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Border Entry

See previous instruction: Border Entry Effective 29/11/2010

**Note:** Some of the instructions contained in this section of the Operational Manual are Immigration New Zealand operational instructions and do not constitute immigration instructions as described in section 22 of the Immigration Act 2009. The sections Y3 to Y6 have been certified as temporary entry and residence instructions as described in sections 22 or 23 of the Immigration Act 2009.
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Y1 Objective

The objective of Border operational instructions are:

a to facilitate the entry of travellers to New Zealand who meet entry requirements; and

b to identify and manage the risks to New Zealand arising from those travellers who do not meet entry requirements.

Effective 29/11/2010
Y2 Arrivals and departures

Both passengers and carriers arriving in and departing from New Zealand have responsibilities under the Immigration Act 2009, the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, and the Immigration (Carriers’ Information Obligations) Regulations 2010.

Effective 29/11/2010
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Y2.1 Passenger responsibilities on arrival

See previous instructions:
Y2.1 Effective 07/11/2011
Y2.1 Effective 29/11/2010

See also Immigration Act 2009 ss 2, 60, 110, 114, 342, 344(e), 384
See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 regs 24, 28, 28B, 29

a New Zealand citizens, if arriving at an immigration control area (see Y2.1.1) are responsible for presenting themselves and producing to an immigration officer:
   i their New Zealand passport or certificate of identity; or
   ii a foreign passport containing an endorsement of a type described in section 384(1) of the Act; or
   iii a foreign passport containing a returning resident’s visa (within the meaning of section 2(1) of the Immigration Act 1987).

b New Zealand citizens must present an arrival card to an immigration officer and comply with any direction of an immigration officer while in the immigration control area.

c A New Zealand citizen who has had their citizen status confirmed by giving their New Zealand passport to an automated electronic system is exempt from the obligation to present themselves and an arrival card to an immigration officer unless the automated electronic system indicates otherwise.

   Note: The obligation on New Zealand citizens to produce a completed arrival card does not arise from the Immigration Act 2009 and does not give rise to liability for arrest under that Act.

d Non-New Zealand citizens, including permanent residents and residents, if arriving at an immigration control area, are responsible, for:
   i presenting themselves to an immigration officer with a completed arrival card (and thereby making an application for entry permission and a visa (if a visa waiver applies)); and
   ii producing their passport or certificate of identity to an immigration officer; and
   iii allowing biometric information to be collected when they are applying for a visa or entry permission (see A22);
   iv producing, if required by an immigration officer, all or any of the following:
       o evidence of any visa held;
       o travel tickets or evidence of onward travel arrangements;
       o evidence of funds for maintenance or of sponsorship; and
   v complying with any direction of an immigration officer while in the immigration control area (see Y2.1.1).

e A non-New Zealand citizen may meet (d) (i) and (ii) above by giving their passport to the automated electronic system and answering questions as required by the system (and thereby make an application for entry permission and a visa (if a visa waiver applies)).

f If a passenger is responsible for the care of a person who cannot comply with Y2.1(a) or Y2.1(d)(i), (ii), (iv) or (v) because of age or disability, it is their responsibility to comply on behalf of that person.

   Note: A passenger who applies for entry permission by completing an arrival card must provide a physical address in New Zealand under section 110 of the Immigration Act 2009.

g A person who arrives in New Zealand other than at an immigration control area must report to an immigration officer at an immigration control area within 72 hours after arriving and then comply with the responsibilities in Y2.1(a) or (d) above and any requirements prescribed in regulations.
Example: an ocean-going yacht which calls into the nearest New Zealand port for repairs or maintenance.

h A passenger who fails to comply with the responsibilities set out above or completes an arrival card in a manner that they know is false or misleading in any way, commits an offence and may be prosecuted.

i Any person who does not report, or in respect of whom it is suspected that they will not report, to an immigration officer at an immigration control area may be arrested by a constable and brought before an immigration officer.

j If a person arrives at a place other than an immigration control area and does not report to an immigration officer at an immigration control area within 72 hours - see reg 29, Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 - any visa they hold will be deemed to be cancelled under section 64 of the Immigration Act 2009.

Note: Y2.1 does not apply to people who arrive in New Zealand other than at an immigration control area who are deemed to have been granted a visa.

Y2.1.1 Definition of ‘Immigration Control Area’
See also Immigration Act 2009 s 382

An immigration control area is that part of an airport or port or any other place so designated by the Chief Executive of the Ministry of Business, Innovation and Employment for the processing of people arriving in or departing from New Zealand. A list and description of all immigration control areas is available:

- at every office of Immigration New Zealand, both onshore and offshore that deals with immigration matters; and
- on the Immigration New Zealand website.

Effective 18/04/2014
Y2.5 Passenger responsibilities on departure

See previous instructions Y2.5 Effective 29/11/2010

See also Immigration Act 2009 ss 119, 120, 342, 344(e)
See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, regs 30, 31

a Passengers are responsible on departure for:
   i presenting themselves to an immigration officer at an immigration control area with a completed
      departure card; and
   ii producing their passport or certificate of identity to an immigration officer; and
   iii complying with any direction of an immigration officer; and
   iv in the case of passengers who are not New Zealand citizens - allowing biometric information to be
      collected (see A22).

b Passengers leaving New Zealand by means of the automated electronic system:
   i are exempt from (a)(i) above, unless the automated electronic system indicates otherwise; and
   ii may meet (a)(ii) above by presenting their passport to the automated electronic system.

c If a passenger is responsible for the care of a person who cannot comply with Y2.5(a)(i)-(iii) above
   because of age or disability, it is their responsibility to comply on behalf of that person.

d A passenger who, without reasonable excuse, fails to comply with the responsibilities set out above or
   completes a departure card in a manner that they know is false or misleading in any way, commits an
   offence and may be prosecuted.

Note: Y2.5 does not apply to people in New Zealand who are deemed to hold a visa and leave New Zealand
other than at an immigration control area.

Effective 18/04/2014
Y2.10 Who is exempt from passport requirement

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 11(3)

A member of the armed forces of any country, members of its civilian component or a crew member of any craft used to transport members of the armed forces of any country to New Zealand as defined in the Visiting Forces Act 2004 is exempt from having to produce a passport or certificate of identity if:

a. members of that armed force are in New Zealand at the request or with the consent of the New Zealand Government; and

b. that person's presence in New Zealand is in the ordinary course of their duty or employment.

Effective 29/11/2010
Y2.15 Who is exempt from need for arrival and departure cards

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 reg 25

A person is exempt from having to present an arrival card and a departure card if they are:

a. crew or passengers on any ship carrying passengers or cargo or both (in the ordinary course of business of the ship) between any foreign port and New Zealand;

b. crew on any foreign ship authorised by the Minister of Transport under section 198(2) of the Maritime Transport Act 1994 to carry coastal cargo (within the meaning of subsection (6) of that section);

c. aircraft crew on any commercial aircraft flying between any other country and New Zealand;

d. members of the armed forces of any country, members of its civilian component or crew members of any craft transporting such people in New Zealand at the request or with the consent of the New Zealand government, in the ordinary course of that member’s duty or employment as defined in the Visiting Forces Act 2004 who arrive in New Zealand at a military base;

e. members of, or a person associated with, any scientific programme or expedition under the auspices of a Contracting Party to the Antarctic Treaty within the meaning of the Antarctica Act 1960, or a person to whom section 5 of that Act applies who enter the Ross Dependency from a country other than mainland New Zealand;

f. members of, or a person associated with, any scientific programme or expedition under the auspices of a Contracting Party to the Antarctic Treaty within the meaning of the Antarctica Act 1960, or a person to whom section 5 of that Act applies who:
   i. have entered the Ross Dependency from a country other than mainland New Zealand; and
   ii. subsequently travel from the Ross Dependency to mainland New Zealand guests of government who have been granted a visa waiver to travel by special direction.

g. guests of government who have been granted a visa waiver to travel by special direction.

