



IMMIGRATION NEW ZEALAND  
INTERNAL ADMINISTRATION CIRCULAR NO: 13/06

To:	Immigration New Zealand, all Managers	Date: 14 June 2013
	Immigration New Zealand, all Staff	

**SKILLED MIGRANT CATEGORY & PARENT CATEGORY & INVESTOR CATEGORY:  
CONSIDERING EXPRESSIONS OF INTEREST**

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 purpose of this Internal Administration Circular (IAC) is to:
  - a. remind staff that the decision to issue an invitation to apply (ITA) for a residence class visa under the Skilled Migrant Category (SMC) or the Parent Category or the Investor Category should be based on a prima facie consideration of the information provided in the client's Expression of Interest (EOI); and
  - b. advise who can issue an ITA;
  - c. provide guidance to staff in considering health, character, and English language requirements at the EOI stage;
  - d. clarify best practice for staff where a decision is made not to issue an ITA; and
  - e. remind staff how to deal with complaints following a decision not to issue an ITA.
2. This IAC replaces "IAC 09/08 *Skilled Migrant Category: Consideration of Expressions of Interest*" issued on 13 October 2009.

**Background**

3. When considering an EOI under SMC or Parent Category or Investor Category, officers should undertake a quick, high level (prima facie) consideration of a client's claims. The aim in considering an EOI is for the officer to be sufficiently confident (as opposed to being confident beyond a reasonable doubt) that the information in the EOI in question is credible and genuine.
4. The EOI mechanism is specifically provided for in the Immigration Act 2009 (the Act) and is conceptually distinct from the residence class visa application process. *Section 93* of the Act places responsibility on clients to ensure that they have provided the most up to date and accurate information in their EOI. *Section 187 (2) (c)* clarifies that there is no right of appeal against a decision not to issue an ITA. The right of appeal by clients who have provided false or misleading information in their EOI is also removed under *section 187 (2) (d)* of the Act.

5. SMC, Parent Category and Investor Category policy and process reflect the legal framework, and make a distinction between the level of consideration required at the EOI and the assessment at the application stage. The decision on whether to issue an ITA is intended to be based on a prima facie consideration of an EOI.

### **Who is able to issue an ITA**

6. *Section 94 (1) of the Act states: "An invitation to apply for a visa is a statement made by or on behalf of the Minister or an immigration officer ...".* Where a Support Officer issues an ITA, they must do so on behalf of a named Immigration Officer who has the ability to issue an ITA in accordance with *section 388 Designation of immigration officers*, who has oversight of the decision to issue the ITA.

### **Credibility check**

7. At EOI stage for SMC, officers should check the credibility of the points claimed in an EOI. This credibility check should be a quick common sense check of the points claimed for employability and capacity building factors (see *SM6 Summary of points for employability and capacity building factors*), based solely on the information provided in the EOI and held on AMS. Consideration should be given to qualifications, job offer and work experience. Only where the claims, which were the basis for selection from the Pool, are obviously not credible, should an ITA not be issued (see *SM3.25 (a) (ii) Invitation to apply for a resident visa under the SMC*).
8. At EOI stage for Parent Category or Investor Category, officers should check the credibility of the claims in the EOI and check they are sufficient to meet the requirements of the Parent Category or Investor Category. This should be a quick check based solely on the information provided in the EOI. Only where the claims are obviously not credible, or not sufficient to meet the requirements of the Parent Category or Investor Category, should an ITA not be issued (see *F4.10.20 (b) Invitation to apply for a resident visa under the Parent Category* and *BJ 4.30 Invitation to apply for a resident visa under the Investor 2 Category*).
9. For SMC, Parent Category and Investor Category, specific documentation that will assist in addressing any unresolved concerns or identified risk(s) at the application stage should be requested in the ITA.

