

VISA PAK ISSUE 557 — 29 SEPTEMBER 2023

## RESPONDING TO FALSE AND MISLEADING INFORMATION – MANAGING IN PROGRESS APPLICATIONS

Information about how to assess and manage false and misleading information for applications lodged prior the changes that came into effect 25 September 2023.

Changes to immigration and operational instructions about false, misleading and withheld information took effect from 25 September 2023. This item provides advice about managing and assessing applications that were lodged before this date and have not been decided.

The advice in this item should be read in conjunction with the other items in this issue.

### Using s58(6) from 25 September for in progress applications

Normally, an immigration officer (IO) must assess an application using the immigration instructions in force at the time the application is lodged. Because s58(6) is not an immigration instruction but rather a section of the Act and was in effect prior to 25 September, legally IOs may decline applications lodged before this date using s58(6).

It is recommended, however, that the following exceptions are made:

- If the application has already been processed to the extent that a character waiver consideration is already in progress, then it may be appropriate to proceed with such an application and to assess it against the character instructions in force prior to 25 September (see next section), rather than assessing it against section 58(6).
- If it is a **residence** application that is to be declined using s58(6), regardless of the extent to which it has been assessed against immigration instructions, then the matter should be raised to the Operations Support team.

### Using previous character instructions for in progress applications

If an application has been made before 25 September 2023, then the A5 character instructions in force when the application was lodged must be used in respect of any character issue, rather than the set of instructions in effect from 25 September. IOs must ensure, that the correct references to the instructions as they were on the date of application are used in PPI and decline letters.

So, for example, if a person has been convicted for an offence in New Zealand for which the court has the power to impose imprisonment for a term of three months or more, then for a temporary entry application lodged before 25 September, the correct reference is [A5.45\(d\)\(iii\)](#) (effective 01/07/2021) (rather than the revised instruction [A5.45.5\(a\)\(iii\)](#)).

For instances of false, misleading or withheld information where the previous instructions were in effect, an IO must establish that an applicant personally intended to provide or withhold the information before the incident can be considered a character issue. This is because the role of the agent is not explained in the pre-25 September instructions.

### Declining in ADEPT under s58(6) for in progress applications

The assessment criteria, templates, and related letter inserts for [A24.1\(f\)](#), will not appear in ADEPT for applications already in progress as of 25 September. If an IO intends to PPI or decline on this ground for an ADEPT application, they should discuss the matter with their Technical Advisers and Practice Lead in the first instance and they may contact Operational Policy for assistance.