

IMMIGRATION TO NEW ZEALAND

1. INTRODUCTION

John has practised in the area of immigration law and policy for over 20 years. He is currently the Convenor of the New Zealand Law Society's Immigration and Refugee Law Committee.

His services include:

- An assessment of whether you are eligible for the visa.
- Advice to enable you to better represent yourself in your application to Immigration New Zealand.
- The full service, involving an assessment, advice and representation.

2. WHY ENGAGE A LAWYER?

You can represent yourself in an immigration application. That may often be the best choice. Descriptions of the Immigration New Zealand policies, plus all the forms and guides, are on their website www.immigration.govt.nz. The link to their Operational Manual is on their homepage. The Operational Manual sets out the requirements under each of the policies. You should read the policy you intend applying under, and work out exactly how you would comply with each of its requirements.

However it can be important to get legal advice. Some of the policies are complex and are frequently changed. Visa officers have discretion to relax some of the policy requirements, and it can be important to know when this can be done. The Operational Manual is difficult to follow. It is important to "get it right first time" because Immigration New Zealand rightly expects the applicant to provide 100% accurate information. Inaccurate or incomplete information will result in delays to a process that can take too long, even when the application is problem free. Standard letters from Immigration New Zealand, pointing out problems in the application, can be intimidating and difficult to understand.

The only persons who can provide advice and representation in New Zealand immigration matters are:

- Lawyers (barristers and solicitors) who hold a practising certificate.
- Licensed Immigration Advisers, meaning non-lawyer immigration consultants who hold licences from the Immigration Advisers Authority.
- Certain other types of people who are exempt from the consultant licensing requirements, eg Members of Parliament and unpaid family members who give advice.

Advice and representation from a Lawyer should ensure the application to Immigration New Zealand is accurate and complete and is processed as efficiently as possible.

There are certain rights of appeal and review against Immigration New Zealand decisions, including:

- The Immigration and Protection Tribunal (IPT) <http://www.justice.govt.nz/tribunals/immigration-protection-tribunal> considers appeals against decisions:
 - To decline a residence application;
 - To deport a person from New Zealand, eg a person who is unlawfully in New Zealand because their visa has expired (an overstayer), a visa-holder who has been served with a deportation liability notice (which can be for a wide range of reasons), a person who entered New Zealand or obtained their visa under a false identity;
 - To decline or to cancel a Refugee status and/or Protected Person status.

There are tight time limits for lodging these appeals, and specific grounds of appeal. The appeal Forms and Guides can be downloaded from the IPT's website. The Guides describe the time limits, grounds and fees for lodging these appeals.

- Persons detained for longer than 96 hours under Immigration Act Warrants of Commitment (in police cells, prisons, in Immigration New Zealand accommodation/detention centres, or released "on conditions") can contest the application to detain them, or ask the District Court to release them on conditions or review their detention or their conditions of release.
- Complaints about the failure/refusal of Immigration New Zealand to disclose personal information on their files can be made to the Privacy Commissioner: www.privacy.org.nz;
- Complaints about Immigration New Zealand's handling of an application can be made to the Ombudsman: www.ombudsmen.parliament.nz;
- Judicial Review proceedings can be taken in the High Court, but tight time limits apply;
- Requests can be made direct to the Minister of Immigration.

Persons taking these steps should obtain legal advice and representation.

Legal aid is not generally available for Immigration matters, but is available to enable persons to be represented by a Lawyer:

- For Refugee and Protected persons claims, including related judicial review proceedings; and
- To contest or review Warrants of Commitment to detention for more than 96 hours under ss 316 and 324 Immigration Act 2009. This includes aid to contest the application for the Warrant of Commitment, or to seek to review the detention or (if the person has been released "on conditions") to review the conditions of release.

3. THE IMMIGRATION ACT 2009

3.1 The old law, the Immigration Act 1987, was replaced from 29 November 2010 by the Immigration Act 2009. Parliament passed the new law in 2009 but it could not be brought into effect until new regulations and other administrative processes were completed, which took over a year.

