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A1 Fairness and Natural Justice
IN THIS SECTION

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A1.1 Introduction

See previous instructions A1.1 Effective 29/11/2010

a Good decision-making requires attention to process, to how the decision is made, as well as looking at the merits of the case. A fair process is more likely to ensure a fair outcome. Decisions that are not made in the proper manner may be reviewed by the courts or become a subject of complaint to the Ombudsman (see A9.10).

b Making a decision in the proper manner involves acting on the principles of fairness and natural justice, which means:
   i giving the applicant a fair hearing; and
   ii avoiding bias.

c All immigration officers must act on the principles of fairness and natural justice when deciding an application.

Effective 29/08/2012
A1.5 Fairness

a  Whether a decision is fair or not depends on such factors as:
• whether an application is given proper consideration;
• whether the applicant is informed of information that might harm their case (often referred to as potentially prejudicial information);
• whether the applicant is given a reasonable opportunity to respond to harmful information;
• whether the application is decided in a way that is consistent with other decisions;
• whether appropriate reasons are given for declining an application;
• whether only relevant information is considered;
• whether all known relevant information is considered.

b  How much fairness an immigration officer must bring to bear in deciding an application may depend on the consequences of the decision for the applicant.

Example: A person who applies for a temporary visa for the first time has less to lose from having the application declined than, for example, a person who has been legally resident in New Zealand for a number of years and is applying for a permanent resident visa.

Effective 29/11/2010
A1.10 Bias

a  Whether or not a decision is biased depends on such factors as:
   i   whether the officer is personally prejudiced against the applicant on grounds such as sex, race, religion, socio-economic status, sexuality etc;
   ii  whether the officer has a direct financial or personal interest in the outcome of a decision;
   iii whether the officer has a relationship with any of the people involved in the application;
   iv  whether the officer has predetermined the decision, without considering all of the facts and evidence.

b  It is important to avoid not only actual bias, but also the appearance or suspicion of bias.

Effective 29/11/2010
A1.15 Practical steps towards achieving fairness and natural justice in decision-making

a If the applicant insists on proceeding, accept and process an application made in the prescribed manner (see R2.35 - R2.50), even if it is likely that it will be declined; and

b consider all the facts, keeping an open mind towards all relevant forms of evidence; and

c distinguish fact from opinion, rumour, allegation, assumption or report; and

d apply relevant immigration instructions; and

e inform the applicant of the actual reasons for a decision; and

f include an interpreter in an interview if the applicant is not fluent in English, or if the applicant asks for one to be present (see A14); and

g include an applicant’s lawyer, immigration adviser, or family representative if the applicant asks for them to be present.

Note: Rulings from the courts, Ombudsmen, senior officers or appeal bodies may be used as guidelines for decision-making in appropriate situations.

A1.15.1 Role of representatives at interviews

If an applicant has a representative at the interview, the representative must be given the opportunity to make any comments or submissions on the application to the immigration officer. Subject to the discretion of the officer, such comment and submission will normally be made at the start and/or finish of the interview.

Effective 29/11/2010
A2 Travel documents
IN THIS SECTION

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A2.1 Types of acceptable travel document

Acceptable travel documents are standard passports or certificates of identity that:

a. come within the definitions in A2.1.1 and A2.1.5 below; and
b. meet the criteria set out in A2.5 to A2.10.

A2.1.1 Definition of ‘passport’

See also Immigration Act 2009 s 4

A passport is a document that:

a. is issued by or on behalf of the government of any country; and
b. is recognised by the New Zealand government as a passport; and
c. purports to establish the identity and nationality of the holder; and
d. confers on the holder the right to enter the country of the government of which has issued the document; and
e. has not expired.

A2.1.5 Definition of ‘certificate of identity’

See also Immigration Act 2009 s 4

a. A certificate of identity is a document (other than a passport) issued by the government of any country to any person for the purposes of facilitating that person’s entry into or exit from any country.

b. A certificate of identity:
   i. purports to establish the identity but not the nationality of a person; and
   ii. confers on that person a right to enter the country whose government has issued the document.

c. A certificate of identity includes:
   i. any emergency travel document or refugee travel document issued under the Passports Act 1992; and
   ii. any travel document issued by any international organisation for the time being specified by the Minister for the purpose of this definition.

Example: United Nations travel documents are acceptable travel documents even though they are not issued by a government. Branches and posts will be advised of any travel document accepted as a certificate of identity. Such documents include:

- Cartes de Service, issued to officials of the South Pacific Commission; and
- Laissez-passers, issued to United Nations officials; and
- Laissez-passers, issued to officials of the Commission of European Communities.

Effective 29/11/2010
A2.5 Criteria for acceptable travel documents

See previous instructions:
A2.5 Effective 29/11/2010

Acceptable travel documents must be:

a  authentic and not unofficially altered or tampered with; and
b  not damaged in a way that compromises the integrity of the document; and
c  valid in the country of issue; and
d  issued by an official source recognised by the New Zealand Government; and
e  valid for travel to and from New Zealand; and
f  in the case of people coming to New Zealand permanently, valid for enough time to allow them to travel to New Zealand; and
g  in the case of people coming to New Zealand temporarily, valid either:
i   for at least 3 months beyond the date they intend to depart; or
ii  for one month beyond the date they intend to depart, if the issuing government has consular representation in New Zealand that is able to issue and renew travel documents.

Effective 21/05/2018
A2.10 Acceptable travel documents

See previous instructions A2.10 Effective 29/11/2010

This section provides a non-exhaustive list of some of the travel documents and their country of origin that INZ considers acceptable, as well as any special conditions that may apply.

A2.10.1 United Kingdom

Any valid British passport is acceptable if it contains the following:

a. the endorsement 'Holder is entitled to readmission to the United Kingdom', usually on page 5 (page 6 for British Subject or British Dependent/Overseas Territories Citizen); or

b. a visa to enter a third country after travelling to New Zealand; or

c. a separate certificate indicating right of abode in or re-entry to the home country; or

d. a residence class visa for New Zealand approved on the basis that the need to seek deportation would be unlikely to arise.

Note: If a passport does not show the right of abode in or re-entry to any country, the application must be referred to the National Office of INZ before a residence class visa may be issued.

A2.10.5 British passports in current use

The following table describes British passports in current use and the circumstances in which each type is acceptable for use in New Zealand:

<table>
<thead>
<tr>
<th>Type</th>
<th>Conditions of acceptability for use in NZ</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Passports issued since 1 January 1983 that describe the holder as a <em>British Citizen</em> on page 1</td>
<td>All passports of this type are acceptable for entry to New Zealand</td>
</tr>
<tr>
<td>(b) Passports issued since 1 January 1983 that describe the holder as a <em>British Dependent/Overseas Territories Citizen</em> and state the name of the dependent territory</td>
<td>Must have an endorsement (usually on page 5) indicating the right of abode in the dependent territory concerned</td>
</tr>
<tr>
<td>(c) Passports issued since 1 January 1983 that describe the holder as a <em>British Overseas Citizen</em></td>
<td>Must have an endorsement indicating the right of abode in or re-entry to the home country</td>
</tr>
<tr>
<td>(d) Passports that describe the holder as a <em>British Protected Person</em></td>
<td>Must have an endorsement indicating the right of abode in or re-entry to the home country</td>
</tr>
<tr>
<td>(e) Passports that describe the holder as a <em>British Subject</em> on page 1</td>
<td>Must have a Certificate of Entitlement and/or the endorsement 'Holder has the right of abode in the United Kingdom' (usually on page 5) or must have an endorsement indicating right of abode in or re-entry to the home country</td>
</tr>
<tr>
<td>(f) Passports issued after 1 July 1987 that describe the holder as a <em>British National (Overseas)</em></td>
<td>Must have either: the endorsement 'the holder of this passport has Hong Kong permanent identity card number (xyz) which states the holder has the right of abode in Hong Kong' or a Returning Resident entry certificate for the UK</td>
</tr>
</tbody>
</table>
(g) Machine-readable passports issued after July 1988 that are:
  - burgundy red in colour and
  - bear the words 'European Community' (EC) on the front cover

(in the cases of British subjects with the right of abode in the UK and British Dependent/Overseas Territory Citizens) must have a Certificate of Entitlement and/or any endorsement indicating right of abode in the UK

(h) Machine-readable passports issued after July 1988 that are similar to those in (g) but without the words 'European Community' on the front cover

Must be endorsed as in (c), (d), (e), (f), (g)

A2.10.10 Yugoslavia

a The following documents from the Federal Republic of Yugoslavia (FRY) are acceptable:
   i standard passport
   ii diplomatic passport
   iii official passport
   iv Emergency Travel Document (folded sheets consisting of 8 pages, no cover and valid only for travel to Yugoslavia).

b Passports of the former Socialist Federal Republic of Yugoslavia (SFRY) (red cover) are valid until the date specified in the passport or until 31 December 1999 at the latest.

A2.10.15 Hong Kong

a Acceptable travel documents are Hong Kong 'Documents of Identity for Visa Purposes' issued by the Hong Kong Government to temporary residents who:
   i do not possess any other travel document; and
   ii are unable to obtain a national passport.

b If the holder is coming to New Zealand for a temporary visit, the document must confirm the right of re-entry to Hong Kong for at least 12 months.

c Hong Kong SAR Passports are acceptable travel documents for travel to New Zealand.

A2.10.20 Indonesia

Indonesian Passports for Aliens (also known as Indonesian Stateless Person Passports or Indonesian Stateless Travel Documents) are acceptable, provided that:

a the territorial validity statement on page 10 includes New Zealand and all other countries on the holder's itinerary; and

b a re-entry permit issued by the Republic of Indonesia is:
   i valid for no less than 3 months beyond the predicted date of departure from New Zealand; and
   ii endorsed on page 11 or a subsequent page.

A2.10.25 Cook Islands, Niue and Tokelau

Certificates of identity issued by the Cook Islands, Niue and Tokelau governments are acceptable, although holders are subject to visa requirements.

A2.10.30 Palestine

Passports issued by the Palestinian Authority are acceptable as certificates of identity.
A2.10.35 Macau

(Portuguese) Macau Certificate of Identity

a. The Passaporte Para Estrangeiros (Aliens Passport) issued by the Portuguese authorities in Macau, also known as the Macau Certificate of Identity, is acceptable.

b. The inside cover of the document states that the holder is authorised to return to Macau, a right which must be valid for three months past the planned date of departure in New Zealand.

c. The differences between the Macau Certificate of Identity and the Portuguese passport are as follows:

<table>
<thead>
<tr>
<th>The Macau Certificate of Identity</th>
<th>Portuguese Passport</th>
</tr>
</thead>
<tbody>
<tr>
<td>Green-grey cover</td>
<td>Dark green or burgundy cover</td>
</tr>
<tr>
<td>Includes an English translation</td>
<td>In Portuguese and French only</td>
</tr>
<tr>
<td>Inside cover states that the holder is not a Portuguese subject</td>
<td></td>
</tr>
<tr>
<td>Issued for 2 years</td>
<td>Issued for 5 years</td>
</tr>
</tbody>
</table>

Macao Special Administrative Region Passport

a. Macao SAR passports are acceptable for travel to New Zealand.

b. These passports have been issued by the Government of the Macao Special Administrative Region of the People's Republic of China since 20 December 1999 to Chinese nationals who are permanent residents of the Macao SAR.

c. Holders require visas to travel to New Zealand.

Macao Special Administrative Region Travel Permit

a. Macao SAR Travel Permits are acceptable as Certificates of Identity for travel to New Zealand.

b. These documents have been issued by the Government of the Macao Special Administrative Region of the People's Republic of China since 20 December 1999 to those legal permanent residents of Macao who are not entitled to a Macao SAR passport.

c. Holders require visas to travel to New Zealand.

A2.10.40 Taiwan

a. Taiwan standard passports, with a green cover are acceptable (see A2.30).

b. A personal identity number printed within the visible section of the biographical page of the Taiwan passport demonstrates that the holder is a permanent resident of Taiwan and is eligible to enter New Zealand as a visitor for up to three months without the need to obtain a visitor visa.

A2.10.45 Kosovo

a. UN Kosovo Travel Documents are acceptable certificates of identity for travel to New Zealand.

b. UN Kosovo Travel Documents are issued by the United Nations Mission in Kosovo (UNMIK), to persons who are registered habitual residents of Kosovo, Federal Republic of Yugoslavia, in order to facilitate the free movement of the people of the province.

Holders of these documents are required to obtain visas for travel to New Zealand from the Hague visa office for temporary visas, and from the INZ London Branch for residence class visas.

**A2.10.50 Greek passports**

As of 1 January 2007 only Greek passports issued on and after 1 January 2006 by the Hellenic Police are acceptable.

*Effective 07/11/2011*
A2.15 Unacceptable travel documents

See previous instructions:
A2.15 Effective 29/11/2010
A2.15 Effective 25/07/2011

If necessary, an immigration officer may seek advice from the Intelligence, Risk and Integrity Division regarding a person who holds an unacceptable travel document and applies for a visa.

Unless otherwise specified, any travel documents issued by the countries or sources listed in this section are unacceptable and visas must not be endorsed in them.

A2.15.1 Countries not recognised by the New Zealand Government

Travel documents from the following countries are unacceptable because they are issued by regimes that the New Zealand Government does not recognise:

- Turkish Republic of Northern Cyprus
- Taiwan: diplomatic and official passports (but see A2.30).

A2.15.5 Unofficial sources of issue

The following is a non-exhaustive list of travel documents that are unacceptable because they have been issued by an unofficial source:

- 'World Service Authority'
- 'Maori Kingdom of Tetiti Islands'.

A2.15.10 Yugoslavian collective passports

The Federal Republic of Yugoslavia (FRY) is issuing a collective passport for up to 50 people which does not meet the requirements of the Immigration Act 2009 and is therefore unacceptable.

A2.15.15 Slovenian collective passports

The collective passport issued by the Republic of Slovenia does not meet the requirements of the Immigration Act 2009 and is therefore unacceptable.

A2.15.20 Kiribati investor passports

Kiribati investor passports are unacceptable because they neither:

a confirm the nationality of the passport holder; nor
b clarify the status of the passport holder.

A2.15.25 Tongan Protected Person's Passport (TPPP)

a The travel document called a "Tongan Protected Person's Passport" ("TPPP"), introduced by the Tongan Government in 1983 is unacceptable because:
   i it does not confirm the right of re-entry to the country of issue; and
   ii it does not confirm the holder's nationality.

b Applicants must be informed that TPPPs are unacceptable to the New Zealand Government for the reasons given in (a) above.

c However, applications from TPPP holders may be dealt with on the basis of the primary and residential status of the applicant.

d If a visa application is approved in principle, the visa must be endorsed in an alternative acceptable passport or certificate of identity, but not in the TPPP.

e The differences between TPPPs and standard Tongan passports are as follows:
The distinctions set out in paragraph (e) apply even though standard Tongan passports may be presented in two formats:
- with soft cover and a green border pattern on the inside front cover (passports issued since mid-1984); and
- with hard cover and no green border pattern (passports issued until mid-1984).

A2.15.30 Former USSR
The following passports are no longer valid:

a Diplomatic and service passports with the former USSR symbol issued in Armenia. (USSR standard passports issued in Armenia are valid till 01.07.2000.)
b Diplomatic and service passports with the former USSR symbol issued in Azerbaijan. (USSR standard passports issued in Azerbaijan are valid till the expiry date.)
c Diplomatic and service passports with the former USSR symbol issued in Belarus, also USSR standard and Belarus standard passports issued in Belarus which do not bear multiple exit stamps.
d Diplomatic, service and standard passports with the former USSR symbol issued in Estonia (USSR passports are not valid for return to Estonia).
e Diplomatic, service and standard passports with the former USSR symbol issued in Georgia (however, these passports can still be used to return to Georgia within the validity of the passports).
f Diplomatic, service and standard passports with the former USSR symbol issued in Kazakhstan (however, these passports can still be used to return to Kazakhstan within the validity of the passports).
g Diplomatic, service and standard passports with the former USSR symbol issued in Kyrgyzstan (however, these passports are valid for return to Kyrgyzstan within the validity of the passports).
h Diplomatic, service and standard passports with the former USSR symbol issued in Latvia (USSR passports are not valid for return to Latvia).
i Diplomatic, service and standard passports with the former USSR symbol issued in Lithuania (USSR passports are not valid for return to Lithuania).
j Diplomatic, service and standard passports with the former USSR symbol issued in Moldova (however, USSR standard passports are valid for return to Moldova within the validity of the passports).
k Diplomatic, service and standard passports with the former USSR symbol issued in Tajikistan (however, these passports are valid for return to Tajikistan within the validity of the passports).
l Diplomatic and service passports with the former USSR symbol issued in Turkmenistan. Standard USSR passports are valid till 31.12.2001.
m Diplomatic, service and standard passports with the former USSR symbol issued in the Ukraine (however, these passports are valid for return to the Ukraine within the validity of the passports).
Diplomatic, service and standard passports with the former USSR symbol issued in Uzbekistan (however, these passports are valid for return of permanent residents to Uzbekistan).

A2.15.35 Somali travel documents
There is currently no authority in Somalia that is recognised by the New Zealand Government as being competent to issue passports on behalf of Somalia. As a result Somali passports are not acceptable travel documents for travel to New Zealand and visas must not be endorsed in them. Endorsement should be made in an INZ Certificate of Identity, or another acceptable travel document.

A2.15.40 Nauru investor passports
Nauru investor passports are unacceptable because they neither:

a. confirm the nationality of the passport holder; nor
b. clarify the status of the passport holder.

A2.15.45 Greek passports issued before 1 January 2006
As of 1 January 2007, only passports issued by the Passport Division of the Hellenic Police on and after 1 January 2006 will be acceptable. Passports issued before this date are not acceptable, regardless of the date of expiry, unless E2.5 applies.

A2.15.50 Additional travel documents which are unacceptable
The following travel documents do not meet the requirements of ‘the definition of passport or certificate of identity’ under section 4 of the Immigration Act 2009 and are therefore unacceptable:

a. Kuwait article 17 passports.
b. Islamic Emirate of Afghanistan passports.
d. Iraqi S series passport.
e. Egyptian travel documents issued for Palestinian refugees, unless they include an entry visa that allows the holder to enter Egypt.

Effective 08/04/2013
A2.20 When acceptable travel documents are not available

The Minister of Immigration has approved two forms to be used when an acceptable passport or certificate of identity is not available.

A2.20.1 Visa form

a The visa form is rarely ever used and must be used only when the applicant is believed to hold an acceptable travel document which is not available to the immigration officer.

b It must not be used for granting visas to applicants who are in New Zealand and is only acceptable for travel to New Zealand when accompanied by an acceptable passport or certificate of identity.

A2.20.5 Certificate of identity form

a The certificate of identity form must be used only when a person does not have any other acceptable form of travel document available, but is to be granted permission to be in New Zealand. This does not include persons who are able to obtain a passport from their own country of citizenship no matter how long or difficult it may be to do so.

b Visas to stay in New Zealand may be endorsed in this form, and it is valid only for use in New Zealand.

c Resident visas endorsed in a certificate of identity must not allow travel.

d Permanent resident visas may be endorsed in a certificate of identity, however the holder of the document should be advised that the document can not be used for travel out of New Zealand.

e Resident visas and permanent resident visas may be endorsed in a Document of National Identity (DONI) Certificate of Identity as issued by the Department of Internal Affairs.

Examples: Customs staff use the INZ Certificate of Identity form for seamen coming ashore in an emergency, whose documents are either unavailable or unacceptable as certificates of identity. Immigration officers use the INZ Certificate of Identity form:

(i) in cases involving refugees who have not been granted a refugee document; or
(ii) in cases involving persons who have arrived at the border without documentation; or
(iii) in other emergency cases, usually with an exceptional humanitarian element.

Effective 29/11/2010
A2.25 Refugee travel documents

a. Acceptable certificates of identity include refugee travel documents issued in terms of the United Nations Convention on Refugees (see A2.1.5).

b. The government that issues such a document is committed to granting the holder the right of entry or re-entry while the document is valid.

Effective 29/11/2010
A2.30 Taiwan passports

See previous instructions A2.30 Effective 29/11/2010

A2.30.1 Background

a. The New Zealand Government recognises the Government of the People's Republic of China as the sole legal government of China, and consequently New Zealand has no official contacts with the present authorities in Taiwan.

b. However, under an agreement with the People's Republic of China, New Zealand may allow the entry of bona fide private permanent residents of Taiwan travelling on Taiwan passports (see A2.10.40).

c. The instructions in the following subsections have been prepared to:

i. enable INZ branches and Ministry of Foreign Affairs and Trade offices to observe New Zealand’s commitment to have no official contacts with Taiwan; and

ii. facilitate private, business and travel links with Taiwan.

A2.30.5 Visa Unit, New Zealand Commerce and Industry Office (NZCIO)

The Visa Unit of the NZCIO facilitates temporary applications by Taiwanese, but the fact that it does so does not indicate official New Zealand recognition of the Taiwan authorities.

A2.30.10 Visits by ministers, officials or those representing Taiwan in other capacities

a. Applications for visits to New Zealand by Taiwan government representatives, for discussions with New Zealand authorities or to attend international conferences, may be approved if MFAT has cleared the visit.

b. Applications from Taiwan government Ministers or officials to attend meetings in New Zealand in their official capacities must be referred to MFAT (North Asia Division), copied to NZCIO.

c. Applications from Taiwan government Ministers or officials to visit New Zealand in a private capacity should also be referred to MFAT, copied to NZCIO, if it can be reasonably expected that such visitors will be portrayed in New Zealand as acting in their official roles.

d. Applications by Taiwan government Ministers and officials to visit New Zealand privately for genuine holiday purposes need not be referred to MFAT except when they are made by Cabinet level visitors and above. (In Taiwan both Ministers and officials may hold Cabinet rank.)

e. Diplomatic (dark blue cover with a D prefix to the passport number) and Official (brown cover with an F prefix to the passport number) Taiwan passports are not acceptable for travel to New Zealand, and visas issued to such passport holders may be endorsed only in standard Taiwan passports (these have a green cover).

f. Taiwan passports with a G prefix to the passport number are not acceptable for visa endorsement and applicants presenting the G prefix passport should be advised to present an alternative acceptable document. In the event of any doubt INZ offices should seek advice from NZCIO Visa Unit in Taipei or the Intelligence, Risk and Integrity Division in New Zealand, prior to visa endorsement.

Effective 07/11/2011
A2.35 New Zealand citizens

A2.35.1 Evidence of New Zealand citizenship

See also Immigration Act 2009 s 13(2)

a To establish his or her right to enter New Zealand, a New Zealand citizen must prove his or her citizenship and establish his or her identity by complying with border requirements.

b The only acceptable evidence of New Zealand citizenship at a port of entry is:

i a current New Zealand passport; or

ii a valid endorsement in the person’s foreign passport, or electronic record, indicating the fact of New Zealand citizenship (see A20.5); or

iii a returning resident’s visa (RRV) issued on the basis of New Zealand citizenship under the Immigration Act 1987 in a valid foreign passport, until the expiry of the passport in which the RRV is endorsed.

Note: A New Zealand citizen’s foreign passport issued by a country that has legislation appearing to forbid dual nationality is considered to be valid unless the issuing country specifically declares it to be invalid.

A2.35.5 New Zealand citizens returning without passports

In certain circumstances, an INZ branch or MFAT post may request that the immigration officer at a port of entry in New Zealand not demand to see a passport of a New Zealand citizen, but only if:

a the situation is one of emergency or requiring compassion (eg, death or serious illness); and

b there is not enough time for a New Zealand passport to be issued.

Note: in most cases, a passport can be issued in less than 24 hours.

A2.35.10 Procedures for New Zealand citizens returning without passports

a An immigration officer at the INZ branch or MFAT post must verify that the traveller is a New Zealand citizen from passport records held at the post or branch or by other means.

b An immigration officer must contact the INZ branch responsible for the relevant port of entry, requesting that an immigration officer not demand to see a New Zealand passport from a particular passenger when they arrive in New Zealand.

c An immigration officer must provide the following details of the passenger:

i flight number and date of arrival; and

ii full name; and

iii place of birth; and

iv date of birth; and

v New Zealand passport number (if available); and

vi other identification carried.

d An immigration officer must also provide:

i confirmation that the passenger is a New Zealand citizen; and

ii the name and designation of the immigration officer making the request; and

iii the INZ branch or MFAT post location.

e Officers with Schedule 1-3 delegations are authorised to determine these requests and must notify their decisions to the New Zealand Customs Service before the passenger's arrival, and if possible, to the initiating branch or post and/or the passenger.

Effective 29/11/2010
A3 Visa system
IN THIS SECTION

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A3.5 Meaning and effect of entry permission.............................................. 27
A3.1 Definition and effect of a visa

See previous instructions:
A3.1 Effective 29/11/2010

See also Immigration Act 2009 ss 43, 62

a A visa (other than a transit visa) authorises the holder to travel to or stay in New Zealand (or both).

b A visa may be granted inside or outside New Zealand or in an immigration control area.

c A visa granted outside New Zealand indicates that:
   i the holder may travel to New Zealand in line with the conditions of that visa (if any) and apply for entry permission; and
   ii if entry permission is granted, may stay in New Zealand in line with the conditions of that visa (if any); and
   iii at the time the visa is granted, Immigration New Zealand has no reason to believe that entry permission will be refused, provided the holder of the visa complies with the conditions of the visa (if any).

d A visa granted inside New Zealand indicates that:
   i the holder of the visa may stay in New Zealand in accordance with the conditions of the visa; and
   ii if granted travel conditions, the holder of the visa may re-enter New Zealand in line with the travel conditions and apply for entry permission.

e A visa granted in an immigration control area indicates that:
   i if granted entry permission, the holder of the visa may stay in New Zealand in accordance with the conditions of the visa; and
   ii if granted travel conditions, the holder of the visa may re-enter New Zealand in line with the travel conditions and apply for entry permission.

f A visa is granted by being entered and retained in the records of the Ministry of Business, Innovation and Employment.

g A visa may (but need not) be evidenced by an endorsement in a passport or a certificate of identity.

Effective 08/05/2017
A3.5 Meaning and effect of entry permission

See also Immigration Act 2009 ss14, 46, 107

a The grant of entry permission has no effect unless the person also holds a visa. Therefore, a person arriving in New Zealand and to whom a visa waiver applies must apply for both a visa and entry permission on arrival, unless they are deemed to hold a visa and entry permission (see E2.95.5).

b The granting of a visa does not of itself entitle the holder to be granted entry permission, unless the visa is a permanent resident visa or a resident visa granted in New Zealand.

c The effect of a refusal to grant a person entry permission to New Zealand is that:
   i any visa the person holds is cancelled; and
   ii if the person has arrived in New Zealand, the person is liable for turnaround.

Effective 29/11/2010
A4 Health Requirements
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A4.1 Objective
The objectives of Health instructions are to:

a. protect public health in New Zealand; and

b. ensure that people entering New Zealand do not impose excessive costs and demands on New Zealand’s health and special education services; and

c. where applicable, ensure that applicants for entry to New Zealand are able to undertake the functions for which they have been granted entry.

Effective 29/11/2010
A4.5 Overview of health instructions

See previous instructions:
A4.5 Effective 30/07/2012
A4.5 Effective 29/11/2010

a All applicants for visas must have an acceptable standard of health unless:
   i they are entering New Zealand for specific medical treatment and have been granted a visa for this purpose; or
   ii they are applying for a further residence class visa under RV2 or RV4.

b A person has an acceptable standard of health if they are:
   i unlikely to be a danger to public health; and
   ii unlikely to impose significant costs or demands on New Zealand's health services or special education services; and
   iii able to undertake the work or study on the basis of which they are applying for a visa, or which is a requirement for the grant of the visa.

c For the purposes of these instructions, 'Health services' includes all health and disability support services funded through Vote Health.

d Applicants for residence class visas and applicants for temporary entry class visas are assessed to determine whether they have an acceptable standard of health using separate sets of criteria. Assessment of whether a temporary entry class visa applicant has an acceptable standard of health takes into account their length of intended stay in New Zealand (see A4.10 and A4.15).

e Applicants are required to provide evidence of their health status as follows:
   i applicants for temporary entry class visas intending a stay in New Zealand of more than six months and who have risk factors for tuberculosis must provide a Chest X-ray Certificate (see A4.25.1 (http://inzkit/publish/opsmanual/#46507.htm));
   ii applicants for residence class visas (other than those specified in A4.5(a)), and applicants for temporary entry class visas intending a stay in New Zealand of more than 12 months must provide a Medical Certificate and a Chest X-ray Certificate (unless A4.25(d) applies) (see A4.20 (http://inzkit/publish/opsmanual/#46161.htm) and A4.25 (http://inzkit/publish/opsmanual/#46507.htm)).

