

VISA PAK ISSUE 413 — 26 AUGUST 2019

## **ADVICE ON ‘NURSERYPERSON’ AND ‘NURSERY ASSISTANT’ OCCUPATIONS FOR ESSENTIAL SKILLS AND RSE**

This advice clarifies:

- Why roles that are eligible for the Recognised Seasonal Employer (RSE) scheme should be declined under Essential Skills (WK3.5(d))
- The difference between ‘Nurseryperson,’ ‘Nursery Assistant’ and ‘Crop Farm Worker’, and whether they fall under WK3.5(d)
- Other factors to consider when assessing whether a role falls under WK3.5(d).

This updates to the advice given in Visa Pak issues 257 and 394.

### **WK3.5 Acceptable employment**

d. Applications for visas under Essential Skills Instructions related to planting, maintaining, harvesting or packing crops in the horticulture or viticulture industries must be declined.

**Note:** Applications for work visas to plant, maintain, harvest or pack crops in the horticulture or viticulture industries must be made under the Recognised Seasonal Employer (RSE) Instructions (see WH1) or the Supplementary Seasonal Employment Instructions (see WH3).

### **RSE versus Essential Skills**

The RSE scheme allows a set number of people to come to New Zealand each year for the purposes of work in the horticulture and viticulture industry. RSE employers are subject to much stricter requirements than Essential Skills employers. While the RSE scheme helps to fulfil New Zealand’s Pacific labour mobility and trade commitments, these strict requirements also ensure that protection is in place for RSE workers regarding pastoral care, employment terms and conditions, etc. On this basis it is important to separate RSE work from the more general Essential Skills space.

As such, work visas under Essential Skills (WK) should not be issued for positions that are eligible under RSE.

The eligible positions under RSE are for planting, maintaining, harvesting or packing crops in the horticulture or viticulture industries. There is no set occupation under ANZSCO, but usually RSE workers substantially match the roles of Crop Farm Worker, Market Gardener, Glasshouse Worker, Orchard Worker or Vineyard Worker. For a general view of what most RSE workers undertake, the appropriate ANZSCO would be a Crop Farm Worker (Unit Group 8412).

Essential Skills caters for more specialised occupations, including those in the horticulture and viticulture industries, such as Nurserypersons and Nursery Assistants.

### **Crop Farm Worker versus Nurseryperson and Nursery Assistant**

The table below shows the key tasks for each ANZSCO occupation. A Crop Farm Worker would generally be considered under RSE, while Nurseryperson and Nursery Assistant can be considered under Essential Skills.

Crop Farm Worker	Nurseryperson	Nursery Assistant
<ul style="list-style-type: none"> <li>planting trees, seeds, seedlings, roots, bulbs, vines and other plants using hand tools and farm machines</li> </ul>	<ul style="list-style-type: none"> <li>preparing potting media and containers before planting</li> </ul>	<ul style="list-style-type: none"> <li>preparing garden sites and plots using hand tools and machines</li> </ul>
<ul style="list-style-type: none"> <li>building trellises for climbing vegetables and vines</li> </ul>	<ul style="list-style-type: none"> <li>selecting seeds, bulbs and cuttings, and planting them in beds, lawn areas and tubs</li> </ul>	<ul style="list-style-type: none"> <li>assisting with planting and transplanting flowers, shrubs, trees and lawns</li> </ul>
<ul style="list-style-type: none"> <li>operating farm machines to cultivate, fertilise, spray and harvest fruit, nuts, grains and vegetables</li> </ul>	<ul style="list-style-type: none"> <li>budding and grafting vegetative material onto root stock</li> </ul>	<ul style="list-style-type: none"> <li>assisting with propagating, planting and potting seeds, bulbs and cuttings</li> </ul>
<ul style="list-style-type: none"> <li>spraying trees, vines and other plants with chemicals to control weed growth, insects, fungus growth and diseases</li> </ul>	<ul style="list-style-type: none"> <li>watering plants manually and controlling automatic watering operations</li> </ul>	<ul style="list-style-type: none"> <li>maintaining gardens by watering, weeding and mowing lawns</li> </ul>
<ul style="list-style-type: none"> <li>thinning, weeding and hoeing row crops, and pruning trees and vines</li> </ul>	<ul style="list-style-type: none"> <li>applying pesticides to control pests, diseases, weeds and nutritional and environmental plant disorders</li> </ul>	<ul style="list-style-type: none"> <li>tending plants by hand watering and weeding</li> </ul>
<ul style="list-style-type: none"> <li>irrigating land for crop growth</li> </ul>	<ul style="list-style-type: none"> <li>keeping records of soil mixtures, plantings, treatments, losses and yields</li> </ul>	<ul style="list-style-type: none"> <li>adjusting mist irrigation systems, shade and ventilation</li> </ul>
<ul style="list-style-type: none"> <li>selecting and picking fruit, nuts, grains, vegetables and mushrooms according to size and ripeness, and discarding rotting and over-ripened produce</li> </ul>	<ul style="list-style-type: none"> <li>selecting plants and packaging them for presentation and delivery</li> </ul>	<ul style="list-style-type: none"> <li>harvesting and packaging plants for sale and transport</li> </ul>
<ul style="list-style-type: none"> <li>grading, sorting, bunching and packing produce into containers</li> </ul>	<ul style="list-style-type: none"> <li>advising customers on plant care and appropriate plants for local conditions</li> </ul>	<ul style="list-style-type: none"> <li>cleaning gardens and removing rubbish</li> </ul>
<ul style="list-style-type: none"> <li>loading filled fruit, nut, grain and vegetable containers onto trucks</li> </ul>	<ul style="list-style-type: none"> <li>may plan sales area layouts and visual merchandise presentation</li> </ul>	<ul style="list-style-type: none"> <li>loading, unloading and moving garden supplies and equipment</li> </ul>