3.2 Major changes were made, including:

- Gone is the confusing old distinction between a “visa” and a “permit”. There is now a universal visa system. The visa entitles the foreign national to travel to and stay in New Zealand, provided they are granted entry permission at the border.
- There used to be 4 different appeal tribunals. There is now a single appeal to the Immigration and Protection Tribunal (IPT). People appealing to the IPT must raise all their grounds of appeal. It is a “one-stop-shop” system.
- “Protected Person” claims can now be made, under Article 3 of the UN Convention Against Torture (CAT) and Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR). These are add-ons to the right to claim Refugee status.
- The deportation regime is “streamlined”. Deportation can apply to overstayers whose visas have been expired for more than 42 days. However it can also apply to people still on valid visas, who become subject to deportation because (eg) they committed criminal offences, breached conditions of their visa, obtained their visa using false information or false ID, or when new information has become available about their character. Persons subject to deportation can make their single appeal to the IPT. It is important to get immediate advice on the strict time limits and other requirements that apply to these appeals.
- There are now quite strict and onerous requirements on sponsors.
- Stricter requirements on employers, education providers and airlines, to ensure they comply with immigration law. Employers are offered a carrot and stick: increased penalties for employing people without visas, but an online system for employers to check a foreign national’s entitlement to work: www.immigration.govt.nz/VisaView.
- As we have come to expect in the post-9/11 world, much greater ability for classified information to be used in immigration decisions, plus ability to collect and use biometric information.

3.3 The immigration “law” changed from 29 November 2010, but the so called “policy settings” were not much changed at that point. The policies set out the specific requirements for obtaining the different categories of visas, so usually have greater impact on the individual visa applicant than the underlying “law”.

3.4 The main categories of visas set out in the policy are summarised in 4 and 5 below. There have been some significant changes to the policy settings since November 2010, including to “prioritise” Family category applicants who can pay their way or contribute to New Zealand’s economy. We can see this in:

- The “Parent Retirement Category” introduced in 2010: parents of New Zealand residents get residence by investing NZ\$1m here for 4 years and having \$.5m settlement funds and a \$60,000 per year income.
- The “Temporary Retirement Category”, also from 2010: not a “family” category policy, but allows a foreign national over 66 years old a 2 year (extendable) visa to retire temporarily in New Zealand if they maintain NZ\$.75m of investments here and meet annual income, maintenance funds and health insurance requirements.
- Closing the “Sibling and Adult Child Category” in May 2012. The old policy allowed adult brothers/sisters/children who had no immediate family left in their country, to be sponsored for residence by a New Zealand resident brother/sister/parent. They had to have a job offer. This category was closed because it was said to be attracting too many migrants who were not self sufficient.
- Closing of the old “Parent - centre of gravity” policy, also in May 2012. The old policy allowed parents of New Zealand citizens and residents to be sponsored for residence by a New Zealand adult child, if the “centre of gravity” of the family was in New Zealand. This policy is replaced with a new Parent Category which gives priority to applicants who will be self sufficient - see below.

4. THE RESIDENCE POLICY CATEGORIES - ways of obtaining residence in New Zealand

4.1 Family Category:

- **The Partnership policy:** residence can be granted to people who are married to or in a de facto (including same sex) relationship with a New Zealand citizen or resident. It must be a “genuine and stable” relationship that has lasted at least 12 months. If it has not lasted 12 months (eg a recent marriage) the application can still be filed and a temporary visa may be granted, but the residence application will not be actioned until the 12 month point.
- **Parents:** is divided into 2 “tiers” and in effect it is 2 separate categories:
 - Tier 1 applicants must show they have a guaranteed lifetime income of at least NZ\$27,203 per year (or NZ\$39,890 for a couple), or be able to bring at least NZ\$500,000 in settlement funds to New Zealand, or have a sponsoring adult child with an income of at least NZ\$65,000 a year (or joint income of NZ\$90,000 when combined with their spouse/partner’s income). Tier 1 applicants no longer have to satisfy a “centre of gravity” test, in other words they don’t have to show they have at least as many adult children in New Zealand as in their home country.
 - Tier 2 applicants must have a sponsoring adult child with an income of at least NZ\$33,675 per year, and must show that all their other children live outside the parent’s home country.

