



<b>IMMIGRATION NEW ZEALAND</b> <b>INTERNAL ADMINISTRATION CIRCULAR NO: 12/05</b>
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To:	<b>Immigration New Zealand, all Managers</b>	Date: 21 August 2012
	<b>Immigration New Zealand, all Staff</b>	

### **Assessing skilled employment under the SMC**

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

It is recommended that this Internal Administration Circular (IAC) be read in conjunction with *IAC 08/01 Skilled Migrant Category: 4 February 2008 changes*.

#### **Purpose**

1. The purpose of this IAC is to provide guidance to immigration officers on how to assess whether an offer of employment or current employment substantially matches the description for that occupation (including core tasks) as set out in the Australian and New Zealand Standard Classification of Occupations (ANZSCO) under the Skilled Migrant Category (SMC).
2. Following the guidance in this IAC will ensure that only skilled employment is recognised and the objective of the SMC is met.

#### **Background**

3. Under the SMC, skilled employment is defined as employment that requires specialist, technical or management expertise.
4. An offer of employment or current employment in New Zealand will be assessed as skilled as set out at *SM7.10.1 Assessment of whether employment is skilled*, and is primarily based on the ANZSCO which associates skill levels with each occupation. The ANZSCO is available at: [www.immigration.govt.nz/ANZSCO](http://www.immigration.govt.nz/ANZSCO).
5. All ANZSCO occupations considered to be skilled are listed at Appendix 6 of the Operational Manual. The applicant's offer of employment or current employment must be assessed to determine whether it substantially matches the description for that occupation (including core tasks) as set out in the ANZSCO.
6. There has been some inconsistency in the assessment of whether applicants' offers of employment or current employment substantially match the description for the occupation (including core tasks) as set out in the ANZSCO. The following occupations have been identified in particular: 141111 Café or Restaurant Manager, 142111 Retail Manager (General) and 512111 Office Manager.

7. While the guidance in this IAC applies to all occupations, careful consideration must be given when dealing with any SMC applications based on an offer of employment or current employment in the above occupations, including undertaking verification where appropriate.
8. Inconsistent and inadequate assessment of whether employment substantially matches the ANZSCO description for an occupation is contrary to the purposes of the SMC and may result in decision-making that is not correct in terms of Government residence instructions. It may also lead to the Immigration and Protection Tribunal (IPT) returning applications to Immigration New Zealand (INZ) for re-assessment.
9. Any application under the SMC must be assessed on its own merits. Although a previous application based on similar employment may have been approved, whether the employment is a 'substantial match' must be assessed on a case-by-case basis. Further verification and information that may not have been known at the time of a previous decision may mean that similar employment is later not found to be a 'substantial match'. An application must not be approved simply because a previous decision found similar employment to be a 'substantial match'.

#### **Assessment of a 'substantial match'**

10. Assessing whether an applicant's offer of employment or current employment is a 'substantial match' requires careful consideration of a range of factors, remembering that skilled employment requires specialist, technical or management expertise. Immigration officers must pay close attention to the factors outlined below, which have been noted in recent IPT decisions.

#### ***Whether there are other similar ANZSCO occupations***

11. Look for the relevant range of ANZSCO occupations with varying titles and listed specialisations. An applicant's occupation title may differ to that described in the ANZSCO, but the core tasks will be consistent. This assessment should include a comparison of similar ANZSCO positions, including whether the role substantially matches a lower skilled occupation than the one nominated, e.g. Retail Supervisor instead of Retail Manager.

#### ***'Management' will have a specific meaning depending on the occupation***

12. 'Management' is a generic term, but it must be assessed narrowly when considering whether an applicant's offer of employment or current employment substantially matches a management position as described in the ANZSCO. E.g. does the applicant "organise and control the operations" of the retail/café/restaurant establishment? Although the job title may contain 'manager', this does not necessarily mean the applicant holds the managerial responsibility for organising and controlling the operations of the business.

#### ***Consider whether the employment is a substantial match 'as a whole'***

13. The IPT has made it clear that INZ should consider the offer of employment or current employment 'holistically'. What this means is taking into account the core tasks as set out in the ANZSCO and the specific characteristics of the applicant's employment as a whole, not focusing solely on whether the applicant performs certain tasks.

