



2 October 2023

IMMIGRATION NEW ZEALAND INSTRUCTIONS: Amendment Circular No. 2023-36

To: All Manual Holders

AMENDMENTS TO THE IMMIGRATION NEW ZEALAND OPERATIONAL MANUAL

Introduction

This circular outlines changes to immigration instructions. A copy of the amended instructions is attached.

All immigration officers dealing with immigration applications should read the amendments and operate in accordance with the amended instructions from the effective date.

Note

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

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

Description of changes

I3 Skilled Migrant Category interim visa

Amendments have been made to immigration instructions related to Skilled Migrant Category (SMC) interim visas. These changes ensure that applicants will receive open study conditions on their interim visa if they are aged 18 years and younger when their interim visa takes effect.

These changes will come into effect with the implementation of SMC interim visas on 9 October 2023, along with the opening of SMC under new policy settings.

E3.26 Varying the conditions of temporary entry class visas

Changes have also been made to immigration instructions to set criteria for holders of SMC interim visas to vary the conditions of their visa. The conditions that may be varied depend on the interim visa holder's current visa conditions and their situation.

These changes are effective on and after 5 November 2023.

Appendix 1: Amendments to Temporary Entry instructions effective on and after 9 October 2023

I3 Skilled Migrant Category interim visa

I3.1 Objective

Immigration Act 2009 s 28; 80

- a. The purpose of the Skilled Migrant Category (SMC) interim visa is to maintain an applicant's lawful status in New Zealand while their application for a SMC resident visa is being considered.
- b. For the purposes of meeting instructions under I3, 'Skilled Migrant Category' (SMC) means the instructions set out at SR3.

I3.5 Automated and manual processing of SMC interim visa

- a. An automated system may grant an SMC interim visa to a person who meets the criteria set out at I3.10(a), unless I3.5(b) applies.
- b. An interim visa will not be granted by an automated system if a person:
 - i. has particular alerts or warnings related to character;
 - ii. has an active appeal;
 - iii. is liable for deportation;
 - iv. has an open case with the Deputy Secretary of Immigration New Zealand or the Minister;
 - v. is a student funded through the Ministry of Foreign Affairs and Trade or the New Zealand scholarship programme;
 - vi. has compliance action underway; or
 - vii. holds a visa that has been granted because the Immigration and Protection Tribunal has ordered the grant of the visa under either section 210 or 216 of the Immigration Act 2009.
- c. In cases where (b) applies, a manual assessment may be carried out by an immigration officer to determine whether an SMC interim visa will be granted.
- d. An automated system may grant an interim visa under section 61 of the Immigration Act 2009 using the criteria outlined in (a), (b) and (c) above, in cases where:
 - i. the associated SMC resident visa application is received at an Immigration New Zealand branch while the person holds a current temporary visa; and
 - ii. the current temporary visa subsequently expires; and
 - iii. the SMC resident visa application is then accepted for processing.

I3.10 Grant of an SMC interim visa

- a. An SMC interim visa may be granted to a person who:
 - i. holds a temporary visa; and
 - ii. has applied for a Skilled Migrant Category resident visa under SR3 instructions; and
 - iii. has not applied for a further temporary visa (at the time the SMC interim visa is granted); and
 - iv. has not been granted a 2021 interim visa; and
 - v. is in New Zealand.
- b. An SMC interim visa cannot be applied for.
- c. An SMC interim visa may be granted by electronic means.
- d. For the avoidance of doubt, people who apply for a Skilled Migrant Category resident visa under SM instructions do not meet the requirements set out at I3.10(a)(ii) for the grant of an interim visa.

Notes:

~Interim and limited visas are not temporary visas and do not meet the requirements of I3.10(a)(i).

~Persons who make an expression of interest for the SMC under SM instructions on or before 16 August 2023 who then make a resident visa application under SM instructions will not be granted an SMC interim visa.

I3.10.1 Grant of an SMC interim visa a matter of absolute discretion

- a. No person is entitled to an SMC interim visa as a matter of right.
- b. Whether or not to grant an SMC interim visa to any person is a matter for the absolute discretion of the Minister of Immigration or the relevant immigration officer.
- c. There is no right of appeal against a decision not to grant an SMC interim visa.