Note: A request may also be made to waive, by special direction, the requirement for distinguished visitors to provide a passport or certificate of identity for inspection.

Effective 29/11/2010
Y2.20 Advance Passenger Processing

See previous instructions Y2.20 Effective 29/11/2010

See also Immigration Act 2009 ss 96, 97, 349, 359, 360
See also Immigration (Carriers’ Information Obligations) Regulations 2010, reg 4

a The Department of Labour requires airlines to initiate passenger checks and pre-processing of passengers prior to embarkation for travel to and through New Zealand by means of the Advance Passenger Processing (APP) system.

b APP assists in the facilitation of efficient and effective processing of all passengers on entry to, and through, New Zealand.

Y2.20.1 Provision of information for the purpose of Advance Passenger Processing

a A carrier, and a person in charge of a commercial craft, who is notified by the Chief Executive of the Department of Labour (the Chief Executive) that they must comply with responsibilities under section 96 of the Immigration Act 2009 must, prior to their departure from another country to travel to New Zealand, obtain the information prescribed by regulation 4 of the Immigration (Carriers’ Information Obligations) Regulations 2010, from every person who intends to board the craft for the purpose of travelling to New Zealand.

b Where the craft is either scheduled to, or it is proposed that it travels to New Zealand, prior to departure from another country, the carrier and person in charge of the craft, must provide the information required in (a) above to the Chief Executive by means of an approved system (see Y2.20.10).

c This information includes:

i the person’s name, date of birth, nationality, gender, passport or certificate of identity number (if any) and passport or certificate of identity expiry date (if any); and

ii the issuer of the person’s passport or certificate of identity, if it is not the person’s country of nationality (if any); and

iii the person’s status as a traveller (including but not limited to, whether the person is a member of the craft’s crew, a passenger whose destination is New Zealand, or a passenger whose destination is other than New Zealand); and

iv information identifying the craft and its intended movements.

d A carrier or person in charge of a commercial craft who, without reasonable excuse, fails to meet the responsibilities set out above commits an offence and may:

i incur an infringement fee; or

ii be prosecuted; or

iii have other action taken against them utilising any appropriate enforcement tools in order to encourage compliance.

e The Chief Executive of the Department of Labour may exempt, in writing, a carrier or a person in charge of a commercial craft from complying (in whole or in part) with the requirements set out in (a), (b) and (c) above.

Y2.20.5 Decisions about people boarding craft for the purpose of coming to New Zealand

a The Chief Executive of the Department of Labour may decide (including by automatic means) that a person about whom passenger information has been received:

i may or may not board a craft for the purpose of travelling to New Zealand;

ii may board a craft for the purpose of travelling to New Zealand if he or she complies with specified conditions.
b Where such a decision is made the Chief Executive must notify the relevant carrier or person in charge of the commercial craft of that decision.

c Notification may be in any form that the Chief Executive thinks is appropriate, including by means of an approved system or by means of an automated electronic notification.

d The Chief Executive may make decisions about whether a person may or may not board or may only board subject to specified conditions, whether or not the person holds a visa to travel to New Zealand, or is a person who is waived the requirement to obtain a visa to travel to New Zealand.

e The Chief Executive may not make decisions about whether a person may or may not board or may only board subject to specified conditions if that person is:
   i a New Zealand citizen who, before boarding, holds and produces a New Zealand passport; or
   ii a New Zealand citizen who, before boarding, holds and produces a foreign passport containing an endorsement indicating New Zealand citizenship; or
   iii a New Zealand citizen who, before boarding, produces a foreign passport that contains a returning resident’s visa issued under the Immigration Act 1987; or
   iv a permanent resident; or
   v a resident visa holder, unless the person has not previously travelled to New Zealand as the holder of that visa and the visa was granted outside New Zealand.

f The Chief Executive is not obliged to give reasons for decisions about whether a person may or may not board or may only board subject to specified conditions, other than that the decision is made in terms of section 97(1) of the Immigration Act 2009 and section 23 of the Official Information Act 1982 does not apply in respect of the decision.

g A person about whom a decision is made in terms of (a) above may not appeal the decision and may not bring review proceedings in relation to the decision except on the grounds that the decision should not have been made because they are a person listed in Y2.20.5(e) above.

h Every carrier or person in charge of a commercial craft commits an offence if:
   i they allow a person to travel to New Zealand before a decision is made by the Chief Executive in terms of (a) above; or
   ii they fail, without reasonable excuse, to ensure that such a decision is complied with.

i A carrier or person in charge of a commercial craft who fails, without reasonable excuse, to meet the responsibilities set out in (a) above commits an offence and may:
   i incur an infringement fee; or
   ii be prosecuted; or
   iii have other action taken against them, utilising any appropriate enforcement tools in order to encourage compliance.

Y2.20.10 Definition of ‘approved system’

See also Immigration Act 2009 s 4

An ‘approved system’ means a system, including an electronic system, approved by the Chief Executive of the Department of Labour for the purpose of:

a providing the information set out in Y2.20.1; or

b notifying a carrier or person in charge of a commercial craft of a decision of the Chief Executive about a person boarding a craft for the purpose of travelling to New Zealand. (Y2.20.5)

Y2.20.15 Delegation of Chief Executive’s powers in relation to the operation of Advance Passenger Processing

a The Chief Executive of the Department of Labour has delegated to people occupying the positions set out in (b) below, the following powers relating to the operation of Advance Passenger Processing:
i the power, in accordance with section 97(1) of the Immigration Act 2009, to make a decision about whether or not a person may or may not board a craft for the purposes of travelling to New Zealand, including specifying conditions which must be complied with before a person boards a craft for travel to New Zealand; and

ii the power, in accordance with section 97(2) of the Immigration Act 2009, to determine the means by which any decision made under section 97(1) of that Act is to be notified to a carrier or person in charge of a commercial craft to whom section 96(2) applies;

iii the power, in accordance with section 102(3) of the Immigration Act 2009 to request information about a person who intended to board a craft for the purpose of travelling to New Zealand, whether or not he or she did in fact board the craft;

iv the power, in accordance with section 102(2)(b) of the Immigration Act 2009, to have access to information of the kind specified in the Immigration (Carrier’s Information Obligations) Regulations 2010 about a person who intended to board a craft for the purpose of travelling to New Zealand, whether or not he or she did in fact board the craft, and to approve the manner and form of that access, and specify the dates on which the access is required in accordance with subsections 102(4) and (6) of Immigration Act 2009; and

v the power, in accordance with subsections 102(5)(d) and (e) of the Immigration Act 2009, to determine whether, in respect of information disclosed or accessed in accordance with subsections 102(2)(a) and (b) of that Act, there is good cause to suspect that an offence against that Act is being, or may have been, committed, or a risk to border security exists.

