

VISA PAK ISSUE 345 — 16 FEBRUARY 2018

## **DEFINITION OF “ONGOING AND SUSTAINABLE EMPLOYMENT” - EXTENSION OF FIXED TERM EMPLOYMENT**

In order to ensure consistency updated information has been provided below, in terms of the assessment of ‘ongoing employment’ in situations where a person is employed on a fixed term employment agreement.

### **Affected instructions:**

- SM6.30 Additional requirements for skilled employment
- RW2.5 Requirements for employment
- RW4.1 Requirements for employment
- S1.10 Samoan Quota Scheme
- S1.40 Pacific Access Category

Where an applicant’s employment is required to be ‘ongoing’, and is for a fixed term, the stated term of employment must be for at least 12 months. When determining this, consecutive periods of fixed term employment with the same employer can be combined.

### **Scenarios**

*Linda was offered a nine-month fixed term employment agreement; she started working on 1 August 2017. The employment agreement ceases on 31 May 2018. On 1 May 2018, Linda and her employer agree to extend the term of the employment agreement by 6 months and Linda lodges a residence application on 15 May 2018. Does she meet instructions?*

Yes – Linda and her employer have agreed to vary the term of the employment agreement. Her employment is now for a stated term of 15 months.

Her employment doesn’t have to have 12 months left to run from either the date of lodgement or the date of assessment. Even if she had just one month remaining, as long as the stated term was 12 months (or more) this meets the requirements.

*What if Linda’s 9 month fixed term employment agreement expires and she is then offered a new 9 month agreement (as opposed to an extension) with the same employer?*

In this scenario Linda’s employment is still considered to meet the 12 month requirement provided there is not a substantial gap between the end of the first employment agreement and the beginning of the next. The object of instructions will be met if there are two (or more) consecutive periods of employment (with the same employer) which total at least 12 months.

*What if Linda lodges her application prior to her employment agreement being extended or new employment agreement being entered into?*

Provided she is able to provide evidence of a contract extension or a new contract with the same employer, which when combined with her initial term of employment amounts to a period of over 12 months, prior to a decision being made on the application, she meets instructions.



*What if Linda's fixed term employment agreement ends before her application is assessed and she hasn't been offered a further employment agreement?*

If she is no longer employed, we cannot grant the visa.

*What if Linda's employment agreement finishes while we are assessing her application but her employer offers her another fixed term employment agreement? Does she meet instructions?*

Yes – provided there is not a substantial gap between the end of the first employment agreement and the beginning of the next, Linda is still in ongoing employment which in total is for a term of at least 12 months.

**Previous advice**

Please note that the above information, regarding employment that has been extended, differs from advice provided in Visa Pak 177. Please inform staff of this updated advice.