### **Health requirements**

9. It is not appropriate to make a full assessment of a client's standard of health at EOI stage. Immigration New Zealand (INZ) medical and X-ray certificates should not be requested, nor should previous medical information be referred to an INZ Medical Assessor.
10. People who would not be granted a medical waiver as described at *A4.60 Medical waivers applicants for residence class visas* are not eligible for a residence class visa. Therefore, any SMC or Parent Category or Investor Category EOIs where people included in that EOI would not be granted a medical waiver should not be issued an ITA (see *A4.60 Medical waivers applicants for residence class visas* and *SM3.25 (a) (i) Invitation to apply for a resident visa under the SMC* and *F4.10.20 (b) (ii) Invitation to apply for a resident visa under the Parent Category* and *BJ 4.30 (a) (i) Invitation to apply for a resident visa under the Investor 2 Category*).
11. If other health issues are declared, including those listed at *A4.10.1 Medical conditions deemed to impose significant costs and/or demands on New Zealand's health and/or education service issues (previously Appendix 10)*, the client should be advised in the ITA that if they submit an application for a residence class visa, it may result in their medical certificate being referred to an INZ Medical Assessor and consideration of a medical waiver may be necessary.

12. The ITA should advise that if a medical waiver is considered, it may not be granted, and that issuing an ITA is not an indication that INZ considers the potential applicant to have an acceptable standard of health for residence in New Zealand.

### **Character requirements**

13. It is not appropriate to make an assessment of a client's character at the EOI stage and police certificates should not be requested. Previous character information on hand should only be considered if a Special Direction or character waiver has been granted.
14. Clients who are described in sections 15 or 16 of the Act are not eligible for a residence class visa or entry permission. Therefore, any EOIs where people included in that EOI are described in sections 15 or 16 of the Act should not be issued an ITA (see *A5.20 Applicants ineligible for a residence class visa or entry permission* and *SM3.25 (a) (i) Invitation to apply for a resident visa under the SMC* and *F4.10.20 (b) (ii) Invitation to apply for a resident visa under the Parent Category* and *BJ 4.30 (a) (i) Invitation to apply for a resident visa under the Investor 2 Category*).
15. If other character issues are declared, the client should be advised in the ITA that if they submit an application for a residence class visa, consideration of a character waiver may be required.
16. The ITA should advise that if a character waiver is considered, it may not be granted, and that issuing an ITA is not an indication that INZ considers the potential applicant to meet good character requirements for residence in New Zealand.

### **English language requirements**

16. International English Language Testing System (IELTS) tests should not be requested when considering an EOI. If there are concerns about whether a client meets the English language requirements, and the information in the EOI is otherwise found to meet the basis of selection, an ITA should be issued.
17. The ITA should advise the client that if they fail to demonstrate that they meet the minimum standard of English an IELTS test may be requested (see *SM5.5 (d) Minimum standard of English language for principal applicants* and *SM5.10 English language requirements for non-principal applicants* and *F4.15.1 (d) English language requirements for the Parent Category* and *BJ5.15 English language requirements*).

### **Decision not to issue an ITA**

18. Within the legal framework described above, where a decision is made not to issue an ITA, INZ is not required to seek comment on that decision. Officers should not send a potentially prejudicial information (PPI) letter to the client. Instead the client should be sent a letter which notifies them of the decision not to issue an ITA, and the reasons for that decision.
19. As stated in *section 95* of the Act, "*Issue of invitation to apply for residence a matter of discretion*", no person is entitled as of right to an ITA. There are no appeal rights against the decision not to issue an ITA. This is because the EOI process is designed to be a prima facie consideration of the information provided in the EOI as a filtering mechanism to ensure only those applicants whom INZ considers to meet an appropriate standard should be entitled to lodge an application for a residence class visa and receive the procedural and appeal rights that such an application attracts.

### **Deputy Chief Executive Complaints**

20. *IAC 09/07 "Client Complaint Resolution Process" (CCRP)* outlines the two stages of the INZ complaint process. The CCRP is a process available so that clients have an accessible, straightforward avenue to seek resolution of a complaint about the service they received from INZ.

21. The CCRP is not an avenue to seek reconsideration of a decision not to issue an ITA, as there is no right of a review of this decision. Where such complaints are received, staff must appropriately address the concerns raised, including any process-related concerns or concerns that information supplied has been misconstrued, and also provide a copy of the text at *section 95* of the Act.

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

**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 Operational Manual. This circular is not a substitute for the Operational Manual.