Applicants in both tiers must have a minimum standard of English, or prepay English language tuition. They must not have any dependent children. The sponsor must have been a New Zealand resident (or citizen) for at least 3 years. The usual health and character requirements apply. Applications are on an Expression of Interest (“EOI”) basis, meaning the parent lodges an

EOI, which Immigration New Zealand enters into a “pool”, and the pool is drawn every 3 months as against an annual quota of 4000 for Parent category applications in both Tier 1 and Tier 2. Tier 1 applicants have priority, and in practical terms this means Tier 2 applicants are likely to wait a very long time.

- **Parent Retirement category:** this is an add-on to the Parent category. The applicant must have an adult child who is a New Zealand citizen or resident and is actually living in New Zealand, and must not have dependent children. However the New Zealand “child” does not have to sponsor the parent. The sponsoring requirement is replaced with requirements for the parent applicant (or couple) to invest at least NZ\$1m in “acceptable investments” here for 4 years, plus demonstrate ownership of at least NZ\$.5m in settlement funds and an annual income of NZ\$60,000, plus meet usual health and character requirements.
- **Dependent children** of New Zealand citizens and residents: will qualify if single and substantially dependent (financially) on their parents or on some other adult. Children aged up to 16 years are almost certain to be “dependent”. 17-24 year olds are still “dependent” if single, childless and substantially dependent (financially) on an adult. Children includes adopted children, provided they were declared in the parents’ New Zealand residence application, or adopted by a Court order recognised under the New Zealand Adoption Act.

4.2 Skilled Migrant Category (“SMC”):

This is New Zealand’s main residence category and is a points system.

The key points are awarded for:

- Offer of, or current “skilled employment” in New Zealand: 50 - 60 points. As well there are bonus points if the offer is outside the Auckland region, or in an “identified future growth area” of the economy, or in an area of “absolute skills shortage”, or if the applicant’s partner has an offer of skilled employment
- “Recognised qualifications”: 40 - 60 points. As well there are bonus points for full time study here completing a New Zealand qualification, or for a qualification in an identified future growth area or area of absolute skills shortage, and for the applicant’s partner’s recognised qualification.
- “Recognised work experience”: 10 - 30 points, also with bonus points if there is New Zealand work experience, or experience in an identified future growth area or area of absolute skills shortage.
- Age: 30 points for a 20-29 year old, down to 5 points for a 50-55 year old. 20 is the minimum and 55 is the maximum age under the Skilled Migrant category.
- And there are 10 bonus points if the applicant or their partner has a parent or adult brother or sister who is resident in New Zealand.

There are detailed requirements around what is/not “skilled” employment, a “recognised” qualification, and what work experience is/not “recognised”. The “identified future growth areas” and areas of “absolute skills shortage” are defined in the policy.

The English language standard is an overall band score of IELTS 6.5 in the General or Academic Module. That is relaxed if the applicant is clearly a competent user of English

or has attained a recognised qualification in English or held skilled employment for a year or more in New Zealand.

Unless you have a qualification which attracts points at the high end, you would probably need to get a New Zealand job offer to get enough points to qualify for residence.

There are health and character requirements, as there are for all residence policies.

The application process is as complex as the rules themselves. It is a 2-step process.

Step 1: you submit an Expression of Interest (“EOI”) in which you claim the points you consider you would qualify for, and state whether you meet the health, character and English language requirements. It costs NZ\$510 to submit the EOI online. If you score 140 or more points you automatically qualify to receive an “Invitation to Apply” (“ITA”). If you score more than 100 but less than 140 points, you go into a “pool” which gets “drawn” every 2 weeks. The “draw” selects the top scoring EOIs, to achieve the number of skilled migrants the New Zealand government wants to recruit at that time. The “pass” points level has been 100 for some time, provided the 100 includes points for a job offer or the experience/qualification is in a New Zealand skills shortage area. If you pass you receive an ITA. You do not submit any documents with the EOI, but still need to take care that it is 100% accurate.

Step 2: persons who receive an ITA can file an Application for Residence. The filing fee varies from NZ\$1550 - \$2400, depending on where you lodge your application. At this stage you must submit the evidence of all the items you claimed points (and bonus points) for, your “recognised qualifications”, “recognised work experience”, “offer of skilled employment” (and if that is in an area which requires New Zealand registration, evidence of that registration). As well you must submit the police certificates, medical certificates, and evidence you satisfy the English language requirement.

