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EXERCISE OF IMMIGRATION OFFICER POWER AND GOOD DECISION-MAKING

Staff working in the role of Immigration Officer (IO) exercise power and make decisions on a daily basis. This advice is a reminder to staff that power must only be exercised within the limits of your lawful authorisation.

For clarity, IO refers to all staff designated and authorised under section 388 of the Immigration Act 2009 (the Act).

The source of IOs' powers

The Act gives some functions and powers directly to IOs and gives some functions and powers only to the Minister of Immigration or to the Chief Executive of Ministry of Business Innovation and Employment (MBIE). However, the Minister of Immigration and the Chief Executive of MBIE may delegate some of their powers to staff, including to IOs.

The Minister of Immigration has delegated some of their powers to designated officers in specified positions and these are set out in Immigration New Zealand (INZ)'s Operational Manual at A15.5 Delegation of Powers: Minister of Immigration to Ministry of Business, Innovation and Employment – Immigration New Zealand.

The Chief Executive (CE) of MBIE has also delegated some of their powers and functions to the Deputy Chief Executive (DCE) – INZ and authorised the DCE to sub-delegate. These are set out in INZ's Operational Manual at A15.20 Delegations of Powers: Chief Executive to Deputy Chief Executive – Immigration New Zealand.

Note: IOs are authorised to exercise the relevant powers only after they have completed the required designation training and have received their authorisation letter.

Making good decisions as IOs

Immigration decision-making must be consistent with the principles of fairness and natural justice as outlined in INZ's Operational Manual.

Sometimes a power you are authorised to exercise (whether as an IO or through delegation) involves discretion. When you exercise discretion you need to follow any required process, be aware of any factors that must be taken into account (or not), and also what may be taken into account, and make a fair and reasonable decision.

The nature of discretion can vary – it may allow you to choose whether to act or not (for example, whether to exercise delegated authority to grant a visa by special direction under section 17(1)(a) of the Act, despite sections 15 and 16), but it also may allow you to choose what an outcome looks like (for example, in the absence of a specific immigration instruction on visa duration, how long to grant a visa for).

An IO can only grant a visa if they are designated and authorised to do so (for example, if their authorisation letter states they are authorised to carry out the IO functions and powers found in Part 3 of the Act). The sections of the Act that relate to IOs granting



visas (such as sections 72 (decisions on applications for residence class visas) and 76 (decisions on applications for temporary entry class visas) and other relevant provisions) are found in Part 3, and only relate to when an application has been made.

The nature of an IO's authority to grant a visa is discretionary but only to the extent allowed by the Act (section 45). An IO also has to decide applications against applicable immigration instructions which may or may not permit discretion in respect of granting a visa, or the nature of the visa that can be granted.

Relevant examples

Example 1: Under section 26(1) of the Act, IOs have the discretion to decide the order and manner of processing of any application for a visa or entry permission. However under section 26(4) of the Act, the CE has the statutory authority, and the DCE has been delegated authority (see A15.20), to issue general instructions about the order and manner of processing visa applications. When a general instruction applies, IOs must follow those instructions and should not use their discretion in respect of order and manner of processing applications (see A16.1 General Instructions as to the order of processing visa applications).

Example 2: The Minister delegated to Delegated Decision Makers (DDMs) the power under section 61(A)(1) of the Immigration Act 2009 to grant a visa in his or her own volition (i.e. without an application) to a person outside New Zealand, or who is an onshore temporary entry class visa holder.

IOs have not been delegated this power, and so are unable to grant a visa in his or her own volition to a person offshore, or to a person who is an onshore temporary entry class visa holder.

Example 3: An IO (if their authorisation letter includes this) has the authority to exercise discretion to grant a temporary entry class visa as an exception to temporary entry instructions under section 76(1) of the Act.

However, under section 76(3), only the Minister has the authority to exercise discretion to grant a visa as an exception to restricted temporary entry instructions. Section 76(3) provides that the discretion the Minister may exercise is "absolute discretion" as defined in section 11 of the Act.