Deputy Chief Executive – Immigration

General Manager, Intelligence, Risk & Integrity, Immigration Group

Manager, Border Operations, Immigration Group

Branch Manager, Border Operations, Immigration Group

Immigration Manager, Border Operations, Immigration Group

Technical Advisor, Onshore Border Operations, Immigration Group

Immigration Officer undertaking duties in an Immigration Control Area

Effective 05/04/2011
Y2.25 Carrier responsibilities prior to departure

See Previous instructions:
Y2.25 Effective 29/11/2010

See also Immigration Act 2009 ss 96, 101(1)
See also Immigration (Carriers' Information Obligations) Regulations 2010, reg 5
See also Immigration (Visa, Entry Permission, and Related Matters) Regulations, reg 11(3), 29

a The Immigration Act 2009 requires that the carrier or the person in charge of any craft en route to New Zealand, or that berths, lands or arrives in New Zealand is responsible for ensuring all persons boarding the craft have the appropriate immigration documentation. The Immigration (Carrier's Information Obligations) Regulations 2010 prescribe the immigration documentation which includes:
   i a valid passport or certificate of identity (unless exempt); and
   ii a visa (if required) or an endorsement indicating New Zealand citizenship.

Note: The check for a visa or endorsement is not required if the carrier or person in charge of a commercial craft obtains the Advance Passenger Processing information as detailed in Y2.20 from every person who intends to board the craft for the purpose of travelling to New Zealand and provides that information to the Chief Executive of the Ministry of Business, Innovation and Employment.

b A carrier or person in charge of a commercial craft who, without reasonable excuse, fails to ensure that all persons boarding the craft have the appropriate immigration documentation except where a person is exempt under regulation 11(3) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 from holding certain documentation, commits an offence and may:
   i incur an infringement fee; or
   ii be prosecuted; or
   iii have other action may be taken against them utilising any appropriate enforcement tools in order to encourage compliance.

Y2.25.1 Carrier responsibilities for ensuring or facilitating compliance with the Immigration Act 2009

a Carriers are responsible on arrival for:
   i once inside the territorial limits of New Zealand and for the purpose of ensuring or facilitating compliance with the Immigration Act 2009, preventing, with such reasonable force as may be necessary, any person landing in New Zealand other than:
      o in an immigration control area; or
      o for the purpose of complying with the responsibilities in Y2.1(a) and (b); and
   ii providing, as may be required by an immigration officer, any details about any persons who may have been on board the craft since its last port of call; and
   iii if the craft is unable to land at an immigration control area, to make appropriate arrangements for all persons on board to report to an immigration officer at an immigration control area, within 72 hours of arriving in New Zealand; and
   iv reporting to an immigration officer as soon as practicable, the existence of any stowaway on board.

b A carrier who, without reasonable excuse, fails to meet the responsibilities set out above commits an offence and appropriate action will be taken against them utilising any appropriate enforcement tools in order to encourage compliance, including prosecution.

Y2.25.5 Definition of 'craft'

See also Immigration Act 2009 s 4

‘Craft’ means any form of aircraft, ship, or other vehicle or vessel capable of being or intended to be used to transport any person to or from New Zealand from or to any country outside New Zealand.
Y2.25.10 Definition of ‘carrier’
See also Immigration Act 2009 s 4

‘Carrier’, in relation to a craft:

a. means the owner or charterer of the craft; and

b. if the owner or charterer is not in New Zealand, includes the agent in New Zealand of the owner or charterer; and

c. if there is no agent in New Zealand, includes the person in charge of the craft.

Effective 08/05/2017
Y2.30 Carrier responsibilities on departure from New Zealand

See Previous instructions:
Y2.30 Effective 29/11/2010

See also Immigration Act 2009, s 118
See also Immigration (Carriers' Information Obligations) Regulations 2010, reg 7(2)

a Carriers (see Y2.25.10) are responsible on departure for:
   i reporting to an immigration officer immediately before the craft (see Y2.25.5) leaves, details of any
      crew member or person described in regulation 7(2) of the Immigration (Carriers' Information
      Obligations) Regulations 2010 who:
         o was on board when the craft arrived in New Zealand; and
         o is not on board the departing craft; and
   ii allowing on board the craft for carriage from New Zealand any person being deported or who is
      liable for turnaround, as long as an offer to pay the fare has been received in relation to the
      person being deported and the safety of the craft or other persons on board is not endangered; and
   iii if a constable or an immigration officer delivers such a person to the craft, taking all reasonable
      steps (including the use of reasonable force) necessary to detain that person on board the craft
      until it has left New Zealand; and
   iv providing, at the carrier's cost, carriage from New Zealand of any person who:
   v was on board the craft, or any other craft operated by the carrier, when it arrived in New Zealand
      but did not hold a visa permitting travel to New Zealand and was, on arrival in New Zealand,
      refused a visa and entry permission (see Y4); or
      o arrived as crew of the craft, or any other craft operated by the carrier and remained unlawfully
         in New Zealand after that craft left; and
   vi meeting the costs (if any) incurred by the Crown in detaining and maintaining any person
      described in Y2.30(a)(iv) above until the person has left New Zealand on the first available craft.

b A carrier who fails to meet the responsibilities set out above commits an offence and appropriate
action will be taken against them utilising any appropriate enforcement tools in order to encourage
compliance, including prosecution.

Y2.30.1 Obligations of carriers and persons in charge of craft
See also Immigration Act 2009 ss 10, 118.

a The carrier, and the person in charge, of a craft leaving New Zealand must allow a person who has
   been refused a visa or entry permission or has had entry permission revoked to board the craft for
   passage from New Zealand.

b The carrier of a craft leaving New Zealand must also provide passage from New Zealand at the cost in
all respects of the carrier, or bear the cost of passage from New Zealand by any other carrier, of a
person:
   i who was on board the craft, or any other craft operated by the carrier, when it arrived in New
      Zealand and did not hold a visa permitting travel to New Zealand and was, on arrival in New
      Zealand, refused a visa and entry permission; or
   ii who arrived in New Zealand as a member of the crew of the craft, or of any other craft operated by
      the carrier, and who remained unlawfully in New Zealand after the departure of that craft:

c The responsibility of the carrier and person in charge of a craft to allow people refused entry to board
or is subject to the safety of the craft and the safety of other persons on the craft.