13.15 Currency and conditions of an SMC interim visa

13.15.1 Currency of SMC interim visas

- a. The SMC interim visa will start on the day after the current temporary visa expires, unless (c) or (d) below applies.
- b. Once an SMC interim visa starts, its duration depends on the outcome of the SMC resident visa application, as set out in the table below:

	Column A: If the application for SMC resident visa is...	Column B: The SMC interim visa will...
i	approved within 24 calendar months of the SMC interim visa's start date	be cancelled on the start date of the SMC resident visa.
ii	declined within 24 calendar months of the SMC interim visa's start date	expire 2 calendar months after the date the SMC resident visa application is declined.
iii	withdrawn within 24 calendar months of the SMC interim visa's start date	expire 2 calendar months after the date the SMC resident visa application is withdrawn.
iv	still under consideration 24 calendar months after the SMC interim visa's start date	expire 24 calendar months from the SMC interim visa's start date.

- c. If the SMC resident visa application is declined or withdrawn before the applicant's current temporary visa expires, the interim visa will expire the day the SMC resident visa application is declined or withdrawn.
- d. If the SMC resident visa application is approved before the applicant's current temporary visa expires, the interim visa will be cancelled on the start date of the SMC resident visa.

13.15.5 Conditions of SMC interim visas

- a. The conditions on each SMC interim visa will depend on the type of temporary visa held by the applicant, as shown in the table below:

Visa held	Conditions granted
Work (open)	Open work conditions
Work (partnership)	Open work conditions
Work (employer specific)	Same work conditions as currently held
Student (open)	Student (open) and the same work conditions as currently held if the applicant is aged 17 years or younger
	Student (open) and work conditions for up to 20 hours in any given week and full-time during specified vacation periods (see U13.15) if the applicant is 18 or older
Visitor	Same visitor conditions as currently held if the applicant is aged 19 or older
	Student (open) if the applicant is aged 18 years or younger

- b. Visas held which are work (partnership) are defined as per the note at I1.20

c. Open student conditions are conditions that allow study in any programme of study, at any educational institute, in any location in New Zealand.

Note: For the avoidance of doubt, those holding an SMC interim visa with open study conditions are not required to meet the conditions set out in E3.20, including progress and attendance requirements

d. Multiple entry travel conditions will be applied to the SMC interim visa.

I3.15.10 Restrictions of SMC interim visas

Immigration Act 2009 s 71; 79; 80

The holder of an SMC interim visa may not apply for any visa while the interim visa is current.

Note: If an SMC interim visa holder's SMC resident visa application is declined or withdrawn then they will not be able to apply for any other visa.

Appendix 2: Amendments to Temporary Entry instructions effective on and after 5 November 2023

E3.26 Varying the conditions of temporary entry class visas

See also Immigration Act 2009 s 52

- a. Holders of temporary entry class visas should apply for a variation of the conditions of their visa, or a Job Change if they hold an Accredited Employer Work Visa, if:
 - i. they wish to work and do not have a visa that allows work in New Zealand; or
 - ii. they hold a work or visitor visa and wish to undertake a programme of study in New Zealand for longer than 3 months (unless U2.5 applies); or
 - iii. they hold a work visa limited by conditions and wish to change employers, and/or occupation and/or the location of employment.
- b. Immigration officers may grant a variation of conditions for cases (a) (i)– (iii) above provided that the applicant completes the relevant application for Variation of Conditions or Job Change and produces:
 - i. the appropriate fee;
 - ii. a valid passport (or a certified copy) or travel document (or a certified copy), if not previously provided;
 - iii. documents which support the requested variation, such as:
 - o an offer of employment that meets W2.10.10, or WA4.10.1; or
 - o an offer of place at a suitable education provider that meets U3.5, and evidence of tuition fee payment or exemption that meets U3.10; and
 - o any other documents or information requested by the immigration officer.
- c. A variation of conditions will only be granted where the varied conditions still meet the objectives of the instructions which the visa was granted under.
- d. A variation of conditions to work for a specific employer will only be granted where the employer meets requirements at W2.10.5, W2.10.6 and W2.10.15, except where E3.26.1.20 applies.

E3.26.1 Varying the conditions of work visas

E3.26.1.1 Varying Essential Skills work visa conditions

- a. Essential skills work visa holders may be granted a variation of conditions to change the conditions of their visa relating to their employer, occupation, location of employment or a combination of these.
- b. Essential skills work visa holders seeking to change their occupation or location of employment will need to meet a labour market test unless:
 - i. their new occupation is listed on an Essential Skills in Demand list and they meet the requirements of the list; or
 - ii. their new occupation is listed on the Green List (Appendix 13) and they meet the requirements of the list; or
 - iii. they are being paid at least twice the median wage (WA3.20(a)(i)).
- c. The labour market test is met if:
 - i. the employer has advertised the position; and
 - ii. they did not find any suitable and available New Zealand workers for the job.
- d. Essential skills work visa holders seeking to change their occupation need to be suitably qualified by qualification and/or experience for the employment on offer as required by the occupation in the ANZSCO which substantially matches the applicant's proposed employment.
- e. Applicants must provide evidence of their job offer.
- f. Despite the normal requirement that applications must be determined in accordance with the instructions in force at the date an application is made (E7.10(a)(ii)), applications made before these instructions came into effect that had not yet been decided, may be granted under these instructions, even if the instructions on the date they applied specified different requirements.

