

VISA PAK ISSUE 503 — 8 APRIL 2022

## FIRST TIME RESIDENT VISA HOLDERS TRAVELLING TO NEW ZEALAND

Introduction — The Minister of Immigration recently made two changes that allow first time resident visa holders to enter New Zealand, even if the border entry restrictions in place when their applications were made would otherwise make them ineligible for entry permission.

The Minister has made a special direction to grant a resident visa under [section 61A](#) of the Immigration Act 2009 (the Act) to people who:

- are outside New Zealand, and
- have submitted a resident visa during the period that the border entry instructions in force would prevent them from entering New Zealand as a first-time resident (i.e. during the border closure), and
- have been determined by an immigration officer as meeting requirements to be granted that visa, with the exception of being eligible for entry permission.

For any visas granted by this special direction, the Minister has imposed under [section 50\(2\)](#) of the Act (by special direction) the visa conditions that would have been imposed by the immigration instructions these people applied under.

The Minister has also delegated to border officers the power to grant entry permission as an exception to residence instructions ([section 108\(9\)](#)) if the border entry instructions in force at the time the person applied for their visa would not have allowed them to enter New Zealand holding that visa. This will allow border officers to grant entry permission as an exception to instructions to a small number of people who were granted resident visas despite not being eligible for entry permission.

Immigration officers assessing resident visa applications for these people (who applied while entry permission instructions made first time residents who are outside New Zealand ineligible for entry permission) will give effect to the special directions by:

- approving the application in AMS (if they are satisfied the applicant meets the immigration instructions they applied under), and
- imposing the conditions required by the immigration instructions the person applied under (i.e. the same conditions they would normally get), and
- adding as a separate application note in AMS the following text:

*I am satisfied that the applicant meets all relevant immigration requirements with the exception of being eligible for entry permission under instructions in effect when their application was made.*

*The applicant made this resident visa application between February 2020 and December 2021 and the applicant is currently outside New Zealand.*

*This visa has been granted and conditions imposed in accordance with the special direction made by the Minister of Immigration on 21 March 2022.*



Immigration officers should also communicate in the decision letter that the visa has been approved and conditions imposed by special direction. The following text is suggested:

*Dear XX,*

*I am pleased to advise that we have completed the assessment of your application and are satisfied you meet the relevant immigration instructions.*

*Your visa has been granted by special direction from the Minister of Immigration under section 61A of the Immigration Act. Visa conditions have been imposed under section 50(2). Your visa conditions are explained in your visa label.*

Visas granted under section 61A by this special direction will allow the holder to travel to New Zealand and be granted entry permission if they meet all other entry permission requirements.

The Minister of Immigration varied this special direction on 5 April 2022, so that the rationale for the special direction more precisely matches the appropriate rationale in section 61A(4).

Both the special direction of 21 April 2022 and the variation of 5 April 2022 will be published in the [New Zealand Gazette](#).

The instrument of delegation that delegates the power in section 108(9) to grant entry permission as an exception to residence instructions will be published in the Operational Manual (at A15.5). Separate advice has been provided to border officers about using the newly delegated power to grant entry permission as an exception to residence instructions.

#### **Why was this necessary?**

[Section 108\(6\)](#) of the Act states that the decision to grant entry permission for first time resident visa holders must be made in terms of the immigration instructions in effect at the time the person applied for the visa.

[Section 43\(1\)\(b\)](#) states that granting a visa to a person outside New Zealand indicates that at the time visa is granted there is no reason to believe the holder will be refused entry permission.

From February 2020 immigration instructions (see [Y4.50](#)) were changed to prevent entry permission being granted to first time resident visa holders and temporary visa holders, first for those travelling from China, followed by Iran, and later for travellers from the rest of the world. Over time exceptions and exemptions to the border closure were made through immigration instructions, though these did not generally apply to people travelling as first-time resident visa holders.

Taken together, these provisions mean that a resident visa can't be granted to first time applicants outside New Zealand if the entry permission instructions in effect when they applied made them ineligible for entry permission. Where a person was granted a resident visa, despite the entry permissions instructions in force when they applied, they would still be ineligible for entry permission if they travel to New Zealand for the first time on that visa. Please discuss with your teams if relevant.