Effective 02/02/2015
**Y2.35 Requirement to provide further information**

See Previous instructions:
Y2.35 Effective 29/11/2010

See also Immigration Act 2009 s 102
See also Immigration (Carriers' Information Obligations) Regulations 2010, reg 6(2)

a Airlines are required to provide information to the Ministry of Business, Innovation and Employment about passengers. This data assists the Department of Labour in the protection of border security.

b If the Chief Executive of the Ministry of Business, Innovation and Employment (the Chief Executive) has requested information about a person who intended to or did travel to New Zealand not more than 14 days before or after the arrival of the craft, regulation 6(2) of the Immigration (Carriers’ Information Obligations) Regulations 2010 requires that the relevant carrier or person in charge of the craft must provide the Chief Executive with information about:
   i where and on what date the person booked the intended travel; and
   ii with whom, if anyone, the person intended to travel; and
   iii with whom the person has previously travelled; and
   iv whether or not the person paid for their own intended travel, and the manner of payment; and
   v the person's travel movements before the intended travel; and
   vi whether the route of the person's previous travel has changed from the way that he or she originally booked the travel, and if so, in what way; and
   vii whether the person failed to undertake travel on a previous occasion; and
   viii whether the person has unchecked baggage.

c The Chief Executive must have access to the information specified in (b) (i)-(viii) for the period from the date specified by the Chief Executive until 14 days after the arrival in New Zealand of the craft on which the person to whom the requested information relates intended to, or did, travel to New Zealand.

d The information specified in (b) (i)-(viii) above must be provided whether or not the person whom the information is about actually boarded the craft.

e The Chief Executive must have access to the information specified in (b)(i) -(viii) above directly from the airline's database in an approved form and manner for a period of 14 days before or after the arrival in New Zealand of the craft on which the person whom the information is about intended to, or did, travel to New Zealand.

f Information specified in (b) (i)-(viii) above may be retained by the Chief Executive if:
   i the Chief Executive decided that the person to whom it relates may not board a craft for the purpose of travelling to New Zealand; or
   ii the person has been refused a visa and entry permission on arrival or in a place designated by the Chief Executive outside New Zealand; or
   iii the information needs to be retained as part of a record of a particular action having been taken in relation to the person to whom it relates (e.g. a record that a person was interviewed on arrival); or
   iv the information gives the Chief Executive good cause to suspect that an offence against this Act is being, or may have been, committed; or
   v the information gives the Chief Executive good cause to suspect that a risk to border security exists.

g A carrier or person in charge of a commercial craft who fails, without reasonable excuse, to meet the responsibilities set out in (b)-(e) above commits an offence and may:
   i incur an infringement fee; or
ii be prosecuted; or
iii have other action taken against them, utilising any appropriate enforcement tools in order to encourage compliance.

Effective 08/05/2017
Y2.40 Memorandum of understanding with airline carriers

a A Memorandum of Understanding (MOU) exists between Immigration New Zealand (INZ) and certain airlines. The MOU:
   i records an agreed approach to border responsibilities between the parties; and
   ii clearly assigns responsibilities in developing and implementing best practices to minimise the number of breaches of airlines’ legislative responsibilities; and
   iii focuses on the level of airline infringements and their associated causes.

b If it is necessary to formally review the passenger check-in and processing procedures at a particular airport, the consent of the airline concerned must be obtained.

c Despite the existence of the MOU, INZ reserves the right to take appropriate action against carriers utilising any appropriate enforcement tools in order to encourage compliance, including prosecution.

Effective 29/11/2010
Y2.45 Persons returning to New Zealand through emergency

See previous instructions:
Y2.45 Effective 29/11/2010

See also Immigration Act 2009 s 122

The holder of a temporary entry class visa, upon application, must be granted entry permission and a further temporary visa current for at least 14 days on their return if, on leaving New Zealand for another country:

a  the craft is forced to return to New Zealand because of an emergency or circumstances beyond the person’s control; and

b  their visa has expired or is due to expire at any time between their leaving New Zealand and 14 days after their return to New Zealand.

Note: Y2.45 applies unless the person is subject to sections 15 or 16 of the Immigration Act 2009.

Effective 02/02/2015
Y3 Entry permission

Previous instruction title: Y3 People refused entry permission
Y3.1 Definition and meaning of entry permission

See previous instructions:
Y3.1 Effective 29/11/201

See also Immigration Act 2009 ss14, 46 and 107

a  A person granted entry permission to New Zealand may enter New Zealand.

b  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).

c  The granting of a visa does not of itself entitle the holder to be granted entry permission unless Y3.10(a) below applies.

d  Certain persons are deemed to hold a visa and entry permission (see E2.95.5).

e  Entry permission is granted by being entered and retained in the records of the Ministry except for those people deemed to hold a visa and entry permission. Entry permission may (but need not) be evidenced by an endorsement in a passport or a certificate of identity.

Effective 02/02/2015
Y3.5 Applying for entry permission

See previous instruction:
Y3.5 Effective 29/11/2010

a. Any person who is applying for entry permission must comply with passenger responsibilities on arrival as prescribed in Y2.1.

b. It is the responsibility of the person applying for entry permission to:
   i. ensure that all information, evidence, and submissions that they wish to have considered is provided when the application for entry permission is made; and
   ii. inform the immigration officer of any relevant fact, including any material change in circumstances that has occurred between the grant of a visa and the application for entry permission on the basis of that visa, if that fact or change in circumstances may affect the decision on the application for entry permission.

c. For the purposes of Y3.5 "material change in circumstances" means a change that may relate to the person applying for entry permission or another person included in the application for entry permission, or may relate to any matter relevant to the Immigration Act 2009, immigration regulations or instructions.

Y3.5.1 Considering an application for entry permission

a. Immigration officers must consider the application for entry permission in accordance with:
   i. the requirements of the Immigration Act 2009 and immigration regulations; and
   ii. the Border Entry instructions in force at the time the application is made or any general instructions given by the chief executive; and
   iii. any relevant special direction.

b. When considering an application for entry permission, an immigration officer is not obliged to seek any further information, evidence, or submissions. The officer may determine the application on the basis of information, evidence, and submissions:
   i. provided by the applicant; or
   ii. held by Immigration New Zealand.

c. If the person applying for entry permission fails to meet the instructions, immigration officers may then consider all the circumstances to see if an exception to instructions to grant entry permission is justified (see Y4.45).

d. Y3.5.1(c) does not apply to Y3.10(a) or Y4.1.

Effective 02/02/2015
Y3.10 Who must be granted entry permission

See previous instructions:
Y3.10 Effective 29/11/2010

See also Immigration Act 2009 ss 108 and 122

a Entry permission must be granted to the holder of a:
   i permanent resident visa; or
   ii resident visa granted in New Zealand; or
   iii resident visa arriving in New Zealand for a second or subsequent time as the holder of the visa.

b A person who returns to New Zealand through emergency (see Y2.45) must be granted entry permission unless that person is subject to section 15 or 16 of the Act.

Effective 02/02/2015
**Y3.15 New Zealand citizens**

See previous instructions:
Y3.15 Effective 29/11/2010

*See also Immigration Act 2009 ss 13(1), 13(2), 103(1), 103(5)*

a  A person who is a New Zealand citizen will be referred to an immigration officer on arrival in New Zealand, whether or not they appear to meet the requirements for entry as a New Zealand citizen, if they arrive back in New Zealand and present a foreign passport with no endorsement under section 384 of the Immigration Act 2009, or no RRV issued under the Immigration Act 1987 on the basis of being a New Zealand citizen.

b  If the officer establishes that the records of the Ministry show the person has an endorsement, then they must grant the person entry as a New Zealand citizen.

c  A New Zealand citizen who is a national of one or more other countries, and who wishes to enter New Zealand other than as a New Zealand citizen, must apply for entry permission.

*Effective 02/02/2015*
Y3.20 People with expired resident visa (including expired returning resident’s visas (RRVs) issued under the Immigration Act 1987)

See previous instructions:
Y3.20 Effective 29/11/2010

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, regs 6, and 34

a A person who has previously held a resident visa will be referred to an immigration officer on arrival in New Zealand, whether or not they appear to meet the requirements for entry as a resident, if their resident visa has expired.

Notes:
An RRV of limited duration issued under the Immigration Act 1987 is deemed to be a resident visa allowing travel to New Zealand for an unlimited number of journeys valid until the date of expiry of the RRV.

