

## **SIDE 2011 – CHALLENGE YOUR FUTURE**

### **Session 2 Workshop – Global Staffing an immigration perspective**

**Monday 27 June 2011 – 3.00pm**

#### ***Overview of Temporary Entry Visas***

There are several types of work visas which may be appropriate in any given employment situation. Each one is designed for a specific type of employment, and each one has its own set of requirements. A broad overview of the most common ones is outlined below.

#### *Essential Skills Instructions*

This work visa category is used for people being employed by an NZ entity (ie being offered an NZ employment contract). The visa can be granted for up to a five year maximum initially (depending on the occupation), then three years for each subsequent application. There is no restriction on the number of work visas a person may have provided they meet the requirements on each application.

Under the Essential Skills instructions it is a requirement to demonstrate why the position has not been able to be filled locally, unless the occupation to be filled is listed on either the Immediate Skills Shortage List (ISSL – currently Assistant Herd Managers, Farm Managers, Herd Managers or Assistant Farm Managers are all listed) or Long Term Skills Shortage List (LTSSL – does not currently contain any dairy-related occupations) and the applicant has the stipulated qualifications and/or experience for that particular occupation. For occupations listed on either of these lists, there is no further requirement for the employer to provide evidence of advertising or recruitment activities.

With specific reference to the Dairy industry, Assistant Herd Managers/Herd Managers are currently listed on the ISSL and Immigration NZ (INZ) are issuing work visas for such positions for two years only. Dairy Farm Assistants will only receive a one year work visa, currently, subject to the labour market check.

The Essential Skills visa is the most common type of work visa for agricultural migrants.

#### *Specific Purpose or Event Instructions*

This is the visa category is for those people who are coming to NZ for a project or specific piece of work, and are likely to be remaining on their home country (or a third country) payroll.

The work visas granted under this policy are able to be issued for up to three years at a time although the nature of their purpose is such that they are usually granted for a lesser period of time (to coincide with the time needed for the person to be in NZ).

### *Talent (Accredited Employers) Work Instructions*

This category falls in to the Work to Residence group of temporary applications, and requires an employer to be Accredited by INZ. Work visas under this category are granted for 30 months only, ie there is no discretion on the length of the visa.

Requirements for work visas under this category are:

- ✚ Offer of employment from an Accredited Employer that is for employment in NZ for at least 24 months
- ✚ Is full time (min 30 hours per week)
- ✚ Attracts a salary of no less than \$55,000
- ✚ The applicant is aged no older than 55
- ✚ Health and character requirements are met by all family members

Applications under this policy are slightly more straightforward – there is less paperwork involved but because of the length of time the visa is granted for, full medicals and police checks are required as part of the application. Depending on the nationality and location/travels of the applicant and their partner, police checks could substantially delay the application process so care needs to be taken to establish that this is in fact the best option for that particular individual.

Providing the visa holder remains in employment (or with another Accredited Employer) for at least 24 months, and that the employer continues to maintain their Accredited Employer status, then the applicant can lodge a streamlined application for residence. This is the easiest way to get residence however the applicant must wait the 24 months after arrival in order to qualify under the Residence from Work category and therefore can sometimes be the slowest way to residence.

The other main residence category is Skilled Migrant – this is a points based assessment and whilst more onerous in terms of documentation required, it can be done at any time including before or straight after arrival in NZ.

### *Other Work Visas*

People may be granted work visas under a multitude of other requirements, some of which are listed here:

- ✚ Working holiday – allows the holder to undertake work (not permanent) for limited periods (eg some may only work for one employer for no more than three months so it is important to check for any special conditions attached – these vary depending on the nationality of the visa holder)
- ✚ Family – partners of NZ citizens or permanent residents, or of another work visa holder may be granted open (ie unrestricted) work visas to allow them to work for whomever they choose
- ✚ Study to Work – a two year work visa granted to allow someone who has completed certain qualifications in NZ to gain work experience relevant to those qualifications

- ✚ Silver Fern work visas – allow the holder to either search for skilled employment in NZ or to gain skilled employment experience in NZ which will then allow them to apply for residence

## *Conditions Attached to Visas*

There are common conditions that are attached to work visas. These can be related to:

- ✚ Who the holder may work for, and in what occupation and location
- ✚ Whether the holder may make multiple entries (or single) to NZ
- ✚ How long the holder may remain in NZ

Usually the principal applicant's visa will restrict them to working for a specific *employer*, in a specific *occupation* and in a specific *location*. Any change to any of these three conditions will necessitate either a Variation of Conditions application or an entirely new work visa application being required.

Unless specifically requested otherwise, it is usual for visas to be issued multiple entry which will allow the holder to depart NZ and then return without having to reapply for entry permission provided they return to NZ prior to the ultimate expiry date of the visa.

It is critical that the employee understands that they must remain working for the specified employer, and that the employer is comfortable with the conditions on the work visa that allow the person to work for a given entity. Failure to comply with the visa conditions generates a risk of the visa being cancelled and penalties being applied including removal from NZ and the possibility of a ban on returning for a period of time.

## *Peripheral Benefit Implications*

Any work visa holder who has a visa or series of work visas that allows a stay in NZ of 24 months or longer may qualify for publicly funded healthcare from the day that they meet these requirements. For example if a person has a six month work visa granted, they are not eligible for publicly funded health care. However for example if in their fourth month they are granted a two year extension to their visa, taking their total allowable stay to 28 months (4 plus 24 months) – from the date of grant of their new visa they are eligible for publicly funded healthcare.

