

VISA PAK ISSUE 564 — 01 DECEMBER 2023

IMMIGRATION NEW ZEALAND POSITION WHERE THE IMMIGRATION AND PROTECTION TRIBUNAL HAS MADE A S216 ORDER

Introduction — Information for immigration staff that sets out the process for where the Immigration and Protection Tribunal have made a s216 order.

This item seeks to provide further clarification to the advice published in [Visa Pak 547](#) and should be read in conjunction.

The Immigration and Protection Tribunal (IPT) have the ability to make an order under s216 of the Immigration Act either delaying deportation for a specified period or directing the grant of a temporary visa for a specified period.

[Visa Pak 457](#) set out Immigration New Zealand's (INZ's) previous interim position in its approach to the IPT making an order under s216 of the Immigration Act. This was brought about in response to the difficulties people faced in travelling during the COVID-19 Pandemic. Once the travel situation substantially improved, INZ's position was updated to reflect this. INZ's current approach and is detailed in [Visa Pak 547](#).

In summary, INZ's current approach is that it will **not**:

- Deport the person during the term of a s216 order delaying deportation but will return to the pre COVID-19 procedure of assessing case-by-case when a deportation order should be served.
- Consider removing prohibition periods if a person subject to a s216 order leaves New Zealand within the term of the order.

For additional clarity about the effect of a s216 order on liability for deportation, please refer to the information below:

- (1) In the case of an order by the IPT granting a temporary entry class visa under s216(1)(b) (**216 visa**) to a person whose deportation liability arises from them being unlawfully in New



Zealand under s154, a deportation order cannot be served on them during the currency of the 216 visa because they are lawful and no longer liable for deportation.

- (2) If the person in (1) remains in New Zealand, a deportation order could not be served until after the 216 visa expired and they again become unlawful in New Zealand (with no further right of appeal because of the effect of s216(2)).
- (3) If a person is liable for deportation under s155 to 162 then s175A provides that a deportation order may be served 28 days after the IPT has made a determination upholding their deportation liability on appeal (and where the person has not appealed the IPT determination). This is because the underlying deportation liability remains and a deportation order may be served during the currency of a 216 visa, but whether to serve a deportation order will be determined by INZ on a case-by-case basis.

This advice is currently in effect.