Under section 63(2) of the Immigration Act 2009, the date a resident visa expires is the earlier of:
~ the day and time the holder left New Zealand, if the visa has no travel conditions allowing further travel to New Zealand;
~ the beginning of the day after the date that is specified by the travel conditions of the visa as the last day of the period of time within which travel is allowed to New Zealand.

b If the person's foreign passport shows that they have held a resident visa, an appropriately delegated officer may:

i give a special direction under regulation 34 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive any requirements for a visa and entry permission, if necessary; and

ii grant a resident visa and entry permission, if the officer determines that the principal applicant:
   o would have met the criteria to be granted a variation of travel conditions had they applied for it on the date their resident visa expired and those travel conditions would still be valid on the date the application for a second or subsequent resident visa was made; or
   o would have met the criteria to be granted a permanent resident visa had they applied for it on the date their resident visa expired and that date was less than 24 months before the date the application for a second or subsequent resident visa is made.

c If the person is not eligible for a resident visa, the officer may grant a one month temporary visa and entry permission.

d If the person's passport does not show that they have held a resident visa but the person claims to have been a New Zealand resident, an immigration officer must establish whether the person has in fact been a resident and held a resident visa.

e If the officer clearly establishes that the person has been a resident and held a resident visa then they may permit the person entry under (b) above.

f If the officer cannot clearly establish whether the person has been a resident and held a resident visa but is satisfied that the person is more likely than not to have been a resident and held a resident visa the officer may:

i give a special direction under regulation 34 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive any requirements for a visa and entry permission, if necessary; and

ii grant a one month temporary visa and entry permission.
g If the officer cannot clearly establish whether the person has been a resident and held a resident visa and is not satisfied that the person is more likely than not to have been a resident and held a resident visa the officer must:

i grant a one month temporary visa, if the person meets the requirements for a temporary visa, and entry permission; or

ii refuse entry permission under section 107 of the Immigration Act 2009, if the person does not meet the requirements for a temporary visa.

h A person who is granted a visa and entry permission under (b) or (e) above must be advised that, in order to facilitate future travel to New Zealand they must apply for further travel conditions on their resident visa or a permanent resident visa.

Effective 02/02/2015
Y3.25 Powers of entry and search by immigration officers, members of the Police, and Customs officers

See previous instructions:
Y3.25 Effective 29/11/2010

See also Immigration Act 2009 ss 283, 284, 285

a. An authorised immigration officer, a member of the Police or a Customs officer undertaking immigration duties may enter and search any craft that arrives in New Zealand, enter and search any land or premises in any airport or port including an immigration control area, without warrant or any other authority than sections 283–285 of the Immigration Act 2009, if they believe on reasonable grounds that this is necessary for the purpose of:
   i. detecting any offence against the Immigration Act 2009; or
   ii. apprehending any person who is liable for deportation, or is or is likely to be liable for turnaround; or
   iii. processing arriving passengers; or
   iv. locating any stowaway; or
   v. deporting any person or facilitating the departure of persons liable for turnaround.

b. An authorised immigration officer, a member of the Police or a Customs officer undertaking immigration duties may enter and search any border place where they have good cause to believe an offence against the Immigration Act 2009 is being or is likely to be committed or to apprehend a person liable for deportation or turnaround who is in the place.

c. In (b) above, a ‘border place’ means:
   i. any part of the foreshore; or
   ii. the shores or banks of any port, bay, harbour, lake, river, or other waters; or
   iii. any land or premises in any port, including any container-base, immigration control area, wharf, or transit building; or
   iv. any pier or such structure attached to or extending from any such shore or bank described in (c)(ii) above.

d. A member of the Police or a Customs officer undertaking immigration duties may enter and search any ship or other sea-borne vessel within the contiguous zone or territorial sea of New Zealand, if they believe on reasonable grounds that there is on board a person who, if they land in New Zealand, will commit an offence against the Immigration Act 2009, or be liable for deportation, or be or likely to be liable for turnaround.

Effective 02/02/2015
Y4 People refused entry permission

Previous instruction title: Y4 Visas in error
Y4.1 People who must be refused entry permission unless special direction given: excluded persons subject to section 15 or 16 of the Immigration Act 2009

See previous instructions:
Y4.1 29/11/2010

See also Immigration Act 2009 ss 15, 16, 17, 83, and 380

a  Under section 15 and 16, entry permission must be refused to any person, except a person listed in Y3.10(a), who:
   i  at any time, has been convicted and sentenced to imprisonment for a term of five years or more, or sentenced to an indeterminate period capable of running for five years or more; or
   ii at any time in the preceding 10 years, has been convicted and sentenced to imprisonment for a term of 12 months or more, or sentenced to an indeterminate period capable of running for 12 months or more; or
   iii is subject to a current removal order imposed under the Immigration Act 1987; or
   iv is subject to a prohibition on entry imposed under section 179 of the Immigration Act 2009 or if section 180 of that Act applies; or
   v at any time has been removed or deported from New Zealand under any enactment (subject to certain exclusions under section 15(3) of the Immigration Act 2009); or
   vi is excluded from New Zealand under any enactment; or
   vii has been removed, excluded or deported from any country other than New Zealand; or
   viii the Minister, or an appropriately delegated immigration officer, has reason to believe:
      o is likely to commit an offence in New Zealand that is punishable by imprisonment; or
      o is, or is likely to be, a threat or risk to security; or
      o is, or is likely to be, a threat or risk to public order; or
      o is, or is likely to be, a threat or risk to the public interest; or
      o is a member of a terrorist entity designated under the Terrorism Suppression Act 2002.

b  Any person, described in section 15 or 16 of the Immigration Act 2009, except those listed in Y3.10(a), may be granted entry permission if an appropriately delegated immigration officer gives a special direction to grant a visa and entry permission, under section 17(1)(a) of the Immigration Act 2009. If a special direction is given, the visa granted should be of a type and duration appropriate to the reasons for the special direction.

c  Entry permission may also be granted and a limited visa granted to a person if:
   i  a certificate has been issued in respect of the person under specific sections of the Mutual Assistance in Criminal Matters Act 1992; and
   ii the limited visa is for the sole purpose of enabling the person to be in New Zealand for the purpose of giving or providing evidence or assistance pursuant to a request under that Act or to be transported through New Zealand under that Act.

d  Entry permission may also be granted and a limited visa granted to a person for the sole purpose of enabling the person to return to New Zealand to face a charge in New Zealand or to serve a sentence imposed on the person in New Zealand.

Effective 02/02/2015
Y4.5 People who must be refused entry permission unless granted as an exception to instructions: general character concerns

See previous instructions:
Y4.5 Effective 29/11/2010

See also Immigration Act 2009 ss 22 and 107.

a Entry permission must be refused to any person, except a person listed in Y3.10(a), who is not otherwise dealt with under Y4.1 and;
   i is arrested on arrival in New Zealand; or
   ii possesses a forged, fraudulent, or improperly-altered identity document or other official document; or
   iii possesses a controlled drug (as defined in s 2 of the Misuse of Drugs Act 1975) without proper authority; or
   iv possesses a prohibited import (as defined in s 2 of the Customs and Excise Act 1996) without proper authority.

b A person subject to Y4.5(a) above may be granted entry permission if the immigration officer deliberately and properly does so as an exception to instructions (see Y4.45).