Applicants must also show an “ability to settle and contribute” in New Zealand. This is automatic for applicants who got 50 or more points for their skilled employment offer or have certain types of New Zealand qualifications. Otherwise there is an assessment interview. If you are approved you get a residence visa. If not you would normally get a 9 month SMC job search work visa (if you are already in New Zealand) or a 9 month “work-to-residence” visa (if you are off shore), to enable you to take up skilled employment in New Zealand and so demonstrate your ability to settle and contribute, and then be granted residence.

4.3 Business (Investor) Categories:

The “Migrant Investment Policy” is divided into 2 separate categories:

- “Investor 1 Category”; and
- “Investor 2 Category”.

Investor 1 is aimed at high worth investors who are prepared to place NZ\$10m plus into “acceptable investments” in New Zealand for 3 years.

The definition of “acceptable investments” is relatively strict. It is limited to New Zealand government or local authority bonds, New Zealand bonds issued on the NZDX (NZ Debt Securities Market), bonds issued by New Zealand businesses with a Standard and Poor’s (or equivalent agency) rating of BBB- or better, shares/equity in New Zealand firms (public, private, registered banks, and managed funds to the extent that their investment is in New Zealand companies, but not including convertible notes), bonds issued by New Zealand registered banks, certain types of residential property developments, bonds in

certain types of finance companies. Immigration New Zealand has some discretion to relax these requirements on a case by case basis.

There is a requirement to show the funds were earned or acquired lawfully, that the applicant owns them (personally or jointly) and that the funds would be transferred to New Zealand through the banking system (directly from the applicant's account, or via a foreign exchange company). There are the usual health and character requirements. Successful applicants will need to spend at least 44 days in New Zealand in years 2 and 3 after they transfer the NZ\$10m plus funds to New Zealand.

However aside from that, there are few requirements. There is no requirement for the applicant or the family members to speak English, or even to purchase ESOL training. There is no requirement for the applicant to show business experience, no age limit, and no need to show any additional funds for personal settlement requirements in New Zealand.

Investor 2 is a points system application. It is aimed at more modest investors, who are prepared to place NZ\$1.5m plus into "acceptable investments" in New Zealand for 4 years.

The essential requirements are:

- At least NZ\$1.5m placed in "acceptable investments" (same definition as under Investor 1 Category) for 4 years.
- Plus NZ\$1m for settlement funds, eg to secure accommodation and establish yourself personally in New Zealand. However there is no requirement to actually transfer this \$1m to New Zealand.
- There is the requirement to show the applicant owns (personally or jointly) the investment funds and the settlement funds.
- And a requirement to show the investment funds were earned or acquired lawfully and would be transferred to New Zealand through the banking system, same as under Investor 1.
- There are the usual health and character requirements.
- Successful applicants will need to spend at least 146 days in New Zealand in years 2, 3 and 4 after they transfer the investment funds to New Zealand.
- There is an English language requirement, but it is not as strict as under the Skilled Migrant Category. An overall band score of 3 in the IELTS general or academic module will be sufficient for the principal applicant. If the accompanying family members are below that standard they can qualify by pre-purchase of ESOL tuition. The English speaking requirement is also satisfied by an "English speaking background" or if the applicant can show he/she is a "competent user of English".
- There is an age limit: the principal applicant must be 65 or younger.
- And the principal applicant must prove at least 3 years business experience.

The application process is different from under the Investor 1 Category. You pay NZ\$595 to submit an Expression of Interest (EOI) in which you claim points for your age, business experience, English language ability and investment funds. The EOIs are placed in a "pool". There is a quota for the number of applicants sought under the policy. The highest

scoring EOIs are sent an “Invitation to Apply” (“ITA”) for residence. You have 3 months from the ITA to lodge the residence application.

4.4 Business (Entrepreneurs) policies

There are 2 separate but closely related policies for entrepreneurs (or at least those outside the “Investor” categories) to obtain residence by establishing a business in New Zealand:

- **The “Long Term Business Visa” (“LTBV”)** policy gives a 3 year visa to enable you to establish a business in New Zealand.
- When the business has been running for 2 years you can apply for residence under the **“Entrepreneur”** policy.

