

VISA PAK ISSUE 437 — 12 JUNE 2020

DECLINING OR WITHDRAWING APPLICATIONS FOR A TEMPORARY VISA, ESPECIALLY WHERE APPLICANTS HAVE INTERIM VISAS

This item provides offices with guidance around declining or withdrawing applications with particular reference to where the applicant has an interim visa.

Applicants' individual circumstances may have changed considerably over the last few months. When considering applications that are likely to be declined, INZ needs to be aware of the impact of COVID-19 on their personal circumstances, including a person's ability to leave New Zealand. They may be impacted by border restriction measures and the availability of international travel here and overseas. Immigration officers must always consider whether the case merits granting a visa as an exception to instructions. An applicant can have no expectation of being granted a visa as an exception to instructions but they can expect an immigration officer to consider their individual circumstances. An applicant's unwillingness to depart is not a relevant consideration.

As a result of the Epidemic Management Notice (EMN) coming into effect, a holder of a visa which stated it had an expiry date between 2 April to 9 July 2020 (inclusive) has had their visa automatically extended to 25 September 2020 if the visa holder was in New Zealand on 2 April 2020. Section 78 of the Immigration Act 2009 determines these dates.

There are specific complexities when a decision is made to decline or withdraw a temporary visa application where the client holds an interim visa that has been extended. This is because the expiry date might revert to the usual 21 day period where an interim visa is still valid after a decline or withdrawal decision has been made and, depending on when the decline or withdrawal is made, may mean that the section 78 extension should not apply. This outcome should be avoided as it will shorten the interim visa and disadvantage the visa holder.

The attached table gives practical examples of the outcomes and alternative options available when a temporary visa application is declined or withdrawn.

With this advice in effect, Operational Policy no longer need to be informed of individual withdrawal cases. Please consider the advice for both decline and withdrawal decisions where the applicant holds an interim visa.

Holders of Interim Visas Extended by EMN (Section 78)				
Decision	Decision Date	Action for IOs	Result	Reason
Approval (including ETI approvals)	Any time	Proceed as normal and ensure you consider the currency of the new visa – a visa that expires before 25 September 2020 may not be appropriate.	Approved visa will replace current interim visa.	Regardless of whether s78 applies to the interim visa, the visa outcome is equal for those extended by EMN and those not.
Decline/ withdrawal	On or before 17 June 2020	Proceed with decline/withdrawal.	The interim visa is extended to 25 September 2020 under the EMN.	Regardless of whether S78 applies to the interim visa, the visa outcome is equal for those extended by EMN and those not. The interim visa will only remain valid for 21 days following the decline/withdrawal decision, but as that expiry falls between 02 April and 09 July 2020 the interim is extended to 25 September 2020 under the EMN.
	Between 18 June and 09 July 2020 (inclusive)	There are 137 applications that if declined/withdrawn within this period, could be disadvantaged in terms of the interim visa duration. Consider holding declines/withdrawals for these 137 applications until 10 July.	The interim visa will be extended to 25 September 2020 under the EMN.	This is relevant to applications where a decision could be made before the 6 months expiry date of the interim visa is reached. If the 6 month expiry date of an interim visa falls within this period, and the application is declined/withdrawn before the 6 month expiry has passed, the interim visa will only remain valid for 21 days following the decline decision/withdrawal and will not be extended under the EMN as the actual expiry date will fall outside of 02 April and 09 July. The possible short delay before the decision is not considered undue as it preserves the extension of the interim visa and is consistent with expectations (as the extension has already been communicated) and presents an outcome that is fairest to the applicant when the wider effects of the Governments response to covid-19 is considered.
	On or after 10 July 2020	Proceed with decline/withdrawal.	Interim visas that had a six month expiry after 9 July 2020 will expire 21 days after the decline or withdrawal.	EMN does not extend the expiry date of interim visas that had a six month expiry date on or after 10 July. Normal process applies to ensure these interim visas do not expire before a decision on the further application or after six months,

