



File Ref: 12/02

**IMMIGRATION GROUP
INTERNAL ADMINISTRATION CIRCULAR NO: 12/02**

To:	Immigration New Zealand, all Managers	Date: 26 July 2012
	Immigration New Zealand, all Staff	

Processes for Ministerial Requests and Directions

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

Purpose

1. The purpose of this Internal Administration Circular (IAC) is to clarify the procedures for requests for Ministerial intervention and how branches are to treat applications and requests based on Ministerial directions.
2. This IAC covers decisions made by the Minister of Immigration (MOI) and the Associate Minister of Immigration (AMOI) however most Ministerial requests relating to individual cases are considered by the AMOI. The Associate Minister also delegates certain decisions to a select group of Departmental Decision Makers (DDMs). DDM decisions shall be treated the same as any decision made by the Minister or Associate Minister. Therefore, reference to "the Minister" for the purposes of this IAC should be read as relating to the MOI, or the AMOI, or the DDMs.

Timeframes for Lodging Applications

3. A Minister's decision letter must state the last date for a client to lodge his or her application (anywhere between a few weeks to 3 months). If the branch receives an application that is outside this timeframe, they should not automatically refuse to accept the application. The Branch Manager or Immigration Manager should contact the relevant Private Secretary, copying in the Technical Advisors (TAs) in the Resolutions Team. The Private Secretary, on instruction from the Minister, can extend the timeframe. In the case of DDM letters, the Private Secretary to the AMOI should be contacted.

Loading Applications for Residence

2. Where the Minister has directed that residence be granted, the subsequent application should normally be loaded as 'Visa, Resident – Ministerial Direction'. There are exceptions to this:
 - 2.1. where the Minister grants residence under section 61 of the Immigration Act 2009 (s61). The application should be loaded as 'Visa, Resident – Section 61'.
 - 2.2. where the Minister has granted a Permanent Resident Visa as an exception to instructions. This should be loaded as a Permanent Resident visa application to ensure that the 'permanent' aspect of the visa is reflected in AMS.
 - 2.3. where the Minister has granted a special direction under section 94(4) to invite someone to apply for residence but not waived any of the requirements that require the use of the Minister's absolute discretion for any category. This should be loaded under the applicable category.
 - 2.4. where the Minister has simply instructed INZ to accept and consider an application for residence, but not waived any of the requirements that require the use of the Minister's absolute discretion for any category. This should be loaded under the applicable category.
3. It is important that any application, which could not have otherwise been approved without the use of Minister's absolute discretion, be loaded as a Ministerial direction, not under the nearest suitable category, such as SMC or family residence. This is to ensure the integrity of the New Zealand Residence Programme (NZRP) reporting regime.

Branch Referrals

4. From time to time, the Minister may give a direction to waive or vary a requirement(s) for the grant of a resident visa.
5. In those circumstances, that application should be then 'lapsed' in AMS and an associated application should be raised as 'Visa, Resident – Ministerial direction'.
6. Unless the Minister makes a specific direction, the application should be processed as normal.

Loading Applications for Temporary Entry

5. Where the client is lawful or offshore, the application shall be loaded under the closest applicable category (eg. Visa, Work, Essential Skills; Visa, Work, Partnership; Visa, Visitor, General).
6. Where the Minister has granted a temporary class visa to a person who is in NZ unlawfully, the application will normally be loaded under s61.

7. Where a client has become unlawful since the date that the Minister's letter was signed, the application should be loaded as a s61 request but considered against the criteria set out by the Minister. See paragraph 21 below.

Fees

8. A 'Visa, Resident – Ministerial Direction' does not have a pre-set fee in AMS. The officer loading the application must collect a fee based on the contents of the Minister's letter. For example, the letter will usually contain something similar to: "you will need to pay the sum equivalent to the fee payable for an application under the SMC".
9. Migrant levies must also be paid unless specifically waived by the Minister. Again, the normal wording in the letter will be similar to: "you will also need to pay a sum which is equivalent to the migrant levy payable for that category".
10. Applicants for directions based on temporary entry visas will be charged the applicable fee for the category under which they are loaded, unless specifically waived by the Minister.
11. A fee will always be payable unless specifically waived by the Minister. If in doubt regarding the fee to be charged contact the TAs in the Resolutions Team.

