



File Ref: SDE-32

**WORKFORCE (IMMIGRATION NEW ZEALAND)  
INTERNAL ADMINISTRATION CIRCULAR NO: 09/10**

**To:** All Workforce/Immigration New Zealand (INZ) staff **Date:** 27 November 2009

**CANCELLATION OF REMOVAL ORDERS**

Please **READ** this information and ensure that all staff members who may be affected are aware of what is required of them.

**Purpose**

1. The primary purpose of this Internal Administration Circular (IAC) is to provide guidance to managers and staff involved in assessing and deciding if it is appropriate to facilitate the entry to New Zealand of persons who have a removal order in force and the correct process to follow.
2. This circular replaces IAC 03/19 dated 18 July 2003.

**Background**

3. A removal order remains in force from the time at which it is served until 5 years have expired after the date the subject of the order is removed from New Zealand, unless it is cancelled before then. The only exception is if the subject of a removal order is under 17 years of age on the date that the order is made, in which case the order only remains in force until they are removed from New Zealand.
4. Any person against whom a removal order is in force is subject to section 7 (1) (c) of the Immigration Act 1987 meaning they are not eligible for exemption or permit.

**Process for facilitating entry if appropriate**

5. Because a person against whom a removal order is in force is subject to section 7 (1) immigration advocates will often request consideration of a special direction as provided for by section 7(3) (a) (ii) of the Act. However, the correct means of overcoming this impediment to entry is not by way of a special direction, but by **cancellation** of the removal order as provided by section 58 of the Act. Such action ensures that in the event a visa/permit is subsequently authorised the person is not subject to arrest and removal as provided by section 59 of the Act.

6. To initiate the process persons outside New Zealand who have removal orders in force and/or those acting for them should approach the nearest offshore INZ Branch if they wish to return to New Zealand. Government Immigration Policy at E7.20 and Government Residence Policy at R5.25 both provide that no visa may be issued, or permit granted to anyone applying or intending to apply for entry to New Zealand until all expenses incurred in removing them are repaid. Enquirers should be informed that repayment of such expenses does not mean entry to New Zealand will be approved.
7. The Branch in question will then assess if the person's circumstances are sufficiently compelling to warrant entry being facilitated in consultation with the Compliance Officer who effected removal. Approval will normally only occur in cases involving exceptional circumstances, which have not previously been considered. Approval must not occur until removal costs have been repaid.
8. Pursuant to section 58(1) of the Act cancellation of a removal order can only be carried out by an immigration officer who has been designated by the Chief Executive of the Department of Labour for the purpose of making removal orders under section 54 of the Act. If entry is to be allowed the INZ Branch needs to request cancellation of the removal order by making contact with a Technical Advisor in Compliance Operations.

#### **Implications of section 58 (5)**

9. Under section 58 (5) of the Immigration Act 1987 no person has the right to apply to an immigration officer to have a removal order cancelled. If a person purports to apply for the cancellation of a removal order, an immigration officer is not obliged to consider the request or to give any reasons for any decision relating to the request, other than that section 58(5) of the Immigration Act 1987 applies. In addition section 23 of the Official Information Act (concerning the right of access to reasons for decisions) does not apply to the request.
10. If as provided by section 58 (5), it is appropriate to refuse to consider a request for cancellation of a removal order use the template letter at Appendix 'A' to convey that decision.

#### **Cancelling removal orders offshore**

11. Pursuant to Regulation 39 of the Immigration Regulations 1999, a "Notice of Cancellation of Removal Order" to be sent under section 58(4) of the Act, to a person who has already been removed from or has left New Zealand, must be in form 5 in Schedule 2 of the regulations. The notice of cancellation should be sent to the INZ Branch dealing with that person to be handed over or sent to the person's last known overseas address. Once the notice is sent the removal order is deemed to be cancelled. A copy of the notice should be placed on the client file and full reasons for the cancellation recorded. Any relevant warnings in AMS must be deleted.