E3.26.1.5 Varying Specific Purpose or Event visa conditions

Holders of a work visa granted under WS2 as players or professional sports coaches may apply for a variation of conditions of their work visa to undertake additional employment. A variation of conditions may be granted if:

- a. the terms of the existing employment have been met, and will continue to be met; and either
- b. the secondary employment is offered by the sports club or a company involved in the sport and the position is offered solely to this particular player or coach; or
- c. the secondary employment is offered by an employer other than the sports club or a company involved in the sport and an immigration officer is satisfied that there are no New Zealand citizens or residence class visa holders available to be employed in the position (see WK3.10).

E3.26.1.10 Varying Talent (Accredited Employers) work visa conditions

- a. Holders of a work visa granted under WR1 (Talent (Accredited Employers) Work Instructions) may apply for a variation of conditions of their work visa to change employers. Variation of conditions may be granted:
 - i. to undertake employment for another employer who is accredited under WR1 (Talent (Accredited Employers) Work Instructions); or
 - ii. to undertake employment for another employer who is not accredited under WR1 (Talent (Accredited Employers) Work Instructions), if their employment is no longer available due to reasons beyond the visa holder's control. When assessing such applications for a variation of conditions, immigration officers will consider all the circumstances of the applicant and the reasons for which the former accredited employer did not continue employment or the former employer's accreditation was not renewed or rescinded; or
 - iii. to undertake employment for another employer who held accreditation (as defined by WR1.20) under Talent (Accredited Employer) Work Instructions after 31 March 2021 and accreditation has since expired.
- b. In order to be granted a variation of conditions under (a) above:
 - i. the base salary offered must be no less than the base salary that was required at the time the initial work visa application was made; and
 - ii. the offer of employment must meet the requirements of WR1.10, except WR1.10(a) and
 - iii. employers must meet the requirements under W2.10.5, W2.10.6, W2.10.10 and W2.10.15.
- c. Despite E7.10(a)(ii), immigration officers may apply E3.26.1.10(a)(iii) to an application to vary employer conditions of a Talent (Accredited Employer) work visa that has not been decided and was submitted before the effective date of these instructions.

Notes:

~ Where a person fails to continue employment in the circumstances described in (a) and (b) above, they will not be eligible for residence under the Residence Instructions for holders of work visas granted under the Talent (Accredited Employers) Work Instructions.

~ For the avoidance of doubt, the base salary in (b) above excludes employment-related allowances (for example overtime, tool or uniform allowances). The base salary is calculated on the basis of 40 hours work per week.

E3.26.1.15 Varying South Island Contribution work visa conditions

- a. Despite WR7.15(b), holders of a work visa granted under WR7 (South Island Contribution work instructions) may apply for a variation of conditions of their work visa to change industries and/or regions.
- b. A variation of conditions may be granted:
 - i. to undertake employment in another industry in the same region; or
 - ii. to undertake employment in the same industry in another South Island region.
- c. In order to be granted a variation of conditions under (a) above the applicant must:
 - i. provide evidence to show they meet the requirements of WR7.10(b)-WR7.10(f); and
 - ii. demonstrate that their employment is no longer available due to reasons beyond their control.
- d. When assessing such applications for a variation of conditions, immigration officers will consider all the circumstances of the applicant and the reasons for which the former employer did not continue employment.
- e. A variation may only be granted once under these instructions.

E3.26.1.20 Job Change for Accredited Employer work visa holders

- a. Accredited Employer work visa holders who apply for a Job Change may be granted a variation of the conditions of their visa relating to their employer, occupation, location of employment or a combination of these.
- b. A variation will only be granted where the employer holds accreditation under Accredited Employer Work instructions (WA2) and the AEWV holder has a valid Job Check number.
- c. A variation will only be granted where the employment offered meets the usual requirements for employment as set out at WA4.10.1, including WA4.10.1(e) which states that the employment must continue to meet the remuneration thresholds in effect at the time the Accredited Employer work visa application is made, or in this case, the Job Change application.
- d. A variation of visa conditions relating to occupation will only be granted where the applicant is suitably qualified by training and experience to do the job they have been offered (see WA4.10.5).
- e. Accredited Employer work visa holders whose visa is based on employment paid at or above the median wage, and who are seeking to change the conditions of their visa to allow for employment paid below the median wage (WA3.15(b)), will only be granted a variation of conditions if:
 - i. the remaining duration on their visa is equal to or less than the maximum duration allowed under WA4.10.10 for their occupation in the relevant sector; and
 - ii. granting the variation of conditions would not result in the holder exceeding the maximum period allowed under WA4.10.10.