Prioritisation

12. Refer to the table below as a guide for prioritisation of applications:
 (applies to all ministerial and DDM decisions)

	Resident Visa	Temporary Visa	All Others (e.g. PRV)
Subject to conditions or determination by the branch (e.g. subject to Health and Character)	Allocate as instructed in the Minister's letter. Where letter is silent, treat as normal application	Allocate within 5 working days	Allocate within 5 working days
Not subject to any conditions or determination by the branch*	Allocate within 3 working days. Processing to begin immediately	Allocate within 3 working days. Processing to begin immediately	Allocate within 3 working days. Processing to begin immediately
Where priority or urgency is instructed	Allocate and process immediately. Decide as soon as practicable	Allocate and process immediately. Decide as soon as practicable	Allocate and process immediately. Decide as soon as practicable

*Apart from the normal requirements for an application form, fee, passport, and photo.

Relevant Considerations

13. The Branch must verify the copy of the letter received by comparing it with the digital copy stored in AMS. A copy of the Resolutions Decision Template should be located in a client's 'client files' tab under 'Review Branch'. If necessary, contact the Resolutions Team for a copy.
14. The Minister's letters should be explicit in what conditions the grant of a visa may be subject to. It depends on the wording of the letter.
15. If the grant of a visa is subject to meeting all but one or two requirements under a particular category of visa instructions, then the applicant must satisfy all other requirements to be granted the visa, whether or not they are specified in the letter. For example, if the Minister grants a resident visa subject to meeting all requirements under the Skilled Migrant Category, except the age criterion, then all other criteria will need to be satisfied.
16. Where the grant of a visa is subject to the provision of information or evidence of some specific nature, then the Minister has waived any other requirements that the letter may be silent on. For example, if the Minister grants an essential skills work visa subject to the provision of an acceptable employment agreement, and meeting health and character requirements, then all other requirements have been implicitly waived.
17. Despite 15 and 16 above, there will always be situations where a branch feels clarification is needed. In such cases they should contact the TAs in the Resolutions Team, who may refer to the relevant Private Secretary. The Private Secretary may need to clarify with the Minister. The branch must rely on the Private Secretary's interpretation of the letter, based on the Minister intention.
18. Every decision the Minister makes is based on the information presented to him or her. No decision creates a precedent for any similar future decision.
19. All letters should contain a paragraph informing the client of the need to ensure that they inform INZ of any material change of circumstances and/or any relevant information not previously disclosed. Where serious unforeseen issues or concerns arise during the processing of an application that cast doubt over a person's continued eligibility for the grant of the visa, the branch should contact the TAs in the Resolutions Team in the first instance to discuss the concerns.
20. Where a person fails to satisfy an officer that they meet all the requirements set out in the Minister's letter, the branch should process the application as normal. If, after being given the usual opportunity to comment or provide information, the client still does not meet the requirements, then the application may be declined.
21. Despite the above paragraph, where an officer holds the delegated authority, and considers, on the balance of facts, that a further exception may be warranted, they should contact the TAs in the Resolutions Team to discuss.
22. Branches must accurately record all visa applications and s61 requests in AMS based on ministerial directions. It is important to note that the branch's role is to give administrative effect to the decision that has already been made by

the Minister. It is not sufficient to simply write "*approved in line with Minister's letter dated xxx*". Officers must record what conditions have been met and how. Where an officer intends to decline the application or refuse to grant a visa under s61, the conditions that have not been met and the manner in which they have failed must be recorded in AMS notes.

23. A branch only needs to refer an application back to the decision maker before declining if specifically instructed to do so by the letter. However this does not prevent the branch from communicating their intention to decline to the TAs in the Resolutions Team if they feel any uncertainty as to the appropriateness of the decision.

Support

24. An officer processing an application based on ministerial direction who needs advice or clarification should discuss the case with their Technical Advisor and/or Immigration Manager in the first instance.
25. All requests for advice or clarification external to the branch should be directed to the TAs in the Resolutions Team, who will refer to the relevant Private Secretary, if necessary.
26. Occasionally, it may be necessary for the branch to contact the Private Secretary directly. If so, contact should come from the Branch Manager or Immigration Manager, and the Resolutions TAs should be copied into all communications.
27. If this IAC is inconsistent with any previous IAC, information or instruction, these instructions prevail.

Margaret Cantlon
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Office of the DCE - Immigration

Disclaimer

Every care has been taken to ensure the information in this circular is accurate and current as at the date of this circular. The information on this circular is to assist you; however applications will be assessed by Immigration New Zealand according to the published Government immigration and Government residence policy as set out in the Operational Manual. This circular is not a substitute for that policy.