   **Note:** Pregnant women and children under 11 years of age are not required to have an X-ray examination.

f An immigration officer may however, request a Chest X-ray Certificate or a Medical Certificate regardless of the period of intended stay in New Zealand, if they consider this is necessary to establish whether the applicant has an acceptable standard of health.

g Generally, an applicant's Chest X-ray Certificate or Medical Certificate will be valid for any temporary entry class or residence class visa application they make within 36 months of the certificate(s) having been completed by the radiologist and physician respectively (see A4.25(c) (http://inzkit/publish/opsmanual/#46507.htm) and A4.20(d) (http://inzkit/publish/opsmanual/#46161.htm)).

h Some applicants who are assessed as having an unacceptable standard of health may be granted a medical waiver (see A4.60 and A4.65).

i If any person included in the application fails to meet the necessary health requirements and does not qualify for a medical waiver, the application may be declined.

Effective 17/11/2014
A4.10 Acceptable standard of health (applicants for residence)

See previous instructions:
A4.10 Effective 17/11/2014
A4.10 Effective 01/07/2013
A4.10 Effective 26/11/2012
A4.10 Effective 30/07/2012
A4.10 Effective 21/11/2011
A4.10 Effective 07/11/2011
A4.10 Effective 25/07/2011
A4.10 Effective 15/12/2010
A4.10 Effective 29/11/2010

a Applicants for residence class visas must have an acceptable standard of health unless they have been granted a medical waiver or (f), below, applies. An application for a residence class visa must be declined if any person included in that application is assessed as not having an acceptable standard of health and a medical waiver is not granted (see A4.60).

b Applicants for residence class visas are considered to have an acceptable standard of health if they are:
   i unlikely to be a danger to public health; and
   ii unlikely to impose significant costs or demands on New Zealand's health services or special education services; and
   iii able to undertake the work on the basis of which they are applying for a visa, or which is a requirement for the grant of the visa.

c The conditions listed in A4.10.1 are considered to impose significant costs and/or demands on New Zealand's health and/or special education services. Where an immigration officer is satisfied (as a result of advice from an Immigration New Zealand medical assessor) that an applicant has one of the listed conditions, that applicant will be assessed as not having an acceptable standard of health.

d If an immigration officer is not satisfied that an applicant for a residence class visa has an acceptable standard of health, they must refer the matter for assessment to an Immigration New Zealand medical assessor (or the Ministry of Education as appropriate).

e Despite (d) above, referral to an Immigration New Zealand medical assessor (or the Ministry of Education) is not required where the applicant is the partner or dependent child of a New Zealand citizen or residence class visa holder, unless the provisions of A4.60(a) or A4.60(b) apply.

f Mandated refugees (see S3.5(a)(i)) and Refugee Quota Family Reunification Category applicants (see S4.20) are exempt from the requirement to have an acceptable standard of health, except where they have any of the conditions set out at A4.74.

g The exemption at (f) above does not apply to those invited to apply under the Community Organisation Refugee Sponsorship category (see S4.25).

Note: These instructions do not apply to residents and former residents applying for a permanent resident visa or a second or a subsequent resident visa.

A4.10.1 Medical conditions deemed to impose significant costs and/or demands on New Zealand's health and/or education services

- HIV infection
- Hepatitis B-surface antigen positive and meeting criteria for anti-viral treatment in New Zealand
- Hepatitis C-RNA positive and meeting criteria for anti-viral treatment in New Zealand
- Malignancies of organs, skin (such as melanoma) and haematopoietic tissue, including past history of, or currently under treatment. Exceptions are:
  - treated minor skin malignancies
  - malignancies where the interval since treatment is such that the probability of recurrence is <10 percent
- Requirement for organ transplants (with the exclusion of corneal grafts), or following organ transplant when immune suppression is required (with the exclusion of corneal grafts)
- Severe, chronic or progressive renal or hepatic disorders
- Musculoskeletal diseases or disorders such as osteoarthritis with a high probability of surgery in the next five years
- Severe, chronic or progressive neurological disorders, including but not exclusive to:
  - any dementia including Alzheimer's disease
  - poorly controlled epilepsy
  - complex seizure disorder
  - cerebrovascular disease
  - cerebral palsy
  - paraplegia, quadriplegia
  - poliomyelitis
  - Parkinson’s disease
  - motor neurone disease, Huntington’s disease, muscular dystrophy
  - prion disease
  - relapsing and/or progressive multiple sclerosis
- Cardiac diseases, including but not exclusive to:
  - severe ischaemic heart disease
  - cardiomyopathy
  - valve disease with a high probability of surgical and/or other procedural intervention in the next five years
  - aortic aneurysm with a high probability of surgical and/or other procedural intervention in the next five years
- Chronic respiratory disease, including but not exclusive to:
  - severe and/or progressive restrictive (including interstitial) lung disease
  - severe and/or progressive obstructive lung disease
  - cystic fibrosis
- Significant or disabling hereditary disorders, including but not exclusive to:
  - hereditary anaemias and coagulation disorders
  - primary immuno-deficiencies
  - Gaucher’s disease
- Severe autoimmune disease which may require treatment in New Zealand with immune-suppressant medications other than Prednisone, Methotrexate, Azathioprine or Salazopyrin
INZ Operational Manual

• Severe (71-90 decibels) hearing loss or profound bilateral sensori-neural hearing loss after best possible correction at country of origin, where significant support is required, including cochlear implants

• Severe vision impairment with visual acuity of 6/36 or beyond after best possible correction at country of origin, or a loss restricting the field of vision to 15-20 degrees where significant support is required

• Severe developmental disorders or severe cognitive impairments where significant support is required, including but not exclusive to:
  - physical disability
  - intellectual disability
  - autistic spectrum disorders
  - brain injury

• Major psychiatric illness and/or addiction including any psychiatric condition that has required hospitalisation and/or where significant support is required

• Those with a history, diagnostic findings or treatment for MDR-TB or XDR-TB, unless they have been cleared by a New Zealand Respiratory or Infectious Diseases specialist upon review of their file or review of the applicant according to the New Zealand Guidelines for Tuberculosis Treatment

Note: The list above at A4.10.1 is not an exhaustive list of conditions which may indicate that an applicant does not have an acceptable standard of health.

A4.10.2 Assessment of whether an applicant for a residence class visa is unlikely to impose significant costs on New Zealand’s health services

a The requirement that an applicant for a residence class visa must be unlikely to impose significant costs on New Zealand’s health services is not met if, in the opinion of an Immigration New Zealand medical assessor, there is a relatively high probability that the applicant’s medical condition or group of conditions will require health services costing in excess of NZ$41,000.

Note: Assessment will be in terms of current costs with no inflation adjustment.

b In the case of acute medical conditions, the medical assessor will provide an opinion on whether there is a relatively high probability that the condition or group of conditions will require health services costing in excess of NZ$41,000 within a period of five years from the date the assessment against health requirements is made.

c In the case of chronic recurring medical conditions, the medical assessor will provide an opinion on whether, over the predicted course of the condition or group of conditions, there is a relatively high probability that the condition or group of conditions will require health services costing in excess of NZ$41,000.

d The following factors have no bearing on whether an applicant is unlikely to impose significant costs on health services:
  i The ability of a person or organisation to pay for health services, pharmaceuticals, or residential care which may be required.
  ii The ability of an applicant to gain access to the private health system.
  iii The applicant’s possession of health insurance.
  iv The capacity of family, friends, or a charitable organisation to provide care for an applicant.
A4.10.5 Assessment of whether an applicant for a residence class visa is unlikely to impose significant costs on New Zealand's special education services

a  The requirement that an applicant for a residence class visa must be unlikely to impose significant costs on New Zealand's special education services is not met if the Ministry of Education (MoE) has determined that there is a relatively high probability that the applicant's physical, intellectual, or sensory condition or their use of language and social communication would entitle them to Ongoing Resourcing Scheme (ORS) funding.

b  Where it has been determined that there is a relatively high probability that an applicant would be entitled to ORS funding, the following factors have no bearing on whether an applicant is unlikely to impose significant costs on New Zealand's special education services:
   i  The ability of a person or organisation to pay for education services.
   ii  The ability of a person to provide in-home education services.

A4.10.10 Assessment of whether an applicant for a residence class visa is unlikely to impose significant demands on New Zealand's health services

a  The requirement that an applicant must be unlikely to impose significant demands on New Zealand's health services is not met if, in the opinion of an Immigration New Zealand medical assessor, there is a relatively high probability that the applicant's medical condition or group of conditions will require health services for which the current demand in New Zealand is not being met.

b  Where it has been determined that there is a relatively high probability that an applicant may require health services for which the demand in New Zealand is not being met, the following factors have no bearing on whether the applicant is unlikely to impose significant demands on New Zealand's health services:
   i  The ability of a person to gain access to the private health system.
   ii  The capacity of family, friends, or a charitable organisation to provide care for an applicant.

Note: These instructions do not apply to people applying for a further residence class visa under RV2 or RV4.

Effective 15/12/2017
A4.15 Acceptable standard of health (applicants for temporary entry class visas)

See previous instructions:
A4.15 Effective 21/11/2011
A4.15 Effective 25/07/2011
A4.15 Effective 29/11/2010

a Applicants for temporary entry class visas must have an acceptable standard of health, unless they have been granted a visitor visa for the purpose of obtaining medical treatment (see V3.40) or have been granted a medical waiver (see A4.65).

b Applicants for temporary entry class visas to New Zealand are considered to have an acceptable standard of health if they are:
   i unlikely to be a danger to public health; and
   ii unlikely to impose significant costs or demands on New Zealand's health services during their period of intended stay in New Zealand; and
   iii (if they are under 21 years of age and are applying for a student visa) unlikely to qualify for Ongoing Resourcing Schemes (ORS) funding during their period of intended stay in New Zealand; and
   iv able to undertake the work or study on the basis of which they are applying for a visa, or which is a requirement for the grant of the visa.

A4.15.1 Assessment of whether an applicant for a temporary entry class visa is unlikely to impose significant costs or demands on New Zealand’s health services

a Assessment of whether an applicant for a temporary entry class visa is likely to impose significant costs or demands on New Zealand’s health services will take into account whether there is a relatively high probability that the applicant will need publicly funded health services during their period of stay in New Zealand including, but not limited to:
   • hospitalisation;
   • residential care;
   • high cost pharmaceuticals;
   • high cost disability services.

   Note: Residential care is long term care provided in a live-in facility such as an aged-person’s facility or a facility for people with a physical, sensory, intellectual or psychiatric disability.

b The following factors have no bearing on whether an applicant is unlikely to impose significant costs or demands on health services:
   i The ability of a person or organisation to pay for health services, pharmaceuticals, or residential care which may be required.
   ii The ability of an applicant to gain access to the private health system.
   iii The applicant’s possession of health insurance.
   iv The capacity of family, friends, or a charitable organisation to provide care for an applicant.

A4.15.2 Assessment of an applicant for a student visa who is likely to qualify for ORS funding

Where it has been determined that an applicant for a student visa may qualify for ORS funding during the period of intended stay in New Zealand, the following factors have no bearing on whether an applicant is unlikely to impose significant costs on New Zealand’s special education services:

a The ability of a person or organisation to pay for education services.

b The ability of a person to provide in-home education services.
A4.15.5 Requirement to refer Medical Certificates and Chest X-ray Certificates

If an immigration officer is not satisfied that an applicant for a temporary entry class visa has an acceptable standard of health, they may refer the matter to an Immigration New Zealand medical assessor for assessment (or Ministry of Education where appropriate).

**Note:** An immigration officer must not decline an application on the basis that an applicant does not have an acceptable standard of health, without first referring the applicant’s Medical Certificate and Chest X-ray Certificate to the Immigration New Zealand medical assessor or the Ministry of Education.

**Effective 30/07/2012**
A4.20 Medical and Chest X-ray Certificates: residence class visa applications

See previous instructions:
A4.20 Effective 15/12/2017
A4.20 Effective 30/03/2015
A4.20 Effective 17/11/2014
A4.20 Effective 08/04/2013
A4.20 Effective 30/07/2012
A4.20 Effective 04/04/2011
A4.20 Effective 29/11/2010

a Applications for residence class visas must include, at the time the application is lodged, evidence that a Medical Certificate and Chest X-ray Certificate (INZ 1096) have been completed (see A4.20(f)) for every person included in the application.

Note: Pregnant women and children under 11 years of age are not required to have an X-ray examination.

b The Medical Certificate that may be required with a residence class visa application, includes the:
   i General Medical Certificate (INZ 1007) which must be provided by all applicants other than those listed in (ii) below, or
   ii Limited Medical Certificate (INZ 1201) which must be provided by:
      o applicants who are the partner of a New Zealand citizen or residence class visa holder and who meet the requirements of the Partnership Category (see F2.5(a)), and any dependent child(ren) included in their application made under the Partnership Category, unless R5.96 applies; or
      o applicants who are the dependent child of a New Zealand citizen or residence class visa holder and who meet the requirements of the Dependent Child Category (see F5.1(a)) unless R5.96 applies; or
      o applicants who have been recognised as having refugee or protection status in New Zealand and are thereby eligible to apply for a permanent resident visa (see S3) and their partner and dependent child(ren), (if any); or
      o applicants who are applying under the Refugee Quota Family Reunification (RQFR) Category (S4.20); or
      o mandated refugees who have been selected as candidates for New Zealand’s Refugee Quota Programme S3.5(a)(i)); or
      o applicants who are applying under the Christchurch Response (2019) Category (S4.30).

Note: For the avoidance of doubt, applicants under the Community Organisation Refugee Sponsorship category (S4.25) must provide a **General Medical Certificate (INZ 1007)**.

c All Medical and Chest X-ray Certificates must have been issued less than three months before the date the application for a residence class visa is made, unless (d) below applies.

Notes:
~ The issue date of a Medical Certificate is the date of the declaration by the examining physician concerning the overall findings of the medical examination, or the date that the Medical Certificate was submitted to Immigration New Zealand if submitted by the physician electronically.
~ The issue date of a Chest X-ray Certificate is the date of the declaration by the radiologist, or the date that the Chest X-ray Certificate was submitted to Immigration New Zealand if submitted by the physician electronically.

d Applicants for a residence class visa may provide a Medical Certificate and Chest X-ray Certificate, which was issued more than three months before the date that their application is made, if:
   i they have provided a Medical Certificate and Chest X-ray Certificate with an earlier visa application; and
ii they were assessed as having an acceptable standard of health based on those certificates; and

iii those certificates were issued less than 36 months prior to the current application.

e Despite (d) above:

i Applicants who have spent six consecutive months in any one or more countries not listed in A4.25.10, since their previous Chest X-ray Certificate was issued, must provide a Chest X-ray Certificate which is less than three months old with their application.

ii Applicants who provided a Limited Medical Certificate (INZ 1201) with a previous visa application but no longer fall within the criteria listed at A4.20(b)(ii), must provide a General Medical Certificate (INZ 1007), which is less than three months old with their application.

iii Applicants must provide a Chest X-ray Certificate and specified tests, if:

iv they did not provide a Chest X-ray Certificate or specified tests with a Medical Certificate provided in the past 36 months because of their age, or because they were pregnant; and

v their age would now require them to undertake the specified tests or provide a Chest X-ray Certificate, or they are no longer pregnant.

vi An immigration officer may require a Medical Certificate and Chest X-ray Certificate which is less than three months old, if they consider this is necessary to establish whether the applicant has an acceptable standard of health.

f Evidence of completion of a Medical Certificate and Chest X-ray Certificate includes:

i a completed Medical Certificate and Chest X-ray Certificate; or

ii an eMedical reference code (NZER); or

iii confirmation in the applicant’s visa application form that a physician is directly submitting the applicant’s Medical Certificate and Chest X-ray Certificate to Immigration New Zealand.

Note: These instructions do not apply to people applying for a further residence class visa under RV2 or RV4.

Effective 24/04/2019
A4.25 Medical and Chest X-ray Certificates: temporary entry class visa applications

See previous instructions:
A4.25 Effective 30/03/2015
A4.25 Effective 17/11/2014
A4.25 Effective 01/07/2013
A4.25 Effective 08/04/2013
A4.25 Effective 26/11/2012
A4.25 Effective 30/07/2012
A4.25 Effective 21/11/2011
A4.25 Effective 25/07/2011
A4.25 Effective 30/04/2011
A4.25 Effective 07/02/2011
A4.25 Effective 29/11/2010

a Applications for temporary entry class visas from applicants intending a stay in New Zealand of more than 12 months must include a completed Medical Certificate and a Chest X-ray Certificate (see A4.25(k)) which have been issued less than three months before the date the application is made, for every person included in the application, unless (c) or (d) below apply.

b The Medical Certificate and Chest X-ray Certificate that may be required with a temporary entry visa application; include:
   i General Medical Certificate (INZ 1007)
   ii Chest X-ray Certificate (INZ 1096)
   iii Limited Medical Certificate (INZ 1201)
   iv Recognised Seasonal Employer Scheme Supplementary Medical Certificate (INZ 1143)

Note: Unless specified otherwise in A4.25(e), applicants should provide the General Medical Certificate (INZ 1007) and the Chest X-ray Certificate (INZ 1096).

c Applicants for a temporary entry class visa do not ordinarily need to provide a Medical Certificate and a Chest X-ray Certificate if:
   i they have provided a Medical Certificate and a Chest X-ray Certificate with an earlier visa application; and
   ii they were assessed as having an acceptable standard of health based on those certificates; and
   iii those certificates were issued less than 36 months prior to the current application.

d Medical Certificates and Chest X-ray Certificates do not need to be provided by the following types of temporary entry class visa applicants:
   i Applicants for a student visa as a fee paying foreign student (see U4.10) (except for students holding a New Zealand scholarship administered by the Ministry of Foreign Affairs and Trade (see U11)), unless (f) below or A4.25.1 applies.
   ii Applicants for a Working Holidaymaker Extension visa (see WH2).
   iii Applicants (and their partner and dependent child(ren), if any) who have been recognised as having refugee or protection status in New Zealand and are eligible to apply for a permanent resident visa.

e Applicants who must provide a Medical Certificate other than the General Medical Certificate (INZ 1007) are set out below:
   i Partners of New Zealand citizens and residence class visa holders must provide a Limited Medical Certificate (INZ 1201) and a Chest X-ray Certificate (INZ 1096) if they are intending a stay in New Zealand of more than 12 months, and they meet the criteria for residence under the Partnership Category (see F2.5(a)), unless E7.50 applies.
ii Dependent children of New Zealand citizens or residence class visa holders must provide a Limited Medical Certificate (INZ 1201) and a Chest X-ray Certificate (INZ 1096) if they are intending a stay in New Zealand of more than 12 months and they meet the criteria for residence under the Dependent Child Category (see F5.1(a)), unless E7.50 applies.

iii Recognised Seasonal Employment limited visa applicants must provide a Chest X-ray Certificate (INZ 1096) where A4.25.1(b) applies and a Recognised Seasonal Employer Scheme Supplementary Medical Certificate (INZ 1143) where WH1.15.15 applies.

f Despite (c), (d)(i),(ii) and (e)(iii) above, an immigration officer may require a Medical Certificate and a Chest X-ray Certificate if they consider this is necessary to establish whether the applicant has an acceptable standard of health.

g Risk factors which may indicate that an applicant should be asked to provide a Medical Certificate or Chest X-ray Certificate, where not otherwise required, may include:
   i the applicant declaring they have a medical condition; or
   ii INZ having knowledge of an applicant's medical condition; or
   iii a recommendation from an INZ medical assessor that a future application be accompanied by an updated Medical Certificate and a Chest X-ray Certificate; or
   iv where A4.25.1(e) applies.

h Applicants must provide a Chest X-ray Certificate and specified tests, if:
   i A4.25(a) applies; and
   ii the applicant did not provide a Chest X-ray Certificate or specified tests with a Medical Certificate provided in the past 36 months because of their age, or because they were pregnant; and
   iii their age would now require them to undertake the specified tests or provide a Chest X-ray Certificate, or they are no longer pregnant.

i Applicants who intend to stay in New Zealand for a total of more than 12 months include those:
   i already in New Zealand for up to 12 months seeking a further visa to be in New Zealand for longer than 12 months; or
   ii applying for visas who indicate their intention is to remain in New Zealand for longer than 12 months; or
   iii applying for student visas and who are defined as domestic students (see U3.35), or who are students holding a New Zealand scholarship administered by the Ministry of Foreign Affairs and Trade (see U11), for a course or courses of study that are longer in total than 12 months.

j Applicants who intend to stay in New Zealand for more than 12 months are also subject to the provisions of A4.25.1(h) and (i).

k Evidence of completion of a Medical Certificate and Chest X-ray Certificate includes:
   i a completed Medical Certificate and Chest X-ray Certificate; or
   ii an eMedical reference code (NZER); or
   iii confirmation in the applicant’s visa application form that a physician is directly submitting the applicant’s Medical Certificate and Chest X-ray Certificate to Immigration New Zealand.
A4.25.1 Requirement to undergo screening for tuberculosis for people with risk factors

a Applicants for temporary entry class visas who intend to be in New Zealand more than six months, and not more than 12 months, and are considered to have risk factors for tuberculosis (TB), must undergo TB screening unless:
   i they are pregnant; or
   ii they are under 11 years of age.

b All Recognised Seasonal Employer limited visa applicants (regardless of the length of time they intend to stay in New Zealand) who are considered to have risk factors for TB must undergo TB screening unless they are pregnant.

c Applicants required to undergo TB screening must provide:
   i a completed Immigration New Zealand Chest X-ray Certificate (INZ 1096); and
   ii any associated radiologist report.

d A Chest X-ray Certificate and the associated report must be less than three months old at the time the application is made unless:
   i the applicant has provided a Chest X-ray Certificate with an earlier visa application; and
   ii they were assessed as having an acceptable standard of health based on that certificate; and
   iii that certificate was issued less than 36 months prior to the current application.

e Applicants who have spent six consecutive months in any one or more countries not listed in A4.25.10, since their previous Chest X-ray Certificate was issued, must provide a Chest X-ray Certificate which is less than three months old with their application, despite (d) above.

Note:
The issue date of a Chest X-ray Certificate is the date of the declaration made by the radiologist, or the date that the Chest X-ray Certificate was submitted to INZ if submitted by the physician electronically.

f Despite (a) and (d) above, an immigration officer may require a Chest X-ray Certificate if they consider this is necessary to establish whether the applicant has an acceptable standard of health.

g Applicants who intend to stay in New Zealand for a total of more than six months include those:
   i already in New Zealand for up to six months seeking a further visa to be in New Zealand for longer than six months; or
   ii applying for visas who indicate their intention is to remain in New Zealand for longer than six months; or
   iii applying for student visas for a course or courses of study that are longer in total than six months.

h Where an applicant in New Zealand has applied for a further temporary entry class visa and is assessed as having TB (excluding latent TB), their application must be declined on the basis that they do not have an acceptable standard of health. A limited visa should be granted for an initial period of one month for the express purpose of undergoing immediate medical treatment to render the disease non-infectious and to travel out of New Zealand. The limited visa should be granted using the
delegated power to grant a visa of a different type from that for which an application is made (see A15.5).

i  Pregnant applicants who intend to be in New Zealand for more than six months, and are considered to have risk factors for TB (see A4.25.5) but otherwise meet immigration instructions for the grant of a temporary entry visa, may only be granted a visa within the limitations of E3.10.1.

**Note:** A limited visa may be granted to a refugee or protection status claimant or a refugee or protected person only if that person is at the time a holder of a current limited visa.

**A4.25.5 Definition of person with risk factors for TB**

a  A person is considered to have risk factors for TB if:

i  they hold a passport issued by a country not listed in A4.25.10; or

ii  in the five years prior to application they have spent a combined total of three or more months in any one or more countries not listed in A4.25.10.

b  Despite (a)(i) above, if an applicant provides evidence that satisfies an immigration officer they have never lived or spent time in the country that issued their passport, and (a)(ii) does not apply, they will not be considered to have risk factors for TB and the requirement to undergo TB screening and provide a Chest X-ray Certificate will not apply.

**A4.25.10 Low TB Incidence Countries, Areas and Territories**

The following countries are deemed for the purpose of immigration instructions to be countries with a low incidence of TB.

<table>
<thead>
<tr>
<th>American Samoa</th>
<th>France</th>
<th>(New Zealand)</th>
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<tbody>
<tr>
<td>Andorra</td>
<td>Germany</td>
<td>Norway</td>
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<tr>
<td>Antigua and Barbuda</td>
<td>Greece</td>
<td>Oman</td>
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<td>Australia</td>
<td>Grenada</td>
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<td>Barbados</td>
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<td>Saint Lucia</td>
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<td>Belgium</td>
<td>Israel (including the Occupied Palestinian Territory, and including East Jerusalem)</td>
<td>San Marino</td>
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<td>Bermuda</td>
<td>Italy</td>
<td>Slovakia</td>
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<tr>
<td>British Virgin Islands</td>
<td>Jamaica</td>
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<td>Canada</td>
<td>Jordan</td>
<td>Sweden</td>
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<td>Cayman Islands</td>
<td>Libya</td>
<td>Switzerland</td>
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<td>Costa Rica</td>
<td>Liechtenstein</td>
<td>Trinidad and Tobago</td>
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<td>Cuba</td>
<td>Luxembourg</td>
<td>Turks and Caicos</td>
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<td>Cyprus</td>
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<td>Chile</td>
<td>Monaco</td>
<td>United States of America</td>
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<td>Czech Republic</td>
<td>Montserrat</td>
<td>United States Virgin Islands</td>
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<td>Denmark</td>
<td>Netherlands Antilles</td>
<td>Vatican City</td>
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<td>Dominica</td>
<td>Netherlands</td>
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<tr>
<td>Finland</td>
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</tbody>
</table>

*Effective 13/05/2019*
A4.30 Completion of medical certificates

See previous instructions:
A4.30 Effective 17/11/2014
A4.30 Effective 25/08/2014
A4.30 Effective 30/07/2012
A4.30 Effective 25/07/2011
A4.30 Effective 29/11/2010

a The Medical Certificate and Chest X-ray Certificate must be completed:
   i by an Immigration New Zealand-appointed panel physician and radiologist if required (see A4.30.5 below); or
   ii a registered medical practitioner and radiologist if there is no New Zealand-appointed panel in that country and in English, if possible.

b If it is not possible to complete the Medical Certificate and Chest X-ray Certificate in English, they must be submitted with a certified translation, as must any accompanying laboratory or specialist reports.

A4.30.1 Cost of undergoing medical and X-ray examinations

The New Zealand Government pays for the medical examinations of some approved refugee and protection applicants and of some applicants for the Christchurch Response (2019) Category visa but is not responsible for meeting the costs of other applicants' medical and X-ray examinations or any associated specialist or laboratory tests or reports.

A4.30.5 Panel physicians and radiologists

a In most countries Immigration New Zealand selects and requires the use of a panel of reputable registered physicians and radiologists.

b All applicants within such countries must have their Medical Certificate and Chest X-ray Certificate completed by a panel physician or radiologist.

c A list of countries for which there are panel physicians and radiologists is contained in Appendix 1. Applicants who are resident in one of these countries should consult the Immigration New Zealand website, or the nearest branch of Immigration New Zealand for details of panel physicians and radiologists in their area.

A4.30.10 Role of Immigration New Zealand medical assessors and Ministry of Education

a Immigration New Zealand medical assessors are appointed to examine medical and chest X-ray certificates that are referred to them by Immigration New Zealand.

b The Immigration New Zealand medical assessor assesses an applicant's health on the basis of their Immigration New Zealand Medical Certificate and Chest X-ray Certificate and associated specialist tests and reports (having regard to Government health requirements and the Immigration New Zealand Guidelines for Medical Assessors), and may refer to any source of relevant guidelines or advice, including the Ministry of Health and Ministry of Education (MoE).

c In addition, Immigration New Zealand medical assessors provide advice concerning any medical factors that may pertain to the grant of a medical waiver.

d The MoE assesses whether an applicant would be eligible for Ongoing Resourcing Scheme (ORS) funding in cases where an immigration officer or Immigration New Zealand medical assessor requests advice on this matter. MoE assesses whether an applicant would be eligible for ORS funding on the basis of the applicant's Immigration New Zealand Medical Certificate and Chest X-ray Certificate and associated reports.

