

INDEX

IMMIGRATION ACT 1987	2
VISAS, PERMITS, RESIDENCE AND CITIZENSHIP	2
WHO NEEDS TO APPLY FOR RESIDENCE?	4
WHO EVALUATES THE APPLICATION?	4
THE RESIDENCE CATEGORIES	5
NECESSARY DOCUMENTS	8
FEES	9
APPEALS	9
REMOVAL FROM NEW ZEALAND	9
COURT	10
SUMMARY	10

IMMIGRATION ACT 1987

The following guide is designed to provide those wishing to immigrate to New Zealand with an introduction to the requirements of the Immigration Act 1987 and the New Zealand Immigration Service. We advise you to obtain specific legal advice on your application to the New Zealand Immigration Service (NZIS) so that you have the best possible chance of obtaining the status which you desire.

You may obtain further information on our website www.shiftcountries.com or download application forms using the NZIS website; www.immigration.govt.nz.

VISAS, PERMITS, RESIDENCE AND CITIZENSHIP

VISAS AND PERMITS

There are several kinds of Visas and Permits including those for holiday, work, students and business. Temporary Permits and Visas enable a person to enter and/or stay in New Zealand for a limited period of time and on certain conditions (set out in the particular Visa). For example the Long-Term Business Visa and Permit enables a person to stay in New Zealand and run a business for up to three years. Some Work Visas specify the employer and place of work.

You do not require a Visa or a Permit to holiday in New Zealand for less than three months if you come from a country which has a Visa waiver agreement with New Zealand.

The difference between a Visa and a Permit is that a Visa allows you to enter New Zealand and a Permit allows you to stay in New Zealand. A Permit is the endorsement placed in your passport which gives the expiry date for your stay in New Zealand and the conditions of your stay.

RESIDENCE

Residence enables a person to live in New Zealand on a permanent basis. Residence can be applied for under several different categories and can require that a person comply with conditions.

CITIZENSHIP

If a person is granted residence they retain their original citizenship. However once a person has been a resident of New Zealand for a certain time (generally five years), they may apply for citizenship (and obtain a New Zealand passport). Citizenship is dealt with by the Department of Internal Affairs, not NZIS.

REFUGEES

Refugees are a special case and may apply to NZIS for Refugee Status.

TEMPORARY STAY IN NEW ZEALAND

Temporary Visas or Permits may be obtained to stay as a visitor, student or worker. To work in New Zealand you must fall into an eligible category for example:

- Your employer can show that he or she can not find a New Zealander for the job, having genuinely searched.
- Your job is listed in one of the “skill shortages” lists.
- You are aged between 18-30 and from a country that has a Working Holiday Scheme with New Zealand.
- You wish to study in New Zealand.
- Your spouse or de facto partner has (or is eligible and applying for) a Work Permit or Visa or is a New Zealand citizen or resident.

The applicant or the employer can initiate the Work Permit application and we are able to assist with meeting the requirements.

WHO NEEDS TO APPLY FOR RESIDENCE?

Residence is for permanent stay in New Zealand. Australian residents/citizens (subject to good character requirements) and New Zealand citizens do not need to apply for Residence in New Zealand as they have the automatic right to reside in New Zealand.

Citizens of all other countries must apply for residence if they wish to immigrate to New Zealand. A person may apply for residence from inside New Zealand if they are in New Zealand lawfully, or from outside New Zealand.

WHO EVALUATES THE APPLICATION?

Under the Immigration Act 1987, the Minister of Immigration sets Government residence policy, set out in the “Operations Manual”. NZIS must evaluate immigration applications according to the rules of the policy to grant a Visa and the decision is subject to the discretion of the Minister or the appropriate officer.

If an application is declined, the applicant may ask the independent Residence Review Board to review the decision and that Board has some discretion to waive policy requirements.

It is also possible to apply to the Minister of Immigration for an exception to policy requirements in exceptional circumstances.

There is a high standard of documentation required to apply for residence and you should set aside time for accumulating the necessary documents (see below for details).

There is an application fee for all categories of residence application.

THE RESIDENCE CATEGORIES

Some of the categories for residence in New Zealand are listed below. You can apply under two categories at the same time but there must be separate applications (and fees).

If a family wishes to obtain residence only the "Principal Applicant" needs to apply under the categories listed below. The spouse or de facto partner and any dependant children can be included in the residence application of the Principal Applicant. A family should choose the spouse or de facto partner most likely to succeed under a category to be the Principal Applicant.

SKILLED MIGRANT CATEGORY

The Skilled Migrant Category is a points system based on ability to work and settle in skilled employment in New Zealand. Applicants score points for a number of factors such as qualifications, work experience, job offer and age. The points must add to more than 100 to submit an Expression of Interest (EOI) or to more than 140 for automatic selection for invitation to apply for residence. This can be submitted in hard copy or online.

Once an EOI has been submitted all applications go into a pool. If you are selected from the pool based on points claimed you will be invited to apply for residence in New Zealand which involves lodging evidence in support of your claim. You may then be granted Residence if you meet the New Zealand Immigration policy requirements.

BUSINESS CATEGORIES

- **ACTIVE INVESTOR CATEGORY**

The Active Investor category is aimed at investor migrants with business experience, international sections and financial capital to New Zealand.

The policy is divided into three categories:

- Global Investor Category – for migrants investing NZ \$20 million in New Zealand, including at least NZ \$5 million in active investment.
- Professional Investor Category – for migrants investing NZ \$10 million in New Zealand, including at least NZ \$2 million in active investment.
- General (Active) Investor Category – for migrants investing a minimum of NZ \$2.5 million in New Zealand, who have an additional NZ \$1 million for settlement funds.