In November 2009 the **“Entrepreneur Plus”** category was added on to the standard Entrepreneur Category. Entrepreneur Plus offers a faster path to residence for applicants who create at least 3 full time jobs in New Zealand and invest NZ\$500,000 plus in their business here.

The minimum requirements for the LTBV and Entrepreneur policies are quite flexible, but there are also real traps. People looking at using these policies should obtain professional legal and accounting/business consultant advice. The LTBV policy requires you to submit a detailed business plan, but you should not make the move to New Zealand and embark on that plan unless you have a good level of confidence that it can work. The market in New Zealand may be very different from that in your home country.

- **Long Term Business Visa:** key requirements for grant of an LTBV are:
 - A detailed business plan. It must show the applicant has the capital, experience and knowledge of the New Zealand environment to make the business produce the projected commercial return. It must also show that the proposal would “benefit New Zealand”;
 - A flexible requirement for “business experience relevant to the business proposal”, and funds sufficient to carry it out;
 - Plus “sufficient funds” for personal and family use;
 - No need for any formal qualifications;
 - English language requirement: overall band score of IELTS 5 in the general or academic modules, or other specified ways of showing you are a competent user of English;
 - The usual health and character requirements apply;
 - Immigration New Zealand can decline an application that would create “unacceptable risks” to our immigration or employment laws or policies. This includes an immigration advice business.
 - The application is vetted by a business immigration specialist and if successful the applicant (and immediate family) are granted the 3 year LTBV.
- **Entrepreneur Policy:** key requirements for grant of residence under Entrepreneur policy are:

- Once the LTBV holder has been running the business for 2 years, he/she can apply for residence under the Entrepreneur policy.
 - The application is vetted by an Immigration New Zealand business migration specialist;
 - Need to show that the business has been successfully established, that you are at least a 25% owner and are hands-on operating it. Need to produce usual forms of records to show the business is operating successfully;
 - You must not have applied for any social welfare benefits in New Zealand;
 - It will usually be a requirement that the business has at least one paid employee apart from the owner and owner's spouse. The business must have complied with New Zealand employment and immigration law;
 - The business must be "benefiting New Zealand" in some way;
 - Minimum English language requirement: same as for the LTBV;
 - Need to show you have closely followed the LTBV business plan and maintained (or increased) the originally proposed levels of investment. This is important and can be a trap. If you have made any significant changes to the LTBV business plan you need to get Immigration New Zealand permission before you make those changes;
 - You continue to meet the health and character requirements.
- **Entrepreneur Plus Policy:** this enables LTBV holders to be granted residence visas as soon as they have invested NZ\$500,000 in New Zealand and have created and retained 3 full time employment opportunities.

4.5 Business (Employees of a Relocating Business) policy

This is a flexible policy enabling residence to be granted to key employees of businesses relocating to New Zealand. It is available only if the employee would not qualify under any other residence category.

4.6 Work to residence ("WTR") Policy

This is in fact 5 separate policies. They are related in that each grants a temporary work visa which can later be converted to a residence visa:

- **The Talent (Accredited Employers) Work policy:**
 - A New Zealand employer applies to be "accredited" to recruit overseas nationals. The application is relatively complex and document-heavy. A key requirement is to show the business trains its employees but still cannot recruit/retain enough skilled people;
 - The accredited employer can then sponsor overseas persons for 30 month work visas;
 - Accreditation is for 12 months but can be renewed;
 - Maximum age for the employee is 55;

