the Immigration Act 2009 or immigration instructions.

e. For the purposes of sections 157 and 158 of the Immigration Act 2009, an applicant is treated as having concealed relevant information if he or she fails to comply with the obligation in (c) above.

f. It is sufficient grounds for the Minister of Immigration or an immigration officer to decline to grant a visa to a person if the Minister or officer is satisfied that the person:

   i. whether personally or through an agent, in applying for the visa submitted false or misleading information or withheld relevant information that was potentially prejudicial to granting the visa; or

   ii. did not ensure that an immigration officer was informed of any material change in circumstances to which (c) above applies between the time of making the application and the time of a decision on the application.

A24.5 Assessing whether section 58(6) of the Immigration Act 2009 applies

a. A decision that section 58(6) of the Immigration Act 2009 (see A24.1(f)) applies due to the provision of false or misleading information does not require an immigration officer to determine whether or not the applicant personally:

   i. knew that the information was false or misleading; or

   ii. knew that such information was provided to INZ (for example by their agent); or

   iii. intended to deceive INZ through their actions or inaction.

b. A decision that section 58(6) of the Immigration Act 2009 applies, due to the withholding of relevant information or the failure to advise of a material change of circumstances, requires an immigration officer to be satisfied that the applicant, or their agent, knew that information.

c. A decision that section 58(6) of the Immigration Act 2009 applies due to the withholding of relevant information or the failure to advise of a material change of circumstances, does not require an immigration officer to determine whether or not the applicant personally intended to withhold information, or deceive INZ through their actions or inaction. It also does not require an immigration officer to determine that the information, if previously known by INZ, would necessarily have led to a decline decision.

d. In cases where an applicant has an agent acting on their behalf, a decision that section 58(6) of the Immigration Act applies does not require an immigration officer to determine whether or not the agent knew that the information was false or misleading.

Note: Section 58(6) of the Immigration Act 2009 (A24.1(f)) cannot be used to decline an application where the proposed ground for declining it is false, misleading or withheld information in a previous application. In such a case, an immigration officer must follow the instructions at A5.25 or A5.45.

A24.10 Deciding whether to decline an application under section 58(6) of the Immigration Act 2009

a. Applications with false, misleading or withheld information will normally be declined.

b. Despite (a), an immigration officer must not decline an application under section 58(6) of the Immigration Act 2009 without considering the circumstances of the application.

R5.10 Verification

Note: These are operational instructions and do not constitute immigration instructions certified under section 22 of the Immigration Act 2009.

a. It is the responsibility of an applicant for a visa to ensure that the information, evidence, and submissions provided demonstrates the applicant meets applicable immigration instructions to the satisfaction of an immigration officer (see R5.30).

b. Immigration officers have a general obligation to take such steps as are necessary or appropriate to verify any documentation or information relevant to any decision under immigration instructions, whether or not a particular provision enables or obliges them to do so.

c. When assessing an application, immigration officers must be satisfied that any documentation or information provided with that application is genuine.

d. If an immigration officer cannot establish documentation or information submitted in applying for a visa is genuine, that application may be declined if an immigration officer is not satisfied that sufficient evidence has been provided to demonstrate that the relevant immigration instructions have been met.

e. If an immigration officer is satisfied that any information or documentation submitted in applying for a visa is false or misleading, that application must be assessed (with respect to the false or misleading information) in accordance with the operational instructions at A24.

E7.5 Verification

Note: These are operational instructions and do not constitute immigration instructions certified under section 22 of the Immigration Act 2009

a. It is the responsibility of an applicant for a visa to ensure that the information, evidence, and submissions provided demonstrates the applicant meets applicable immigration instructions to the satisfaction of an immigration officer (see E7.30).

b. Immigration officers have a general obligation to take such steps as are necessary or appropriate to verify any documentation or information relevant to any decision under immigration instructions, whether or not a particular provision enables or obliges them to do so.

c. When assessing an application, immigration officers must be satisfied that any documentation or information provided with that application is genuine.

d. If an immigration officer cannot establish documentation or information submitted in applying for a visa is genuine, that application may be declined if an immigration officer is not satisfied that sufficient evidence has been provided to demonstrate that the relevant immigration instructions have been met.

e. If an immigration officer is satisfied that any information or documentation submitted in applying for a visa is false or misleading, that application must be assessed (with respect to the false or misleading information) in accordance with the operational instructions at A24.

E7.5.1 Verification of identity

If there is reason to doubt the claimed identity of an applicant or the authenticity of identity document(s), immigration officers must seek further information to verify the identity of the applicant and authenticity of the documents provided.