While there may be some similarities between Crop Farm Worker and Nurseryperson, the tasks for the role of a Nurseryperson are more specialised (i.e. more specific and require a higher level of skill and/or experience) and, along with Nursery Assistant, generally refer to individual plants or a selection of plants or seeds being propagated in a nursery. A nursery is a place where plants are propagated and then transplanted later. Nurserypersons and Nursery Assistants are not considered to come under RSE and therefore WK3.5(d) would not apply. The tasks for the role of a Crop Farm Worker on the other hand, generally refer to a crop

or field being planted, maintained or harvested. A crop is generally a plant grown on a large scale, which is then harvested for commercial profit.

**Factors to consider**

- **What tasks are being undertaken**

While a role should be matched to an ANZSCO occupation, the determining factor of whether an application should be declined under WK3.5(d) is whether the role is for *planting, maintaining, harvesting or packing crops in the horticulture or viticulture industry* i.e. whether they are eligible for an RSE position. You should check that the applicant isn't undertaking RSE tasks under the job title of Nurseryperson. If the role primarily and consistently includes other specialised tasks, an immigration officer may determine it does not relate to planting, maintaining, harvesting or packing crops and therefore may be considered under Essential Skills. Applicants should be able to provide detail, if required, of the specialised aspects of their role.

- **Nursery Assistant position**

If the role does not include the tasks of a Nurseryperson, this does not automatically mean that the application falls under WK3.5(d). The role may instead be for a Nursery Assistant. A Nursery Assistant assists in propagating, cultivating and harvesting plants in a nursery. Workers who substantially match the role description and the tasks listed in the table above may also be eligible for an Essential Skills work visa.

- **Pay rate and experience**

You should also check that the pay rate and qualification/work experience held by someone claiming to be a Nurseryperson reflects the increased specialisation and skill level required.

- **Where the role is performed**

Working on an orchard or vineyard or in a glass house does not disqualify someone from being considered under Essential Skills. Some orchards, vineyards and glass houses require specialised Nurserypersons or Nursery Assistants, for example if they have integrated nurseries as part of their operation. While the location or venue the tasks are performed at may play a part in matching the role to an occupation or determining whether the role is for planting, maintaining, harvesting or packing crops, the tasks that are performed as part of the role should be the main focus when assessing whether a position falls under WK3.5(d).

- **What is being grown**

Working with crops or growing food does not disqualify someone from being considered under Essential Skills. If an employer grows crops, this does not mean that the specialised skills of a Nurseryperson or Nursery Assistant are not required. While some employees will be working on the crop undertaking tasks such as harvesting, planting etc. (these applications should be considered under RSE and declined under Essential Skills), others might be undertaking more specialised tasks such as those listed under Nurseryperson or Nursery Assistant in the table above. In these cases an Immigration Officer may determine that the role is not related to planting, maintaining, harvesting or packing crops and therefore may consider the position under Essential Skills.

If you are unsure as to whether WK3.5(d) applies, you are encouraged to discuss your application with a TA in the first instance.