- The employee can transfer to another employer, but only to another accredited employer;
- Minimum base salaries apply;
- After 2 years on the work visa, the employee can be granted residence.
- **The Talent (Arts, Culture and Sports) policy:**
 - Applicants must have exceptional talent in a declared field of art, culture or sport, and be sponsored for a 30 month temporary work visa by a New Zealand organisation of national repute;
 - Maximum age 55;
 - After 2 years on the work visa, the applicant can be granted residence if they are still actively engaged and prominent in their declared field, sponsored by a reputable New Zealand organisation, and continue to meet health and character requirements.
- **The Residence Policy for Holders of Visas Granted Under the Long Term Skill Shortage List Work Policy:**
 - The applicant must have an employment offer for an occupation on the “Long Term Skills Shortage List” (“LTSSL”) which he/she is qualified (by training or experience) to do;
 - Maximum age is 55;
 - Successful applicants get a 30 month work visa;
 - After 2 years on the work visa the employee can be granted residence provided they have remained in an occupation on the LTSSL.
- **Religious Workers Policy**
 - Enable holders of work visas granted under Religious Worker instructions to obtain New Zealand residence.
 - The applicant must have held the work visa for at least 3 years.
 - There must be an acceptable sponsor, which must be a religious organisation that is registered as a charity.
 - Maximum age 55.
 - The usual health, character and English language requirements apply.
 - Must not have applied for any social security benefits in New Zealand.
- **Work to Residence (Skilled Migrant Category) Policy:**
 - This is an add-on to the Skilled Migrant Category. Applicants who do not immediately qualify for residence under Skilled Migrant Category, but are assessed as having the potential to “settle and contribute” to New Zealand, may have the residence decision deferred for 12 months and be granted a 9 month work visa.

- Applicants must have funds to support themselves during the 9 months, and a return ticket;
- The work visa is open, ie allows the holder to work for any employer in New Zealand;
- If the applicant becomes established in on-going skilled employment, and demonstrates the ability to settle here, residence can be granted.

English language, minimum salary, and the usual health and character requirements apply to these policies.

4.7 Refugees and “Protected Persons”

There are 2 ways for refugees to obtain residence in New Zealand:

- **Mandate Refugees:** are people the United Nations High Commission on Refugees (UNHCR) has determined are refugees. New Zealand takes a certain number of mandate refugees every year.
- **Convention refugees:** are people who manage to arrive in New Zealand and apply for Refugee status under the UN Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. New Zealand applies the UN definition of “refugee”: a person who is in New Zealand and has a well founded fear of being persecuted in their country for reasons of race, religion, nationality, membership of a particular social group, or political opinion, and is unable (or, owing to that fear, unwilling) to avail themselves of the protection of their country.

From 29 November 2010 persons in New Zealand can also make claims for “Protected Person” status:

- Under Article 3 of the UN Convention Against Torture (CAT), if there are substantial grounds for believing the applicant would be in danger of being tortured if deported from New Zealand and would be unable to access meaningful protection in their country; and/or
- Under Articles 6 and 7 of the UN’s International Covenant on Civil and Political Rights (ICCPR), if there are substantial grounds for believing the applicant would be in danger of arbitrary deprivation of life or being subjected to cruel, inhuman or degrading treatment or punishment if deported from New Zealand, and would be unable to access meaningful protection in their country.

Refugee status and Protected Person applications are made to the Refugee Status Branch (“RSB”) of Immigration New Zealand.

The RSB assesses the applicant’s predicament as against the 3 Conventions. First it assesses whether the applicant is a “refugee” under the Refugee Convention, then it assesses them under the CAT, and then under the ICCPR. In practice, if the RSB grants Refugee status, it declines Protected Person status on the reasoning that the person is a refugee so there is no danger of them being deported from New Zealand. If the RSB grants Refugee status and/or Protected Person status, the applicant (and family) can apply for residence.

If the RSB declines Refugee status and/or Protected Person status, there is a right to make a single appeal to the Immigration and Protection Tribunal (IPT) www.justice.govt.nz/tribunals/immigration-protection-tribunal. This is a specialist tribunal

which is entirely independent of Immigration New Zealand. The IPT will decide all of the applicant's claims, including the Refugee claim, and any Protected Person status claim.

The Refugee and Protected Person appeal is free. However if the applicant also wants to appeal on "humanitarian grounds" against their deportation liability, they must lodge that appeal (and pay the fee) at the same time as the Refugee and Protected Person appeal. This applies even if that applicant is still on a valid visa. There are real traps in this process, and extremely short time limits.

If the IPT grants Refugee status or Protection Person status, the applicant (and family) can apply for residence.

Refugee and Protected Person status applicants who cannot afford a lawyer can be granted legal aid. It is very important for Refugee and Protected Person status applicants to be represented by a lawyer, to ensure that the evidence about their predicament is complete and that the RSB/IPT has comprehensive information about the "situation" in the applicant's home country.