14. In practice this means considering the scope and scale of the employer's organisation and operation. This may include factors such as the size of the operation, the number of staff and managers, and whether management functions are centralised at a head office or undertaken by other managers. Centralisation of many core managerial functions, specifically in relation to planning, purchasing, financial and overall responsibility for decision-making, may result in a downgrading of the managerial responsibility held by a manager. For example, in the case of a takeaway pizza franchise, the IPT found that due to this centralisation of many core managerial functions, the franchisee rather than the 'manager' was in the ANZSCO position of Restaurant Manager (IPT 200150).

***The salary may indicate whether the position is a 'substantial match'***

15. Take into account the remuneration offered as an indicator of the applicant's level of responsibility. In a past appeal it was noted that if a salary offered is well below that offered for the nominated position in the industry generally, it could indicate that the position itself is not a skilled one as claimed, but one requiring a lower level of skills (RRB 15789).

***The 'substantial match' must be proportionate***

16. A substantial match must be proportionate, e.g. consider whether a person with an offer of employment as a Retail Manager who spends the majority of their time serving customers or supervising staff is a substantial match to the ANZSCO description for Retail Manager (General). While an applicant's job might incorporate *some* aspects of retail management, that does not necessarily mean it meets the ANZSCO description for Retail Manager (General).
17. If business intelligence is available concerning the applicant's occupation or employer, ensure that it is considered when assessing whether there is a 'substantial match'.

**Verification reports**

18. Verification reports regarding employment should provide a clear assessment as to whether employment is a 'substantial match' and whether it meets the requirements of skilled employment under the SMC, as well as recording details of the verification work undertaken.

**Potentially prejudicial information**

19. A verification report that finds an applicant's offer of employment or current employment does not substantially match the ANZSCO description for the occupation must be carefully considered. This potentially prejudicial information (PPI) must be put to the applicant in writing and in plain English. Do not simply 'cut and paste' text from the verification report in a letter to the applicant (although it may be useful to provide this separately). Consider recording in the PPI letter whether you are satisfied that the applicant performs or will perform each core task listed in the ANZSCO description for the occupation, although this does not change the need to consider the employment 'holistically'.

**Making the final decision**

20. If comments or submissions are received that contest your or the verification officer's assessment of whether the employment is a 'substantial match', do not

accept them at face value. Consider the comments and assess whether they adequately address all the concerns put to the applicant, remembering that the applicant is required to demonstrate that the employment substantially matches the ANZSCO description.

21. If the PPI letter was based on a verification report, immigration officers should consult with the verification officer who completed the report before proceeding to a final decision. The verification officer may be able to provide advice on the credibility of the comments.
22. Having considered the comments, record whether you are satisfied that the applicant's offer of employment or current employment substantially matches the description for that occupation (including core tasks) as set out in the ANZSCO.
23. If the employment is assessed as a 'substantial match', despite the verification report finding it not to be, the reasons for this must be clearly recorded in notes.
24. If the employment is not found to be a substantial match, ensure that the decline letter provides detailed reasons explaining why the comments received have not adequately addressed INZ's concerns. Make sure that all comments are considered against INZ's initial concerns.

### **Monitoring for quality purposes**

25. The Quality Unit will monitor whether the guidance in this IAC is followed. This information will be available to Branch Managers for review.
26. Where applications are approved without following this guidance, the circumstances of approval should be investigated and further action considered.

### **IPT decisions**

27. The following IPT decisions may be of use when assessing whether employment is skilled: IPT 200388, IPT 200311, IPT 200309, IPT 200306, IPT 200150. These are available at: [www.justice.govt.nz/tribunals/immigration-protection-tribunal/decisions](http://www.justice.govt.nz/tribunals/immigration-protection-tribunal/decisions).
28. If this IAC is inconsistent with any previous IAC, the instructions contained here prevail.

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Service Support

### **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 instructions as set out in the Operational Manual. This circular is not a substitute for that policy.