VISA PAK ISSUE 206 — 10 APRIL 2015

CONSEQUENCES OF SECTION 157 DEPORTATION LIABILITY NOTICES

Section 157 of the Immigration Act 2009 (the Act) allows for the Minister or their delegate (i.e. an Immigration Officer who holds the position of Compliance Officer) to make the holder of a temporary entry class visa liable for deportation if there is "sufficient reason" to do so.

As provided by section 157(5), "sufficient reason" includes but is not limited to:

1. Breach of conditions of the person's visa;
2. Criminal offending;
3. Other matters relating to character;
4. Concealment of relevant information in relation to the person's application for a visa; or
5. A situation where the person's circumstances no longer meet the rules or criteria under which the visa was granted.
6.

If a Compliance Officer determines that a person who holds a temporary entry class visa is liable for deportation under section 157, a Deportation Liability Notice (DLN) may be served on the person. In instances where a DLN is served an appropriate alert should be raised against the person's AMS record. A copy of the DLN itself may be found in template letters under 'Non-Application Related'. If no template is visible, a copy can be obtained from the relevant Compliance Officer. Among other things, the DLN sets out the grounds for deportation liability, review and appeal rights, consequences of deportation, and impact on the person's immigration status. Service of a DLN is only undertaken if it has been decided deportation is appropriate.

From the date of service of a DLN under section 157 the person has 14 days to give Immigration New Zealand (INZ) good reason why deportation should not proceed. They also have 28 days to appeal to the Immigration and Protection Tribunal (IPT) on humanitarian grounds. They may elect to do both. If INZ accepts the good reasons given, the DLN will be cancelled.

As provided by sections 79(4)(b)(i) and 169(1)(b) of the Act, the holder of a temporary entry class visa who is liable for deportation may not apply for a further visa of a different class or type (e.g. the holder of a student visa may not apply for a post-study work visa). They may, however, apply for another temporary entry class visa of the same class and type; provided they do so before their current visa expires (e.g. the holder of a partnership-based work visa may apply for a work visa under essential skills). The purpose of this is to enable them to preserve, but not improve, their position pending the outcome of any appeal.

There is no guarantee that an application for a further visa of the same class or type will be successful (e.g. if the DLN was served because of criminal offending, the person may be subject to character requirements instructions). Even if an application for a further visa of the same class or type visa is successful, that is not the same as cancelling deportation liability.

If they submitted an application for a different class or type of visa prior to being served a DLN that is not yet decided, the processing of that application must be suspended while they are liable for deportation.

The consequences of deportation are detailed in the DLN. Once served, liability under section 157 continues to apply until it is either cancelled (in writing) or the person departs or is deported, and this is the case whether or not the person still holds a visa at the time of departure. There is a limited timeframe in which a person may depart 'voluntarily' (i.e. without triggering a ban period) once served with a section 157 DLN. In some instances, as provided by section 10(3) of the Act, a person served with a DLN who departs at their own expense and arrangement may self-deport. Persons who are deported or self-deport under section 157 are subject to a period of prohibition on entry for 5 years from date of deportation.