Effective 24/04/2019
**A4.40 Seeking comment concerning health assessments**

<table>
<thead>
<tr>
<th>See previous instructions A4.40 Effective 29/11/2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>a In all cases, an immigration officer must not decline an application on the basis that an applicant does not have an acceptable standard of health, without first seeking comment from the applicant on the report provided by the Immigration New Zealand medical assessor or the Ministry of Education (MoE) advising that the applicant does not meet the requirements of A4.10(b) or A4.15(b).</td>
</tr>
<tr>
<td>b Where a further medical opinion on the medical condition or disability of the applicant, or a further opinion from a suitably qualified professional concerning an applicant’s disability or eligibility for Ongoing Resourcing Scheme (ORS) funding is provided and this disputes the original medical or ORS assessment, officers must refer this to the Immigration New Zealand medical assessor (or MoE as appropriate) before deciding whether or not to decline the application.</td>
</tr>
<tr>
<td>c Having regard to the opinion that disputes the assessment of the Immigration New Zealand medical assessor or the MoE, the Immigration New Zealand medical assessor or MoE assessor may either amend their original assessment or confirm their original assessment.</td>
</tr>
</tbody>
</table>

*Effective 25/07/2011*
A4.45 Second opinion assessments by Immigration New Zealand medical assessors (residence applications)

a) In the case of applications for residence, where the original assessment of an Immigration New Zealand medical assessor is confirmed by that medical assessor and a medical opinion from a medical practitioner or relevant professional which disputes the original assessment has been provided, the Immigration New Zealand medical assessor's original assessment and the further medical or professional opinion will be referred to a different Immigration New Zealand medical assessor for a second opinion. Where this occurs, it is the role of the second medical assessor, acting as a medical referee, to assess whether the applicant is:
   i) unlikely to be a danger to public health; or
   ii) unlikely to impose significant costs or demands on New Zealand's health services or education services; or
   iii) able to undertake the work on the basis of which they are applying for a visa, or which is a requirement for the grant of the visa.

b) The recommendation arising from the second medical assessor's assessment is final.

Effective 29/11/2010
A4.50 Second opinion assessments by Ministry of Education (residence class visa applications)

See previous instructions:
A4.50 Effective 25/07/2011
A4.50 Effective 29/11/2010

a  In the case of applications for residence class visas, where the original assessment of a Ministry of Education (MoE) assessment panel is confirmed by that panel and an opinion from a suitably qualified professional which disputes the original assessment has been provided, the original assessment and the further opinion will be referred to a different MoE panel for a second opinion. Where this occurs, it is the role of the second panel to assess whether there is a relatively high probability that the applicant’s physical, or intellectual condition or their use of language and social communication would entitle them to Ongoing Resourcing Schemes (ORS) funding.

b  The recommendation arising from the second panel’s assessment is final.

Effective 07/11/2011
A4.55 Deferral of decisions on residence applications pending treatment for medical conditions

See previous instructions A4.55 Effective 29/11/2010

a Applications for residence class visas from people who currently have tuberculosis (TB) (pulmonary or non-pulmonary) must be deferred for up to six months from the date anti-TB treatment commenced and can only be approved if:

i they have been adequately treated according to the New Zealand Guidelines for TB Treatment; and

ii the applicant continues to meet all other requirements.

b Applications for residence class visas from people who have a history of, diagnostic findings of, or treatment for Multidrug-Resistant-TB or Extensively Drug-Resistant-TB must be deferred for up to six months from the date anti-TB treatment commenced and can only be approved if:

i they have been cleared by a New Zealand Respiratory or Infectious Diseases specialist upon review of their file or review of the applicant according to the New Zealand Guidelines for TB Treatment; and

ii the applicant continues to meet all other requirements.

c A decision on an application for a residence class visa may also be deferred for a period of up to three months where an Immigration New Zealand medical assessor has advised that:

i the applicant’s medical condition, if not successfully treated, would result in an assessment that they are:

   o likely to be a danger to public health; or
   o likely to impose significant costs or demands on New Zealand’s health or education services; or
   o unable to undertake the work on the basis of which they are applying for a visa, or which is a requirement for the grant of the visa; and

ii the applicant’s medical condition is treatable within that three month period such that at the end of that treatment period they may be considered to have an acceptable standard of health.

d Where (c) above applies, the application may only be approved where:

i a further medical report is provided to the Immigration New Zealand medical assessor; and

ii the Immigration New Zealand medical assessor, having considered that further report, advises an immigration officer that the applicant is unlikely to be a danger to public health, and unlikely to impose significant costs or demands on New Zealand’s health or education services, and able to undertake the work on the basis of which they are applying for a visa, or which is a requirement for the grant of the visa; and

iii the applicant continues to meet all other requirements.

Note: These instructions do not apply to people applying for a further residence class visa under RV2 or RV4.

A4.55.1 Evidence of treatment according to New Zealand Guidelines for TB Treatment

Evidence of treatment according to the New Zealand Guidelines for TB Treatment, is a report from an appropriate treating medical provider stating that treatment for the disease has been completed and laboratory evidence of culture conversion must be included.

Effective 30/07/2012
**A4.60 Medical waivers (applicants for residence class visas)**

See previous instructions:

- A4.60 Effective 15/12/2017
- A4.60 Effective 26/11/2012
- A4.60 Effective 30/07/2012
- A4.60 Effective 21/11/2011
- A4.60 Effective 29/11/2010

a. Applicants for residence class visas in New Zealand who are assessed as not having an acceptable standard of health and whose applications meet all other requirements for approval under the relevant Government residence instructions may be considered for the grant of a medical waiver unless they:

   i. require dialysis treatment, or an Immigration New Zealand medical assessor has indicated that they will require such treatment within a period of five years from the date of the medical assessment; or

   ii. have severe haemophilia; or

   iii. have a physical, intellectual, cognitive and/or sensory incapacity that requires full time care, including care in the community; or

   iv. currently have tuberculosis (TB) (any form including pulmonary and non-pulmonary TB, Multidrug-Resistant (MDR)-TB and Extensively Drug-Resistant (XDR)-TB) and have not completed full treatment for TB as outlined in the New Zealand Guidelines for TB Treatment; or

   v. have had a history, diagnostic findings or treatment for MDR-TB or XDR-TB, unless they have been cleared by a New Zealand Respiratory or Infectious Diseases specialist upon review of their file or review of the applicant as outlined in the New Zealand Guidelines for TB.

b. Medical waivers will also not be granted to people who:

   i. are applying for residence under one of the Family Categories; and

   ii. were eligible to be included in an earlier application for a residence class visa (or a residence visa or residence permit issued or granted under the Immigration Act 1987) as the partner of a principal applicant or the dependent child of a principal applicant or their partner; and

   iii. were not declared in that earlier application; or

   iv. were not included in that earlier application; or

   v. were withdrawn from that earlier application.

c. Applicants (and dependants included in their application) who have been recognised as having refugee or protection status (except those invited to apply under the Community Organisation Refugee Sponsorship category (see S4.25)) will be granted medical waivers, unless (a) above applies.

d. An applicant who is the partner or dependent child of a New Zealand citizen or residence class visa holder, who would otherwise meet the criteria for residence under Partnership (see F2.5(a)) or Dependent Child (see F5.1(a)) instructions, will be granted a medical waiver unless (a) or (b) above apply.

e. Applicants for residence class visas under the Christchurch Response (2019) Category (S4.30) who otherwise meet the criteria for residence under those instructions will be granted a medical waiver unless (a) above applies.

f. Despite A4.60 (a) above, applicants for residence class visas under the Christchurch Response (2019) Category who otherwise meet the criteria for residence will be granted a medical waiver if they have a condition described in A4.60(a) above which was caused by injuries or trauma suffered in the attacks on the Masjid Al Noor or Linwood mosques in Christchurch on 15 March 2019.
Note: These instructions do not apply to people applying for a permanent resident visa who currently hold resident visas.

Effective 24/04/2019
A4.65 Medical waivers (applicants for temporary entry class visas)

See previous instructions:
A4.65 Effective 21/11/2011
A4.65 Effective 29/11/2010

a Applicants for temporary entry class visas will not be considered for the grant of a medical waiver unless they:
   i are applying for work visas as seconded business personnel (see A4.65.1 below); or
   ii have submitted a claim for refugee or protection status in New Zealand; or
   iii have been recognised as having refugee or protection status in New Zealand; or
   iv are the partner or dependent child of a New Zealand citizen or residence class visa holder; and
      o the purpose of their stay in New Zealand is to be with that New Zealand citizen or residence class visa holder; and
      o if they applied for a residence class visa in New Zealand they would meet the criteria for residence under Partnership (see F2.5 (a)) or Dependent Child (see F5.1(a)) instructions.

b Despite A4.65(a)(iv) medical waivers will not be granted to applicants who:
   i are applying for a temporary entry class visa as the partner or dependent child of a New Zealand citizen, or residence class visa holder; and
   ii were eligible for inclusion in their partner or parent’s earlier application for a residence class visa, but were not included; or
   iii were withdrawn from their partner or parent’s earlier application for a residence class visa.

Note: The grant of a medical waiver for the purpose of temporary entry to New Zealand does not confirm that the applicant has an acceptable standard of health for the purposes of residence in New Zealand or that a medical waiver would be granted if a residence class visa application were made. This does not prevent an immigration officer considering whether or not an applicant is likely to be granted a medical waiver for the purpose of residence in New Zealand.

A4.65.1 Seconded business people

a Seconded business people applying for work visas may be granted a medical waiver if an immigration officer is satisfied that:
   i the intended secondment will be of real benefit to New Zealand; and
   ii the applicant is unlikely to be a danger to public health during the period of secondment; and
   iii the employer has guaranteed to pay all medical expenses of the applicant during the secondment, including any significant costs to health services identified by an immigration officer or Immigration New Zealand medical assessor (despite A4.15.1(b)).

b At the time the work visa is granted, the principal applicant must be advised in writing that the visa has been granted even though the applicant does not have an acceptable standard of health.

Note: This instruction (A4.65.1) facilitates New Zealand’s international trade commitments (see E9). Effective 30/07/2012
A4.70 Determination of whether a medical waiver should be granted (residence and temporary entry)

See previous instructions:
A4.70 Effective 30/07/2012
A4.70 Effective 21/11/2011
A4.70 Effective 29/11/2010

a  Any decision to grant a medical waiver must be made by an immigration officer with Schedule 1-3 delegations (see A15.5).

b  When determining whether a medical waiver should be granted, an immigration officer must consider the circumstances of the applicant to decide whether they are compelling enough to justify allowing entry to, and/or a stay in New Zealand.

c  Factors that officers may take into account in making their decision include, but are not limited to, the following:

i  the objectives of Health instructions (see A4.1) and the objectives of the category or instructions under which the application has been made;

ii  the degree to which the applicant would impose significant costs and/or demands on New Zealand’s health or education services;

iii  whether the applicant has immediate family lawfully and permanently resident in New Zealand and the circumstances and duration of that residence;

iv  whether the applicant’s potential contribution to New Zealand will be significant;

v  the length of intended stay (including whether a person proposes to enter New Zealand permanently or temporarily).

d  An applicant who is the partner or dependent child of a New Zealand citizen or residence class visa holder, who would otherwise meet the criteria for residence under Partnership (see F2.5(a)) or Dependent Child (see F5.1(a)) instructions, will be granted a medical waiver unless the limitations on the grant of medical waivers to such persons set out at A4.60(a) and A4.60(b) apply.

e  An applicant who has been recognised as having refugee or protection status (except those invited to apply under the Community Organisation Refugee Sponsorship category) will be granted a medical waiver, unless the limitation on the grant of medical waivers to such persons set out at A4.60(a) applies.

f  An immigration officer should consider any advice provided by an Immigration New Zealand medical assessor on medical matters pertaining to the grant of a waiver, such as the prognosis of the applicant.

g  An immigration officer must record decisions to approve or decline a medical waiver, and the full reasons for such a decision.

Effective 15/12/2017
A4.74 Health requirements for mandated refugees and Refugee Quota Family Reunification Category applicants

See previous instructions:
A4.74 Effective 30/03/2015
A4.74 Effective 17/11/2014
A4.74 Effective 01/07/2013

Mandated refugees who have been put forward for consideration to be resettled in New Zealand under the Refugee Quota Programme (S3.5(a)(i)), and applicants for residence under the Refugee Quota Family Reunification (RQFR) Category (S4.20), can be considered for a residence class visa unless they:

a. require dialysis treatment, or have an Immigration New Zealand medical assessor indicate that they will require such treatment within a period of five years from the date of the medical assessment; or

b. have severe haemophilia; or

c. have a physical, intellectual, cognitive and/or sensory incapacity that requires full time care, including care in the community; or

d. currently have tuberculosis (TB) (any form including pulmonary and non-pulmonary TB, Multidrug-Resistant (MDR)-TB and Extensively Drug-Resistant (XDR)-TB) and have not completed full treatment for TB as outlined in the New Zealand Guidelines for TB Treatment; or

e. have had a history, diagnostic findings or treatment for MDR-TB or XDR-TB, unless they have been cleared by a New Zealand Respiratory or Infectious Diseases specialist upon review of their file or review of the applicant as outlined in the New Zealand Guidelines for TB.

A4.74.1 Medical and Chest X-ray Certificates for mandated refugees, Refugee Quota Family Reunification category and Community Organisation Refugee Sponsorship category applicants

a. The following medical certificates must be provided by mandated refugees (S3.5(a)(i)), and Refugee Quota Family Reunification (RQFR) Category applicants (S4.20):
   i. Limited Medical Certificate (INZ 1201); and

b. Separate medical certificates must be provided for each person.

c. A Chest X-ray Certificate (INZ 1096) may not be required until such time as one is requested by Immigration New Zealand.

d. All applicants included in a Community Organisation Refugee Sponsorship (CORS) category (see S4.25) must provide a General Medical Certificate (INZ 1007) and Chest X-ray Certificate (INZ 1096).

Notes:
- Pregnant women and children under 11 years of age are not required to have an X-ray examination.
- The issue date of a Medical Certificate is the date of the declaration by the examining physician concerning the overall findings of the medical examination, or the date that the Medical Certificate was submitted to INZ if submitted by the physician electronically.
- The issue date of a Chest X-ray Certificate is the date of the declaration by the radiologist, or the date that the Chest X-ray Certificate was submitted to INZ if submitted by the physician electronically.

e. An immigration officer may request a further medical certificate and chest X-ray certificate, or other medical information, if they consider this is necessary to establish whether a mandated refugee, RQFR or CORS category applicant has a condition that means they are ineligible for the grant of residence under A4.74.

Effective 15/12/2017
A4.75 Exception to health requirements instructions for people entering New Zealand for medical treatment

Temporary entry instructions allow for some visitors to enter New Zealand for medical treatment or medical consultation (see V3.40 for specific criteria). Such applicants are exempted from the requirement to be of an acceptable standard of health for the purpose of the visa applied for under V3.40.

Effective 29/11/2010
A5 Character requirements
IN THIS SECTION

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A5.1 Requirement of good character

Applicants for all visas must:

a  be of good character; and

b  not pose a potential security risk.

If any person included in the application fails to meet the necessary character requirements and the character requirements are not waived, the application may be declined.

Effective 29/11/2010
A5.5 Character checks

See previous instructions:
A5.5 Effective 08/05/2016
A5.5 Effective 11/04/2016
A5.5 Effective 24/03/2014
A5.5 Effective 02/12/2013
A5.5 Effective 12/08/2012
A5.5 Effective 30/07/2012
A5.5 Effective 29/11/2010

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 Regs 5(2)(d)(iii), 6(2)(d)(iv), 10(2)(e)(iii)*

a  Character checks must be carried out for the following categories of applicant:
   i  those aged 17 and over applying for residence class visas; and
   ii those aged 17 and over applying for temporary entry class visas who intend to stay in New Zealand for 24 months or longer; and
   iii other applicants for temporary entry class visas who warrant a character check if the immigration officer decides it is necessary.

*Note:* the 24-month period in A5.5(a)(ii) above includes time already spent in New Zealand prior to the application being made.

b  It is a mandatory requirement (see R2.40) for first time applicants for a residence class visa aged 17 and over to obtain a police or similar certificate from:
   i  the applicant's country of citizenship; and
   ii each country in which the applicant has lived for 12 months or more (whether on one visit or intermittently) in the last 10 years (but see A5.10.1).

Applicants for a further residence class visa under RV2 or RV4 will not usually need to submit a police or similar certificate, unless specifically asked to by an immigration officer. Applicants for a further residence class visa applying under any other category are required to submit a police or similar certificate as if they were applying for residence for the first time.

*Note:* the requirement in A5.5(b) above does not apply to Australian citizens, holders of a current Australian permanent residence visa and holders of a current Australian resident return visa, applying for a resident visa at an immigration control area.

c  If required, applicants aged 17 and over applying for a temporary entry class visa must obtain a police or similar certificate from:
   i  their country of citizenship; and
   ii from any country in which they have lived for five or more years (whether on one visit or intermittently) since attaining the age of 17 years.

d  Despite (c) above, student visa applicants do not have to provide a police or similar certificate until they are aged 20 or over if they:
   i  held a student visa when they turned 17; and
   ii have held consecutive student visas (or interim visas with study conditions) since the date they turned 17; and
   iii are applying for a further student visa.

e  Despite (d) above, a police or similar certificate is required if an immigration officer decides it is necessary.
A5.5.1 Impact of the Criminal Records (Clean Slate) Act 2004

a When assessing whether a person meets an applicable character requirement, an immigration officer must be aware that New Zealand convictions may be covered by the Criminal Records (Clean Slate) Act 2004 (Clean Slate Scheme) and that if so, an eligible individual is not required to declare New Zealand convictions.

b If Immigration New Zealand (INZ) holds any information that a person has these New Zealand convictions, and that person is an eligible individual under the Clean Slate Scheme, this information cannot be used when assessing whether the person meets the applicable character requirements.

c The information referred to in (b), above, includes any prior police certificates, any information INZ holds in its records (including its Application Management System), and any other information which may have been gathered from a public source.

d If a person is an eligible individual under the Clean Slate Scheme, immigration officers cannot, under any circumstances, request or require that an individual disregard the effect of the Clean Slate Scheme when answering questions about his or her New Zealand criminal record, or disregard the effect of the Clean Slate Scheme and disclose, or give consent to the disclosure of, his or her criminal record. Doing so is an offence under the Criminal Records (Clean Slate) Act 2004. However, if the persons voluntarily declares criminal convictions that are subject to the Clean Slate Scheme, this information can be used to assess whether the person meets the applicable character requirements.

Effective 28/08/2017
### A5.10 Police certificates

See previous instructions:
A5.10 Effective 25/07/2011
A5.10 Effective 04/04/2011
A5.10 Effective 07/02/2011
A5.10 Effective 29/11/2010

a All police certificates must be less than six months old at the time an application is lodged, unless A5.10(d) applies or an appropriately delegated immigration officer, having regard to any instructions on the matter, has waived that requirement, in which case police certificates more than six months old may be accepted and used for determination purposes.

b If police certificates become a year old from date of issue before a decision on an application is made (see R2.25), immigration officers may request further police certificates as a basis for determining an application.

c An immigration officer may also request further police certificates within the 12-month period if there is good reason to do so.

d If police certificates were submitted with a previous application:
   i they can be accepted for any further application for a temporary entry class visa (other than a student visa under U4.10) made within 24 months of the date of issue of the police certificates; or
   ii they can be accepted for further student visa applications as either:
      o a fee-paying foreign student (U4.10); or
      o a student enrolled in any Doctor of Philosophy (PhD) programme in any New Zealand university (see U3.35.20) made within 36 months of the date of issue of the police certificates; or
   iii they can be accepted for any further temporary entry class visa application as a partner or dependant of a student enrolled any Doctor of Philosophy (PhD) programme in any New Zealand university made within 36 months of the date of issue of the police certificates; or
   iv they can be accepted for a residence class visa application under the Partnership Category (F2) or the Dependent Child Category (F5) made within 24 months of the date of issue of the police certificates.

e The applicant is responsible for meeting all the costs of obtaining a police certificate.

f Instructions on how to obtain police certificates from specific countries can be obtained from the INZ website at www.immigration.govt.nz/policecertificate (http://www.immigration.govt.nz/policecertificate).

g If an applicant requires a police certificate from a country that:
   i does not issue police certificates to individuals; and
   ii for which no instructions in respect of how to obtain a police certificate are available;
   iii an immigration officer may proceed to assess the application without a police certificate and obtain any necessary clearances before a decision is made.

h If a police certificate is not written in English, it must be accompanied by a translation (see A13.5).

### A5.10.1 If police certificates are unavailable

a Provision of police or similar certificates is a mandatory requirement for the grant of residence class visas in most cases (except for applicants under 17 or who are applying for a further residence class visa under RV2 or RV4). They are also required for some temporary entry class visa applications, as set out at A5.5a. The only exception is where an immigration officer who holds the position of immigration manager or has Schedule 3 delegations or above is satisfied that such certificates are not
available or would be unduly difficult to obtain (for example where the authorities of any such country will not generally provide such certificates).

b  Evidence of undue difficulty in obtaining police or similar certificates may include, but is not limited, to:
   i  information indicating conditions in the relevant country are such that the country’s governmental infrastructure is no longer functioning; or
   ii  confirmation that there are circumstances beyond the control of the applicants which prevent them obtaining the required certificates.

   Note: Such circumstances do not include difficulty in paying for the certificates or delays in obtaining them.

c  If an immigration officer who holds the position of immigration manager or has Schedule 3 delegations or above is satisfied that a police certificate is not available or unduly difficult to obtain from a particular country, then that immigration officer may require the applicant to make and provide a separate statutory declaration in both English and the applicant's own language.

d  The statutory declaration must:
   i  detail the applicant’s attempts to obtain a police certificate; and
   ii  state whether the applicant and any accompanying family members have been convicted, or found guilty of, or charged with offences against the law of that country, or have not been charged with any offences against the law of that country; and
   iii  be corroborated by other information confirming the applicant's character.

e  Any decision to waive the production of:
   i  a police or similar certificate; and/or
   ii  a statutory declaration instead of a police or similar certificate;
   must be made by an officer with Schedule 3 delegations or above.

Effective 06/07/2015
A5.15 Applicants not considered to be of good character for a residence class visa

Applicants not considered to be of good character for a residence class visa are classified as follows:

a. applicants who will not be granted a residence class visa (see A5.20); or

b. applicants who will not normally be granted a residence class visa (see A5.25) unless a character waiver is granted; or

c. applicants whose applications for a residence class visa will usually be deferred (see A5.35).

Effective 29/11/2010
A5.20 Applicants ineligible for a residence class visa or entry permission

See previous instructions:
A5.20 Effective 29/11/2010

See also Immigration Act 2009 ss 15, 16, 73, 74

a Any person described in section 15 or 16 of the Immigration Act 2009 must not be granted a residence class visa or entry permission, and their application will be declined. The only exceptions are where:

i the person is otherwise eligible for the grant of a visa and entry permission under immigration instructions (see S2), and

ii a special direction under section 17 of the Immigration Act 2009 has been given to that person, authorising the grant of a visa and entry permission.

Note: Persons described in section 15 or 16 must not be issued with a temporary entry class visa either (see A5.40).

b Under section 15, the following people are not eligible for a visa or entry permission to enter or be in New Zealand:

Any person who -

i at any time (whether before or after the commencement of the Immigration Act 2009), has been convicted of any offence for which that person has been sentenced to imprisonment for a term of five years or more, or for an indeterminate period capable of running for five years or more; or

ii at any time within the preceding 10 years (whether before or after the commencement of the Immigration Act 2009), has been convicted of any offence for which that person has been sentenced to imprisonment for a term of 12 months or more, or for an indeterminate period capable of running for 12 months or more; or

iii is subject to a period of prohibition on entry to New Zealand under section 179 or 180 of the Immigration Act 2009; or

iv at any time (whether before or after the commencement of the Immigration Act 2009) has been removed or deported from New Zealand under any enactment; or

v is excluded from New Zealand under any enactment; or

vi has, at any time, been removed, excluded, or deported from another country.

Paragraphs (b)(i) and (ii) above apply:

• Whether the sentence is of immediate effect or is deferred or is suspended in whole or in part

• Where a person has been convicted of two or more offences on the same occasion or in the same proceedings, and any sentences of imprisonment imposed in respect of those offences are cumulative, as if the offender had been convicted of a single offence and sentenced for that offence to the total of the cumulative sentences

• Where a person has been convicted of two or more offences, and a single sentence has been imposed in respect of those offences, as if that sentence had been imposed in respect of a conviction for a single offence.

c Under section 16 of the Immigration Act 2009, the following people are not eligible for a visa or entry permission to enter or be in New Zealand:
Any person who the Minister has reason to believe:
- is likely to commit an offence in New Zealand that is punishable by imprisonment; or
- is, or is likely to be, a threat or risk to security; or
- is, or is likely to be, a threat or risk to public order; or
- is, or is likely to be, a threat or risk to the public interest; or
- is a member of a terrorist entity designated under the Terrorism Suppression Act 2002.

d Despite sections 15 and 16 of the Immigration Act 2009, entry permission must be granted to the holder of a:
- permanent resident visa; or
- resident visa granted in New Zealand; or
- the holder of a resident visa arriving in New Zealand for a second or subsequent time as the holder of the visa.

*Effective 28/08/2017*
**A5.25 Applicants normally ineligible for a residence class visa unless granted a character waiver**

See previous instructions:
A5.25 Effective 29/11/2010

Applicants who will not normally be granted a residence class visa, unless granted a character waiver (see A5.25.1(b) below), include any person who has been:

a convicted at any time of any offence against the immigration, citizenship or passport laws of any country; or

b convicted at any time of any offence involving prohibited drugs; or

c convicted at any time of any offence involving dishonesty; or

d convicted at any time of any offence of a sexual nature; or

e convicted at any time of any offence for which they were sentenced to a term of imprisonment (whether the sentence was of immediate effect or was deferred or was suspended in whole or in part); or

f convicted (whether in New Zealand or not) of an offence committed at any time when the applicant was in New Zealand unlawfully or was the holder of a temporary entry class visa or held a temporary permit under the Immigration Act 1987 or was exempt under that Act from the requirement to hold a permit, being an offence for which the court has power to impose imprisonment for a term of three months or more; or

g convicted at any time of any offence involving violence; or

h convicted at any time during the last five years, of an offence (including a traffic offence), involving dangerous driving, driving having consumed excessive alcohol (including drunk driving and driving with a blood or breath alcohol content in excess of a specified limit) or driving having consumed drugs; or

i in the course of applying for a New Zealand visa (or a permit under the Immigration Act 1987), has made any statement or provided any information, evidence or submission that was false, misleading or forged, or withheld material information; or

j at any time in a public speech or public comments, or public broadcast, or in publicly distributing or publishing a document;

  i argues that one race or colour is inherently inferior or superior to another race or colour; or

  ii used language intended to encourage hostility or ill will against any person or group of persons on the basis of colour, race or ethnic or national origins of that person or group; or

k has been, or is, a member of (or adheres or has adhered to) any organisation or group of people which (at the time of the person's membership or adherence) had objectives or principles based on:

  i hostility against people or groups of people on the basis of colour, race, or ethnic or national origins; or

  ii an assumption that persons of a particular race or colour are inherently inferior or superior to other races or colours; or

l in support of any application by another person for a New Zealand visa (or a permit under the Immigration Act 1987), has made any statement or provided any information, evidence or submission that was false, misleading or forged.

**Note:**
- When considering whether or not an applicant has committed an act that comes under A5.25 (i), (j) or (k) or (l) above, an immigration officer should establish whether, on the balance of probabilities, it is more
likely than not that the applicant committed such an act.
- For the avoidance of doubt, any offence that has the potential to result in a term of imprisonment of three months falls within the scope of A5.25(f). This includes, but is not limited to, potential sentences "not exceeding three months" or "up to and including three months".