- f. An application for a Job Change of an AEWV must be made using the approved online form provided by INZ for this purpose.

Notes:

- A job check for employment paid below the median wage is only approved if the occupation is exempt from the median wage threshold, as listed in Appendix 14, and the remuneration threshold for that occupation is met.
- When determining whether an applicant is moving from employment paid at or above the median wage, to employment paid below the median wage, the wage in effect at the time of the application for a Job Change should be used.

E3.26.1.25 Varying work visa conditions for partners of Accredited Employer and Essential Skills work visa holders

- a. Holders of a work visa granted under WF3.1.5 (Partners of Accredited Employer and Essential Skills work visa holders) may apply for a variation of conditions to remove conditions on their work visa which state that they must:
- i. work for an employer accredited under the AEWV scheme; and
 - o in a role paid at or above the median wage; or
 - o in a role earning the relevant wage threshold if a sector agreement is in place for that role; and
 - ii. not work in a role covered by a capped sector agreement
- b. Variation of conditions may be granted to allow the holder to undertake employment in any role for any employer anywhere in New Zealand
- c. In order to be granted a variation of conditions under (a) above, the applicant's supporting partner must provide evidence that they:
- i. have had a pay rise which has resulted in them earning at least twice the median wage, and that evidence must meet the requirements of WF3.1.5.1(b) and (c); or
 - ii. work in a role which has been added to the Green List, and that they are suitably qualified for the role based on meeting the applicable Green List requirements (Appendix 13).

Note: The varied conditions will only apply to the holder of a work visa granted under WF3.1.5. The supporting partner must make a new application if they want their visa conditions or duration to be updated based on any changes to their employment.

E3.26.5 Varying the conditions of visitor visas

- a. Holders of visitor visas granted under V3.100 Guardians accompanying students to New Zealand may only be granted a variation of conditions for part time work or part time study between the hours 9:30am and 2:30pm Monday to Friday (inclusive) (see V3.100.35).
- b. Holders of visitor visas may be granted a variation of conditions for a duration of six weeks to undertake seasonal work (planting, maintaining, harvesting and packing crops) in any region where the Ministry of Social Development has identified a shortage of seasonal labour and for any employer in the horticulture or viticulture industries, provided the applicant has not been granted a variation of conditions for this purpose since their most recent entry to New Zealand.
- c. Holders of visitor visas who are aged 18 or older, have left secondary school, and are included as a dependent child in an application for a 2021 Resident Visa may be granted a variation of conditions to allow them to work for up to 20 hours per week.

E3.26.10 Varying the conditions of student visas

Holders of student visas may be granted a variation of conditions to allow them to work in line with the requirements at U13.

E3.26.15 Varying the conditions of Skilled Migrant Category interim visas

For the purposes of meeting E3.26.15 instructions, 'Skilled Migrant Category' (SMC) is defined as those set out in SR3 instructions. SMC interim visa conditions may only be varied in accordance with these (E3.26.15) instructions.

- a. Holders of SMC interim visas with employer-specific work conditions may be granted a variation of conditions to change employer, occupation, location of employment, or a combination of these. A variation of conditions may be granted if:
- i. the SMC interim visa holder meets the requirements set out in E3.26.1.20; and
 - ii. the employment is paid at or above the median wage.
- b. Holders of SMC interim visas with student conditions may be granted a variation of conditions to allow them to work for up to 20 hours in any given week and full-time in specified vacation periods (see U13.10 and U13.15) if the interim visa holder:
- i. meets the applicable requirements at U13; and
 - ii. is aged 16 or older; and
 - iii. has written permission from their parents and education provider (if they are enrolled with an

education provider) if they are aged 16 or 17 years old; and

iv. is included in an SMC resident visa application as a dependent child, if they held a visitor visa directly before being granted an SMC interim visa.

c. Holders of SMC interim visas with visitor conditions may be granted a variation of conditions to allow them to hold open study conditions and/or work for up to 20 hours in any given week and full-time during specified vacation periods (see U13.15) if they are:

i. aged 18 or older; and

ii. included as a dependent child in an application for a Skilled Migrant Category resident visa.

Note:

- Where the SMC application includes the requirement to have a job or job offer which meets the definition of skilled employment, applicants seeking a variation of conditions will be responsible for ensuring that the planned new employment still meets the SMC application criteria.