

VISA PAK ISSUE 464 — 26 MARCH 2021

CUSTODY OF CHILDREN UNDER 16 YEARS OF AGE

This item provides clarification for the interpretation of instruction E4.1.15 – Custody of children under the age of 16 years.

Instruction E4.1.15 (a) outlines that:

If an applicant is applying for a visa to enter New Zealand for the purpose of marriage to a New Zealand citizen or residence class visa holder (see V3.35), or for any temporary entry class visa with the intention of remaining in New Zealand for a period of 12 months or more and:

i.a child under the age of 16 years is included in their application; or

ii.a child under the age of 16 years is applying for a different type of visa in order to accompany that parent as provided by E4.5; and

iii.that child's other parent is not included in the application or accompanying the child to New Zealand,

immigration officers must be satisfied that the applicant parent has the right to remove the child from its country of residence or from the country in which rights of custody or visitation have been granted, or that the other parent consents to such removal.

There has been inconsistency in the way these instructions are being interpreted and applied. It has been noted that these instructions *can* be read as only applying to children when entering New Zealand. This is not the correct interpretation.

This instruction should be interpreted as applying equally to people who are either onshore or offshore and we should request the evidence listed at E4.1.15(b) in both cases.

Further to this, as part of weighing and balancing all the factors when making a decision on a visa application officers should also consider the effect of declining the application resulting in the child becoming unlawfully in New Zealand and place an appropriate weighting on the best interests of the child. In some cases it may be in the child's best interests to maintain their lawful status in New Zealand and this may require an exception to instructions on a case by case basis.

If an application looks like it is going to be declined the immigration officer should discuss with their Practice Lead whether or not it is appropriate to raise a NSFS in the circumstances.