A5.25.1 Action

a. An immigration officer must not automatically decline residence class visa applications on character grounds.

b. An immigration officer must consider the surrounding circumstances of the application to decide whether or not they are compelling enough to justify waiving the good character requirement. The circumstances include but are not limited to the following factors as appropriate:
   i. if applicable, the seriousness of the offence (generally indicated by the term of imprisonment or size of the fine);
   ii. whether there is more than one offence;
   iii. if applicable, the significance of the false, misleading or forged information provided, or information withheld, and whether the applicant is able to supply a reasonable and credible explanation or other evidence indicating that in supplying or withholding such information they did not intend to deceive INZ;
   iv. how long ago the relevant event occurred;
   v. whether the applicant has any immediate family lawfully and permanently in New Zealand;
   vi. whether the applicant has some strong emotional or physical tie to New Zealand;
   vii. whether the applicant's potential contribution to New Zealand will be significant.

c. In the case of a person covered by A5.25(j) and (k) above, officers must consider, in addition to any relevant matters listed in A5.25.1(b) above, the following:
   i. the length of time since the applicant publicly expressed the views, or was a member or adherent of the group or organisation; and
   ii. whether the applicant still holds the views or still belongs or adheres to the group or organisation, and any evidence of a change in views; and
   iii. the extent to which the applicant was involved in publishing or distributing the views, or the extent of involvement in the group or organisation; and
   iv. the nature of the views, or the nature of the group or organisation.

d. Officers must make a decision only after they have considered all relevant factors, including (if applicable):
   i. any advice from the National Office of INZ; and
   ii. compliance with fairness and natural justice requirements (see A1).

e. Officers must record:
   i. their consideration of the surrounding circumstances, (see paragraph (b) above), noting all factors taken into account; and
   ii. the reasons for their decision to waive or decline to waive the good character requirements.

Any decision to waive the good character requirements must be made by an immigration officer with Schedule 1-3 delegations.

Effective 30/03/2015
A5.30 Applicants normally ineligible for a residence class visa

a Applicants will not normally be granted a residence class visa, unless in accordance with A5.30.1 below, where an applicant would pose a risk to New Zealand’s international reputation.

b In particular (but not exclusively), applicants are considered to pose a risk to New Zealand’s international reputation if they have or have had an association with, membership of, or involvement with, any government, regime, group or agency that has advocated or committed war crimes, crimes against humanity and/or other gross human rights abuses.

c A5.30(b) does not mean that an applicant cannot be considered to pose a risk to New Zealand’s international reputation for any other reason.

d Applications to which this provision applies must be determined in accordance with A5.30.1 below.

A5.30.1 Action

a An immigration officer may decline residence class visa applications under A5.30 on character grounds. In determining whether to decline an application under A5.30 the surrounding circumstances of the application, including any family connections the applicant might have to New Zealand, are to be disregarded for the purposes of the decision.

b Where A5.30(b) applies, an immigration officer may consider the nature and extent of the applicant’s association with, membership of, or involvement with, the government, regime, group or agency. If the immigration officer is satisfied beyond doubt that the nature and extent of the association, membership or involvement was minimal or remote then the officer may grant a residence class visa to the applicant provided all other Instructions requirements are met.

c An immigration officer must make a decision in compliance with fairness and natural justice requirements (see A1).

d An immigration officer must record the reasons for their decision on this aspect of the character requirements.

e Any decision to determine the application in accordance with A5.30 must be made by an immigration officer with Schedule 1-3 delegations.

Effective 29/11/2010
A5.35 Applications usually deferred

Applications for a residence class visa will usually be deferred for up to six months if, at the time the application is assessed:

a the applicant (see R2.1.5) has an arrest warrant (or the equivalent) outstanding in any country; or

b the applicant:
   i has been charged with any offence which, on conviction, would make either A5.20 or A5.25(a) to (f) apply to that applicant; or
   ii is under investigation for such an offence; or
   iii is wanted for questioning about such an offence; or

c the applicant is applying for residence under the Family or Special Categories on the basis of their relationship to a person whose residence status is under investigation at the time of assessment of the Family or Special Category application. In such cases, if the investigation cannot be finalised within the initial six month deferral period the application may continue to be deferred until it is.

Note: if a resident visa holder is applying for a permanent resident visa, and the travel conditions on the resident visa are about to expire, further travel conditions can be granted for the same duration as the deferral period.

A5.35.1 Action

The immigration officer must:

a defer the decision on the application for up to six months; and

b inform the applicant of the decision to grant a deferral and the period of the deferral, in writing; and

c await the outcome of the charge, investigation or questioning, or await cancellation or execution of the arrest warrant; and

d if removal of the character impediment is confirmed, continue processing the application normally; and

e if the character impediment is not removed, refer to the Head of Operations or Visa Operations Manager for their decision on whether to grant a second or subsequent deferral under the provisions at A5.35.5.

A5.35.5 Second and subsequent deferral periods

a In cases where the deferral period is coming to an end and the applicant is still awaiting the outcome of the charge, investigation or questioning, or awaiting cancellation or execution of the arrest warrant, a second or subsequent deferral period may be imposed.

b A decision on a second or subsequent deferral will only be made after appropriate consultation with National Office and the Legal Services of the Ministry of Business, Innovation and Employment about:
   i whether a second or subsequent deferral is justified in the circumstances; and
   ii whether the deferral period is reasonable, given the likely timeframe of any outcome being reached and the efforts the applicant is making to reach an outcome.

c A decision to grant a second deferral must be made by an Head of Operations or Visa Operations Manager or above.
d. If the character impediment is not removed by the end of the second deferral period, the Head of Operations or Visa Operations Manager may impose a subsequent deferral under the provisions at A5.35.5.

e. The length of the subsequent deferral period will be decided according to the length of time it is expected for a decision on the charge, investigation or questioning, cancellation or execution of the arrest warrant to be made.

f. The applicant must be informed of any decision to impose a second or subsequent deferral and the period of the deferral, in writing.

g. If the subsequent deferral period comes to an end without the character impediment being removed or an outcome to the case, officers must assess the application as in A5.25.1.

Note: A deferral does not require granting the applicant a temporary entry class visa.

Effective 13/05/2019
A5.40 Applicants ineligible for a temporary entry class visa or entry permission

See previous instructions A5.40 Effective 29/11/2010

Any person described in section 15 or 16 of the Immigration Act 2009 (see A5.20(b) and A5.20(c)) must not be granted a temporary entry class visa or entry permission, and their application will be declined. The only exceptions are where:

a. the person is otherwise eligible for the grant of a visa and entry permission under temporary entry immigration instructions, and

b. a special direction under section 17 of the Immigration Act 2009 has been given to that person, authorising the grant of a visa and entry permission.

Effective 01/07/2013
A5.45 Applicants normally ineligible for a temporary entry class visa unless granted a character waiver

Applicants who will not normally be granted a temporary entry class visa, unless granted a character waiver include any person who:

a  has been convicted at any time of an offence against the immigration, citizenship or passport laws of any country; or

b  in the course of applying for a New Zealand visa, has made any statement or provided any information, evidence or submission that was false, misleading or forged, or withheld material information; or

c  at the time of application:
   i  has been charged with an offence, which on conviction, would make section 15 of the Immigration Act 2009 apply to that applicant; or
   ii  is under investigation for such an offence; or
   iii  is wanted for questioning about such an offence; or

d  has been convicted at any time of:
   i  any offence for which they have been imprisoned; or
   ii  an offence in New Zealand for which the court has the power to impose imprisonment for a term of three months or more; or

e  in support of any application by another person for a New Zealand visa (or a permit under the Immigration Act 1987), has made any statement or provided any information, evidence or submission that was false, misleading or forged.

Note:
- When considering whether or not an applicant has committed an act that comes under A5.45 (b) or (e) above, immigration officers should establish whether, on the balance of probabilities, it is more likely than not that the applicant committed such an act.
- A5.45 (d) does not apply to individuals undergoing an appeal process against their liability for deportation who have applied for a temporary entry class visa of the same class and type they currently hold.
- For the avoidance of doubt, any offence in New Zealand that has the potential to result in a term of imprisonment of three months falls within the scope of A5.45(d)(ii). This includes, but is not limited to, potential sentences "not exceeding three months" or "up to and including three months".

A5.45.1 Action

a  An immigration officer must:
   i  not automatically decline the application; and
   ii  if applicable consider, the significance of the false, misleading or forged information provided, or information withheld, and whether the applicant is able to supply a reasonable and credible explanation or other evidence indicating that in supplying or withholding such information they did not intend to deceive INZ;
   iii  consider whether the applicant’s reason for travel to New Zealand, and any surrounding circumstances, are compelling enough to justify making an exception to the character requirement, taking into account the public interest; and
   iv  record reasons for deciding whether to waive or decline to waive the good character
requirements; and
v if they decide to decline the application, raise an 'Alert' against the applicant.

b Any decision to determine the application in accordance with A5.45 must be made by an immigration officer with Schedule 1 - 3 delegations.

Effective 30/03/2015
A5.50 Applicants normally ineligible for a temporary entry class visa

a. Applicants will not normally be granted a temporary entry class visa, unless in accordance with A5.50.1 below, where an applicant would pose a risk to New Zealand’s international reputation.

b. In particular (but not exclusively), applicants are considered to pose a risk to New Zealand’s international reputation if they have or have had an association with, membership of, or involvement with, any government, regime, group or agency that has advocated or committed war crimes, crimes against humanity and/or other gross human rights abuses.

c. A5.50(b) does not mean that an applicant cannot be considered to pose a risk to New Zealand’s international reputation for any other reason.

d. Applications to which this provision applies must be determined in accordance with A5.50.1 below.

A5.50.1 Action

a. An immigration officer may decline temporary entry class visa applications under A5.50 on character grounds. In determining whether to decline an application under A5.50 the surrounding circumstances of the application, including any family connections the applicant might have to New Zealand, are to be disregarded for the purposes of the decision.

b. Where A5.50 applies, an immigration officer may grant a temporary entry class visa to the applicant, provided all other instructions requirements are met, if the applicant’s entry or stay in New Zealand is considered to be in the national interest.

c. Where A5.50(b) applies, an immigration officer may consider the nature and extent of the applicant’s association with, membership of, or involvement with, the government, regime, group or agency. If the immigration officer is satisfied beyond doubt that the nature and extent of the association, membership or involvement was minimal or remote then the officer may grant a temporary entry class visa to the applicant provided all other instructions requirements are met.

d. An immigration officer must make a decision in compliance with fairness and natural justice requirements (see A1).

e. An immigration officer must record the reasons for their decision on this aspect of the character requirements.

Any decision to determine the application in accordance with A5.50 must be made by an immigration officer with Schedule 1-3 delegations.

Effective 29/11/2010
A6 Fees and Immigration levy
IN THIS SECTION

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A6.1 Application fees and immigration levy for holders of diplomatic and official passports

See previous instructions:
A6.1 Effective 29/11/2010

Holders of diplomatic or official passports who are listed below are exempt from the requirement to pay a visa fee and immigration levy.

A6.1.1 Fee and immigration levy exempt

Applicants listed below are exempt from the requirement to pay a visa fee and immigration levy, holders of diplomatic or official passports who are:

a Diplomatic consular and official staff and accompanying dependants immune from jurisdiction under the Diplomatic Privileges and Immunity Act 1968 and the Consular Privileges and Immunity Act 1971, as confirmed by the Protocol Division of the Ministry of Foreign Affairs and Trade (see H: Special Temporary Visas).

b Officials of government entities travelling to New Zealand to conduct business with New Zealand Ministers of the Crown or New Zealand central Government Ministries or Departments. Applicants will be required to provide evidence of the purpose of their visit.

c Entering or transiting New Zealand en route to or returning from, a Diplomatic posting in a country other than New Zealand. Applicants will be required to provide evidence of the purpose of their visit.

d Officials of government entities entering or transiting New Zealand en route to or returning from a third country where the purpose of the visit to that country is to conduct official government to government business. Applicants will be required to provide evidence of the purpose of their visit.

e Individuals entering or transiting New Zealand in order to assist the operations of their Embassy or Consulate in New Zealand or elsewhere. Applicants will be required to provide evidence of the purpose of their visit.

A6.1.5 Fee and immigration levy payable

Applicants listed below are required to pay the appropriate visa fee and immigration levy:

a Holders of diplomatic and official passports who are visiting or transiting New Zealand for the purposes of tourism or private business.

b Holders of diplomatic and official passports who are visiting New Zealand for the purposes of official business, but who are not conducting business with New Zealand Ministers of the Crown or New Zealand central Government Ministries/Departments.

Note: Diplomats and officials from countries with which New Zealand has a visa waiver agreement (see E2.1), do not need to apply for a visa to travel for the purposes outlined in this section.

Effective 07/12/2015
A6.5 Bilateral fee waivers

See previous instructions:
A6.5 Effective 07/12/2015
A6.5 Effective 07/02/2011
A6.5 Effective 29/11/2010

New Zealand has bilateral fee waiver agreements with several countries. These agreements were set up to facilitate and recognise New Zealand’s international relationships and obligations. The fee waivers do not apply to the English language fee or transfer fee (where a visa stamp or label is transferred from one passport or certificate of identity to another). Until further notice, visa fees for citizens of the following countries should be waived as specified below.

The principal applicant for a visa specified below is exempt from paying the immigration levy (see A6.11.20).

<table>
<thead>
<tr>
<th>Country</th>
<th>Type of Visa/Endorsement/Condition</th>
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<tbody>
<tr>
<td>AUSTRIA</td>
<td>Offshore applications for a:</td>
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<tr>
<td></td>
<td>• residence class visa</td>
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<td>• visitor visa.</td>
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<td></td>
<td>Onshore and offshore applications for a:</td>
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<td></td>
<td>• variation of travel conditions on a resident visa</td>
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<td>• permanent resident visa</td>
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<td></td>
<td>• second or subsequent resident visa</td>
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<td></td>
<td>• endorsement indicating New Zealand citizenship</td>
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<td>• variation of travel conditions on a visitor visa</td>
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<tr>
<td>FINLAND</td>
<td>Onshore and offshore applications for any type of visa, endorsement or variation of travel conditions (except transfers).</td>
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<tr>
<td>GREECE</td>
<td>Offshore applications for a visitor visa.</td>
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<td>Onshore and offshore applications for a:</td>
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<td>• variation of travel conditions on a resident visa</td>
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<td>• endorsement indicating New Zealand citizenship</td>
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<td>• variation of travel conditions on a visitor visa</td>
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<td>ICELAND</td>
<td>Onshore and offshore applications for any type of visa, endorsement or variation of travel conditions (except transfers).</td>
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<td>ISRAEL</td>
<td>Offshore applications for a visitor visa.</td>
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<td>Onshore and offshore applications for a:</td>
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<td>• variation of travel conditions on a resident visa</td>
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<td>• endorsement indicating New Zealand citizenship</td>
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<td>Country</td>
<td>Offshore Applications</td>
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<td>ITALY</td>
<td>Offshore applications for a visitor visa.</td>
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<td>Onshore and offshore applications for a:</td>
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<td>• variation of travel conditions on a resident visa</td>
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<td>• permanent resident visa</td>
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<td>• second or subsequent resident visa</td>
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<td>JAPAN</td>
<td>Offshore applications for any type of visa, endorsement or travel condition (except transfers).</td>
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<td>Onshore and offshore applications for a:</td>
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<td>• variation of travel conditions on a resident visa</td>
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<td>• permanent resident visa</td>
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<td>• second or subsequent resident visa</td>
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<td>MEXICO</td>
<td>Offshore applications for a:</td>
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<td>• visitor visa</td>
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<td>• work visa</td>
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<tr>
<td>PHILIPPINES</td>
<td>Offshore applications for a:</td>
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<td>• visitor visa (for visits not exceeding 59 days)</td>
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<td>Onshore applications for a:</td>
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<td>• variation of travel conditions on a visitor visa (where the visitor visa does not exceed 59 days)</td>
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<tr>
<td>RUSSIA</td>
<td>Offshore applications for a:</td>
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<td>• visitor visa</td>
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<tr>
<td>TURKEY</td>
<td>Offshore applications for a visitor visa.</td>
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<td>Onshore and offshore applications for a:</td>
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<td>• variation of travel conditions on a resident visa</td>
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<td>USA</td>
<td>Offshore applications for a:</td>
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<td>• visitor visa</td>
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<td>• work visa</td>
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<td>• student visa.</td>
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Onshore applications for a:

• variation of travel conditions on a visitor visa
• variation of travel conditions on a work visa
• variation of travel conditions on a student visa.

**Effective 21/11/2016**
A6.10 Fees payable to INZ when making applications and requests

See previous instructions
A6.10 Effective 07/12/2015
A6.10 Effective 25/07/2011
A6.10 Effective 29/11/2010

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010

a The Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 prescribe when fees may be payable to INZ or its agents and the amounts payable. For details of fees payable see www.immigration.govt.nz/fees.

b Fees may be payable to INZ regardless of whether the action requested of INZ requires completion of a prescribed application form or not. All fees are payable at the time an application or request is made to INZ or its agents.

c Different fees are payable for applications and requests based on the citizenship of the principal applicant. The respective fees apply regardless of the office at which the application is actually lodged.

Example: An Indian citizen resident in Bahrain who lodges a residence application with London office will be required to pay the fee payable by citizens of India.

d The only exception to this rule is that if a principal applicant is in New Zealand, the fee payable for the application or request is the fee payable for applications lodged in New Zealand, regardless of the principal applicant's citizenship.

e In the case of requests for approval in principle to employ foreign workers (see WK3.1.5 and WJ3), as long as the positions offered are with the same employer then only one fee is payable regardless of the number of foreign workers for whom approval is being sought.

Effective 28/08/2017
A6.11 Immigration levy

A6.11.1 Objective
See also Immigration Act s 399

a The objective of the immigration levy is to fund:
   i the provision of programmes intended to assist the successful settlement of migrants or categories of migrants
   ii the carrying out of research into settlement issues and the impacts of immigration
   iii the infrastructure required for, and the operation of, the immigration system, including (without limitation) for the following purposes:
      o establishing and verifying the identity of persons:
      o managing risk to the integrity of the immigration system:
      o managing immigration risk to the safety and security of New Zealand:
      o managing compliance with the immigration system;
   iv activities aimed at attracting migrants to New Zealand; and
   v the Immigration Advisers Authority, to the extent that it is not otherwise funded.

A6.11.5 Who must pay the immigration levy
See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, Reg 4B

a Principal applicants applying for a visa outside of an immigration control area, for one of the following categories must pay an immigration levy, unless exempt:
   i temporary visas
      o work visas; or
      o student visas; or
      o visitor visas, except group visitor visas; or
   ii limited visas; or
   iii resident visas, except second and subsequent resident visas under RV4.

b All applicants applying for a group visitor visa must pay the immigration levy, unless exempt.

Note: Applicants who made an application under the residence instructions made prior to 7 December 2015 must pay the migrant levy, as per R5.1 Applications determined by INZ officers.

A6.11.15 Immigration levy payable to INZ when making an application for a visa
See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, Reg 4C

a The Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 prescribe when an immigration levy is payable to INZ and the amounts payable.

b An immigration levy is payable at the time an application for a visa is made to INZ or its agents.


A6.11.20 Exempt from immigration levy
See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, Reg 4C

Principal applicants are exempt from paying the immigration levy if the applicant is:

a a person to whom a visa waiver to travel to New Zealand applies (see E2.1); or

b a diplomatic, consular and official staff and accompanying partners and dependent children (see A6.1.1); or

c a person applying for a visa where there is a bilateral fee waiver for that visa (see A6.5); or
d a citizen of Samoa applying for a residence class visa; or

e a claimant, refugee, or protected person; or

f a person applying for a residence class visa on the basis of the person’s relationship with a refugee or protected person; or

g a person applying for a visa:
   i under the special instructions for Victims of People Trafficking; or
   ii under the special instructions for Victims of Domestic Violence; or
   iii under the Skilled Migrant Category job search instructions.

Effective 07/12/2015
A6.15 Other fee and immigration levy information

See previous instructions:
A6.15 Effective 24/03/2014
A6.15 Effective 29/11/2010

See also Immigration Act 2009 s 394

A6.15.1 Recovery of courier costs

INZ can charge or recover the cost of the courier delivery of documents to applicants.

A6.15.5 Fee for a reconsideration of a temporary class visa application

Where applicants wish to have their visa application reconsidered, they can submit a new application and pay the reconsideration fee.

If, on reconsideration of the application, INZ finds that the initial decision was made in error, then the reconsideration fee may be refunded using existing discretionary powers by an immigration officer with the appropriate delegation.

A6.15.10 Fee for applications granted after consideration under Section 61 of the Immigration Act 2009

Temporary class visas granted after consideration under Section 61 of the Immigration Act 2009 will incur the appropriate Section 61 temporary class visa fee, instead of the visitor, student or work visa fee.

Residence class visas granted after consideration under Section 61 of the Immigration Act 2009 will incur the appropriate Section 61 residence class visa fee.

A6.15.15 Use of call out fee

Where an immigration officer with Schedule 1-3 delegations considers there are compelling reasons for an application to be treated as urgent, and this requires the office to be opened after hours, the call out fee should be applied.

In cases where the call out fee is used, the fee may be partially waived where the actual costs associated with the processing of the application are lower than the fee specified on the fees schedule.

The call out fee specified in the fee schedule is the maximum amount that can be charged in these situations.

A6.15.20 Offshore fees and immigration levy

The Ministry of Business, Innovation and Employment Corporate Finance function completes a quarterly assessment of the fees and immigration levy in relation to foreign currencies, and adjusts them where there are significant currency fluctuations.

Effective 07/12/2015
A7 Privacy Act 1993
IN THIS SECTION

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A7.1 Objectives of the Privacy Act 1993

The objectives of the Privacy Act 1993 include:

a. promoting and protecting individual privacy;

b. establishing principles for collecting, using, and disclosing information about individuals; and

c. establishing principles for allowing each individual access to information about them that is held by public and private sector agencies; and

d. providing for the appointment of a Privacy Commissioner to investigate complaints about interferences with individual privacy.

Effective 29/11/2010
### A7.5 Privacy Act Policy

See previous instructions:
A7.5 Effective 29/11/2010

The information contained in these instructions does not replace the Ministry of Business, Innovation and Employment’s Privacy Act Policy.

**Effective 08/05/2017**
A7.10 Who may make a request under the Privacy Act 1993

See previous instructions:
A7.10 Effective 13/02/2012
A7.10 Effective 07/11/2011
A7.10 Effective 29/11/2010

See also Privacy Act 1993 ss 6, 34

a Requests regarding personal information by the individual concerned, under principle 6 (access) and principle 7 (correction), may only be made by that individual.

b Individuals may authorise an agent to receive the information on their behalf.

c Subject to (d) below, New Zealand based lawyers holding a current New Zealand practising certificate and licensed immigration advisers do not require written authority to act when representing their clients in interactions with the Ministry of Business, Innovation and Employment. Lawyers and licensed immigration advisers may make requests for the personal information of their client.

d If the Ministry of Business, Innovation and Employment has information which suggests that a client may not be represented by the lawyer or licensed immigration adviser requesting their personal information, an authority to act may be requested before such information is released.

Effective 08/05/2017
A7.15 Establishing identity

*See also Privacy Act 1993 s 45*

a. It is important to be assured of the identity of the individual making the request before releasing information.

b. Staff must not grant access unless they are satisfied that the information will be received only by the individual it is intended for or by that individual’s agent if the agent makes a request on behalf of the client.

c. Staff must be satisfied that agents have the written authority of the individual concerned or are otherwise appropriately authorised to receive the information.

d. If a request is made by telephone or letter, staff must not release any information without first confirming the identity of the person making the request.

*Effective 29/11/2010*
A7.20 Reasonable assistance and transferring requests

See also Privacy Act 1993 ss 38, 39

a Reasonable assistance must be given to the person making a request to ensure it is made in accordance with the Privacy Act and is to the appropriate agency.

b If the information is held by another agency or is more closely connected with the functions of another agency, the request must be transferred promptly but not later than 10 working days, and the requestor informed in writing.

Effective 29/11/2010
A7.25 Time limits

See also Privacy Act 1993 ss 39, 40, 41

a  The time limits under the Privacy Act are as follows:
   i  requests transferred to another agency must be transferred promptly but not later than 10 working days; and the requestor informed in writing.
   ii requests being actioned by INZ must be responded to as soon as reasonably practicable but not later than 20 working days of receipt by INZ.

b  If an extension of time is notified for one of the reasons permitted under section 41, the person requesting the information must be advised of the right to complain about the extension to the Privacy Commissioner. Only ONE extension can be notified.

Effective 29/11/2010
A7.30 Urgent requests

See also Privacy Act 1993 s 37

Reasons why a request is urgent must be given and these should be taken into account when responding to the request.

Effective 29/11/2010
A7.35 Charges for information

See also Privacy Act 1993 s 35

A public sector agency, including INZ, cannot charge for a request under the Privacy Act.

Effective 29/11/2010
A7.40 Which Branch responds to the request?

See previous instructions:
A7.40 Effective 29/11/2010

a The office nearest to where the client lives will normally process the information request, or if there is an undecided visa or compliance application, the office that is processing that application.

b The processing office must obtain all INZ physical and electronic files and information whether these are at other INZ offices, MFAT posts, Archives, Online, National Office, or temporarily with the Immigration and Protection Tribunal pending the outcome of an appeal.

c If a request has to be forwarded to another office (because the client lives in that area or there is undecided visa or compliance action), lodge the request on AMS and fax a copy to the relevant office. Remember, the time starts from the date the request is received by INZ so forward the request promptly. Advise the requestor of the office you have sent it to. Transfer any physical/electronic files.

Effective 08/05/2017
A7.45 Requests to National Office or the Immigration and Protection Tribunal

a National Office does not normally deal with requests for client information under the Privacy Act. Requests received by those offices will usually be forwarded to the relevant processing branch.

b The Tribunal does not process requests for information held on INZ files. However, the Tribunal is required to provide INZ with a copy of the appeal and decision, and these should be on the relevant INZ file. With respect to refugee or protection decisions, only a copy of the decision is required to be provided.

Effective 29/11/2010
A7.50 Form in which the information may be released

See previous instructions A7.50 Effective 29/11/2010

See also Privacy Act 1993 s 42

a Information should be provided in the way preferred by the individual requesting it unless to do so would:
   i impair efficient administration; or
   ii be contrary to any legal duty of the agency in respect of the document; or
   iii prejudice one of the interests protected by the withholding provisions of the Privacy Act.

b Normally, INZ provides:
   i a photocopy of the information requested, including a print of the:
      o Customer Interaction Notes from AMS; and
      o Client Information Report; and
      o Application Information Report for each application; or
   ii a reasonable opportunity to inspect documents, or listen to or view recordings; or
   iii an excerpt or summary of the information, if some information is being withheld or deleted from a
      document.

Effective 07/11/2011
A7.55 Release of information originating from the New Zealand Police

a Standard New Zealand Police certificates may be released.

b Any other information originating from the New Zealand Police or from Interpol should not be released without consultation with Privacy Officer
Police National Headquarters
Box 3017
Wellington

c Alternatively, the request may be transferred to the New Zealand Police at National Headquarters.

Effective 29/11/2010
A7.60 Guidelines for withholding information

See also Privacy Act 1993 ss 27, 28, 29, 32, 44, Parts V and VIII

a The reasons for withholding information include (but are not limited to):
   i disclosure would be likely to prejudice the maintenance of the law, including preventing, investigating and detecting offences, and the right to a fair trial (this includes information that would be likely to identify informants, or restricted information in the Operations Manual such as risk profiles); or
   ii disclosure would involve the unwarranted disclosure of the affairs of another individual; or
   iii disclosure would breach legal professional privilege (the confidentiality of dealings between client and lawyer, including requests for legal advice, the advice itself, any reference to the legal advice); or
   iv disclosure would be likely to prejudice New Zealand’s security or defence or the international relations of the New Zealand Government; or
   v disclosure would be likely to prejudice the entrusting of confidential information to the New Zealand Government by other governments or international organisations (it MAY be possible to release a summary of the information but withhold the identity of the source); or
   vi release would disclose a trade secret or would be likely unreasonably to prejudice the commercial position of the person supplying or who is the subject of the information; and there are no countervailing public interest considerations, or(vii) the information is not readily retrievable or does not exist or cannot be found (this can only be used after a thorough, fully documented search has been made); or
   vii the information is not readily retrievable or does not exist or cannot be found (this can only be used after a thorough, fully documented search has been made); or
   viii disclosure would be likely to endanger the safety of any individual (for example, based on the past behaviour of the person likely to cause the danger).
   ix disclosure would constitute contempt of Court or of the House of Representatives (for example, where a Court has made an order prohibiting publication of a person’s name or other details).

b Certain personal information is also excluded from disclosure such as information contained in any communication between the Office of the Ombudsmen and INZ, or the Office of the Privacy Commissioner and INZ relating to any investigation under the Ombudsmen Act, the Official Information Act or the Privacy Act.

Effective 29/11/2010
A7.65 Reasons for refusal to be given and right of complaint to the Privacy Commissioner

See also Privacy Act, ss 44, 67

If information is withheld:

a the reasons why that information has been withheld must be given, with reference to the appropriate section of the Act (a copy of the withheld information must be placed in an envelope and put on the physical file);

b the requestor must also be advised of the right to seek an investigation and review of the refusal by writing to the Privacy Commissioner.