The principal applicant must have at least four years business experience as well as meeting other requirements.

- **LONG TERM BUSINESS VISA**

This is not a category for permanent residence. However a long term business Visa entitles you to live in New Zealand and own and operate a business in New Zealand for up to three years. (though the first Visa is granted for nine months). This may lead to a permanent residence application under the Entrepreneur Category (see below).

To apply for a Long Term Business Visa you must submit a business plan to NZIS Business Section detailing a proposal for setting up a business in New Zealand and its viability. The business may be an existing overseas business or a newly proposed business.

Applicants must have a sound business plan and sufficient funds to support themselves and their business.

This category is an option for persons who are unable to apply under other categories but who wish to set up business in New Zealand.

- **ENTREPRENEUR CATEGORY**

The Entrepreneur Category has been set up for people who have run a business in New Zealand successfully for more than two years, either self-employed or part-owner/substantial investor in the business.

- **EMPLOYEES OF RELOCATING BUSINESSES**

This category enables residence to be granted to key employees of businesses relocating to New Zealand.

FAMILY CATEGORY

The Family Category covers certain family members of New Zealand citizens or permanent residents. These each have specific requirements. This category includes:

- Partners (married, in a civil union or de facto)
- Parents
- Brothers, sisters and adult children
- Dependant children

RESIDENCE FROM WORK

This category is for people who have been granted a work Visa under the Work to Residence policy based on a job offer in an occupation on the long term skill shortage list.

OTHER

There are several other categories for applying for residence including the Samoan Quota Scheme, the Pacific Access category or the Special Zimbabwe Residence policy for example.

NECESSARY DOCUMENTS

Applications for New Zealand residence must contain the documents listed below. The documents required to be submitted may depend on which category you are applying under.

- **IDENTITY**
Passport photos (x2), passports, full birth certificates
- **HEALTH**
Medical and chest x-ray certificates not less than three months old at the date application is submitted.
- **CHARACTER**
Recent Police certificates for persons over 17 from country of citizenship. You may also be required to provide a Police Certificate from other countries in which you have spent 12 or more months in.
- **ENGLISH LANGUAGE**
Evidence of English language ability is required under some categories. If a secondary applicant's English language is poor they may be permitted to pre-purchase English language tuition to satisfy the English language requirements.
- **RELATIONSHIP**
Marriage Certificate, photos, joint ownership documents and/or sufficient information to satisfy a Visa or immigration officer that you are or have been living in a genuine and stable relationship (for 12 months or more if applying as a partner of a New Zealand citizen or resident).
- **APPLICATION**
The completed NZIS application form
- **OTHER**
Other documents depending on your type of application such as Birth Certificate. Business plan, offer of study or employment, work references etc.

FEES

The NZIS fees for temporary Permits and Visa applications lodged at your nearest branch in New Zealand range from NZ \$120.00 to \$180.00 although the long term business Visa fee is \$2,600.00. The fees for residence applications generally range from \$700.00 to \$2,500.00. There are also migrant Levies of \$150.00 - \$130.00. All fees are subject to change and may vary depending on country of citizenship and type. Please contact us if you would like any further information on NZIS fees.

(This is a general guide to fees for applications made from inside New Zealand as at the time of publication of this booklet)

APPEALS

If you are not granted residence then you may appeal to the Residence Review Board within 42 days. There are two grounds:

- the decision not to grant you residence was not correct in terms of the Government residence policy applicable, and/or
- your special circumstances are such that an exception to the Government residence policy should be considered.

REMOVAL FROM NEW ZEALAND

If you are in New Zealand unlawfully you have 42 days from the date on which you become unlawful to obtain an extension or lodge an appeal with the Removal Review Authority.

Once the 42 days expires you may be served with a Removal Order and could be immediately taken into custody by the Police and detained until you are physically removed from New Zealand and prevented from returning for five years.

Therefore if your Permit to be in New Zealand has expired or you believe for some reason you are in New Zealand unlawfully then you should immediately obtain legal advice.

COURT

If you would like to challenge any decision of the Residence Review Board or Removal Review Authority then you may appeal to the High Court within 28 days.

SUMMARY

This booklet has been designed to be a user friendly summary of the requirements for immigration to New Zealand. Policy requirements are subject to change. There are a number of special immigration policy provisions which are not dealt with in this booklet. We recommend that you contact a solicitor before applying for a Visa, a Permit or for residence in New Zealand. We can assist you in preparing your application, obtaining the necessary documentation, as well as liaising with NZIS and other organisations involved.

Our immigration team includes:

- Ross Fanthorpe
- Andrew Laurensen
- Harini Fernando

Please call this office if you would like further information on any guides prepared by this firm. Copies are also available from our website.

- *Asset Protection and Residential Care Subsidies*
- *Business Grants & Assistance*
- *Buying or Setting Up a Small Business*
- *Charities*
- *Companies Act 1993*
- *Consumer Guarantees Act*
- *Credit (Repossession) Act 1997*
- *De Facto Property Rights*
- *Employment Law*
- *Enduring Powers of Attorney*
- *Fair Trading Act 1993*
- *Family Trust*
- *Flexible Working Arrangements*
- *Franchising*
- *Health & Safety in Employment*
- *House Buyers and Sellers Guide*
- *Immigration*
- *Insolvency and Bankruptcy*
- *Intellectual Property and Copyright*
- *Securing Money Lent*
- *Subdivisions*
- *Traffic Offences and Breath Testing Procedures*
- *Wills & Estate Administration*

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THE LAWYERS

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