

VISA PAK ISSUE 358 — 25 MAY 2018

IMMIGRATION INSTRUCTION R5.115

Instructions at R5.115 Partners and dependent children who must be included in a residence class visa application give the clear impression that once included in a residence application no partner or dependent child of the principal applicant (PA) can be removed; however, that is not the case.

As advised previously, instructions at R5.115 are reliant on Regulation 20(2A) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 which took effect on 8 May 2017. This made it a mandatory requirement for lodging a residence class visa application (as reflected in instructions at R2.40.d.) to include all dependents of the PA where they hold or have applied for a temporary entry class visa based on their relationship to the PA, for example, a partner of a worker work visa or dependent child of worker student visa.

R5.115 only applies where the PA was required by Reg 20(2A) [R2.40 d.] to include their partner or dependent child in their residence class visa application. For example, if a PA under the Parent Category has included her partner in her residence application and he has never entered New Zealand or obtained a temporary entry class visa based on his relationship with her, R5.115 does not apply.

There have been claims from some immigration advocates, where we have applied R5.115 to a residence class visa application made before 8 May 2017, that we are applying law/instructions retrospectively. As the requirement for immigration officers to determine applications based on residence instructions applying at the time the application is made still remains, that is not the case. It simply means that if a residence class visa application made before 8 May 2017 is still being processed, that after 8 May 2017 a partner or dependent child subject to Reg 20(2A) cannot be removed from the application.