Effective 29/11/2010
A7.70 Right to request correction of information

See also Privacy Act, s6, principle 7

In all responses to information requests, (regardless of whether information has been withheld) the requestor must be advised of the right under Principle 7 to request correction of personal information; and to request that there be attached to the information a statement of the correction sought but not made.
A7.75 Requests for information by other Government agencies

a Some Government agencies are entitled to request information under relevant legislation. For example, under s.11 of the Social Security Act 1964 Work and Income (Ministry of Social Development) may, by notice in writing, require any person (including any person who is an officer or employee in the service of the Crown in a Government department or public body - other than as an officer of a court) to provide Work and Income (Ministry of Social Development) or a specified employee of theirs with such information as the Director General requires.

b Section 17 of the Tax Administration Act 1994 gives similar power to officers of the Inland Revenue.

c It is not a breach of privacy to supply this information as section 7 of the Privacy Act states: "7. Savings:—Nothing in principle 6 or principle 11 derogates from any provision that is contained in any enactment and that authorizes or requires personal information to be made available."

However, always ensure that the request is in writing and that it details the relevant statutory authority.

Effective 29/11/2010
A7.80 Disclosure of information overseas under section 305 of the Immigration Act 2009

See previous instructions A7.80 Effective 29/11/2010

When releasing information overseas under section 305 the following steps are to be considered:

a. Identify the agency, body or person that is to receive the information.

b. Identify the information to be disclosed. Does it all come within 306(1)?

c. Is there an existing agreement with this agency, body or person? Does it apply in the circumstances?

d. If no agreement applies, consider whether an agreement should be developed.

e. If the information is to be disclosed on a "one-off" basis check that the disclosure is carried out strictly in accordance with the requirements of section 305(7) and (8).

Note: If unsure whether to release information either under an agreement or on a one-off basis please contact the Ministry of Business, Innovation and Employment Legal Services for advice.

Effective 08/04/2013
A8 Official Information Act 1982
IN THIS SECTION

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A8.1 Objectives of the Official Information Act 1982

See also Official Information Act 1982 s 4

The purposes of the Official Information Act 1982 are:

a to increase public access to official information to
   i enable more effective participation in the making of laws and policies; and
   ii promote the accountability of Ministers and officials;

b to give persons access to official information about them; and

c at the same time to protect the public interest and safeguard personal privacy.

Note: Individuals (live natural persons) who are New Zealand citizens or permanent residents (as defined in the Privacy Act) or are in New Zealand request personal information about themselves under the Privacy Act. They may authorise an agent to receive the information on their behalf.

Effective 29/11/2010
A8.5 Official Information Act Policy

See previous instructions:
A8.5 Effective 29/11/2010

The information contained in these instructions does not replace the Ministry of Business, Innovation and Employment’s Official Information Policy.

Effective 08/05/2017
A8.10 The principle of availability

See also Official Information Act 1982 s 5

All official information must be made available unless there is good reason under the Act to withhold it.

Effective 29/11/2010
A8.15 Who may make a request under the Official Information Act

See also Official Information Act 1982 s 12

Requests for official information may only be made by:

a  a New Zealand citizen; or
b  a permanent resident of New Zealand (as defined under the Official Information Act 1982); or
c  a person who is currently in New Zealand; or
d  a body corporate incorporated in New Zealand; or
e  a body corporate incorporated outside New Zealand that has a place of business in New Zealand.

Effective 29/11/2010
A8.20 Reasonable assistance

See also Official Information Act 1982 s 13

Reasonable assistance must be given to the person making a request. This may involve telephoning or writing to the requestor to clarify what information is being sought.

Effective 29/11/2010
A8.25 Conditions for releasing information

Before releasing information, immigration officers must be satisfied that:

a the person making the request is eligible to receive that information; and
b the information does not contain any material that should be withheld.

Effective 29/11/2010
A8.30 Transferring requests

See also Official Information Act, s.14

If the information is held by another Department or organisation, or more closely related to another department's functions, the request must be transferred promptly but not later than 10 working days, and the requestor informed in writing.

Effective 29/11/2010
A8.35 Time limits

See also Official Information Act 1982 ss 15(1), 15A

a Requests for information must be responded to as soon as reasonably practicable but no later than 20 working days from the date the request is received.

b If the person makes an urgent request for information, they must give reasons for requesting urgency and this must be taken into consideration when responding to the request.

c The time limit may be extended once only in the following circumstances:
  i the request is for a large quantity of official information; or
  ii the request requires a search through a large quantity of information; or
  iii meeting the original time limit would unreasonably interfere with INZ operations; or
  iv extensive consultations are necessary to make a decision on the request.

d If an extension of time is notified for one of the above reasons, the person requesting the information must be advised of the right to complain to an Ombudsman about the extension.

Effective 29/11/2010
A8.40 Which INZ processing office responds to the request?

See previous instructions:
A8.40 Effective 29/11/2010

A8.40.1 Information relating to INZ clients

a. The office nearest to where the client lives will normally process the information request, or if there is an undecided visa or compliance application, the branch that is processing that application.

b. The processing office must obtain all INZ physical and electronic files and information whether these are at other offices, MFAT posts, Archives, Online, National Office, or temporarily with the Tribunal pending the outcome of an appeal.

c. If a request has to be forwarded to another office (because the client lives in that area or there is an undecided visa or compliance action), lodge the request on AMS and fax a copy to the relevant office. Remember, the time starts from the date the request is received by INZ so forward the request promptly. Advise the requestor of the office you have sent it to. Transfer any physical/electronic files.

d. The Tribunal does not process requests for information held on INZ files. However, the Tribunal is required to provide INZ with a copy of the appeal and decision, and these should be on the relevant INZ file. With respect to refugee or protection decisions, only a copy of the decision is required to be provided.

A8.40.5 All other information

The branch that holds the information or knows most about the information will respond to the request. For instance, if the information relates to refugee or protection status, the Refugee and Protection Unit will respond. If the request is for information relating to policy development or policy papers, National Office will respond.

Effective 08/05/2017
A8.45 Form in which the information may be released

See also Official Information Act 1982 ss 16 and 17

a Information should be provided in the way preferred by the individual requesting it unless to do so would
   i impair efficient administration; or
   ii be contrary to any legal duty of the agency in respect of the document; or
   iii prejudice the interests protected by the withholding provisions of the Official Information Act.

b Normally, INZ provides:
   i a photocopy of the information requested, including a print of the relevant AMS screens 'copied
      and pasted' onto a Word document (a copy of this must also be placed on the physical file so it is
      clear what has been released); or
   ii a reasonable opportunity to inspect documents, or listen to or view recordings; or
   iii an excerpt or summary of the information, if some information is being withheld or deleted from a
document.

Effective 29/11/2010
A8.50 Guidelines for withholding information

See also Official Information Act, ss 6, 7, 9, 10, 18, and 27

a The reasons for withholding information include (but are not limited to):

i release would be likely to prejudice the maintenance of the law, including preventing, investigating and detecting offences, and the right to a fair trial (this includes information that would be likely to identify informants, or restricted information in INZ Operational Manual such as risk profiles); or

ii it is necessary to protect the privacy of natural persons, and this is not outweighed by other considerations which render it desirable, in the public interest, to make that information available; or

iii it is necessary to maintain legal professional privilege (the confidentiality of dealings between client and lawyer, including requests for legal advice, the advice itself, any reference to the legal advice) and this is not outweighed by other considerations which render it desirable, in the public interest, to make that information available; or

iv release would be likely to prejudice New Zealand’s security or defence or the international relations of the New Zealand Government; or

v release would be likely to prejudice the entrusting of confidential information to the New Zealand Government by other governments or international organisations (it MAY be possible to release a summary of the information but withhold the identity of the source); or

vi it is necessary to protect the information as release would disclose a trade secret or would be likely unreasonably to prejudice the commercial position of the person supplying or who is the subject of the information; and this is not outweighed by other considerations which render it desirable, in the public interest, to make that information available; or

vii the document alleged to contain the information does not exist or cannot be found (this can only be used after a thorough, fully documented search has been made); or

viii release would be likely to endanger the safety of any person (based on the past behaviour of the person likely to cause the danger); or

ix release would constitute contempt of court or of the House of Representatives (for example, where a court has made an order prohibiting publication of a person’s name or other details).

b Certain official information is also excluded from disclosure such as information contained in any communication between the Office of the Ombudsmen and INZ, or the Office of the Privacy Commissioner and INZ relating to any investigation under the Ombudsmen Act, the Official Information Act or the Privacy Act.

Effective 29/11/2010
A8.55 Release of information originating from the New Zealand Police

a Standard New Zealand Police certificates may be released.

b Any other information originating from the New Zealand Police or from Interpol should not be released without consultation with

Privacy Officer,
Police National Headquarters
Box 3017
Wellington

c Alternatively, the request may be transferred to the New Zealand Police at National Headquarters.

Effective 29/11/2010
A8.60 Reasons for refusal to be given and right of complaint to the Ombudsmen

See also Official Information Act ss 19 and 28

If information is withheld:

a  the reasons why that information has been withheld must be given, with reference to the appropriate section of the Act (a copy of the withheld information must be placed in an envelope and put on the physical file); and

b  the requestor must also be advised of the right to seek an investigation and review of the refusal by writing to the Ombudsman.

Effective 29/11/2010
A8.65 Right to request correction of information

See also Official Information Act s 26

In all responses to requests by persons under section 24 of the Official Information Act for personal information (regardless of whether information has been withheld) the requestor must be advised of the right under section 26 to request correction of personal information; and to request that a notation be attached to the information indicating the nature of any correction requested but not made.

Note: section 24 applies to personal information about (a) a body corporate which is incorporated in New Zealand; or (b) a body corporate which is incorporated outside New Zealand but which has a place of business in New Zealand.

Effective 29/11/2010
A8.70 Requests for information by other Government departments

a Some Government agencies are entitled to request information under relevant legislation. For example, under section 11 of the Social Security Act 1964 Work and Income (Ministry of Social Development) may, by notice in writing, require any person (including any person who is an officer or employee in the service of the Crown in a Government department or public body - other than as an officer of a Court) to provide Work and Income (Ministry of Social Development) or a specified employee of theirs with such information as the Director General requires.

b Section 17 of the Tax Administration Act 1994 gives similar power to officers of the Inland Revenue.

c Requests must always be made in writing and must detail the relevant statutory authority.

Effective 29/11/2010
A8.75 Disclosure of information overseas under section 305 of the Immigration Act 2009

When releasing information overseas under section 305 the following steps are to be considered:

a. Identify the agency, body or person that is to receive the information.

b. Identify the information to be disclosed. Does it all come within section 306(1)?

c. Is there an existing agreement with this agency, body or person? Does it apply in the circumstances?

d. If no agreement applies, consider whether an agreement should be developed.

e. If the information is to be disclosed on a "one-off" basis check that the disclosure is carried out strictly in accordance with the requirements of section 305(7) and (8).

Note: If unsure when releasing information either under an agreement or on a one-off basis please contact the Ministry of Business, Innovation and Employment Legal Services for advice.

Effective 08/04/2013
A8.80 Requests from Members of Parliament

a A Member of Parliament (MP) may request official information from INZ like any other person, and in most cases such requests will be dealt with under standard procedures.

b An MP may be exempted from charges for information if that information is likely to be used in the reasonable exercise of their democratic responsibilities as MP and not for private political purposes.

Effective 29/11/2010
A8.85 Consulting the Minister regarding policy information

a In requests for policy related information, INZ should consult the Minister of Immigration about whether or not to release the information:
   i if it is a marginal case; or
   ii if the information is sensitive; or
   iii if the information contains advice to the Minister from INZ.

b In such cases, a submission should be sent to the Minister, which:
   i details the information requested; and
   ii advises that INZ proposes to (as appropriate):
      o release; or
      o conditional release; or
      o withhold the information; and
   iii quotes the relevant reference in the Official Information Act.

Effective 29/11/2010
A8.90 Charges for providing Official Information

See previous instructions A8.90 Effective 29/11/2010

See also Official Information Act 1982 s 15

a INZ follows the Government guidelines set out in the Ministry of Justice guidelines dated 18 March 2002. The guidelines represent what are regarded as reasonable charges for the purposes of the Official Information Act.

b Staff time is charged at NZ$38 per half hour or part thereof, after the first hour which is free. The rate applies to all staff dealing with requests, irrespective of seniority or grade. Staff time includes:
   i searching indexes;
   ii locating and extracting information (but not if the information is not where it should be);
   iii reading or reviewing information (but not deciding whether to release information);
   iv transcribing, including compiling excerpts or summaries;
   v supervising access to the information, including supervising the requestor if the information is being viewed;
   vi collating and photocopy information.

c Photocopies are provided at 20 cents per page after the first 20 pages which are free.

d Other actual costs such as:
   i producing a document by computer or other such equipment;
   ii reproducing a film, video or audio recording;
   iii arranging for the applicant to hear or view an audio or visual recording;
   iv providing a copy of any map, plan or other document larger than A4 or foolscap size;
   v posting large packages;
   vi courier services;
   vii retrieval of information off-site;
   viii producing or supplying commercially valuable information.

e The charges include GST.

f If repeated requests are made about a common subject over a period of up to 8 weeks, all but the first request should be combined for charging purposes.

g If time and materials exceed by only a small amount the threshold for supplying the information without charge, immigration officers must use their discretion to decide whether any charge should be made, and if so, how much.

A8.90.1 Deposits

a A deposit may be required:
   i if the charge is likely to be more than $76 (an hour of chargeable staff time); or
   ii to provide some assurance of payment to avoid wasting resources.

b A deposit may only be requested after a decision has been made to release the information.

c The applicant must be notified of:
   i amount of deposit required; and
   ii method of calculating the charge; and
   iii expected final amount to be paid.

d Work on the request may be suspended until the deposit is received.
e The unused part of any deposit should be refunded immediately to the applicant with a statement detailing how the rest was spent.

A8.90.5 Waiving or reducing charges

a INZ may, at its discretion, modify or waive the requirement to pay any charge.

b Before a decision on waiving or reducing charges is made, the circumstances of each individual request must be considered.

A8.90.10 Review of decisions on charges

See also Official Information Act 1982 s 28(1)(b)

a The Ombudsman may investigate and review any decision on charging for an official information request (see A9.10).

b Applicants must be informed of their right of appeal to the Ombudsman when they are notified of the charge.

c Immigration officers must record all costs involved, as well as the fact that an applicant liable for payment has been notified of how the charge was calculated.

A8.90.15 Members of Parliament or political parties

Requests from Members of Parliament may be exempt from charges for official information provided for their own use. This discretion may be extended to cover political party parliamentary research units when the request for official information has the endorsement of an MP. In exercising this discretion it is appropriate to consider whether remission of charges would be consistent with the need to provide more open access to official information for MPs in terms of the reasonable exercise of their democratic responsibilities. However if large or costly requests are received from this source, officers should clarify, and where possible, narrow the request. Accordingly, the amount of time and resources taken to provide the information requested should be taken into account as a reasonable charge may be appropriate. Assistance from Legal Services should be sought if clarification is needed.

Effective 29/08/2012
A9 Complaints against Immigration New Zealand
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A9.1 Immigration New Zealand’s Complaint and Feedback Process

See previous instructions:
A9.1 Effective 08/05/2017
A9.1 Effective 22/08/2016
A9.1 Effective 01/07/2013
A9.1 Effective 29/08/2012

Immigration New Zealand’s (INZ) Complaint and Feedback Process (CFP) provides clients with an avenue to seek resolution of a complaint relating to the service they received from INZ. The CFP is not an avenue to seek a review of a declined visa application, an invitation to apply for residence or a request for a visa made under section 61 of the Immigration Act 2009.


a  INZ’s expectation is that clients will access the CFP to seek resolution of a complaint before approaching the Office of the Ombudsmen.

b  INZ endeavours to respond to all complaints within 25 working days of receipt.

c  Where INZ determines that it erred in the provision of a service to a client, a remedy, if appropriate, will be provided in the response.

A9.1.1 Submitting a complaint under the CFP

Complaints must be made in writing using the Online Feedback Page, by email to
INZComplaintsandFeedback@mbie.govt.nz (mailto:INZComplaintsandFeedback@mbie.govt.nz), or sent by post to:

Central Feedback Team
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

Note: The Online Feedback Page can also be used to submit compliments and suggestions on how INZ can improve its service and/or processes.

Effective 19/06/2017
A9.5 Commissioners and INZ

See previous instructions:
A9.5 effective 10/12/2012
A9.5 effective 29/08/2012

An individual or group may make complaints about INZ to the Office of the Ombudsman, Privacy Commissioner and other commissioners (including the Human Rights Commissioner and the Race Relations Commissioner) and the United Nations Human Rights Committee, or investigations may originate from within these organisations themselves.

A9.5.1 Enquiries relating to investigations by commissioners

a If a person enquires about an investigation that an Ombudsman is currently conducting (following a complaint under the Ombudsmen Act 1975, or the Official Information Act 1982), they must be advised to approach the Office of the Ombudsman about the matter.

b It is a long established principle that the parties to a complaint should remain "at arm's length" while the matter is under investigation.

c The same principles in (a) and (b) apply to investigations conducted by the Privacy or other commissioners.

d Nothing at paragraphs (a) - (c) above prevents a complainant from approaching INZ to:
  • make an enquiry
  • make a visa application
  • make a request for a visa under section 61 of the Immigration Act 2009.

e Any correspondence or queries regarding this type of investigation should be referred to Immigration Resolutions. This applies to any approach by investigators from the Office of the Ombudsman, Privacy Commissioner, or other commissioners.

In such cases INZ may as appropriate, communicate directly with the complainant.

Effective 22/08/2016
A9.10 The Ombudsmen Act 1975

See previous instructions:
A9.10 effective 10/12/2012
A9.10 effective 29/11/2010

See also Ombudsmen Act s 13

a Each Ombudsman may undertake investigations on a complaint, or on his or her own motion, relating to any decision, recommendation, act, or omission by government departments and organisations, their committees and subcommittees, officers and employees that relate to a matter of administration and affect any person in a personal capacity.

b Having completed an investigation, an Ombudsman may form an opinion that the decision, recommendation, act or omission:
   i appears to have been contrary to law; or
   ii was based on a mistake of fact or law; or
   iii was unreasonable, unjust, oppressive, improperly discriminatory or wrong; or
   iv was based on a law or practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory; or
   v A discretionary power has been exercised for an improper purpose, on irrelevant grounds or by taking into account irrelevant considerations; or
   vi Reasons should have been given for the decision.

c If an Ombudsman forms such an opinion, he or she may recommend that:
   i the decision be reconsidered, varied or cancelled, or that reasons for it be given; or
   ii the law or practice be reconsidered or altered; or
   iii any other steps should be taken.

d If an Ombudsman is not satisfied that the government department or organisation concerned has acted upon a recommendation, he or she may send a copy of his or her report and recommendations to the Prime Minister and then to Parliament.

e The Ombudsman will inform the complainant of the result of the investigation.

Note: Ombudsmen are not authorised by law to enforce their recommendations.

A9.10.1 Official Information Act 1982

See also Official Information Act ss 28 and 35

a It is a function of the Ombudsman to investigate and review, on complaint, any decision by a Department or Minister to:
   • refuse to release official information in response to a request
   • decide in what form information is released
   • decide what charge to make
   • impose conditions on the use, communication or publication of information
   • extend any time limit
   • provide or refuse to provide a statement of reasons under section 23 of the Official Information Act (OIA).

b After the investigation is made the Ombudsman will report his or her opinion to INZ (or to the minister if appropriate) and may make such recommendation as the Ombudsman sees fit.

c A public duty to observe the recommendation arises on the 21st working day after the day on which it was made unless before that date an Order in Council directs otherwise.
d  The above does not apply to complaints about requests made under sections 21 - 24 of the OIA, which are conducted under the Ombudsmen Act with the same possible outcomes as with complaints made under that Act.

e  The Ombudsman will inform the complainant of the result of the investigation.

A9.10.5 Hold on deportation in certain circumstances

a  Where the Office of the Ombudsman notifies INZ that an investigation is being made into a complaint against INZ, a complainant who has been served with a deportation order will not be deported before the investigation has been concluded.

b  The hold on deportation does not apply if the complainant has been taken into custody pending deportation, and in such cases the deportation processes may continue.

c  If a deportation order is served after the Office of the Ombudsman notifies INZ of an investigation, the complainant will not be taken into immigration-related custody and deported before the investigation has been concluded.

d  Notwithstanding (a) and (c) above, INZ reserves the right to proceed with deportation in any particular case, where it has been authorised via the Manager, Immigration Resolutions.

e  Nothing prevents INZ from proceeding to assemble appropriate travel documentation and make contingent travel arrangements where the complainant is liable for deportation.

Effective 22/08/2016
A9.15 Privacy Act 1993

See also Privacy Act ss 13, 67 and 68

a The functions of the Privacy Commissioner include, but are not limited to the following:
   i investigating complaints that any action is or appears to be an interference with the privacy of an individual, including the withholding of personal information
   ii promoting an understanding and acceptance of the privacy principles
   iii examining any proposed legislation or policy of the Government that may affect the privacy of individual
   iv monitoring the use of unique identifiers and reporting the results and recommendations to the Prime Minister
   v making public statements in relation to any matter affecting the privacy of the individual or any class of individuals
   vi enquiring generally into any matter if it appears that the privacy of the individual may be infringed.

b After investigation, if the complaint has substance the Privacy Commissioner:
   i shall endeavour to secure a settlement between the parties and if necessary a satisfactory assurance against the repetition of any action that was the subject of the investigation; or
   ii if a settlement or an assurance is unable to be secured, may refer the matter to the Proceedings Commissioner to decide whether proceedings should be started with the Complaints Review Tribunal against the person against whom the complaint was made.

Effective 29/08/2012
A9.25 Procedures relating to correspondence from Ombudsmen (to 10/12/2012)

Note: These instructions cease to be effective from 10 December 2012.

Effective 10/12/2012
A9.30 The Ombudsmen and Ministers (to 10/12/2012)

Note: These instructions cease to be effective from 10 December 2012.
A10 The Privacy Commissioner - Role and powers
IN THIS SECTION

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A10.5 Enquiries relating to Privacy Commissioner’s investigations ....................................................... 137
A10.10 Procedures relating to correspondence from the Privacy Commissioner ............................... 138
A10.1 Privacy Act 1993

See also Privacy Act ss 13, 67 and 68

a The functions of the Privacy Commissioner include, but are not limited to the following:
   i investigate complaints that any action is or appears to be an interference with the privacy of an individual, including the withholding of personal information
   ii promote an understanding and acceptance of the privacy principles
   iii examine any proposed legislation or policy of the Government that may affect the privacy of individuals
   iv monitor the use of unique identifiers and report the results and recommendations to the Prime Minister
   v make public statements in relation to any matter affecting the privacy of the individual or any class of individuals
   vi enquire generally into any matter if it appears that the privacy of the individual may be infringed.

b After investigation, if the complaint has substance the Privacy Commissioner shall:
   i endeavour to secure a settlement between the parties and if necessary a satisfactory assurance against the repetition of any action that was the subject of the investigation; or
   ii if a settlement or an assurance is unable to be secured, may refer the matter to the Proceedings Commissioner to decide whether proceedings should be instituted with the Complaints Review Tribunal against the person against whom the complaint was made.

Effective 29/11/2010
A10.5 Enquiries relating to Privacy Commissioner’s investigations

If a person enquires about an investigation that the Privacy Commissioner is currently conducting (following a complaint under the Privacy Act 1993) they must be advised to approach the Office of the Privacy Commissioner about the matter.

Effective 29/11/2010
A10.10 Procedures relating to correspondence from the Privacy Commissioner

See previous instructions:
A10.10 effective 29/11/2010

a  Immigration Resolutions is responsible for answering most correspondence from the Office of the Privacy Commissioner about complaints made under the Privacy Act 1993.

b  Any other office approached about a case that is the subject of a Privacy Commissioner's investigation must refer details to the Manager, Immigration Resolutions.

Effective 22/08/2016
A11 Other Commissioners (including the Human Rights Commissioner and the Race Relations Conciliator) and the United Nations Human Rights Committee
IN THIS SECTION

A11.1 Complaints .......................................................................................................................... 141
A11.5 Correspondence relating to these complaints ..................................................................... 142
A11.1 Complaints
An individual or group may make complaints against INZ to the above commissioners or committee, or investigations may originate from within these organisations themselves.

Effective 29/11/2010
A11.5 Correspondence relating to these complaints

See previous instructions:
A11.5 effective 29/11/2010

a Procedures for dealing with correspondence involving complaints to the other Commissioners are the same as for complaints to the Ombudsmen.

b All such correspondence should be referred to Immigration Resolutions.

c There is no right to remain in New Zealand pending the outcome of any complaint to other Commissioners.

Effective 22/08/2016
A12 Forms and leaflets
IN THIS SECTION
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A12.5 Obtaining application forms.......................................................................................... 146
A12.10 Printing (22/08/2016) ............................................................................................... 147
A12.1 Chief Executive’s approval required for forms

See previous instructions
A12.1 Effective 29/11/2010

See also Immigration Act 2009 s 381

Under section 381 of the Immigration Act 2009, the Deputy Chief Executive, Immigration New Zealand may approve and issue application forms and any other forms necessary for the purposes of the Act (except those prescribed by Regulations made under the Immigration Act 2009). Several other forms are prescribed by the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 and Immigration (Certificate and Warrant Forms) Regulations 2010, and can only be changed by legislative means.

A12.1.1 Alteration of forms and leaflets

The content of most forms must be approved by the Deputy Chief Executive, Immigration New Zealand. Processing offices must not alter the text of numbered forms and leaflets in any way, although suggestions for changes will be considered if:

a  they are made to the Service Design and Performance Branch, National Office; and

b  the form or leaflet number is quoted.

A12.1.5 Validity of forms and leaflets

a  The month and year of the initial print of, or the last amendment to, an INZ form or leaflet is shown at the bottom of the last page of the document.

b  Where a form is amended and approved by the Deputy Chief Executive, Immigration New Zealand, that amended form will be the only approved form for lodging an application from the date of amendment onwards - except where the Deputy Chief Executive has also approved the continued use of the previous form for a specified period of time. Where the Deputy Chief Executive approves the continued use of a previous form for a specified time applicants applying on that form may be required to submit any additional information required by the amended form before a decision is made on the application.

A12.1.10 Numbered forms and leaflets

a  Numbered forms and leaflets have a shoulder number (usually at the bottom of the last page), prefixed by the letters "INZ".

b  Always identify forms and leaflets by quoting the relevant shoulder number to:

   i    simplify stock management and ordering; and

   ii   avoid confusion when there may be more than one form with a similar name.

Effective 06/07/2015
A12.5 Obtaining application forms

See previous instructions:
A12.5 Effective 08/05/2017
A12.5 Effective 29/11/2010

a  Application forms and guides are available for download and use from the INZ website (www.immigration.govt.nz/forms (http://www.immigration.govt.nz/forms)).

b  Pacific based applicants can obtain forms and guides from the INZ Pacific Offices in Samoa, Tonga and the Visa Application Centres in Fiji.

c  Bulk forms and guides can be purchased directly from Excel Digital Print Ltd.

d  Visa Application Centres globally provide Immigration New Zealand forms on request.

Effective 01/03/2018
A12.10 Printing (22/08/2016)

Note: These instructions cease to be effective from 8 May 2017.

See previous instructions:
A12.10 Effective 06/07/2015
A12.10 Effective 26/03/2012
A12.10 Effective 29/11/2010

A supply agreement exists between INZ and Blue Star Group for printing and/or supplying:

a  all leaflets; and

b  application forms; and

c  most other forms.

Note: No office may print their own numbered forms or leaflets without first consulting Service Design and Performance Branch.

