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IMMIGRATION NEW ZEALAND
INTERNAL ADMINISTRATION CIRCULAR NO: 11/09

To:	All Immigration New Zealand Managers	Date: 04 November 2011
	All Immigration New Zealand Staff	
	MFAT Posts	

- **Change in approach to decision-making processes for offshore temporary visa applications**
- **Amendments to instructions E7.15 *Potentially prejudicial information***

Purpose

1. This Internal Administration Circular (IAC) sets out a change in approach to decision-making processes for temporary entry visa applications made in **offshore branches** of Immigration New Zealand (INZ) and MFAT posts. This change in approach also applies to temporary entry visa applications assessed in the Immigration Profiling Branch, where the applicant is offshore.
2. Supporting amendments to instructions at E7.15 of the Operational Manual are also explained.
3. The change in approach, and instructions, are **effective on and after 21 November 2011**.

Rationale for change

4. The process that INZ currently applies when declining a temporary visa requires an immigration officer to invite an applicant to comment on any aspect of their application that may be unfavourable to the likely success of the application, even if the unfavourable determination may stem from information that the applicant has supplied themselves¹. This is at odds with INZ's obligations under [section 58 of the Immigration Act 2009](#), which allows for immigration officers to determine applications on the basis of information provided.
5. INZ is therefore, in some cases, incorrectly labelling information supplied with an application as Potentially Prejudicial Information (PPI) and then embarking on an

¹ Staff Toolkit process for "PPI APPLICANT [TEMPORARY ENTRY]" which states that: *PPI is anything unfavourable to the likely success of the application that you would probably rely on if the application were to be declined; and This applies even if the applicant has supplied the information themselves as he/she may not have known that supplying it could lead to the application being declined.*

unnecessary process of inviting comment on this information prior to making a final decision.

6. This lengthy and time-consuming approach has contributed to delays in timeliness for temporary visa application decisions, which is particularly evident in offshore branches with large volumes of high-risk/low-value applications.
7. A change in approach to decision-making processes has therefore been developed for **offshore temporary entry visa applications**. This is focussed on ensuring that INZ correctly identifies PPI that is required to be put to an applicant for comment prior to a final decision on their application, avoiding unnecessary processing delays for applications where a decision can be made on the basis of the information supplied (i.e. where there is no PPI).

Applications this change applies to

8. This change in approach applies to **offshore temporary entry visa applications that are received on or after 21 November 2011**. This includes all temporary entry visa applications that are received in offshore INZ branches and MFAT posts, and applications considered by the Immigration Profiling Branch, where the applicant is offshore.
9. The change is restricted to offshore temporary entry visa applications because of the inherent differences between onshore and offshore temporary visa applications, particularly with reference to the principles of fairness and natural justice. There are potentially greater consequences of a decision for a person already in New Zealand so a greater level of fairness must be brought to bear. For example, onshore applicants may have moved many of their possessions to New Zealand, may have enrolled in education here and/or may have been working for a New Zealand employer. This can not generally be said of offshore applicants.

Amendments to instructions

10. E7.15, below, has been amended to support the change in approach to PPI that is to be applied to offshore temporary entry visa applications:

E7.15 Potentially prejudicial information

- a. 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).

b. Potentially prejudicial information is factual information or material that:

- i. was not obtained from the applicant or the applicant's authorised representative or agent; and
- ii. is not publicly available, or the applicant is not necessarily aware of the material or information; and
- iii. the material or information will or may adversely affect the outcome of an application; and
- iv. the applicant has not previously had an opportunity to comment on the information or material.

Note: Where an applicant has had an opportunity to comment on the information or material during the course of a previous application, the information or material is not potentially prejudicial information as per E7.15(b)(iv).

Applying the change in approach and E7.15 in practice

Onshore temporary entry visa applications

11. While the change in approach will apply to **offshore** temporary entry visa applications only, the instructions do not make a distinction between onshore and offshore applications. This is so that the change in approach to PPI may, upon any

future decision by the business, be extended to also apply to onshore temporary visa applications.

