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INTERPRETATION OF SPECIFIC PURPOSE WORK VISA INSTRUCTIONS

There have been inconsistent approaches to assessing applications under WS2.1.1(a) and (b) of the specific purpose category. Of particular note are differences in determining whether an employer is a New Zealand subsidiary of an overseas company or whether they are a multinational company, and establishing whether an applicant is deemed to meet the definition of specialist personnel.

Process

Application of WS2.1.1(a)

WS2.1.1(a) applies where a company is listed as a NZ Limited Company by the Companies Office. If the NZ Limited Company is owned by an overseas company the two companies will have separate legal entities and the New Zealand company will be considered a subsidiary of the overseas company.

Application of WS2.1.1(b)

WS2.1.1(b) applies where a company is listed as an “Overseas Non-ASIC Company” by the Companies Office. The company in New Zealand is not a separate legal entity; rather one legal entity is operating in multiple countries.

Specialist Personnel

WS2.5 defines specialist personnel as a person undertaking a specific or specialist task at a senior level within the company. This definition will only apply to a small percentage of employees within a company and generally does not capture employees undertaking business as usual day to day tasks. Employees who are not working at a senior level do not meet the requirements of WS2.1.1(a) or (b). In these cases Essential Skills is likely to be a more appropriate category.

Time Bound

As both WS2.1.1(a) and WS2.1.1(b) refer to a ‘secondment’, it implies that a person can be moved into an existing position that can continue after the person leaves it.