Effective 22/08/2016
A13 Documents submitted to support applications
IN THIS SECTION

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A13.5 Translations ......................................................................................................................... 152
A13.1 The form in which documents must be submitted

See previous instructions:
A13.1 Effective 22/08/2016
A13.1 Effective 01/11/2015
A13.1 Effective 06/07/2015
A13.1 Effective 18/04/2014
A13.1 Effective 29/11/2010

a Unless the exceptions at (b) below apply, any passport, certificate of identity, birth certificate or other document provided as evidence of an applicant’s identity must be either the original or a certified copy.

b Documents specified in (a) do not need to be original or certified copies if provided in support of an application made:
   i on an electronic form; or
   ii by a diplomatic or consular official for a temporary entry class visa; or
   iii for reconsideration of a decision to decline a further temporary entry class visa.

c All other documents submitted in support of an application must be originals, or certified copies, unless:
   i uncertified copies are specifically requested on the relevant INZ form or guide; or
   ii the application is made on an electronic form, in which case a legible scan of the original document must be provided in the manner specified by the online form or by an immigration officer; or
   iii the application is for a temporary entry class visa, in which case a legible copy of the original document may be provided.

d Despite (a) and (c) above, original documents must be provided if specifically requested on the relevant INZ form or guide, or if requested by an immigration officer.

A13.1.1 Originals

Original documents must:

a be copied or processed immediately; and

b be returned directly to the owner or the owner’s authorised agent (e.g. solicitor) as soon as possible; and

c not be released to any other person unless the owner has made a written statement authorising their release to a specified person.

A13.1.5 Certified copies

a Certified copies must be stamped or endorsed as being true copies of the originals by a person authorised by law to take statutory declarations in the applicant’s country or in New Zealand.

   Examples: a lawyer, notary public, Justice of the Peace, or court official.

b If certified copies are supplied, immigration officers may also request the original documents.

c An immigration officer may certify copies submitted with the original document if they are satisfied that the copy agrees with the original in essential details.

d If the actioning officer is satisfied that the copy is a true copy, it must be marked with:
   i the words "original sighted"; and
   ii the date.

e An immigration officer should accept faxed copies of certified documents only if the originals, or certified copies, are then submitted at the earliest opportunity.
f  Documents with evidence of having been tampered with, or unofficially altered, must be referred to an immigration officer, with Schedule 1-3 delegations, who will decide what further action to take.

A13.1.10 Uncertified copies

a  Where uncertified copies of original documents have been provided, an immigration officer may request to see the original documents before making a decision on the application.

b  Uncertified copies must be legible and an accurate reflection of the original document.

Effective 08/05/2017
A13.5 Translations

See previous instructions:
A13.5 Effective 06/07/2015
A13.5 Effective 08/04/2013
A13.5 Effective 07/11/2011
A13.5 Effective 04/04/2011
A13.5 Effective 29/11/2010

a Applicants must provide a certified translation for all documents not written in English which are provided in support of an application for a residence class visa.

b Applicants must provide a certified translation for all police certificates and medical certificates not written in English which are provided in support of an application for a temporary entry class visa despite (d) below.

c If requested by an immigration officer, applicants must provide a certified translation for any other documents not written in English and provided in support of an application for a temporary entry class visa.

d Immigration officers may translate documents provided in support of temporary applications (other than police and medical certificates as per (b) above) where they have the appropriate language skills.

e Translations must:
   i not be prepared by an applicant, any member of their family or an immigration adviser assisting with the application; and
   ii be accompanied by the original documents or certified copies, unless legible copies are acceptable under A13.1; and
   iii be paid for by the applicant; and
   iv be certified as a correct translation made by a person familiar with both languages and competent in translation work; and
   v bear the stamp or signature of the translator or translation business; and
   vi if applicable, be on the official letterhead of the translation business.

f Translations may be prepared by:
   i the Translation Service of the Department of Internal Affairs, or
   ii reputable people within the community who are known to translate documents accurately, with the exception of those listed in A13.5(e)(i) or
   iii embassies or high commissions (if the translation is endorsed with the appropriate embassy or high commission seal), or
   iv any other private or official translation business.

g An immigration officer may request a translation:
   i of the complete document where the translation is of a selected part(s) of the document, and/or
   ii by a different (specified) translation service where they are not satisfied by the initial translation.

h Where uncertified copies of original documents have been provided with translations, an immigration officer may request to see the original documents before making a decision on the application.

Note: If a translation by a different (specified) translation service is requested the reason(s) behind the request must be clearly documented and conveyed to the applicant by INZ.

Effective 07/12/2015
A14 Interpreters
IN THIS SECTION

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A14.5 Suitability of interpreters .............................................................................. 156
A14.10 Interpreters' fees ....................................................................................... 157
A14.1 Situations requiring an interpreter

a An immigration officer may require the assistance of an interpreter when interviewing a person who is unable to understand the questions fully and give adequate answers in English.

b If an immigration officer is aware that such a situation may arise, they must make arrangements to obtain an interpreter before the interview.

Effective 29/11/2010
**A14.5 Suitability of interpreters**

a An immigration officer may use a staff member who understands and communicates in the interviewee’s language, or a third party interpreter in whom they have confidence.

b If family members, friends or agents accompany interviewees who do not speak English fluently to an interview, an immigration officer should not use these people as interpreters, because they may have an interest in the outcome of the application and therefore may:
   i provide an incorrect translation; or
   ii give their own answers and ask their own questions rather than those of the applicant; or
   iii seek to influence the applicant's responses.

*Effective 29/11/2010*
A14.10 Interpreters’ fees

a If an applicant fails to attend a formal interview for which an interpreter has been obtained, INZ will pay the interpreter fee and arrange a new interview.

b The applicant will be notified in writing of the date and time of the second interview and that if they fail to attend without notifying INZ, they may be charged the cost of the interpreter.

When arranging an interview, INZ must communicate the rules and choices on interpreters to the applicant in writing.

Effective 29/11/2010
A15 Immigration Officer Warrants and Delegations
IN THIS SECTION

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A15.15 Delegation of Powers to Delegated Decision Makers of the Ministry of Business, Innovation and Employment – Immigration New Zealand ............................................................................................................................................. 169
A15.1 Making decisions in terms of the Immigration Act

See previous instructions:
A15.1 effective 03/09/2012
A15.1 effective 29/11/2010

See also Immigration Act 2009 ss 154-162, 172, 175-177, 380(1), 388(1) and (6), 390, 391

a All references to the Immigration Act within this chapter refer to the Immigration Act 2009.

b To make immigration decisions under the Immigration Act a person must be designated by the chief executive as an immigration officer (see A15.1.10) or a refugee and protection officer (see A15.1.25).

c In addition, from time to time the Minister of Immigration may delegate some of his or her powers under the Immigration Act to immigration officers. These delegations are listed in schedules (see A15.5). Some delegations are for a whole class of officers (for example for all technical advisors); some can only be exercised by officers in particular roles, and are not related to a position in the hierarchy. Further, delegations may effectively act as an administrative constraint on the exercise of statutory decision-making powers.

d Where a person has not been designated as an immigration officer or a refugee and protection officer, they cannot make any immigration decisions. In addition, the Minister may not delegate any other powers to a person who is not an immigration officer.

e A person who is designated as a refugee and protection officer cannot also be designated as an immigration officer, and vice versa.

f To be able to:
   i sign or cancel a deportation order, or
   ii consider or cancel a person’s liability for deportation

   an immigration officer must be specifically authorised by the chief executive as having the power to do so.

g The chief executive of the Ministry of Business, Innovation and Employment may at any time revoke a designation (see A15.1.30).

Note: The power to designate a person as an immigration officer or a refugee and protection officer, or to revoke a designation, has been delegated to the Deputy Chief Executive – Immigration New Zealand.

A15.1.5 Designations

See also Immigration Act 2009 ss 388, 390

a An immigration officer:
   i is the chief executive, and every person who has been designated by the chief executive as an immigration officer;
   ii includes any Customs officer designated by the chief executive as an immigration officer, whether individually or by class or position for the purposes of Parts 3 and 4 and sections 279, 280, 282-285, 366 and 367 of the Immigration Act 2009, and regulation 34 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010;
   iii includes any person designated by the chief executive as an immigration officer, whether individually or by class or position, who:
      o is a head of mission or head of post; or
      o is a member of staff at a New Zealand overseas mission or post who is authorised by the head of mission or head of post to exercise consular functions; or
      o is a member of staff of an overseas branch of the Ministry of Business, Innovation and Employment; or
b. The chief executive must specify which functions and powers an immigration officer is authorised to exercise under this Act. An officer may not perform any functions or exercise any powers under this Act unless specifically authorised by the chief executive.

**Note:** The power to specify which functions and powers an immigration officer is authorised to exercise under the Immigration Act 2009 has been delegated to the Deputy Chief Executive – Immigration, General Manager – Visa Services and Immigration New Zealand Branch Managers.

c. A person who has been designated by the chief executive as a refugee and protection officer may perform all the functions and exercise all the powers of a refugee and protection officer.

A15.1.10 Process for being designated as an immigration officer

**See also Immigration Act 2009 ss 388, 391(3)**

a. To be designated as an immigration officer a person must:

i. complete a training schedule (coordinated by the Ministry of Business, Innovation and Employment technical trainers); and

ii. demonstrate competence in a number of specified areas; and

iii. be deemed competent to carry out the functions of an immigration officer.

b. However, the chief executive may otherwise designate an individual as an immigration officer as he or she sees fit.

**Note:** the chief executive need not be issued with a warrant of designation, and may perform or exercise all the powers and functions of an immigration officer under this Act.

c. The manager should make a request to the chief executive, using the appropriate form, that a person be designated as an immigration officer when the person’s manager is satisfied that the person:

i. has completed the required training; and

ii. can demonstrate competence in a number of specified areas; and

iii. should be designated as an immigration officer.

d. If the chief executive decides to designate the person as an immigration officer, a letter will be sent to the person detailing any relevant delegated powers the person may exercise.

e. Any such designation or authorisation:

i. continues in force according to its tenor until it is revoked, even if the chief executive who made it has ceased to hold office, and continues to have effect as if made by the successor in office of that chief executive;

ii. is subject to such restrictions or conditions as the chief executive specifies in writing in the warrant of designation.

A15.1.10.1 Transitional provisions regarding immigration officers

**See also Immigration Act 2009 s 462**

From commencement of the Immigration Act 2009:

a. immigration officers, including customs officers, designated under the Immigration Act 1987 must be treated as immigration officers designated under the Immigration Act 2009 who are authorised to exercise visa and entry permission decision-making powers; and
b visa officers designated under the Immigration Act 1987 must be treated as immigration officers designated under the Immigration Act 2009 who are authorised to make decisions relating to visas outside New Zealand.

A15.1.15 Immigration officers’ functions and powers

See also Immigration Act 2009 ss 389(1), 389(2)

a An immigration officer may be authorised to perform or exercise individual functions and powers, or functions and powers of one or more classes.

b Functions and powers may be classified as follows:
   i visa decision-making;
   ii entry permission decision-making;
   iii compliance and enforcement;
   iv the power of detention.

A15.1.20 Warrant of designation

See also Immigration Act 2009 ss 388(3), 388(4), 388(7), 388(8), 388(9)

a An immigration officer authorised to exercise one or more of the following powers must be issued with a warrant of designation, signed by the chief executive, specifying which of those powers the officer may exercise:
   i the power to deport a person under section 178;
   ii the power of entry and inspection under sections 276, 277, and 278;
   iii the powers under sections 279, 280, 281, and 288 to require information or documents for the purpose of ensuring compliance with this Act;
   iv the powers under sections 282, 283, 284, and 285 at a border;
   v the power of entry and search under section 286;
   vi the power to obtain certain information pending a person’s deportation under section 287;
   vii the power to detain a person under section 312.

b A warrant is sufficient evidence of an officer’s designation as an immigration officer and the officer’s authorisation to perform the functions and exercise the powers specified in it.

c To be issued with a warrant, the immigration officer must have received suitable training.

d Whenever an immigration officer (including a constable exercising the powers of an immigration officer):
   i seeks entry to any premises, building, or craft in the course of exercising a power; or
   ii exercises a power of detention
      the officer must produce their warrant of designation and, if requested, state the provision or provisions of the Act under which they are acting.

e An immigration officer (including a constable exercising the powers of an immigration officer) who, in exercising a power described in (a) above, orally makes a request, requirement, or demand of a person must also produce his or her warrant of designation if called upon to do so by the person.

f A constable exercising the powers of an immigration officer can meet the requirement to produce his or her warrant of designation by being in uniform or by producing their badge or other evidence of being a constable.

g Notwithstanding (a) above immigration officers who are not authorised to exercise any of those powers may also be issued with a warrant of designation.

h The warrant of designation must be:
i  in a secure place when not in use; and
ii used only by the officer to whom it is issued; and
iii produced in circumstances where production is required by law (as described in (d) and (e) above); and
iv returned to the chief executive of the Ministry of Business, Innovation and Employment when the officer leaves the Ministry or moves to a position which does not require them to exercise the functions of an immigration officer.

A15.1.25 Process for being designated as a refugee and protection officer
See also Immigration Act 2009 s 390
To be designated as a refugee and protection officer a person must:
a complete a training schedule (coordinated by Immigration New Zealand trainers); and
b demonstrate competence in a number of specified areas; and
c be deemed competent to carry out the functions of a refugee and protection officer.

A15.1.30 Revocation or lapsing of designations
See also Immigration Act 2009 s 391
a Every designation by the chief executive of a person as an immigration officer or a refugee and protection officer, or for any other purpose under this Act, is revocable in writing at will.
b Every authorisation of an immigration officer to exercise a power or perform a function is revocable in writing at will.
c A designation lapses when the person leaves the Ministry or the service or employment in respect of which the person was designated.
d A person whose designation has lapsed or been revoked must immediately surrender the warrant of designation to the chief executive.

Effective 08/05/2017
A15.5 Delegation of Powers to the Ministry of Business, Innovation and Employment – Immigration New Zealand

PURSUANT to section 380 of the Immigration Act 2009 (the Act) and effective from 20 September 2017 I, Michael Allan Woodhouse, Minister of Immigration, hereby:

1. REVOKE the Instrument of Delegation dated 2nd day of December 2015 previously made under that section;
2. DELEGATE, to each immigration officer who is the holder (or is acting as the holder) from time to time of any office or position specified in each of the Schedules to this Instrument, and is suitably trained and qualified, the powers under the Immigration Act 2009 specified in relation to that office or position in the relevant Schedule, but subject to any conditions listed in those Schedules; and
3. DELEGATE to every immigration officer the power to take the practical steps necessary under that Act to implement a decision taken by another immigration officer pursuant to this Instrument of Delegation. Any person who exercises any power pursuant to this Instrument of Delegation shall do so in accordance with the Government policy and Departmental instructions that are current at the time, as set out from time to time in the Immigration New Zealand Operational Manual and circular instructions on Immigration.

Dated at Wellington this 11th of September 2017

Michael Allan Woodhouse
Minister of Immigration

Schedule 1

Office or Position:
1. Chief Executive, Ministry of Business, Innovation and Employment
2. Deputy Chief Executive – Immigration New Zealand, Ministry of Business, Innovation and Employment

Powers Delegated:
1. All those powers set out in Schedules 2, 3 and 4 of this Instrument of Delegation without limitation or subject to any conditions;
2. Specifying an international organisation under s4, by notice in the Gazette, as an organisation whose travel documents will be accepted as certificates of identity.
Schedule 2

Office or Position:
1. 3rd Tier Manager - Immigration New Zealand, Ministry of Business, Innovation and Employment
2. 4th Tier Manager - Immigration New Zealand, Ministry of Business, Innovation and Employment
3. 5th Tier Manager - Immigration New Zealand, Ministry of Business, Innovation and Employment
4. 6th Tier Manager - Immigration New Zealand, Ministry of Business, Innovation and Employment
5. Immigration Manager - Immigration New Zealand, Ministry of Business, Innovation and Employment

Powers Delegated:
1. All those powers set out in Schedules 3 and 4 of this Instrument of Delegation;
2. Giving a special direction under s17(1)(a) of the Act authorising a residence class visa to be granted to a person to whom s15 or s16 applies;
3. The power under s79(5) of the Act to grant a temporary visa to a person prohibited from applying for a temporary visa under s79(4);
4. The power under s180(3) of the Act to reduce or waive any debt due by a person under s180(1) (this power is delegated to managers in the Compliance, Risk and Intelligence Services Branch only);
5. Providing by special direction under s395(2) of the Act for an exemption from or refund of any prescribed fee or charge in whole or in part;
6. Providing by special direction under s396(9) of the Act for an exemption from or refund of any bond, in whole or in part;
7. The power under s398(1) and (3) of the Act to provide funds for the costs of deportation or repatriation from New Zealand (this power is delegated to managers in the Compliance, Risk and Intelligence Services Branch only);
8. Giving a special direction under s412(2) of the Act, relating to existing applications for visas and permits, that s412(1) not apply;
9. The power conferred by regulation 26(5) (where applicable pursuant to s399(8) of the Act and pursuant to the transitional provision of Schedule 1AA of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive (by way of special direction) the requirement to pay the migrant levy;
10. The power conferred by regulation 34(1)(a) and (f) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction:
   a. one or more of the requirements for applying for a visa (whether at an immigration control area or otherwise);
   b. any matter relating to an endorsement of New Zealand citizenship in a New Zealand citizen’s foreign passport;
11. The power to give a special direction under s51(3) of the Act to vary the conditions of a resident visa, as an exception to instructions;
12. The power under s72(3) of the Act to grant a second or subsequent resident visa as an exception to instructions;
13. The power under s72(3) of the Act to grant a permanent resident visa as an exception to instructions;
14. The power under s399(3A) of the Act to provide by special direction for an exemption from or refund of any immigration levy, in whole or in part.

Schedule 3

Office or Position:
1. Immigration officer, technical advisor
2. Immigration officer

Powers Delegated:

1. Any of the powers set out below which have been assigned to an individual by the Chief Executive;
2. Giving a special direction under s17(1)(a) of the Act authorising:
   a. a temporary entry class visa and/or entry permission; or
   b. a transit visa
to be granted to a person to whom s15 or s16 of the Act applies;
3. The power under s50(3) of the Act to do either of the things in subsection (2)(b), that is to vary or cancel conditions on a resident visa, by agreement with the visa holder;
4. The power under s61 of the Act to grant or refuse a visa of any type to a person who is unlawfully in New Zealand and is not a person in respect of whom a deportation order is in force;
5. The power under s69(2)(d) of the Act to suspend, in any individual case, a waiver of the requirement to hold a visa permitting travel to New Zealand;
6. The power conferred by regulation 23(2) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to require, by special direction, that regulations apply to applications for visas not otherwise provided on the approved form;
7. The power conferred by regulation 34(1)(a) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, the requirements in regulation 5(2)(d)(iii), to the extent that it relates to immigration instruction requirements to produce a police or similar certificate;
8. The power conferred by regulation 34(1)(a) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, requirements specified in regulation 5(2) in relation to residence class visa applications lodged:
   a. under the Refugee Family Support category;
   b. under the victims of domestic violence category;
   c. by persons recognised as refugees and protected persons in New Zealand.
This delegation only applies to the extent specified by immigration instructions;
9. The power conferred by regulation 34(1)(a) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, requirements specified in regulation 5(2) in relation to residence class visa applications lodged under the Skilled Migrant Category;
10. The power conferred by regulation 34(1)(a) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, the requirements in regulation 10(2)(e) for particular documents, information and/or evidence to be tendered with the approved application form, in respect of applications made for temporary entry class visas;
11. The power conferred by regulation 34(1)(a) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, requirements specified in regulations 10(2), in relation to temporary entry class visa applications lodged:
   a. under Special work visas for victims of domestic violence category;
   b. by persons recognised as refugees and protected persons in New Zealand.
This delegation only applies to the extent specified by immigration instructions;
12. The power conferred by regulation 34(1)(b), (c) and (d) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, one or more of the requirements for:
   a. applying for a second or subsequent resident visa;
   b. varying conditions of travel for a resident visa;
   c. notifying an expression of interest in applying for a residence class visa.
Schedule 4

Office or Position:
1. Immigration officer at an immigration control area, as defined under s382, or any other port of entry
2. Immigration officer who holds the position of compliance officer

Powers Delegated:
1. Any of the powers set out below which have been assigned to an individual by the Chief Executive;
2. The power to make decisions under s16 of the Act that certain persons are not entitled to the grant of a visa and/or entry permission;
3. Giving a special direction under s17(1)(a) of the Act authorising a resident class visa to be granted to a person who applies for a resident class visa on arrival, and to whom s15 or s16 applies;
4. The power under s69(2)(c) of the Act to waive, in any individual case, the requirement to hold a visa permitting travel to New Zealand;
5. The power to give a special direction under s101(4) of the Act in relation to the responsibilities of carriers and persons in charge of craft en route to or arriving in New Zealand;
6. The power to give a special direction under s103(1) of the Act in relation to persons arriving in New Zealand;
7. The power to give a special direction under s108(4)(b) or (5)(b) of the Act to impose, vary or cancel the conditions of a resident visa granted outside New Zealand;
8. The power to give a special direction under s119(1) of the Act in relation to persons leaving New Zealand.
9. Determining under s156(1)(b) of the Act that a person holds a temporary entry class visa under a false identity;
10. Determining under s157(1) of the Act that there is sufficient reason to deport a temporary entry class visa holder;
11. Determining under s157(3) of the Act that a person is an excluded person for the purpose of section 157(2);
12. The power under s172 of the Act, with due regard to submissions (if applicable), to cancel liability for deportation for a temporary entry class visa holder;
13. The power under s182(1) of the Act to reduce or remove a non-permanent period of prohibition on entry in relation to a person in regards to their application for visa or entry permission;
14. The power conferred by regulation 34(1)(a), (b) and (e) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, one or more of the requirements for applying for:
   a. a visa or for entry permission, to the extent specified by immigration instructions;
   b. a second or subsequent resident visa at an immigration control area.

Effective 20/09/2017
A15.10 Instrument of Delegation September 2011 (to 01/07/2013)

Note: The instructions contained in this section cease to be effective from 1 July 2013.

Effective 01/07/2013
### A15.15 Delegation of Powers to Delegated Decision Makers of the Ministry of Business, Innovation and Employment – Immigration New Zealand

<table>
<thead>
<tr>
<th>See previous instructions:</th>
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<td>A15.15 Effective 24/11/2015</td>
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<tr>
<td>A15.15 Effective 26/11/2014</td>
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PURSUANT to section 380 of the Immigration Act 2009 (the Act) and effective from **20 September 2017**, I, Michael Allan Woodhouse, Minister of Immigration, hereby:

1. REVOKE the Instrument of Delegation dated 30th day of July 2015 previously made under that section with the title *Delegation of Powers to Delegated Decision Makers of Ministry of Business, Innovation and Employment - Immigration New Zealand*;
2. DELEGATE the powers in the Act that are specified below to the immigration officers specified below (known as Delegated Decision Makers ("DDMs");
3. DELEGATE to every immigration officer the power to take the practical steps necessary under that Act to implement a decision taken by a DDM pursuant to this Instrument. Any person who exercises any power pursuant to this Instrument shall do so in accordance with:
   a. any applicable immigration instructions (s22 of the Act); and
   b. any applicable general instructions to immigration officers from the chief executive (s26(4) of the Act).
4. For the avoidance of doubt, this Instrument is additional to, and does not revoke, any other Instrument aside from that revoked by paragraph 1 of this Instrument.

Dated at Wellington this 11th of September 2017

Michael Allan Woodhouse
Minister of Immigration

**Specified Delegated Decision Makers**

Alejandra Mercado (5th Tier Manager)
Arron Baker (4th Tier Manager)
Bruce Burrows (4th Tier Manager)
Steve Cantlon (5th Tier Manager)

**Additional Powers Delegated:**

1. On granting a resident visa as an exception to residence instructions, the power under s50(1) to impose conditions in addition to those specified in the applicable residence instructions (if any); or to vary or waive conditions that would otherwise apply to a visa of that type;
2. Following the grant of a resident visa, the power under s50(2) to, by special direction, impose further conditions whether or not the conditions are specified in the applicable residence instructions (if any); or vary or cancel conditions that would otherwise apply to the visa or were imposed under s50(1);

3. The power under s71(5) to grant a residence class visa, as a matter of absolute discretion, to a person to whom s71(4) of the Act applies;

4. The power under s72(2) to give a special direction allowing a residence application received by an immigration officer in the first instance to be considered by the Minister;

5. The power under s72(3) to grant a residence class visa as an exception to residence instructions;

6. The power under s94(4) to, by special direction, issue an invitation to apply for a visa to a person whether or not the person has expressed his or her interest in the manner required by the Act or immigration instructions;

7. The power under s172(1) to, as a matter of absolute discretion, cancel a person's liability for deportation where deportation liability arises under ss156(1)(a), 158(1)(a), 159, 161, or 162;

8. The power under s172(2) to, as a matter of absolute discretion, suspend a residence class visa holder’s liability for deportation where deportation liability arises under ss156(1)(a), 158(1)(a), 159, 161, or 162. Any suspension of liability may be set for a period not exceeding 5 years, and may be made subject to any conditions which are to be stated in the written notice of suspension.

9. The power under s172(3) to reactivate a person’s liability for deportation if the person fails to comply with the conditions imposed by a DDM under s172(2)(b).

10. The power under s174(2) to determine that a person has met the conditions imposed by the Minister under s172(2) for the period of the suspension, to cancel that person’s liability for deportation, and notify the person and the Tribunal of that fact.

11. The power under s213(5) to determine that a person has met any conditions imposed by the Tribunal under s212(1) for the duration of the suspension, cancel the person’s liability for deportation, and notify the Tribunal accordingly.

Effective 20/09/2017
IN THIS SECTION

A16.1 General Instructions as to the order and manner of processing residence applications .......... 173
A16.2 Operational instruction: exercise of discretionary powers .................................................. 174
A16.1 General Instructions as to the order and manner of processing residence applications

See previous instructions:
A16.1 Effective 30/07/2012
A16.1 Effective 29/11/2010

See also Immigration Act 2009 ss 26(4), 411

Pursuant to section 26(4) of the Immigration Act 2009 and acting under delegated authority from the Chief Executive of the Ministry of Business, Innovation and Employment, I hereby give the following general instructions as to the order and manner of processing residence class visa applications under Government residence instructions:

a First priority will be given to the following types and categories of applications for residence class visas in preference to applications under other types and categories:
   i Christchurch Response (2019) Category will have priority;
   ii Skilled Migrant Category (SMC) applications with job offers;
   iii All business categories;
   iv Residence from Work category applications:
      o Talent (Accredited Employer);
      o Talent (Arts, Culture and Sport);
      o Long Term Skill Shortage List;
   v Refugee Policy;
   vi Partnership and Dependent Child applications where the partner or parent is,
      o a New Zealand citizen, or
      o the holder of a permanent resident visa, and who has been absent from New Zealand for a period of at least two years prior to the date of the application being accepted for consideration apart from short visits within that period. (Note that in the case of a partnership application the New Zealand partner and the applicant must have been living together for 12 months or more in a partnership that is genuine and stable).

b Second priority will be given to the following types and categories of applications for residence class visas:
   i Partnership and Dependent Child applications (other than those in instruction (a)).

c Third Priority will be given to the following types and categories of applications for residence class visas:
   i Parent category.

d These instructions do not prevent immigration officers according urgency to the processing of any particular residence class visa application when the individual circumstances so warrant that.

e The previous General Instructions made pursuant to section 26(4) of the Immigration Act 2009 are revoked.

Effective 24/04/2019
**A16.2 Operational instruction: exercise of discretionary powers...**

See previous instructions:
- A16.2 Effective 22/08/2016
- A16.2 Effective 01/12/2014
- A16.2 Effective 29/07/2013
- A16.2 Effective 29/11/2010
- A16.2 Effective 01/07/2011

**Note:** The operational instructions contained in this section of the Operational Manual do not constitute immigration instructions as described in section 22 of the Immigration Act 2009.

**A16.2.1 Introduction**

a. This Operational Instruction provides guidance to immigration officers concerning the continuing treatment of persons claiming refugee or protection status on arrival at the border, including in a mass arrival context. In particular, it is intended to inform decisions made by immigration officers at the border and whether to detain or otherwise restrict the freedom of movement of persons claiming refugee or protection status. It rescinds previous operational instructions and internal administration circulars on this subject.

b. The overriding principle behind the Operational Instruction is that, if freedom of movement of persons claiming refugee or protection status at the border is to be restricted at all, then it should be restricted to the least degree and for the shortest duration possible. Particular care must be given in any decision involving women (particularly pregnant women and adolescent girls), children and members of other vulnerable groups.

c. The Operational Instruction has been drafted having regard to the UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (February 1999), and the Court of Appeal’s 16 April 2003 decision in *Refugee Council and Ors v AG*.

d. The Operational Instruction will be incorporated into the INZ Operational Manual and the Compliance Staff Toolkit.