Note: A person should be dealt with under Y4.1 if, on arrival, the person possesses a controlled drug in an amount, level, or quantity at or over which the controlled drug is presumed to be for supply (as per s 2(1A) of the Misuse of Drugs Act 1975).

Effective 02/02/2015
Y4.10 Restrictions on the grant of a visa or entry permission to certain groups as designated by the United Nations Security Council

See previous instructions
Y4.10 Effective 02/02/2015


a Entry permission must be refused to any person, except a person listed in Y3.10(a), who is a designated individual or specified entity; and is not otherwise dealt with under Y4.1.

b A designated individual or a specified entity means someone who is named on a list of such persons held by Immigration New Zealand and includes:
  i designated individuals from Liberia
  ii designated individuals from Côte d’Ivoire
  iii designated individuals from the Democratic People’s Republic of Korea (DPRK), and:
  iv their immediate family members, and
  v people acting on their behalf or under their direction, and
  vi people assisting in the evasion of a determination by the United Nations Security Council that applies to the DPRK
  vii designated individuals and specified entities from Al-Qaida and Taliban
  viii designated individuals from Iran
  ix designated individuals from Lebanon
  x designated individuals from the Democratic Republic of Congo
  xi designated individuals from Sudan
  xii designated individuals from Somalia
  xiii designated individuals from Eritrea
  xiv designated individuals from Libya
  xv designated individuals from Guinea-Bissau
  xvi designated individuals from Central African Republic
  xvii designated individuals from Yemen
  xviii designated individuals from South Sudan.

c Immigration officers must contact the Ministry of Foreign Affairs and Trade when processing application for entry permission or a visa from a person to whom (b) above applies.

d A visa or entry permission may only be granted to a person to whom (b) above applies:
  i on the advice of the Secretary of Foreign Affairs and Trade; and
  ii if the immigration officer deliberately and properly does so as an exception to instructions (see Y4.45).

Effective 06/07/2015
Y4.15 People who must be refused entry permission unless granted as an exception to instructions: circumstances and compliance concerns

See also Immigration Act 2009 ss 22 and 107.

a Entry permission must be refused to any person, except a person listed in Y3.10(a), who is not otherwise dealt with under Y4.1 and:

i makes a false declaration on any part of the New Zealand Passenger Arrival Card or Crew Declaration, whether that declaration relates to an immigration matter or not; or

ii fails to comply with an immigration, customs, biosecurity, or Police responsibility on arrival, including (but not limited to) failing to:
  o apply for a visa, if a visa waiver applies; and entry permission; or
  o produce an arrival card; or
  o produce a passport or certificate of identity; or
  o produce other immigration documentation required by an immigration officer; or
  o comply with any other direction or request by immigration, customs, or biosecurity, or Police.

b A person subject to (a) above may be granted entry permission if an immigration officer deliberately and properly does so as an exception to instructions (see Y4.45).

Note: Immigration Officers may consult with Customs, Biosecurity, or Police Officers as necessary.

Effective 02/02/2015
Y4.20 People who must be refused entry permission unless granted as an exception to instructions: stowaways

See also Immigration Act 2009 ss 101, 115, 116.

a Entry permission must be refused to any person who is a stowaway and is not otherwise dealt with under Y4.1.

b A stowaway:
   i is a person who is carried in or on a craft without the consent of the carrier, or the person in charge, of the craft; and
   ii is unlawfully in New Zealand; and
   iii does not have any rights of appeal on humanitarian grounds so long as section 115 of the Immigration Act 2009 applies to the person; and
   iv is liable to be arrested and detained under Part 9 of the Immigration Act 2009; and
   v is liable for turnaround.

c A person subject to (a) above may be granted entry permission if an immigration officer deliberately and properly does so as an exception to instructions (see Y4.45).

d The carrier and the person in charge of a craft must report the presence of a stowaway on board the craft as soon as practicable (see Y2.20(a)). In most cases the ship’s agent will have informed New Zealand Customs Service (Customs) or Immigration New Zealand well in advance of the craft’s arrival.

e If there are reasonable grounds for believing that there are stowaways or other people intent on avoiding arrival procedures on board a craft, members of the New Zealand Police (Police) and Customs officers undertaking immigration duties have powers under the Immigration Act 2009 to enter and search that craft (see Y3.25).

f Action to deal with stowaways may begin as soon as the craft on which they are travelling crosses into New Zealand’s territorial limits. The territorial limit is any point 12 miles seaward from the New Zealand shore or baseline, as defined by the Territorial Sea and Exclusive Economic Zone Act 1977.

g Stowaways must be arrested and detained within 72 hours of the person first reporting or presenting to an immigration officer (see D4.25). After 72 hours have passed stowaways can only be dealt with by way of deportation.

Effective 02/02/2015
Y4.25 People who must be refused entry permission unless granted as an exception to instructions: unable to meet relevant immigration instructions

See also Immigration Act 2009 ss 22 and 107.
See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 2

Entry permission must be refused to any person, except a person listed in Y3.10(a), who is not otherwise dealt with under Y4.1 and;

a is unable to meet the requirements for entry permission or a visa under relevant instructions including (but not limited to):
   i having expired travel documents or no travel documents; or
   ii having no visa, an inappropriate visa or an expired visa; or
   iii having insufficient funds and no sponsorship; or
   iv having no outward ticket; or
   v being previously refused entry permission to New Zealand; or
   vi failing to meet the bona fide applicant requirement; or
   vii being normally ineligible for a visa (see A5.25, A5.30, A5.35, A5.40 and A5.45); or

b no longer meets the requirements or purpose of the visa held (e.g. job no longer available).

Effective 02/02/2015
Y4.30 People who must be refused entry permission: holders of transit visas

See also Immigration Act 2009 ss 89, 90, 91

a  Holders of transit visas are not entitled to apply for entry permission or any other class or type of visa while in New Zealand during the transit period.

b  An immigration officer may, in their absolute discretion, grant the person a visa and entry permission where the person holds a transit visa and the transit period has expired or the transit visa has been cancelled.

c  An immigration officer may cancel a transit visa at any time. If the transit visa is cancelled after the holder has arrived in New Zealand, the person is liable for turnaround.

d  An immigration officer may, in their absolute discretion, extend the period for which the person may remain in New Zealand under the transit visa, or grant the person a visa and entry permission where the person’s transit visa expires while the person is in New Zealand. If the immigration officer does not extend the visa or grant a visa and entry permission, the person is liable for turnaround.

e  A person whose transit visa is cancelled by an immigration officer after the person arrives in New Zealand, or who holds a transit visa and the transit period has expired is subject to section 115 of the Immigration Act 2009.

Note: Where a transit passenger mistakenly attempts to apply for a visa or entry permission, an immigration officer should not normally accept their application and should assist them to return to the transit area.

Effective 02/02/2015
Y4.35 People who may be refused entry permission: concealment of relevant information, including changed circumstances

See also Immigration Act 2009 s 112

a An immigration officer may refuse to grant entry permission to a person, if satisfied that the person:
   i in applying for entry permission, whether personally or through an agent, submitted false or misleading information or withheld relevant information that was potentially prejudicial to the grant of the permission; or
   ii did not ensure that the Minister or an immigration officer was informed of any material change in circumstances between the time of being granted a visa and the time of applying for entry permission.

b For the purposes of Y4.35(a):
   i "applying for entry permission" only relates to the provision of information or documentation related to Immigration Act processes, not the activities of other agencies at the border (e.g. Customs);
   ii "material change in circumstances" means a change that may relate to the person applying for entry permission or another person included in the application for entry permission, or may relate to any matter relevant to the Immigration Act 2009, immigration regulations or instructions.

