VISA PAK ISSUE 508 — 27 MAY 2022

RESIDENCE APPLICATIONS INVOLVING FAMILY MEMBERS

This item provides an update to advice included in Visa Pak 308 (issued on 5 May 2017) and Visa Pak 341 (issued on 19 January 2018) on the requirement to include family members (dependent children and spouses or partners) in residence applications where they hold or have applied for a temporary entry class visa based on their relationship to the principal applicant. This is required by regulation 20 (2A) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 ("the Regulations") as reflected in R2.40.d.

Visa Pak 341 advised that this requirement applies only where a family member holds or has applied for a temporary entry class visa (based on their relationship to the principal applicant) at the time the residence application is lodged. This would include, for example, visas such as special work visas for partners of holders of student visas (WF4) or student visas for dependent children of holders of work visas (U8.20) or relationship based Critical Purpose visas (including but not limited to those granted under H5.30.45, H5.30.50, H5.30.55 and H6) but does not include visas such as general visitor visas (even if the declared purpose is to visit family).

Subsequently, there have been differing approaches as to the application of Regulation 20(2A). To ensure that applications are assessed consistently, the approach consistent with Visa Pak 341 continues to apply.

In accordance with this approach, a partner, spouse, or dependent child who has applied in the past for a visa based on their relationship to the principal applicant for a residence class visa, but who does not currently hold a visa based on that relationship and does not have an application based on that relationship being processed, does not have to be included in the residence application under R2.40.d and regulation 20(2A).

Inability to remove family members from a residence application

Regulation 20(2A) also states that where a partner or dependent child is required to be included in a residence application, they cannot be removed, unless there is a change of circumstances that results in them ceasing to be the spouse/partner or dependent child of the principal applicant. This is reflected in immigration instruction R5.115, which does not allow a partner or dependent child to be removed from a residence application, unless they cease to be the partner or

dependent child. Visa Pak 358 clarified that this instruction relates only to those family members who must be included in accordance with Regulation 20 (2A).

This means that those secondary applicants, to whom regulation 20(2A) applies and who are included in a residence application, cannot be either withdrawn or removed, unless they are no longer a dependent child, spouse, or partner. This applies even if, after the residence application has been lodged, they withdraw a temporary entry visa application which has been made based on their relationship to the principal applicant, or they no longer hold a visa based on that relationship.

A secondary applicant who is not actually a dependent child, spouse or partner however must be removed, as they do not meet the definition of a family member and therefore are not eligible to be included in the Residence application in accordance with regulation 20.

Some examples are provided below to clarify scenarios for inclusion and removal from a residence application:

Scenario	Action
Partner/dependent child who holds (or has applied for) a current temporary entry visa based on their relationship to the principal applicant at the time the residence application is made. This includes dependent children who are deemed to hold a visa in accordance with A.17 of the Operational Manual.	The partner/dependent child must be included in the residence application and cannot be removed (unless evidence is provided to show that they are no longer the partner/dependent child of the principal applicant).
Partner/dependent child of the principal applicant who previously applied for a temporary entry visa based on their relationship to the principal applicant (but the application was declined, withdrawn or lapsed; or the approved visa is no longer held at the time the residence application is made).	The partner/dependents are not required to be included in the residence application and can be removed. Note however that exclusion or removal from a residence application will mean that these family members, if they are non-ASH, will not be eligible for a medical waiver if they subsequently apply for residence under one of the family categories (see A4.60.b).

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A secondary applicant "partner" has been included in a residence application however during processing of the application it is identified that the couple are not married, not in a civil union and have never lived together.	The "partner" does not meet the definition of a partner in accordance with the Regulations and R2.1.10, so is ineligible to be included in the residence application and must be removed.

Partnership requirements

Residence instructions require a couple to be living together in a genuine and stable relationship for at least 12 months, to meet the partnership requirements for the grant of a resident visa.

Where an immigration officer is satisfied that the couple are living together in a genuine and stable relationship but have not lived together for the full 12 months duration, the decision on the secondary applicant partner's application may be deferred to enable the qualifying period to be met in accordance with R2.1.15.5, subject to all other requirements being met.

Where an immigration officer is not satisfied that the couple are living together in a genuine and stable relationship, the secondary applicant partner will not be granted residency, however the principal applicant's resident visa application may be approved if they meet the requirements without reliance on their partner in accordance with R2.1.15.1.

A standard operating procedure has been developed which details the process to be followed and is available in the Global Processing Manual (See SOP: Declining a Secondary Applicant Partner included in a Residence application).

Should any enquiries about errors be received, individuals should be referred in the first instance to contact the Complaints and Feedback Team (email: INZComplaintsandFeedback@mbie.govt.nz). Although the Complaints and Feedback Team will not be able to investigate a disputed immigration decision, this will provide an avenue to record and redirect these enquiries appropriately.

The ability to approve the principal applicant's application if they independently meet instructions can only be used if the above partnership requirements are not met. The regulations and immigration instructions do not permit different outcomes for individual applicants included in a residence application in any other scenario, so if any of the applicants do not meet other requirements such as health or character, the whole application will normally be declined.