**A16.2.5 Background**

a. The Immigration Act 2009 contains discretionary powers that may be exercised by immigration officers in relation to non-New Zealand citizens or residents arriving at New Zealand’s border. The spectrum of responses ranges from the grant of a temporary visa and/or entry permission to New Zealand to detention in a penal institution until departure from New Zealand can be arranged on the first available flight. In all cases, a decision to detain in a penal institution rather than any lesser form of restriction on the freedom of movement of a refugee or protection claimant is to be made only after all other alternatives have been excluded.

b. The full range of possible responses are as follows:
   i. The grant of a visa under section 45 and/or entry permission under section 107 of the Immigration Act 2009 where the person is able to lodge an application in accordance with section 79 of the Immigration Act 2009 (i.e. they hold a valid visa or have arrived under a visa waiver);
   ii. The grant of a visa under section 61 of the Immigration Act 2009 where the person is not able to lodge an application;
   iii. Release into the community on residence and reporting requirements under section 315 of the Immigration Act 2009 without the grant of a visa and without initially detaining the person under section 313 of the Immigration Act 2009;
   iv. Initial detention under section 313 of the Immigration Act 2009 for the purpose of release into the community on conditions under section 320 Immigration Act 2009;
   v. Initial detention under section 313 of the Immigration Act 2009 for the purpose of obtaining a
warrant for further detention in an approved premises under section 317 of the Immigration Act 2009;
vi Initial detention under section 313 of the Immigration Act 2009 for the purpose of obtaining a warrant for further detention in a penal institution under section 317 of the Immigration Act 2009.

c The response chosen will take into account the individual circumstances of the person presenting at the border. In the case of a group arrival in New Zealand, all the circumstances surrounding its arrival will be considered. The responses are not static. It may be appropriate, throughout the duration of a person’s presence in New Zealand, for an immigration officer to revisit the case to ensure that their decision remains appropriate in view of any changed circumstances (including the simple passage of time). This is particularly important where a person remains subject to restrictions on their freedom of movement (including being released on conditions). Those restrictions must continue to be able to be justified as necessary. It may, for example, be appropriate for a person initially detained in a penal institution to be moved to an approved premises. A person detained at an approved premises may be released on conditions or released into the community with a temporary visa. It may be appropriate for a person previously released on conditions to be taken back into custody to be detained at an approved premises or in a penal institution.

A16.2.10 Restricting movement of refugee or protection status claimants

A16.2.10.1 Convention/Covenant Analysis

Where a person arrives in New Zealand from another country and on arrival claims refugee status under the 1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention), or protection status under the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) or the 1966 International Covenant on Civil and Political Rights (ICCPR), care must be exercised in determining the appropriate immigration response. This is especially important where the response involves possible detention under section 317 in a penal institution or at an approved premises. There are a number of reasons for this:

a Commitment to a system of asylum, as being a Party to the Refugee Convention, CAT and ICCPR entails, requires all persons claiming asylum to be treated carefully and with sensitivity at all stages of the process. This is especially important where it is proposed that restrictions on freedom of movement be imposed, particularly restrictions involving detention;

b The effect of custody in a penal institution can be traumatic for some genuine claimants;

c Immigration officers need to have regard to the provisions of the Refugee Convention in carrying out their functions. In accordance with Article 31 of the Refugee Convention and also with the UNHCR Guidelines on Detention, it is accepted that restrictions on freedom of movement of refugees, in particular by detention (including detention of refugee status claimants), should occur only where necessary. In particular Article 31 states:

Article 31: Refugee Unlawfully in the Country of Refuge

The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restriction shall only be applied until their status in the country is regularised or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period of time and all the necessary facilities to obtain admission into another country.

Therefore, not only should restrictions on freedom of movement occur only where necessary, but the level of restriction on freedom of movement should be as minimal as possible, appropriate to the circumstances of the particular case.

Section 164 provides that no person who is a refugee status claimant (or who has been recognised as a refugee) may be deported from New Zealand unless such deportation is permitted in terms of Articles
32.1 or 33 of the Refugee Convention; and, no person who is claiming protection status or is a protected person may be deported from New Zealand to a place where there is reason to believe they would be in danger of being subjected to torture, arbitrary deprivation of life or cruel treatment. Because processing claims to refugee or protection status, and appeals, may not be straightforward, claimants held in detention may be liable for detention for a considerable period of time.

A16.2.10.1.5 Restrictions on freedom of movement

There will be circumstances where restricting the movement of a person who claims refugee or protection status at the border is necessary, particularly where issues of national security or public order arise. Determining whether placing restrictions on freedom of movement (in particular, through detention) is necessary will depend on a careful assessment of all factors relevant to the arrival. This may include the extent to which that person is able to provide accurate and reliable information about their identity, whether the claim appears to be made in good faith, and the extent to which there are identified risks to national security and public order.

An assessment of any risk to public safety, security, and order will need to take account of the prevailing security situation, both in New Zealand and globally. Whether the person arrived as part of a group which arrived unlawfully, or was involved in organised smuggling of illegal migrants, may be a factor in determining whether restriction on freedom of movement (in particular detention in a penal institution) is necessary. Smuggled migrants must not, however, be automatically subject to detention.

A16.2.10.10 Judgement

a The necessary standard will vary according to the type of restriction on freedom of movement to be applied. The UNHCR Guidelines on Detention recognise a distinction between detention in a prison environment and accommodation at an open centre with some restrictions on freedom of movement. The Guidelines also recognise a distinction between detention and release into the community with reporting conditions. Individual immigration officers must, therefore, make judgements taking into account a cumulative set of considerations:

i Immigration officers are first to consider whether any restriction at all on a refugee or protection status claimant’s freedom of movement is necessary or whether the officer may grant the claimant a visa and/or entry permission so that they may remain in the community unrestricted.

ii If a visa and/or entry permission is refused then officers are next to consider whether monitoring of the claimant on residence and reporting requirements can manage the identified risks.

iii If release on residence and reporting requirements is not sufficient to manage the risks, then officers should consider whether the client could be released on conditions by a District Court.

iv If the identified risks cannot be managed by this means, immigration officers are to consider whether accommodation at the Mangere Refugee Resettlement Centre can manage those risks.

v If not then detention in a penal institution may be considered necessary.

b All decisions are based on a careful, individual assessment of the circumstances of each case, and a decision must not restrict freedom of movement more than is necessary. All decisions involving any form of restriction on freedom of movement must be lawful and in accordance with international standards. An immigration officer making a decision to restrict freedom of movement should record all of the matters considered in reaching the decision. All decisions to restrict the freedom of movement of a refugee or protection status claimant are also subject to built in safeguards, by way of administrative or judicial review. These review processes are described at A16.2.25.

c An indicative list of considerations has been drawn up to guide decisions by immigration officers as to whether in a particular case any restrictions on freedom of movement are necessary, and if so, the type of restriction that may be necessary. See A16.2.30.

A16.2.15 Children and young persons under 18 years of age

a Under the Immigration Act 2009, an immigration officer may apply a discretionary power in respect of a child or young person under 18 years of age who has (or, if accompanied, whose parent/s have)
claimed refugee or protection status. In this situation, where any restriction on freedom of movement is being considered, the additional principles set out below apply. These principles are in accordance with the UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum (February 1997) and the United Nations Convention on the Rights of the Child:

i. The best interests and welfare of a child or young person shall be the primary consideration;

ii. A child or young person is entitled to such measures of protection as are required given their status as a minor;

iii. A child or young person is entitled to receive appropriate protection and humanitarian assistance in pursuing their claim to refugee or protection status;

iv. A child or young person is not to be separated from their parent(s) against their will, except where such separation is necessary for the best interests and welfare of the child or young person;

v. In the case of a child or young person under 18, there must be a responsible adult to represent their interests, in accordance with, and as defined in, section 375 of the Immigration Act 2009, before any decision regarding restrictions on that child or young person’s freedom of movement is made;

vi. A child or young person is entitled to express their views regarding any proposed restriction on their freedom of movement, either personally or through a responsible adult. Due weight is to be given to those views having regard to the age and level of maturity and understanding of that child or young person;

vii. The detention of a child or young person is only to be used as a measure of last resort and for the shortest appropriate period of time; and

viii. A child or young person should not be detained with adults unless it is considered in that child’s or young person’s best interests and welfare to do so (for example if this is the only way to preserve family unity). It is recognised, however, that due to the number of suitable facilities, in some cases detention with adults will be unavoidable.

b. On the basis of these principles, as a general rule, children and young persons under 18 years of age should not be detained, and it would only be in extenuating circumstances that their detention in a penal institution could be justified as necessary. As a general rule, an unaccompanied child or young person under 18 should not be detained. Any restriction on the freedom of movement of an unaccompanied child or young person under 18 years of age should only occur after the Ministry for Children, Oranga Tamariki has been involved, either in the role of responsible adult, or otherwise.

c. As a minimum, any restriction on the freedom of movement of an accompanied or unaccompanied child (all young persons under 18 years of age) should be notified to the Ministry for Children, Oranga Tamariki as soon as practicable after that detention has occurred.

A16.2.20 Officers authorised to exercise discretionary powers

Only immigration officers listed in A16.2.35, (as may be amended by an Area Manager from Compliance Risk and Intelligence Services from time to time), are authorised:

- to determine whether a request that a police officer arrest and detain a person who is a refugee or protection status claimant, under section 313 of the Immigration Act 2009, is justified as necessary;
- to agree to a residence and reporting requirements agreement with a refugee or protection status claimant under section 315 of the Immigration Act 2009;
- to apply for or give consent to the release on conditions of a refugee or protection status claimant under section 320 of the Immigration Act 2009;
- to refer to a branch with a direction to grant a visa under section 61 of the Immigration Act 2009 to a claimant who has been detained and/or released on conditions.
A16.2.25 Periodic review of restrictions on freedom of movement

A16.2.25.1 Administrative review processes

a Any decision restricting the freedom of movement of a refugee or protection status claimant must not only be justified as necessary at the time of the decision, but that restriction must continue to be justified as necessary. Individual’s circumstances can change with the passage of time. Restrictions on freedom of movement that are necessary for shorter periods of time may not meet the necessary test over a longer period.

b At the time of a person’s arrival in New Zealand there may be limited time and information available to inform a decision that affects a claimant’s freedom of movement. A more conservative approach to the guidelines set out in A16.2.30 may be appropriate. Often, further information will become available over the next 10-14 days that may be relevant to the initial decision to restrict a person’s freedom of movement. This may include information regarding the identity of the claimant such as:

i documents and further information provided by the claimant regarding their identity;

ii a credibility assessment concerning identity by a refugee and protection officer following an interview of the claimant;

iii information from a superintendent of a penal institution or the person in charge of the Mangere Refugee Resettlement Centre (MRRC) about the identity of a person and any identified risks that they present in terms of criminal offending, absconding or to national security and public order; and

iv any relevant information provided by international agencies, the New Zealand Police or security services.

c For claimants in detention, a review of the grounds justifying detention should occur as soon as practical after any new evidence or information emerges about the claimant, or 14 days after detention at the latest. This is preferable to waiting until the initial 28 day period expires, when the matter will be subject to mandatory judicial review by a judge. If detention is determined at that stage to no longer be necessary, then the immigration officer must decide whether to apply for the claimant’s release on conditions under section 320 of the Immigration Act 2009, or to direct that a visa be granted under section 61 of the Immigration Act 2009. Alternatively, an application for a variation of the warrant to allow the person to be transferred from a penal institution to the MRRC may be appropriate.

d Immigration officers should also continue to monitor the circumstances of claimants released on conditions or subject to a residence and reporting requirements agreement. A review of the appropriateness of that release should occur as soon as practical after any new evidence or information emerges or is provided about the claimant, and immigration officers should continue to monitor these cases. Where applicable, steps to vary the conditions or requirements should be taken.

e In conducting a review, immigration officers may obtain information about the claimant and the claim from a variety of sources, including the Refugee Status Branch (RSB) of Immigration New Zealand. Without compromising its ability to carry out a full and fair assessment of the claim, the RSB may be in a position to offer factual advice about the circumstances of the claimant (including their identity and nationality) and about the relative strength or weakness of the claim. Where the RSB has declined refugee or protection status, that fact itself may have a bearing on any review of the necessity for continued restrictions on the claimant’s freedom of movement.

A16.2.25.5 Further warrants of commitment and judicial review processes

Further Warrants of Commitment

a The Immigration Act 2009 provides for periodic review of the detention of all persons detained under sections 317 and 323 of the Immigration Act 2009 in either a penal institution or an approved premise, regardless of whether or not they have claimed refugee or protection status.
b Section 317(4) states that in determining whether to issue a warrant of commitment, or whether to order the person’s release on conditions, the Judge must have regard to, among other things, the need to seek an outcome that maximises compliance with the Act.

c Section 323(3) allows the Judge to order a person’s release on conditions where a warrant of commitment is applied for, and if successful would result in the person’s continuous detention for a period of more than six months, unless the person’s deportation or departure is prevented by some action or inaction of the person; and no exceptional circumstances exist.

d It is therefore particularly important that immigration officers, when preparing the required section 316 application, present all the circumstances of the case, and that the application justifies as necessary the continued detention of the claimant in either a penal institution or the Mangere Refugee Resettlement Centre

Application for release on conditions

a An immigration officer may at any time apply for release on conditions of a person detained under section 317 of the Immigration Act 2009. A detainee may also apply for a variation of the warrant or release on conditions, which is ultimately a matter for the discretion of a District Court Judge.

b Orders for release on conditions must be made subject to particular statutory conditions (e.g. place of residence, frequency and manner of reporting), and can be made subject to other conditions the Judge thinks fit to impose. Immigration officers have a role in informing the way in which the statutory conditions are applied and in assisting in the imposition of any judicial conditions. The conditions imposed should be no more than are necessary to manage the risks associated with the claimant.

Judicial review of release on conditions

A District Court Judge may make an order for a person released on conditions to be detained under a warrant on application by an immigration officer, either due to a breach or because detention in a penal institution or approved premises is considered necessary. Where a person breaches the statutory conditions, there is a presumption of continued detention unless the person concerned can provide a reasonable excuse for the breach. An application for an order to detain under a warrant of commitment by an immigration officer must include the reasons why detention in a penal institution or at the Mangere Refugee Resettlement Centre is necessary.

Habeas corpus and judicial review

a Persons subject to detention under sections 317 or 323 of the Immigration Act 2009 or released on conditions under section 320 of the Immigration Act 2009 may apply at any time to the High Court for judicial review of any decision by an immigration officer or a District Court Judge to detain them or release them on conditions.

b Persons detained pursuant to sections 317 or 323 of the Immigration Act 2009 may also apply to the High Court in accordance with the Habeas Corpus Act to have the lawfulness of their detention determined by a High Court Judge. Such applications must be heard and determined in precedence to all other matters.

A16.2.30 Indicative list of considerations which may guide decisions about restriction on freedom of movement (at the time of their arrival and subsequently) of persons claiming refugee or protection status at the border

Any decision to impose any level of restriction on the freedom of movement of the individual, and the level of restriction of movement that is to be imposed, remains a matter for careful judgement by the officer concerned after weighing up all relevant circumstances of the case. For example, with regard to the factors listed below, the absence of valid travel documents is just one factor which may be taken into consideration when making a decision whether or not to impose any level of restriction of movement. There is no predetermined view that a claimant without valid travel documents, or whose documents have been destroyed, should be treated as high risk, as it is recognised that individuals with legitimate claims to
refugee or protection status may have to resort to such measures to escape a well founded fear of persecution, torture, cruel treatment or arbitrary deprivation of life.

A critical factor, particularly in considering whether detention in a penal institution is necessary, (and in line with the UNHCR Guidelines on Detention, including the 1989 Policy and 1991 Guidelines on the Protection of Refugee Women and the 1995 Sexual Violence against Refugees: Guidelines on Prevention and Response (as updated in 2003)), is the existence of an intention to mislead the authorities of the State in which they wish to claim asylum. In all cases, a decision to detain in a penal institution rather than any lesser form of restriction on the freedom of movement of a claimant is considered only after all other alternatives have been excluded.

A16.2.15 sets out the special principles that apply in relation to decisions affecting the freedom of movement of children and young persons under 18. Special consideration is also to be given to the treatment of other vulnerable groups, including women (especially pregnant women and adolescent girls), the elderly, the disabled, and torture or trauma survivors, in line with the relevant UN human rights instruments and UNHCR guidelines.

A16.2.30.1 Considerations which may inform a decision to grant a visa and release into the community

a) The refugee or protection status claimant has valid travel documents. There are no concerns as to the claimant’s identity (including nationality) or risks to national security or public order. There are no concerns as to the claimant criminally offending or absconding (including for example, where a preliminary interview by a refugee and protection officer discloses that a claim is brought in good faith);

b) The circumstances outlined above apply but the claimant has no valid travel documents. However there would be no delay or difficulty in obtaining such documents in the event that the claim is declined;

c) The claimant is otherwise able to enter the community unrestricted, particularly in the case of a member of a vulnerable group including women (particularly pregnant women and adolescent girls), children, the elderly, the disabled, and torture or trauma survivors.

A16.2.30.5 Considerations which may inform a decision to release into the community on conditions or residence and reporting requirements

a) The identity (including nationality) of a refugee or protection status claimant cannot be ascertained to the satisfaction of an immigration officer but the officer is satisfied that the claimant presents a low risk of criminal offending, absconding or otherwise posing a risk to national security and public order;

b) A preliminary assessment of a refugee or protection status claimant’s claim by a refugee and protection officer suggests that the claim may not be brought in good faith and for this reason an immigration officer cannot be satisfied that there is no real risk of the claimant absconding;

c) A refugee or protection status claimant has no valid travel and/or identity document [and there may be delay or difficulty in obtaining those documents in the event that their claim to refugee or protection status is declined].

A16.2.30.10 Considerations which may inform a decision to require residence at Mangere Refugee Resettlement Centre

a) The identity (including nationality) of a refugee or protection status claimant cannot be ascertained to the satisfaction of an immigration officer and the risks presented by the claimant in terms of criminal offending, absconding or to national security and public order cannot be ascertained;

b) There is a clearly identified risk of a refugee or protection status claimant criminally offending, absconding or otherwise posing a risk to national security or public order but that risk can be managed by the claimant being required to reside at the Mangere Refugee Resettlement Centre (MRRC);
c A refugee or protection status claimant has arrived as part of a group of 10 or more persons who have also arrived unlawfully, and it is not appropriate for them to be released into the community on conditions;

d A refugee or protection status claimant has no valid travel and/or identity document and there may be delay or difficulty in obtaining those documents in the event that their claim to refugee or protection status is declined, and requiring the claimant to reside at the MRCC is otherwise necessary given the risks associated with them;

e A preliminary assessment of a refugee or protection claimant’s claim by a refugee and protection officer suggests any refugee or protection claim is clearly not brought in good faith, or not related to the criteria for the granting of refugee status laid down in the Refugee Convention nor any other criteria justifying the granting of refugee or protection status, and requiring the claimant to reside at the MRRC is otherwise necessary given the risks associated with them;

f A refugee or protection status claimant has already had a claim to refugee or protection status substantively declined in New Zealand, or another country that affords effective protection in a similar manner to the obligations listed in the Immigration Act 2009, and requiring the claimant to reside at the MRRC is otherwise necessary given the risks associated with them. However, if there were evidence that the claim was unfairly rejected (including new circumstances not being properly considered) this should be taken into account.

A16.2.30.15 Considerations which may inform a decision to detain in a penal institution

a A refugee or protection status claimant is a person to whom section 15 or 16 of the Immigration Act 2009 applies, or detention is otherwise required to protect national security or public order;

b There is reason to suspect that a refugee or protection status claimant is a person to whom sections 15 or 16 of the Immigration Act 2009 applies but their section 15 or 16 status cannot be immediately ascertained. This is especially in the case of a group arrival situation where there may be good reason to suspect some of those people of being involved in people smuggling;

c It is necessary to verify the identity of a refugee or protection status claimant where identity cannot be ascertained, particularly if identity may impact on the application of sections 15 or 16 of the Immigration Act 2009. This is especially relevant in the group arrival situation where there may be reason to suspect some of those arriving of being involved in people smuggling and the risks in failing to properly ascertain identity are high;

d There are strong grounds to believe that a refugee or protection status claimant has destroyed or otherwise disposed of their travel and/or identity documents with the intention of misleading Immigration New Zealand (INZ) officials as to the details of their travel and/or identity;

e A refugee or protection status claimant has used fraudulent documents in order to mislead INZ officials (for example the claim to refugee or protection status follows detection of the fraud by officials or the New Zealand Police);

f There is a clearly identified risk of a refugee or protection status claimant criminally offending, absconding or otherwise threatening national security and public order and that risk cannot be managed by the claimant being required to reside at the Mangere Refugee Resettlement Centre (MRRC);

g A preliminary assessment of a refugee or protection claimant’s claim suggests the claim is clearly not brought in good faith, or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention) nor any other criteria justifying the granting of refugee or protection status, and detention in a penal institution is otherwise necessary given the risks associated with them;

h A refugee or protection status claimant has already had a claim to refugee or protection status substantively declined in New Zealand, or another country that affords effective protection in a similar manner to the obligations listed in the Act, and the risks associated with the claimant cannot
be managed by the claimant being required to reside at the MRRC. However, if there were evidence that the claim was unfairly rejected (including new circumstances not being properly considered) this should be taken into account.

i In the case of a group arrival, if it is expected to take INZ and other government agencies considerable time to fully investigate and determine all the circumstances and facts pertaining to the group’s arrival in New Zealand. Such enquiries might include extensive enquiries both inside New Zealand, as well as in other countries, to obtain information regarding the group’s origin, history, composure, movements and activities.

A16.2.35 Officers authorised to exercise discretionary powers

a Immigration officers who are authorised to determine whether detention in a penal institution of a person who is a refugee or protection status claimant is justified as necessary, to apply for or consent to the release on conditions of a refugee or protection status claimant from a penal institution, or to direct that a visa be granted under section 61 of the Immigration Act 2009 to a refugee or protection status claimant detained in a penal institution are:
   • Assistant General Manager(s), Compliance and Border Operations, CRIS
   • Head(s) of Operation, Compliance Investigations, CRIS
   • Visa Operations Manager(s) ; Manager(s) Systems and Support, Compliance Investigations, CRIS
   • Immigration Manager(s), Border Operations, CRIS
   • Technical Specialist(s), Compliance Investigations ; Border Operations, CRIS
   • Compliance Officers (CRIS) who, as determined by the Manager(s) Systems and Support, are deemed sufficiently experienced to make this determination
   • Border Officers (CRIS), as determined by Technical Specialist(s) Border Operations, are deemed sufficiently experienced to make this determination

b Immigration officers who are authorised to determine whether detention at the Mangere Refugee Resettlement Centre (MRRC) of a person who is a refugee or protection status claimant is justified as necessary, or to agree a residence and reporting requirements agreement with a person who is a refugee or protection status claimant, or to direct the grant of a visa under section 61 of the Immigration Act 2009 to a refugee or protection status claimant detained at the MRRC are:
   • those immigration officers listed in A16.2.35(a).

c Immigration officers who are authorised to direct the grant of a visa under section 61 of the Immigration Act 2009 to a refugee or protection status claimant who is released on conditions or is subject to a residence and reporting requirements agreement are:
   • those immigration officers listed in A16.2.35(a).

Effective 13/05/2019
A17 Status of children born in New Zealand on or after 1 January 2006
IN THIS SECTION

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A17.1 Persons born in New Zealand on or after 1 January 2006

See also Immigration Act 2009 s 374

a A person who is:
   i born in New Zealand on or after 1 January 2006; and
   ii is determined by the Department of Internal Affairs not to be a New Zealand citizen,
   iii is deemed to have the most favourable immigration status as the most favourable immigration
      status of either of the person’s parents at the time that he or she was born, as determined under
      the Immigration Act 2009.

b The person’s immigration status continues until either;
   i the person leaves New Zealand; or
   ii the person is accorded a different immigration status under, or by the operation of, the
      Immigration Act 2009.

Effective 29/11/2010
A17.5 Immigration status of persons born in New Zealand on or after 1 January 2006 who are determined by the Department of Internal Affairs not to be New Zealand citizens

See also Immigration Act 2009 s 374

a The immigration status of a person born in New Zealand on or after 1 January 2006 where both parents are recorded on the person’s original birth record is to be determined as follows:

i if both parents held any type of temporary visa (other than a limited visa), the person is deemed to hold a temporary visa of the duration of the unexpired period of the visa of the parent whose temporary visa has the longest unexpired period; or

ii if one parent only held any type of temporary visa (other than a limited visa), the person is deemed to hold a temporary visa of the duration of the unexpired period of that parent's temporary visa; or

iii if both parents held limited visas, the person is deemed to hold a limited visa of the duration of the unexpired period of the visa of the parent whose limited visa has the longest unexpired period; or

iv if one parent only held a limited visa, the person is deemed to hold a limited visa of the duration of the unexpired period of that parent's limited visa; or

v if both parents held interim visas, the person is deemed to hold an interim visa of the duration of the unexpired period of the visa of the parent whose interim visa has the longest unexpired period; or

vi if one parent only held an interim visa, the person is deemed to hold an interim visa of the duration of the unexpired period of that parent’s interim visa; or

vii if both parents were unlawfully in New Zealand, the person is deemed to be unlawfully in New Zealand and to have unlawful status on the same basis and for the same duration as the parent whose unlawful status is of the shortest duration.

b The immigration status of a person born in New Zealand on or after 1 January 2006 where one parent only is recorded on their original birth record is to be determined as follows:

i where the parent held a temporary visa (other than a limited visa), the person is deemed to hold a temporary visa of the duration of the unexpired period of the parent’s temporary visa; or

ii where the parent held a limited visa, the person is deemed to hold a limited visa of the duration of the unexpired period of the parent’s limited visa; or

iii where the parent held an interim visa, the person is deemed to hold an interim visa of the duration of the unexpired period of the parent’s interim visa; or

iv where the parent was unlawfully in New Zealand, the person is deemed to be unlawfully in New Zealand on the same basis and for the same duration as the parent’s unlawful status.

A17.5.1 Procedure for making a request for a statement of immigration status of persons born in New Zealand on or after 1 January 2006

a Parents who wish to have a statement of immigration status for their son or daughter may request a letter regarding that status on the form Request for Statement of Immigration Status of a person born in New Zealand on or after 1 January 2006.

b People making such a request should supply the following documents:

i the person’s New Zealand birth certificate; and

ii evidence of the immigration status of the parent(s) at the time of the person’s birth in New Zealand; and

iii the person’s current passport or travel document (if the person has one); or

iv the parent’s passport or travel document if the person is endorsed in their parent’s passport.

c The person’s immigration status will be determined as per A17.5.
No fee is required for the provision of the statement of immigration status.

Effective 29/11/2010
A18 Immigration adviser acting on behalf of an applicant

See also Immigration Advisers Licensing Act 2007 s 9

No immigration application or request put forward on behalf of another person by an unlicensed immigration adviser may be accepted, unless the immigration adviser is exempt from the requirement to be licensed under the Immigration Advisers Licensing Act 2007.

Effective 29/11/2010
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A18.1 Persons exempt from licensing

See also Immigration Advisers Licensing Act 2007 s 11

The following persons are exempt from the requirement to be licensed under the Immigration Advisers Licensing Act 2007:

a. a person who provides immigration advice in an informal or family context only, where the advice is not provided systematically or for a fee;

b. a Member of Parliament or their staff who provides immigration advice as part of their employment agreement;

c. a foreign diplomat or consular staff accorded protection as such under the Diplomatic Privileges and Immunities Act 1968 or the Consular Privileges and Immunities Act 1971;

d. an employee of the New Zealand public service who provides immigration advice within the scope of their employment agreement;

e. a lawyer who holds a current practising certificate as a barrister or as a barrister and solicitor of the High Court of New Zealand;

f. a person employed by or working as a volunteer for a New Zealand community law centre where at least one lawyer is on the employing body of the community law centre or is employed by or working as a volunteer for the community law centre in a supervisory capacity;

g. a person employed by or working as a volunteer for a New Zealand citizens advice bureau; and

h. a person who provided immigration advice offshore in relation to applications or potential applications for student visas only.

Effective 29/11/2010
**A18.5 Definition of 'immigration adviser'**

*See also Immigration Advisers Licensing Act 2007 ss 5 and 7*

Immigration adviser means a person who provides immigration advice. Immigration advice:

- means using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter relating to New Zealand, whether directly or indirectly and whether or not for gain or reward; but

- does not include:
  - i. providing information that is publicly available, or that is prepared or made available by the Department; or
  - ii. directing a person to the Minister or the Department, or to an immigration officer, or a refugee and protection officer (within the meaning of the Immigration Act 2009), or to a list of licensed immigration advisers; or
  - iii. carrying out clerical work, translation or interpreting services, or settlement services.