Effective 02/02/2015
Y4.40 People who may be refused entry permission: not supplying biometric information

See previous instruction Y4.40 effective 02/02/2015

See also Immigration Act 2009 s 111

a 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) must allow biometric information to be collected from him or her if required to do so by an immigration officer:
   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 If a person 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.

Effective 28/08/2017
Y4.45 Making a decision to grant entry permission as an exception to instructions

a An immigration officer must attempt to interview a person before deciding to grant entry permission as an exception to instructions.

b The immigration officer must have regard to the principles of fairness and natural justice (see A1).

c When making the decision, an immigration officer must consider all of the surrounding circumstances, including factors both for and against the grant of entry permission such as:

i whether the person has compelling and genuine reasons to enter New Zealand; and

ii whether the person can take any action to meet the requirements for a visa and/or entry permission; and

iii whether there is any other impediment to the grant of a visa and entry permission.

d An immigration officer must record reasons for the decision to grant entry permission as an exception to instruction and enter those reasons into the Ministry’s records.

Effective 02/02/2015
Y5 Administrative error

Previous instruction title: Y5 Transit passengers
IN THIS SECTION

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Y5.1 Revocation of entry permission for administrative error

See previous instructions:
Y5.1 Effective 29/11/2010

See also Immigration Act 2009 ss 8, 64, 113

a An immigration officer may revoke a person’s entry permission before the person leaves the immigration control area where the error was made, if the immigration officer believes on reasonable grounds that the entry permission was granted as a result of an administrative error.

b Revocation of entry permission for administrative error is made by being entered into the Ministry’s records and will take effect immediately. Revocation may (but need not) be evidenced in a passport or certificate of identity.

c Entry permission is granted as a result of an administrative error if—

i it is granted to a New Zealand citizen (unless the person is a New Zealand citizen entering New Zealand in the circumstances described in section 13(4)(b)) of the Immigration Act 2009; or

ii it is granted to an excluded person to whom section 15 or 16 of the Immigration Act 2009 applies unless section 17(1)(a) applies; or

iii it is granted contrary to:
   o a special direction; or
   o immigration instructions (unless an immigration officer deliberately and properly granted it as an exception to immigration instructions); or

iv it is granted on the basis of, or in conjunction with,—
   o a visa that was itself granted on the basis of an administrative error; or
   o a visa that was granted for a period exceeding the period specified in immigration instructions for a visa of that type (unless an immigration officer deliberately and properly granted the visa as an exception to the immigration instructions); or
   o a visa of a class or type other than that intended to be granted.

d If a person’s entry permission is revoked for administrative error, the person’s visa is automatically cancelled and the person is liable for turnaround.

Effective 02/02/2015
Y5.5 Making a decision to refuse to grant entry permission or revoke entry permission on the basis of administrative error

See previous instruction:
Y5.5 Effective 29/11/2010

a An immigration officer must attempt to interview a person before deciding to:
   i refuse to grant the person entry permission; or
   ii revoke the person’s entry permission on the basis of administrative error.

b The immigration officer must have regard to the principles of fairness and natural justice (see A1).

c When making the decision, an immigration officer must consider all of the surrounding circumstances, including factors both for and against the grant of entry permission such as:
   i whether the person has compelling and genuine reasons to enter New Zealand; and
   ii whether the person can take any action to meet the requirements for a visa and/or entry permission; and
   iii whether there is any other impediment to the grant of a visa and entry permission.

d An immigration officer must record reasons for the decision to refuse entry permission or revoke entry permission and enter those reasons into the Ministry’s records.

Effective 02/02/2015
Y5.10 Effect of refusal to grant entry permission and revocation of entry permission

See previous instruction:
Y5.10 Effective 29/11/2010

a 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.

b The effect of revoking entry permission on the basis of administrative error 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 02/02/2015
Y5.15 Reasons for decisions to be given if visa or entry permission is refused or revoked to certain persons

See also Immigration Act 2009 s27

a Where a person who applied for a visa or entry permission onshore or in an immigration control area so requests, an immigration officer must give the reasons for any decision to:
   i refuse to grant a visa to the person; or
   ii refuse to grant to the person a visa of a particular type; or
   iii refuse to grant entry permission to the person.

b The reasons must:
   i be given in writing; and
   ii contain the information required under section 23 of the Official Information Act 1982 as if the reasons were given in response to a request to which that section applies.

c Reasons for a decision under (a) above are not required to be given if section 40(3)(e) and (f) of the Immigration Act 2009 apply.

d When entry permission is revoked for administrative error (a) and (b) above does not apply. Howeverbest practice requires that the immigration officer, if requested, is to provide a copy of the reasons to the person who had entry permission revoked.

Effective 02/02/2015
Y5.20 Effect of international conventions on refusing entry permission or revoking entry permission on the basis of administrative error

a As the Government recognises New Zealand’s obligations under international law, it is essential that such obligations be taken into account when refusing entry permission or revoking entry permission on the basis of administrative error.

b International obligations which may apply in such circumstances, and therefore may need to be considered in a decision to refuse or revoke entry permission, include but are not limited to:


ii the 1948 Universal Declaration of Human Rights;

iii the 1966 International Covenant on Civil and Political Rights and the optional Protocol relating to that Covenant;

iv the 1989 Convention on the Rights of the Child and New Zealand’s reservations to that Convention; and

v the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Effective 02/02/2015
Y5.25 Refugee status or protection claimants

If a person who is in the process of being, or has been, refused entry permission, or in the process of having their entry permission revoked, or entry permission has been revoked and indicates that they wish to claim refugee or protection status they must not be removed from New Zealand until their refugee or protection status has been finally determined, and then only if their claim is unsuccessful or if section 164(3) of the 2009 Immigration Act 2009 allows. (see Y8).

Effective 02/02/2015
Y6 Visas in error

Previous instruction title: Y6 Refugee and protection claimants
IN THIS SECTION

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Y6.1 Cancellation of visa for administrative error

See previous instruction:
Y6.1 Effective 29/11/2010

See also Immigration Act 2009 ss 8, 67, 107, 115
See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 34

a An immigration officer may cancel a visa that the officer believes on reasonable grounds was granted as a result of an administrative error if—
   i the person has not left the arrival hall of the airport or port at which he or she arrived in New Zealand; or
   ii the visa was granted to a person in an immigration control area and the person is still in the immigration control area.

b If a visa is cancelled as outlined in (a) above, such a cancellation will take effect immediately and be entered into the Ministry’s records.

c A visa is granted as a result of an administrative error if—
   i it is granted to a New Zealand citizen (unless the person is a New Zealand citizen entering New Zealand in the circumstances described in section 13(4)(b)); or
   ii it is granted to an excluded person (unless section 17 applies); or
   iii the person granting it intended to grant a visa of a type other than the one that was actually granted; or
   iv it is granted for a period exceeding the period specified in immigration instructions for visas of that type (unless the Minister or an immigration officer deliberately and properly granted it as an exception to the immigration instructions); or
   v it is granted on the basis of the person holding a visa that was granted as a result of an administrative error; or
   vi it is granted contrary to:
      o a special direction; or
      o immigration instructions (unless the Minister or an immigration officer deliberately and properly granted it as an exception to immigration instructions); or
      o an instruction of a kind referred to in section 378(7).
   vii it is granted on the basis of an administrative error (of any of the types in (c)(i) to (v) above) in determining an earlier application for a visa.

d If a visa is cancelled for administrative error, then entry permission, if granted, has no effect and the person is liable for turnaround.