#### **Cancelling removal orders onshore**

12. A removal order may be cancelled if:
  - a. it was served in error; or
  - b. an immigration officer considers that, in all the circumstances, it is appropriate to give the person an opportunity to request the grant of a permit under section 35A of the Immigration Act 1987; or
  - c. the Minister or a Court so directs.
13. In situations where (b) above applies, or where the immigration officer decides it is not appropriate to serve a removal order until the person has had an

opportunity to make a request for a permit under section 35A the template letter at Appendix 'B' should be used.

14. If the person named in the removal order is still in New Zealand, an appropriately designated Immigration Officer may cancel the removal order by endorsing a copy of the removal order accordingly and personally serving that copy of the order on the person named in it. Should the person be in custody the immigration officer who cancels the order must ensure that the person is released immediately.
15. If this IAC is inconsistent with any previous information or instruction, the instructions contained here prevail.

Alan Collin  
Manager Investigations  
Workforce – Border Security

THE ADVICE IN THIS INTERNAL ADMINISTRATION CIRCULAR IS NO LONGER CURRENT.

## Appendix A

Date:

Request number:  
Client number:

Name  
P O Box  
Auckland

Dear Name

### Request for cancellation of removal order for:

**Name:**

**Date of birth:** [ ]

I am replying to your request of [date] for cancellation of the removal order currently in force against you.

### Our decision on your request

We have decided to refuse to consider your request. For the reasons detailed below we are not required to give reasons for this decision.

### Section 58(5) of the Immigration Act 1987

Under section 58 (5) of the Immigration Act 1987 no person has the right to apply to an immigration officer to have a removal order cancelled. If a person purports to apply for the cancellation of a removal order, an immigration officer is not obliged to consider the request or to give any reasons for any decision relating to the request, other than that section 58(5) of the Immigration Act 1987 applies. In addition section 23 of the Official Information Act (concerning the right of access to reasons for decisions) does not apply to the request.

### Your documents

We are returning your original documents with this letter. The documents are:

- [List documents]

Yours sincerely

Immigration Officer  
Immigration New Zealand

## Appendix B

Date:

Client number:

Name  
P O Box  
Auckland

Dear Name

### **Requesting the grant of a permit under section 35A of the Immigration Act 1987**

**Name:**

**Date of birth: [ ]**

I am writing to confirm my verbal advice that I will not be taking any action to effect your removal from New Zealand until you have had the opportunity to request the grant of a permit under section 35A of the Immigration Act 1987. Please note that the fact you are being given the opportunity to request such a permit does not mean you will be granted one. The reason for this is detailed below.

#### **What you need to do now**

You need to ensure you lodge your request for a section 35A permit with your nearest branch of Immigration New Zealand no later than [date]. Failure to do so may result in action being taken to effect your removal without further warning.

When making your request please supply reasons why you have remained in New Zealand after the expiry of your permit plus full reasons, supported by all relevant information and evidence to show why you think you ought to be granted a permit under section 35A.

#### **Section 35A of the Immigration Act 1987**

Section 35A is a provision in the Act that relates to the grant of a permit to people in New Zealand who do not hold a current permit to be in New Zealand because their permit has expired.

While section 35A provides a legal means to grant a permit of any type to a person in your situation it does not provide rights to apply for a permit. The fact that section 35A (1) enables the Minister (or delegated Immigration Officers) to grant a permit does not confer on any person the right to apply for one. Section 35A (2) makes this clear. It further states that where any person purports to apply for a permit, there is no obligation to consider it and whether it is considered or not, there is no obligation to provide reasons, other than the reason that section 35A (2) (b) applies.

Any purported request that is considered is assessed strictly on a case by case basis, taking into account the merits of the case balanced against the interests of New Zealand. As there is no specific policy criteria that must be met, decisions are totally discretionary and reasons for decisions don't have to be supplied.

#### **If your Section 35A permit request is refused**

Should your section 35A permit request be refused please make contact with me [insert contact details] to discuss arrangements for your departure from New Zealand. Failure to do so may result in action being taken to effect your removal without further warning.

Yours sincerely

Immigration Officer  
Immigration New Zealand