An immigration adviser can act as an agent on behalf of their immigration client.

**Note:** 'Agent' means any individual authorised to act on behalf of the applicant or registrant or sponsor or employer. It includes, but is not limited to, lawyers, consultants and representatives.

**Effective 29/11/2010**

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**A19 Determination that classified information relates to matters of security or criminal conduct and may be relied on in decision-making**

*See previous instructions:*

A19 Effective 29/11/2010

*See also Immigration Act 2009, ss 33, 34, 36, 37*

a. Classified information may be relied on in making decisions or determining proceedings if the Minister of Immigration determines that the classified information relates to matters of security or criminal conduct.

b. Where classified information may be relevant to a making a decision under the Immigration Act 2009, the Minister of Immigration may:
   - i. request an oral or a written briefing from the chief executive of the relevant agency, and if so, the content of briefing is to be determined by the chief executive of that agency; and
   - ii. seek the assistance of such security cleared assistants as he or she thinks fit.

c. No person may be called to give evidence in any court or tribunal in relation to the content of the briefing or anything coming to his or her knowledge as a result of the briefing except as provided for in the Immigration Act 2009 for the tribunal or court.

d. The Minister of Immigration may:
   - i. rely on the classified information to make a visa decision, an entry decision or a deportation decision; or
   - ii. direct that a refugee and protection officer may rely on the information to make a refugee and protection status determination; or
   - iii. refer the classified information to the Immigration and Protection Tribunal or a court, as applicable, if the information is first to be relied on:
     - o in an appeal to the Tribunal or the court; or
     - o in an application to the Tribunal or
o in review proceedings; or

iv refer the information to the Chief Executive of the Ministry of Business, Innovation and Employment to make an application for a warrant of commitment, or an application or a response to an application for review or release, in accordance with section 325 (to continue to be detained until a determination is made on the application).

e The chief executive of a relevant agency who provides classified information to the Minister of Immigration must ensure that:

i the information is provided in a manner that does not, by reason of the omission of any other relevant classified or non-classified information, give a misleading view of the information supplied; and

ii any classified or non-classified information that is favourable to the person subject to the decision or proceedings is also provided; and

iii any further classified information that becomes available and that is relevant to the decision or proceedings is provided until the decision is made or a decision on the proceedings is made.

f If the chief executive of a relevant agency updates, withdraws or adds to the classified information provided to the Minister of Immigration, the Minister of Immigration must make a further determination under A19(a) as to whether the information may be relied on.

g If the chief executive of a relevant agency withdraws any classified information:

i the classified information must be kept confidential and must not be disclosed by the decision maker, the Tribunal, or the court (as the case may be); and

ii the decision maker, the Tribunal, or the court must continue to make the decision or determine the proceedings:

   o without regard to that classified information (but subject to matters to be considered by the Tribunal); and

   o in the case of an appeal, a matter or review proceedings, as if that information had not been available in making the decision subject to the appeal, matter, or review proceedings.

h The chief executive of the relevant agency may at any time direct any person to return classified information to the relevant agency.

Effective 08/05/2017
IN THIS SECTION

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A19.1 Definition of 'classified information'

See previous instructions:
A19.1 Effective 29/11/2010

See also Immigration Act 2009 ss 39, 40, 265

a Classified information means information that the chief executive of a relevant agency certifies in writing cannot be disclosed, unless expressly provided for under the Act, because:
   i the information is of a kind specified in A19.1(c) below; and
   ii disclosure of the information would be disclosure of a kind specified in A19.1(d) below.

b A chief executive of a relevant agency must not delegate to any person the ability to certify information as classified information under A19.1(a) above.

c Information falls under section A19.1(a)(i) above if it:
   i might lead to the identification, or provide details, of the source of the information, the nature, content, or scope of the information, or the nature or type of the assistance or operational methods available to the relevant agency; or
   ii is about particular operations that have been undertaken, or are being or are proposed to be undertaken, by the relevant agency; or
   iii has been provided to the relevant agency by the government of another country, an agency of a government of another country, or an international organisation, and is information that cannot be disclosed by the relevant agency because the government, agency, or organisation from which the information has been provided will not consent to the disclosure.

d Disclosure of information falls under A19.1(a)(ii) above if the disclosure would be likely:
   i to prejudice the security or defence of New Zealand or the international relations of New Zealand; or
   ii to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the government of another country, an agency of a government of another country, or an international organisation; or
   iii to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
   iv to endanger the safety of any person.

A19.1.1 Definition of 'relevant agency'

In relation to any classified information, a relevant agency is any of the following agencies that hold, were the source of, or were provided with, that classified information:

a Aviation Security Service;

b Civil Aviation Authority of New Zealand;

c Department of Corrections;

d Department of Internal Affairs;

e Ministry of Business, Innovation and Employment;

f Government Communications Security Bureau;

g Maritime New Zealand;

h Ministry for Primary Industries;

i Ministry of Foreign Affairs and Trade;

j New Zealand Customs Service;
New Zealand Defence Force;

New Zealand Police;

New Zealand Security Intelligence Service.

A19.1.5 Definition of 'proceedings involving classified information'

See also Immigration Act 2009, s 7

a  Proceedings involving classified information means any proceedings in which classified information:
   i  was relied on in making the decision appealed against or subject to review proceedings (including a
classification decision of the Immigration and Protection Tribunal); or
   ii is first raised or proposed to be raised in the course of an application to the Tribunal or an appeal
or in review proceedings; or
   iii is raised in an application under detention or monitoring.

A19.1.10 Protection of classified information

See also Immigration Act 2009, s 35

a  Classified information relied on for the purpose of making any decision or determining any
proceedings under the Immigration Act 2009 must be kept confidential and must not be disclosed,
except as provided for under the Act to the Tribunal, a court, a Special Advocate, counsel assisting the
court, or a special adviser.

b  A19.1.10(a) above does not limit or affect the application of the Ombudsmen Act 1975, the Official
Information Act 1982, or the Privacy Act 1993, but otherwise applies despite any other enactment or
rule of law to the contrary.

c  Neither the Tribunal or any court may require or compel the chief executive of the relevant agency,
the Minister of Immigration, or any other person to disclose any classified information in any
proceedings under the Immigration Act 2009 (but without derogating from Tribunal access and Court
access to classified information).

A19.1.15 The Summary of Allegations

See also Immigration Act 2009, ss 38, 40

a  Before a relevant decision is made that relies on any classified information that may be prejudicial to
the person who is the subject to the proposed decision, a summary of allegations arising from the
classified information must be agreed on by the chief executive of the relevant agency and either the
Minister of Immigration or the refugee and protection officer as applicable.

b  The Minister of Immigration or the refugee and protection officer must forward the summary of
allegations to the person who is the subject of the proposed decision for comment, and specify a time
by which any comment may be provided.

c  The summary of allegations must be updated and agreed as stated in A19.1.15(a) above, and the
person affected provided with an updated summary of allegations, where:
   i  any classified information that was proposed to be relied on in making the decision is withdrawn
(unless all of the classified information is withdrawn); or
   ii the chief executive of the relevant agency adds to or updates the classified information that will be
relied on in making the decision.

d  The summary of allegations is not required to:
   i  list any documents or other source material containing classified information; or
   ii  detail the contents of any documents or other source material containing classified information; or
   iii specify the source of any documents or other source material containing classified information.
The provision of a summary of allegations only applies where classified information is to be relied on, or may be relied on, in the making of any decision in relation to:

i an application for a visa, if the application is for:
   o a residence class visa; or
ii a temporary visa or a limited visa, and the applicant is onshore; or a person’s liability for deportation; or
iii any matter to which refugee and protection status determinations apply, if the decision is to be made by a refugee and protection officer.

The summary of allegations is not required to be provided:

i if the decision concerned is in the absolute discretion of the decision maker; or
ii in relation to expressions of interest or invitations to apply for a visa, or
iii to applicants for transit visas; or
iv to applicants for temporary entry class visas who are outside New Zealand; or
v in relation to applications for visas made in an immigration control area or a place outside New Zealand that is designated by the Chief Executive of the Department of Labour where entry permission may be granted; or
vi in relation to applications for entry permission.

A19.1.20 Reason for decision made that relied on classified information
See also Immigration Act 2009 ss 39, 40, 265

a Following a prejudicial decision by the Minister of Immigration or refugee and protection officer of a kind referred to in A19.1.15(e), the person who is the subject of the decision must be informed, in writing, of:

i the fact that classified information was relied on in making the decision; and
ii the reasons for the decision (except to the extent that providing reasons would involve a disclosure of classified information that would be likely to prejudice the interests referred to in A19.1(d)) and contain the information required under s23 of the Official Information Act 1982 as if the reasons were given in response to a request to which that section applies; and
iii the appeal rights, if any, available in respect of the decision; and
iv if appeal rights are available, the right to be represented by a special advocate.

b Where appeal rights are available in respect to a decision of a kind referred to in A19.1.15(e), the Minister of Immigration or a refugee and protection officer, as applicable, must notify the designated agency that a decision relying on classified information has been made under the Immigration Act 2009.

c The Minister of Immigration or a refugee and protection officer, as applicable, must prepare a record of the reasons for the decision, including any reasons arising from the classified information, which may not be accessed or disclosed except as required by the Tribunal or courts, or to the chief executive of the relevant agency.

d The reasons for the decision are not required to be provided:

i if the decision concerned is in the absolute discretion of the decision maker; or
ii in relation to expressions of interest or invitations to apply for a visa; or
iii to applicants for transit visas; or
iv to applicants for temporary entry class visas who are outside New Zealand; or
v in relation to applications for visas made in an immigration control area or a place outside New Zealand that is designated by the chief executive where entry permission may be granted; or
vi in relation to applications for entry permission.
A19.1.25 Declassification of classified information
See also Immigration Act 2009 s 41

a Information can be declassified when the chief executive of the relevant agency certifies in writing that, as from a specified date, the classified information is no longer classified information within the definition of classified information at A19.1.

b From the date of the declassification, the information is no longer subject to any confidentiality, processes or other requirements of the Immigration Act 2009 that apply to classified information or the users of the information.

A19.1.30 No right of complaint to Inspector-General of Intelligence and Security
See also Immigration Act 2009 s 42

No complaint may be made to the Inspector-General of Intelligence and Security about any situation or set of circumstances relating to an act, omission, practice, policy, or procedure done, omitted, or maintained (as the case may be) in connection with a decision under the Immigration Act 2009 involving classified information (including a determination in proceedings involving classified information).

Effective 08/05/2017
A20 New Zealand citizens and endorsements

See also Immigration Act 2009 ss 13, 103

a Every New Zealand citizen has, by virtue of his or her citizenship, the right to enter and be in New Zealand at any time.

b However, to establish his or her right to enter New Zealand, a New Zealand citizen must prove their citizenship and establish their identity by complying with border requirements (see A2.35.1).

c New Zealand citizens are not liable for deportation from New Zealand in any circumstances.

Effective 29/11/2010
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A20.1 Purpose of endorsement

The purpose of an endorsement is to facilitate a New Zealand citizen’s entry into NZ where the New Zealand citizen:

a. is a national of one or more other countries; and  
b. is travelling on a foreign passport.

Effective 29/11/2010
A20.5 Definition and effect of an endorsement

See previous instructions A20.5
Effective 29/11/2010

See also Immigration Act 2009, s384

a  An endorsement is granted by being entered and retained in the records of the Ministry of Business, Innovation and Employment.

b  An endorsement may (but need not) be evidenced by a physical endorsement in a passport.

c  An endorsement is not a visa.

d  An endorsement is current for the duration of the passport it is endorsed in.

e  An endorsement is evidence of New Zealand citizenship for New Zealand citizens travelling to New Zealand on a foreign passport.

Effective 08/05/2017
A20.10 Who may obtain an endorsement

See also Immigration Act 2009 s 13(4)(b)

a New Zealand citizens can not hold a visa, however New Zealand citizens who wish to enter New Zealand as a New Zealand citizen on a foreign passport may obtain an endorsement.

b Despite A20.10(a) above, a New Zealand citizen who is a national of one or more other countries and is not travelling on a New Zealand passport may hold a visa subject to meeting the relevant immigration instructions if she or he has not been:

i granted New Zealand citizenship; or

ii registered as a New Zealand citizen by descent under section 7(2) of the Citizenship Act 1977; or

iii issued with an evidentiary certificate under section 21 of the Citizenship Act 1977 confirming that he or she is a New Zealand citizen.

Effective 29/11/2010
A20.15 Application for an endorsement

See also Immigration Act 2009 s 384(4)

Before an endorsement is made:

a  applicants must lodge their application in the manner set out at A20.20.5 or A20.20.10; and
b  an immigration officer must be satisfied that applicants for endorsements are New Zealand citizens.

Effective 29/11/2010
A20.20 Endorsement lodgement criteria

See previous instructions A20.20 Effective 29/11/2010

Applications for endorsements may be lodged at any Immigration New Zealand (INZ) office or Visa Application Centre and certain Ministry of Foreign Affairs and Trade (MFAT) posts. Receiving Offices can be found on the INZ website.

A20.20.1 How an application must be lodged
See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 reg 33

a Applications must be lodged in the prescribed manner.

b The prescribed manner is the manner set for lodging endorsement applications by the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 (see A20.20.5 and A20.20.10).

c Applications that are not lodged in the prescribed manner will not be accepted for processing.

A20.20.5 Requirements for lodging a first-time application for an endorsement
See also Immigration Act 2009 s 384(4)
See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 reg 33(1)

a First-time endorsement applications must:

i be made on an approved form; and

ii be completed in English; and

iii relate to only 1 person; and

iv be signed by the applicant (unless the applicant is less than 18 years old, in which case the application form must be signed by a parent or guardian of the applicant).

b First-time endorsement applications must be submitted to an immigration officer together with:

i the applicant’s current passport that he or she wishes to be endorsed; and

ii original or certified copies of evidence that the applicant is a New Zealand citizen (see A20.20.5(c) below); and

iii a New Zealand passport issued on or after 5 November 2005, or a passport-sized photograph of the applicant’s head and shoulders if the person does not hold a New Zealand passport issued on or after 5 November 2005; and

iv the appropriate fee (if any).

c Evidence that the applicant is a New Zealand citizen is:

i a New Zealand passport; or

ii a New Zealand birth certificate issued prior to 1 January 2006; or

iii a New Zealand birth certificate issued on or after 1 January 2006 that positively indicates New Zealand citizenship; or

iv a certificate of New Zealand citizenship; or

v a confirmation of New Zealand citizenship by descent certificate issued under the Citizenship Act 1977; or

vi an evidentiary certificate issued under the Citizenship Act 1977 confirming New Zealand citizenship.

A20.20.10 Requirements for lodging an application for a second or subsequent endorsement
See also Immigration Act 2009 s 384(4)
See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 reg 33(2)

a New Zealand citizens who wish to travel to New Zealand on a foreign passport must obtain a second or subsequent endorsement if the passport containing their previous endorsement has expired.
b An application for a second or subsequent endorsement must:
   i be made on an approved form; and
   ii be completed in English; and
   iii relate to only 1 person; and
   iv be signed by the applicant (unless the applicant is less than 18 years old, in which case the
      application form must be signed by a parent or guardian of the applicant).

c An application for a second or subsequent endorsement must be submitted to an immigration
   officer, together with:
   i the applicant’s current passport that he or she wishes to be endorsed; and
   ii a New Zealand passport issued on or after 5 November 2005, or a passport-sized photograph of
      the applicant’s head and shoulders if the person does not hold a New Zealand passport issued on
      or after 5 November 2005; and
   iii the appropriate fee (if any).

d The applicant must also make a declaration that he or she has previously held a foreign passport
   with an endorsement confirming New Zealand citizenship.

Effective 02/12/2013
A20.25 Cancellation of an endorsement

*See also Immigration Act 2009 s 384(5)*

An endorsement may be cancelled where INZ becomes aware that the holder of that endorsement has been deprived of, or has renounced, his or her New Zealand citizenship under the Citizenship Act 1977.

Effective 29/11/2010
A20.30 Transitional instructions for holders of returning resident’s visas issued under the Immigration Act 1987

See also Immigration Act 2009 s 416

a These transitional instructions apply to New Zealand citizens who hold a returning resident’s visa (RRV) issued under the Immigration Act 1987 on the basis of their New Zealand citizenship in a valid foreign passport.

b Persons issued RRVs under the Immigration Act 1987 on the grounds that they are New Zealand citizens may travel to and enter New Zealand as a New Zealand citizen until the expiry of the passport in which the RRV is endorsed.

c Upon expiry of the passport in which the RRV is endorsed, New Zealand citizens who wish to enter New Zealand as a New Zealand citizen on a foreign passport, must have an endorsement in relation to that passport.

Effective 29/11/2010
A21 Automated electronic decision making

See previous instructions A21 Effective 29/11/2010

See also Immigration Act 2009 s 28

An automated electronic system that applies criteria predetermined in accordance with immigration instructions may be used to:

a  rank an expression of interest
b  process, grant, or refuse to grant an invitation to apply for a visa
c  process an application for, grant (with or without conditions), or refuse to grant a visa
d  process, grant, or refuse to grant an interim visa
e  process an application for, grant, or refuse to grant entry permission.

Effective 07/11/2011
A22 Biometric information
A22.1 Definition of ‘biometric information’

See also Immigration Act 2009 s4

Biometric information, in relation to a person:

a means any or all of the following:
   i a photograph of all or part of the person’s head and shoulders;
   ii the person’s fingerprints;
   iii an iris scan; and

b includes a record, whether physical or electronic, of any of the above things.

Effective 07/11/2011
A22.5 Use, collection and storage of biometric information

*See also Immigration Act 2009 ss 30, 31*

a All references to the Act in A22 refer to the Immigration Act 2009.

b Biometric information required from a person may be used to:
   i establish a record of a person’s identity;
   ii establish or verify a person’s identity; or
   iii assist in making a decision under the Act.

c Biometric information may be collected using an automated system or otherwise, by:
   i an immigration officer or a refugee and protection officer; or
   ii an agent or person on behalf of an immigration officer or a refugee and protection officer.

d Biometric information must be dealt with in accordance with the Privacy Act 1993.

*Effective 07/11/2011*
A22.10 Collection of biometric information

See previous instructions
A22.10 effective 03/09/2012
A22.10 effective 07/11/2011

See also Immigration Act 2009 ss 60, 111, 120, 149(1)(e), 287, 288

a An immigration officer may require a person who applies for entry permission (irrespective of whether the application is still being considered, or whether entry permission has been granted or refused) to provide biometric information:
   i at any time before the person leaves the immigration control area, designated place, or prescribed place at which the application is made; and
   ii if the application is not made in New Zealand, at any time before the person leaves the immigration control area or prescribed place at which he or she arrives in New Zealand.

b The following persons must allow biometric information to be collected from him or her:
   i A person applying for a visa.
   ii A person applying for entry permission.
   iii A person leaving New Zealand who is not a New Zealand citizen.
   iv A refugee or protection status claimant or a person whose recognition as a refugee or protected person is being investigated (note that this may only be required by a refugee and protection officer or by an agent or person on behalf of a refugee and protection officer).
   v A person subject to section 288 of the Act (see A22.15).
   vi A person liable for deportation or turnaround, where biometrics are required to meet the transit or entry requirements of any country to which or through which the person is to travel.

c If a person applying for a visa or entry permission fails to allow the biometric information to be collected, the Minister or an immigration officer may:
   i refuse to grant the visa or entry permission applied for; or
   ii revoke any entry permission already granted.

Note: Entry permission may be revoked at any time before the person leaves the immigration control area, designated place, or prescribed place.

d Biometric information in the form of a photograph of all or part of a person’s head and shoulders will normally be required from all visa applicants, applicants for entry permission, non-New Zealand citizens who are leaving New Zealand, and persons covered by (e) below.

e Biometric information will normally only be required from the following persons:
   i A person subject to section 288 of the Act (see A22.15).
   ii A person applying for a residence class visa for resettlement in New Zealand under the UNHCR Refugee Quota.
   iii A refugee or protection status claimant or person whose recognition as a refugee or protected person is being investigated.
   iv A person applying for entry permission at the border, who is being formally interviewed by an immigration officer.
   v A person liable for deportation or turnaround, where one or more fingerprints are required to meet the transit or entry requirements of any country to which or through which the person is to travel (for example to ‘sign’ a travel document).

f Notwithstanding (d) and (e) above, an immigration officer may request biometric information in any case where authorised by the Act or regulations.
Note:
~ Fingerprints will not normally be required from persons under 14 years of age.
~ The powers under section 288 of the Act are not currently authorised to immigration officers and are not to be exercised by any officer until further notice.

Effective 28/08/2017
A22.15 When biometric information can be used to determine compliance

See previous instructions A22.15 effective 07/11/2011

See also Immigration Act 2009 ss 288, 388(2)

If an immigration officer who is authorised to exercise powers under section 288 of the Act has good cause to suspect that a person:

- a is liable for deportation or turnaround; or
- b is not complying with, or is materially breaching, the conditions of the person’s visa; or
- c is undertaking work or a course of study where the person is not entitled to undertake that work or study under the Act; or
- d has obtained a visa under a fraudulent identity

the officer may require the person to allow biometric information to be collected from him or her, in order to determine whether any of the matters specified in (a) - (d) apply to the person.

Note: The powers under section 288 of the Act are not currently authorised to immigration officers and are not to be exercised by any officer until further notice.

Effective 03/09/2012
A22.20 Compulsion order for the collection of biometric information

See also Immigration Act 2009 ss 288, 289, 290, 291

a Where a person has refused to allow biometric information to be collected in response to a requirement under section 288(2) of the Act, an immigration officer may apply to a District Court Judge for a compulsion order.

b The application must set out the following:
   i the facts relied on to show there is good cause to suspect that any of the matters in A22.15(a)-(d) apply to the person; and
   ii the reasons why a compulsion order is necessary, including the facts relied on to show that there are reasonable grounds to believe that the biometric information would tend to confirm or disprove that any of the matters in A22.15(a)-(d) apply to the person.

c The immigration officer must serve notice of the application on the person, and both the officer and the respondent may appear and provide evidence at the hearing of the application.

d On the hearing of the application a District Court Judge may make a compulsion order requiring the person to allow specified biometric information to be collected from him or her, and a person served with such an order must allow the biometric information specified in the order to be collected from him or her.

e The fact that a compulsion order has previously been sought or made in respect of a matter does not prevent another application or order being made.

Effective 07/11/2011
A22.25 Offences in relation to providing biometric information

See also Immigration Act 2009 ss 111, 120, 344(e) and (f)

Every person commits an offence against the Act who refuses or fails to provide biometric information:

a  as an applicant for entry permission under section 111 of the Act; or
b  as a person leaving New Zealand who is not a New Zealand citizen under section 120 of the Act; or
c  in accordance with a compulsion order.

Effective 07/11/2011
A23 Grant of a visa in a special case under section 61
IN THIS SECTION

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A23.1 Overview and legal framework

See previous instruction:
A23.1 effective 30/09/2013

A23.1.1 Overview

See also Immigration Act 2009 ss 11, 20, 61

a  The Minister may, at any time, grant any type of visa to a person who is:
   i  unlawfully in New Zealand; and
   ii not a person in respect of whom a deportation order is in force.

b  The Minister’s power to grant a visa in a special case has been delegated to officers with Schedule 3
delegations or above.

c  As the grant of a visa under section 61 is a matter of absolute discretion, no person has the right to
   apply for a visa under section 61, and if a person purports to make such an application by requesting
   the grant of a visa under section 61:
   i  the Minister or delegated immigration officer is not obliged to consider the request; and
   ii the Minister or delegated immigration officer is not obliged to make further enquiries or inquire
      into the circumstances of the person or any other person; and
   iii whether a request is considered or not, the Minister or immigration officer is not obliged to give
      reasons for any decision on it, other than that section 11 applies; and
   iv  privacy principle 6 (which relates to access to personal information and is set out in section 6 of
       the Privacy Act 1993) does not apply to any reasons for any decision relating to the purported
       application; and
   v  section 23 of the Official Information Act 1982 and section 27 of the Immigration Act 2009
       (concerning the right of access to reasons for decisions) do not apply.

d  In simple terms people who make requests under section 61:
   i  have no right to apply for a visa under it;
   ii have full responsibility for ensuring that any and all information that might potentially be
      considered in any exercise of the section 61 discretion is put forward with their request;
   iii have no right to have their request considered;
   iv  if their request is considered, have no right to be told why a particular decision was reached;
   v  if their request is considered, have no right to have it considered against any particular
      immigration instructions.

Effective 28/08/2017
A23.5 Considering or refusing to consider a request

A23.5.1 Refusing to consider a request
a There is no obligation to consider a request made under section 61. An immigration officer may refuse to consider the request given the information provided. Equally, however, they may consider a request and may ask for more information or evidence to be provided to do so.
b Where an immigration officer refuses to consider a request they need not record reasons for doing so (other than the reason that section 11 of the Act applies).
c Any matters an immigration officer chooses to record in relation to the request may be recorded on the physical and electronic file associated with the request.
d If an immigration officer asks for more information or evidence then the request has been considered and the process set out below under A23.5.5 Considering a request must be followed.

A23.5.5 Considering a request
a If the immigration officer decides that there are grounds to consider the request based on the evidence and submissions provided by the requester, he or she should consider the request.
b There are no specific immigration instructions that must be met as decisions are a matter of absolute discretion.
c As a person making a request for a visa under s61 is unlawfully in New Zealand and requests the exercise of absolute discretion as an exception to the usual rules governing those unlawfully present in New Zealand and liable to deportation, it is for the person making the request to put forward their case.
d During the consideration of a s61 request, an immigration officer is not obliged to request any further information or to seek comment prior to an adverse immigration decision being made. A decision can be made solely on the basis of the facts available and the submissions provided with the request. However, this does not preclude an immigration officer requesting further information (such as a medical or police certificate) or comment to assist him or her in considering the request.
e In considering a s61 request immigration officers should also consider whether or not the matters put forward for the grant of a visa are best dealt with by the applicant exercising one of their rights under the Act; for example, by way of an appeal on humanitarian grounds against the requirement to leave New Zealand to the Immigration and Protection Tribunal (if such appeal is available).
f Decisions under s61 are still subject to the general requirement of fairness that is derived from public law principles. However, what fairness requires in a particular case must be determined having regard to all the circumstances including the particular statutory provisions under which the decision is made, the overall statutory scheme, what is known of the requestor’s circumstances and the consequences of the decision.
g Consistent with this approach, the courts have described language similar to the definition of “absolute discretion” in section 11 as conferring “rights which ... are very limited”. These limited rights may be contrasted with the protections made available elsewhere in the immigration legislation.
h A relevant consideration which immigration officers may take into account when determining a request under section 61 is that the requestors, as persons unlawfully present in New Zealand and liable to deportation (although not yet subject to a deportation order), have the following options contemplated by the Act:
i to voluntarily depart from New Zealand at any time under their statutory obligation to do so, and is free to apply for a visa from outside of New Zealand in accordance with the usual rules and processes, or
ii to cooperate in being interviewed by an immigration officer to obtain a Record of Personal
Circumstances before a deportation order is made and served. The immigration officer may determine, after obtaining a Record of Personal Circumstances, whether or not the deportation process under sections 175 to 178 should continue.

i New Zealand’s international obligations may also be a relevant consideration to be taken into account when assessing a request under section 61.

j The electronic record of the request must record whether the request has been considered. Any matters an immigration officer chooses to record in relation to the request may be recorded on the physical and electronic file associated with the request.

Effective 30/09/2013
A23.10 Outcome of the consideration

a When a request has been considered, Immigration officers should briefly record, on the physical and electronic file, their reasons for the decision.

b The decision to grant or not to grant a visa following the consideration should be clearly recorded on the physical and electronic file associated with the request. If the request is approved, the type and duration of visa to be granted should be stated.

c Unlike an ordinary application, the reasons for the decision need not be recorded in communication with the client. That, however, is a matter for the officer concerned. If the officer exercises his or her discretion to not give reasons to the requestor, he or she must however expressly record that section 11 of the Act applies.

d If an immigration officer chooses not to provide reasons to the requestor in reliance on section 11, consideration should be given to withholding these reasons if a request is received under the Privacy or Official Information Acts on the basis that disclosing this information would be contrary to section 11 of the Immigration Act 2009 (section 18(c)(i) of the Official Information Act and section 7(2) of the Privacy Act).

Effective 30/09/2013