Effective 02/02/2015
Y6.5 Making a decision to cancel a visa on the basis of administrative error

See previous instructions:
Y6.5 Effective 29/11/2010

a  An immigration officer must attempt to interview the person, before cancelling the visa on the basis of administrative error. The immigration officer must have regard to the principles of fairness and natural justice (see A1).

b  An immigration officer must consider all of the surrounding circumstances, including factors both for and against the cancellation of the visa such as:
   i  whether the person has compelling and genuine reasons to enter New Zealand; and
   ii  whether the person can take any action to meet the requirements for a visa and/or entry permission; and
   iii  whether there is any other impediment to the grant of a visa and entry permission.

c  An immigration officer must also consider the effect of international conventions as outlined in Y5.20.

d  An immigration officer must record reasons for the decision to cancel a visa on the basis of administrative error and enter those reasons into the Ministry’s records.

Effective 02/02/2015
Y6.10 Referrals from Customs officers: not needed if new visa immediately granted

A Customs officer who cancels a person’s visa granted as a result of administrative error:

a  may, despite Y6.5 (a) above, immediately grant the person a new visa; or otherwise
b  must refer the person to INZ for consideration under Y6.5.

Note: "Customs officer" means a designated immigration officer under s380 of the Immigration Act 2009.

Effective 02/02/2015
Y7 Transit passengers
Y7.1 Definition of ‘transit passenger’

See also Immigration Act 2009 ss 86-91

Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 17

a The period of time for which a person may be in New Zealand as the holder of a transit visa is set in the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 and is currently 24 hours.

b Transit passengers are persons who:
    i arrive in New Zealand from another country while in transit to another overseas destination; and
    ii throughout the whole 24 hour transit period that they are in New Zealand, remain:
        o on board the craft in or on which they came to New Zealand on; or
        o in an immigration control area; or
        o in the custody of the Police.

Effective 02/02/2015
Y7.5 Bona fide transit passengers

See also Immigration Act 2009 ss 86, 89

a A bona fide transit passenger is one who:
   i has a stated and genuine intention to be in New Zealand only for the purpose of reaching a further destination; and
   ii will be confined to a place listed in Y7.1b(ii) during the whole of their stay in New Zealand; and
   iii will not be in New Zealand longer than the transit period of 24 hours.

b All transit passengers must obtain a transit visa before travelling to New Zealand, unless they are persons to whom a transit visa waiver applies (see N2.1).

c Holders of transit visas may not remain in New Zealand for more than the transit period of 24 hours.

d Holders of transit visas are not entitled to apply for entry permission or any type of visa to be in New Zealand.

e If a person who holds a transit visa applies for entry permission or any other type of visa, an immigration officer may refuse their application, in which case section 115 of the Immigration Act 2009 will apply to that person.

Note: Where a transit passenger mistakenly attempts to apply for a visa or entry permission, an immigration officer will not normally accept their application and will assist them to return to the transit area - in which case (e) above will not apply.

Effective 02/02/2015
Y8 Refugee and protection claimants
Y8.1 Claims for refugee or protection status at port of entry

See previous instructions:
Y8.1 Effective 02/02/2015

See also Immigration Act 2009 ss 125, 133

a  Under the guidelines set down by the United Nations High Commissioner for Refugees (UNHCR) and the obligations set out in the Immigration Act 2009 with reference to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR), New Zealand has a general obligation to admit people who make a claim for refugee or protection status on arrival in New Zealand.

b  An indication of intent is all that is required to initiate the processing of a refugee or protection claim.

c  Immigration officers should give due consideration to people who wish to claim refugee or protection status, because they may be tired, disoriented, distressed, and incapable of communicating in English, either orally or in writing.

d  People may express an intention to seek refugee or protection status in a variety of ways, to a representative of the Ministry of Business, Innovation and Employment or a constable including, but not limited to, statements of the following kind:

i  they have been persecuted; or

ii  they are in fear of being persecuted; or

iii  they have been imprisoned for political reasons; or

iv  they are afraid of being imprisoned in their home country; or

v  they want to 'see the United Nations' (ie the United Nations High Commissioner for Refugees ('UNHCR')); or

vi  they want to know if there is a United Nations office in New Zealand; or

vii  they are 'stateless' or 'homeless' persons; or

viii  they want to see a lawyer; or

ix  they are afraid to return to their home country; or

x  they are in danger of being subjected to cruel, inhuman or degrading treatment if they are returned home; or

xi  they will be in danger of being arbitrarily killed; or

xii  they simply "do not want to return".

e  No person who is a refugee or protection status claimant may be deported from New Zealand until their refugee or protection status has been finally determined.

f  Assessment against the general instructions at A16.2 will indicate where a person is not someone to whom a visa should be granted.

g  Other than where (f) above applies, claimants may be granted temporary visas as outlined at E8.10.

h  Where a claimant is not granted a visa and is subject to turnaround under section 115 of the Immigration Act 2009, they may not be removed from New Zealand until their refugee or protection status has been finally determined.

i  If the claimant is the holder of a limited visa, the claimant, unless subject to sections 15 or 16 of the Immigration Act 2009, should be granted entry permission for the period required to achieve the express purpose for which they were granted the limited visa.

j  A representative of the Ministry of Business, Innovation and Employment may request that the claimant confirms their claim in writing in the prescribed manner. If a claimant does not confirm their claim in the prescribed manner (see C4.20) at the border, an immigration officer must advise that they
have five working days to do so, or to otherwise establish contact with the Refugee Status Branch. If they do not do so their claim will be treated as not made, and they will become liable for deportation.

k If the claimant is the holder of a limited visa, they should be told that an application for a further limited visa will only be considered after they have confirmed their claim in the prescribed manner.

Effective 30/03/2015
Y8.5 Detention of refugee or protection claimants

a  A visa may be refused, and a claimant may be detained under Part 9 of the Immigration Act 2009 so that a refugee and protection officer can finally determine their claim, if, after interviewing a claimant, a preliminary assessment against the general instructions at A16.2 indicates that:
   i  the claim for refugee or protection status appears to be 'abusive' or 'manifestly unfounded'; or
   ii the claimant otherwise does not meet bona fide entry requirements.

b  A refugee or protection status claim is abusive or manifestly unfounded if:
   i  it is clearly fraudulent or unrelated to the criteria for granting refugee or protection status; or
   ii the claimant is claiming refugee or protection status in an attempt to evade normal immigration requirements.

c  The National Manager, Border and Compliance Operations, must be advised of any proposed detention of a refugee or protection status claimant under Part 9 of the Immigration Act 2009.

d  If a claimant is to be detained for a period longer than 96 hours a warrant of commitment must be obtained (see D5.5).

e  If it is apparent that a claim for refugee or protection status cannot be determined within the period of custody of up to 28 days, an officer may apply for an extension to the warrant (see D5.5).

Effective 02/02/2015