			Interim visas that had a six month expiry on or before 9 July will be extended to 25 September 2020 despite the decline/withdrawal.	Interim visas that had a six month expiry between 2 April and 9 July 2020 (inclusive) will retain their extension to 25 September because the six month expiry date of the interim visa has now passed and the 21 day expiry that is triggered by decline/withdrawal only applies if decisions are made within six months.
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Note: While extended visas legally do not need to be recorded to be effective, to ensure processes continue (including identifying when people are unlawful) and a person's status can be easily checked, the extension date is being recorded in AMS. To ensure it is recorded correctly, interim visas for declined/withdrawn applications will be "re-extended" by a script in the backend. Processing staff do not need to do anything.

Information warnings will be raised on the 137 applications stating careful consideration should be given before any decision to decline/withdraw between 18 June and 09 July on those applications, but these warnings will expire on 10 July.

Message to processing staff:

Where the applicant is currently on an Interim Visa, assess and decide all visa applications as you normally would, except if an application has a warning with the following message:

"If the outcome of this application will be a decline or withdrawal that is made between 18 June 2020 and 9 July 2020 inclusive, please discuss with your Practice Lead or Technical Advisor before making the decision on the application. This is because a decline or withdrawal decision made in this timeframe might impact the extension until 25 September 2020 of the client's interim visa under the Epidemic Management Notice."

This warning only impacts around 137 applications, and will expire on 10 July 2020 as it will no longer be applicable after then. Please pay attention to this warning if you come across one. However, if you decide to approve the application, you can proceed with your decision any time.

If the application is declined or withdrawn, and has the following note in AMS indicating the interim visa has been extended under s78, please include this wording in your decision letter to reassure the applicant that their interim visa remains valid until 25 September 2020:

Officer	Branch	Type	Client/Appln#	Client name/Appln Type
EMN System, EMNSys	National Offic	Application N	19269303	Visa, Interim visa, General
Expiry date has been extended under s78, Immigration Act 2009.				

“Please note that the expiry date of your interim visa is 25 September 2020 as per the extension applied under the Epidemic Management Notice. It may take up to one week from the date of decision for this expiry date to be reflected in the Visa Verification Service and Visa View (where your employer or education provider can view it).

If the above AMS note is not found, you may proceed as normal.

Holders of Other Temporary Visa (other than Interim Visas)			
Decision	Current Visa Validity	Action for IOs	Reason
Approval	Any duration	Proceed as normal i.e. ensure you consider the currency of the new visa so that the new visa expiry is not an unreasonably short duration.	It is impractical to grant a visa for a period at the end of which the applicant is still realistically unable to leave New Zealand.
Decline	Still valid for more than 2 months	Proceed as normal (including consideration of ETI and LV).	All BAU considerations apply in determining whether a visa should be granted as an ETI, and no one is entitled to an ETI as a matter of right. Applicant will still hold a valid visa for a sufficient duration to submit a new application.
	Imminent expiry (within 1-2 months)	Proceed as normal but be particularly alert to the impact of covid-19 when considering options: <ul style="list-style-type: none"> Decline and remind the applicant to submit a new application before visa expiry Grant a temporary visa for an appropriate duration as an ETI 	All BAU considerations apply in determining whether a visa should be granted as an ETI, and no one is entitled to an ETI as a matter of right. Processing staff should however be alert to those who do not meet immigration instructions, yet are also genuinely unable to leave New Zealand due to lack of flight options.
Withdrawal	Any duration	Proceed as normal.	Applicant is making a conscious decision to withdraw their application and should be aware how much longer they are able to remain lawfully in New Zealand.

Message to processing staff:

As always, be mindful of each individual's circumstances when making a decision to decline the application. You should apply your usual discretion when deciding whether to grant a visa as an exception to instructions, weighing and balancing relevant factors. At the moment these factors will likely include consideration of covid-19 circumstances including the applicant's current ability to leave New Zealand. In light of this it may be appropriate to enable the applicant to remain lawfully in New Zealand for a further time, during which they may be able to leave New Zealand.