4.8 The Refugee Family Support Category

Gives both Mandate and Convention refugees a limited chance to sponsor family members for New Zealand residence.

4.9 Special residence policies

There are special policies for nationals of certain countries, in particular the special policy for Pitcairn Islanders, the Western Samoa Quota Scheme, and the "Pacific Access Category" for citizens of Tonga, Tuvalu and Kiribati.

There are also policies to allow victims of domestic violence, and victims of people smuggling, to get residence in New Zealand, but strict criteria apply.

4.10 Special directions

Application can be made direct to the Minister of Immigration to grant residence outside of policy in exceptional circumstances. For example, an applicant who does not fit any of the categories but would make an exceptional contribution to New Zealand.

5. THE TEMPORARY VISA CATEGORIES:

- **Visitor visas:** are usually granted for 3 months, extendable to 9 months (in any 18 month period) for genuine visitors.
- **Special Categories of visitors:** there are many special categories, including the Parent and Grandparent Multi Entry Visitor Visa Policy, the Temporary Retirement Category (described at 3.4 above), and visas for performers and support crew at "approved" arts or music festivals in New Zealand.
- **Student visas:** for overseas students studying in New Zealand.
- **Work visas:**
 - The key policy is the *Essential Skills* work policy. This allows New Zealand employers who can prove they cannot find a New Zealand resident employee in their immediate area, to recruit overseas nationals for temporary work visas.

It must be shown that the job falls within the ANZSCO classification of occupations (www.immigration.govt.nz/ANZSCO). There is a “labour market test” to determine if New Zealand citizens/residents are available or could readily be trained to do the work on offer. Immigration NZ checks that job offers are at New Zealand market pay and conditions.

Work visas under *Essential Skills* policy can be granted for up to 3 years, with no limit on the number of further/extended visas that may be granted. Persons with positions at the top ANZSCO skill level (Level 1) with offers of \$55,000 + per year can be granted a visa up to 5 years.

National occupational/industry organisations can make submissions with view to getting special provisions to alleviate significant and national shortages of highly skilled employees.

Employers with a number of employees on temporary work visas may be required to obtain a so called “Approval in Principle” (AIP) to recruit overseas employees.

- The *Work to Residence* policies which grant temporary work visas which can lead to a grant of residence (described above).
 - Temporary work visas for various categories of people coming here to do specific work or business, eg to work on films being produced in New Zealand.
 - Special categories of work visas, eg for horticulture and viticulture workers from Pacific Island countries, crew of foreign chartered fishing vessels, religious workers.
 - Working holiday schemes for 18 - 30 year olds from an ever-increasing list of countries.
 - Temporary visas to enable international students in New Zealand to get practical work experience as part of their studies.
 - Work visas for spouses/partners of New Zealanders and people here on temporary work visas and long term business visas.
- **The Silver Fern policies:** aimed at attracting qualified young people: 20 - 35 year olds with degrees or trade qualifications (equivalent to New Zealand National Certificate Level 4 qualifications) and at least 2 years work experience, can be granted a 9 month “job search” visa. They have to show funds to maintain themselves over the 9 months. If they get an offer of skilled employment they can be issued with a work visa for a maximum of 2 years. The 2 years would give the visa holder the opportunity to apply for residence under the skilled migrant category. There is a cap on the number of job search visas issued, currently 300 a year.
 - **Limited purpose visas:** for people who would not normally be allowed to enter New Zealand (eg because they might overstay) but who have a special reason to need to come here (eg a wedding, medical treatment). These visas cannot normally be extended.
 - **Transit visas:** for persons transiting through a New Zealand airport, to make sure they do in fact fly on to their destination. This is aimed in particular at asylum seekers who may buy a ticket transiting through New Zealand, but stay and apply at the airport for Refugee status.

- **Interim visas:** people who apply to extend their temporary visa will normally be issued (electronically) an interim visa if their extension application hasn't been decided. The issue of an interim visa is discretionary (meaning it is not guaranteed) but will normally be automatically generated one week before expiry of the old visa, so will keep the person legal while their extension application is being considered.

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Important note: This paper contains general information and opinions, and should not be used or relied on in the absence of specific legal advice.