

VISA PAK ISSUE 568 — 26 January 2024

## **MITIGATING THE RISK OF VISA APPLICANTS BECOMING UNLAWFUL WHILE AWAITING A DECISION ON THEIR TEMPORARY ENTRY CLASS VISA APPLICATION**

This advice supersedes the advice published in December 2021.

This advice concerns visa applicants who have, or are due to, become unlawful due to the expiry of their interim visa and circumstances outside their control that have led to delays in the processing of their visa application.

When determining an application for visa applicants in this situation, which may include cases where the applicant has been unable to access the required documentation to be granted a visa, staff are advised to take an empathetic and pragmatic approach.

If an applicant's interim visa is due to expire, please consider if a decision can be made on the substantive application immediately, including whether granting a visa as an exception to immigration instructions is justified.

### **Section 79(5)**

If an applicant's substantive visa application cannot be approved during the currency of their interim visa (including as an exception to instructions), it may be appropriate to consider granting a visa under s79(5) of the Immigration Act 2009 to ensure the applicant remains lawfully in New Zealand while their substantive application continues to be processed.

Section 79(5) can only be used to grant a temporary visa to a person who has made a request for a visa. As such, if an immigration officer does not have a request on hand, he or she should discuss the situation with the applicant or representative and only proceed to grant a further visa if the applicant has expressed a desire to be granted a further visa.

Any decision made under s79(5) must be made by a schedule 2 officer. Applicants should be notified that they have been granted a further visa to allow them to remain lawfully in New Zealand while their substantive application continues to be processed.

The updated standard operating procedure that details the process is available in the Global Processing Manual

### **Unlawful applicants**



**NEW ZEALAND**  
IMMIGRATION

The SOP guidance applies to applicants who are still lawful. If the client is unlawful, offices should continue to engage with the section 61 team to facilitate further visas while the substantive application is under assessment.

Additionally, when processing a subsequent visa application from someone who had an unlawful period, please consider whether the period of unlawfulness was due to circumstances outside the applicant's control.