12. Current PPI practice therefore continues to apply for **onshore** temporary entry visa applications.

Offshore temporary entry visa applications

13. In practice, this change means that immigration officers may proceed to a decline decision without seeking comment from the applicant where the immigration officer's assessment has determined that an application does not meet the relevant immigration instructions on the basis of information supplied with the application. That is, the information that the officer is basing their decision on *does not* fall within the definition of PPI as provided by instructions E7.15(b).
14. Alternatively, where an immigration officer intends to decline an application on the basis of any information that *does* meet the definition of PPI as provided by instructions E7.15(b), the immigration officer is required to put this to the applicant for comment as per E7.15(a).
15. The key consideration for immigration officers in applying this change in approach is, therefore, understanding whether information being relied on to reach the final decision to decline an application is PPI or not. Scenarios and examples are provided below to support immigration officers' understanding of PPI and this change in approach.
16. Immigration officers should, however, continue to be reasonable in their decision-making. Although this change does not require an immigration officer to ask for comment in each and every situation, immigration officers should still be reasonable in their approach and continue to engage with applicants if appropriate. For example, in a case where a small amount of information could be sufficient to enable an immigration officer to make a decision, the officer should not be averse to contacting the applicant (e.g. by phone or email), rather than simply declining the application on the basis of information that they have on hand.
17. It is also important to note that this change in approach does not alter the requirement for immigration officers to consider whether an exception to instructions is justified where an application does not meet temporary entry instructions ([E7.10\(b\)](#)), or whether a bond or limited visa may be used to mitigate any identified risk ([E7.32](#)).

Recording decisions

18. When declining a temporary entry visa application for which no comment has been sought from the applicant prior to the decision (i.e. where there is no PPI), immigration officers should ensure this is recorded in AMS notes. For example, *I have not sought comment from the applicant prior to making the decision to decline this application as the information I am basing my decision on is not PPI, according to instructions E7.15.*

Scenarios

19. Scenarios in the table below will help immigration officers to identify when PPI is present according to E7.15(b), and therefore whether you are required to put this to the applicant for comment in accordance with E7.15(a).

Scenario	Assessment	Is this PPI?	Visa decision
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Full-fee paying student	Meets student visa requirements, but immigration officer is not satisfied that applicant is bona fide.	No. Assessment and decision can be made on basis of information provided with application.	Proceed to consider LPV and exception to instructions. If not warranted, decline as does not meet requirements for being a bona fide applicant.
Full-fee paying student	Applicant meets all requirements for student visa, except for health requirements. As a student, they are not eligible for consideration of a medical waiver.	Yes. The immigration officer must seek comment from the applicant prior to a decision on the application in accordance with immigration instructions A4.40 .	This will depend upon whether the immigration officer is satisfied that the applicant is of an acceptable standard of health, or not.
Full-fee paying student	Applicant's offer of place has expired prior to submitting their application. Therefore does not meet requirements for a student visa.	No. Assessment and decision can be made on basis of information provided with application.	Proceed to consider LPV and exception to instructions. If not warranted, decline as does not meet student visa requirements.
Work visa: dependant of a student	Immigration officer receives information that the applicant has entered into a marriage of convenience in order to obtain a work visa.	Yes. This is information that falls within E7.15(b) and requires comment from the applicant. The immigration officer may also undertake further verification action.	This will depend on the outcome of any verification and response to PPI.
Work visa: essential skills	A labour market check with Ministry of Social Development is unfavourable, yet all other requirements are met.	Yes. This is information that falls within E7.15(b) and requires comment from the applicant.	This will depend on the response to the PPI.
Visitor visa: general	Information provided by applicant does not demonstrate that they meet funds or sponsorship requirements.	No. Assessment and decision can be made on basis of information provided with application.	Proceed to consider LPV/bond (as applicable, and exception to instructions. If not warranted, decline as does not meet visitor visa requirements.
Temporary entry visa: work, student or visitor – Character issues	Application form states they have a conviction which brings them under provisions of section 15 of the Immigration Act 2009, therefore A5.40 applies.	No. Assessment and decision can be made on basis of information provided with application.	Decline, though consideration can be given as to whether a special direction might be warranted.

<p>Temporary entry visa: work, student or visitor – Character issues</p>	<p>Applicant has provided a false document with their application, therefore failing to meet character requirements as per A5.45(b).</p>	<p>Yes. The immigration officer would consider whether a character waiver is warranted as per A5.45.1, and will need to put this PPI the applicant and request their comments, in order to consider whether the applicant is able to supply a reasonable and credible explanation.</p>	<p>This will depend on the assessment of the character waiver.</p>
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Further information

- 20. In addition to the information, scenarios and examples provided in this IAC, further support in understanding and applying this change in approach will be provided in an online training module through the Learning Management System. This will be available from 7 November 2011 and immigration officers should ensure they complete this module.
- 21. The Staff Toolkit will also be updated with information on this change in approach.
- 22. Immigration officers can also refer any questions to their Technical Advisor or Immigration Manager.

Operational Policy Manager
Service Support Group

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