Further details can be found on the Ministry of Health's website at [www.moh.govt.nz/eligibility](http://www.moh.govt.nz/eligibility)

School age dependants of work visa holders may attend school in NZ and should be treated as domestic students. This means that they should not be charged overseas student fees and are entitled to a 'free' education in the same vein that NZ citizens and permanent residents are. There is no minimum time frame for visas for this entitlement to be available.

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Tertiary (or post-secondary) education, however, requires the student to enrol as an overseas student and therefore higher applicable fees will be payable.

## **Employer Obligations**

### *New Immigration Act 2009 – Implications for Employers*

A new Immigration Act 2009 came into force on 29 November 2010, and with it there came a shift in the responsibility of employers to take 'reasonable precautions' and to 'exercise due diligence' in ensuring that only foreign nationals authorised to work in New Zealand are employed. Whilst the penalties for offences committed in relation to employing a foreign national without correct work authorisation remains the same under the new Act, the ability for the government to prosecute is greatly enhanced by the removal of the previously used 'reasonable excuse'. Employers have now lost the right to use the excuse of holding a signed IR330 form to avoid penalty for knowingly employing someone without correct work authorisation.

In effect, there is now a requirement for employers to sight, and retain, a copy of an employee's work authorisation (eg work visa copy, birth certificate/passport copy) to avoid any doubt and potential liability. The fines and penalties range from \$10,000 to \$100,000 and/or imprisonment.

Employers can register for the Department of Labour's Visaview system, which allows employers to check whether any individual has permission to work for that business. The system does have limitations but can be worthwhile to register at:

<http://www.immigration.govt.nz/community/stream/visaview/>

### *Employer's Role in Work Visa Process*

NZ immigration's focus remains very much on the individual (employee) rather than the employer. However if someone is applying for a work visa on the basis of having been offered employment in NZ, then INZ must be satisfied that the employment is genuine, that local NZ citizens and residents are not being sidestepped in the recruitment process and that market rates are being offered for the role. INZ will consider the visa application as an application made by the visa applicant, but will seek information from the employer to support the application. It is important to note that this limits the employer to providing information only.

There is an Employer Supplementary Form that must be provided with a work visa application under Essential Skills and Specific Purpose or Event categories. This form is signed by the employer and confirms the nature of the role to be offered, any efforts that have been taken to recruit from the local labour market and some basic information about the employer. This form does not constitute a form of sponsorship, only the basis of the information that an employer must provide as part of a work visa application.

The onus will be very much on the employer (under Essential Skills work visa applications) to provide as much information and evidence as possible as to why they have been unable to locate someone suitable locally to fill the role. Employers are encouraged to be as detailed as possible in providing this information, as it will assist the visa application greatly. Examples of this evidence may include advertising or listing an advert with WINZ, recruitment agencies (eg FRENZ who specialise in the agricultural industry) or online job placement boards (eg Trademe Jobs, Seek and so on), and a summary of why any applications received were not suitable for the role.

## *Sponsorship*

The notion of sponsorship for work visas in NZ has not been a feature or possibility in terms of actual immigration policy in an employer/employee relationship, despite popular perception. As noted above, employers' involvement in a work visa application is usually restricted to providing supporting documentation to address labour market and employment law issues.

With the new Act coming into effect at the end of November last year, it has become possible for organizations (such as companies, charitable trusts and societies) to sponsor visitors to New Zealand. In certain restricted circumstances it will also allow organizations to sponsor work, and residence, visas for those who are recognized internationally in an area of sport, culture or arts.

It is important to note this does not apply to the other work visa categories and therefore is unlikely to be anything that this audience is required or able to undertake. Sponsors must take full responsibility for all aspects of the visa holder's maintenance, accommodation and repatriation.

In summary, employer obligations towards those holding a work visa is to provide employment and conditions that meet NZ employment law, and to provide market rates for salaries. These would be checked at the time the application is processed, and the visa would not be granted if they had concerns regarding any breach of employment law. There is no requirement for such employees to be given medical coverage, repatriation costs or any other special benefit different to that the employer would provide to any other local employee.

## *What Happens When an Employee Leaves?*

As a matter of best practice, it is advisable that an employer notifies INZ should an employee, who holds a work visa issued on the basis of a job with that employer, depart their employment. Under the Immigration Act 2009, it is cause for the visa to be cancelled should a work visa holder leave the employment that is specified on their visa, unless they have been granted permission to do otherwise. Unlike Australia which has a mandatory reporting requirement within a short time frame (5 working days), there is no specified time period that an employer has to notify INZ of the cessation of employment.

An employer is not penalized in any way, should the employer fail to notify INZ of the person's cessation of employment, and that person goes on to work illegally for another employer. That becomes an issue for the visa holder and the subsequent employer.

## **Process Overview**

### *Who Can Advise Applicants?*

The rules around who can and can't give immigration advice are very clear, and wide-reaching. Unless a person is exempt (eg solicitors, MPs and certain other professionals) then they must hold a valid Immigration Advisers License if they dispense immigration advice in relation to New Zealand. This includes employers and recruiters, which takes our rules one step further than the Australian system. It is important for employers to understand where the line is and what the implications are for assisting their employees with immigration matters, as penalties can be severe – up to seven years imprisonment and/or a \$100, 000 fine.

Essentially immigration advice is defined as using or purporting to use knowledge of or experience in immigration matters to assist, advise or direct another person with a New Zealand immigration matter. What is permitted is to give people publicly available information (eg INZ website, or to direct them to a Licensed Immigration Adviser for assistance.

More information can be found at the Immigration Advisers Authority website:

[www.iaa.govt.nz](http://www.iaa.govt.nz)

### *Where are Applications Lodged?*

Applications for work visas for NZ must be submitted to the closest NZ processing office with jurisdiction over the location of the applicant. For example, if the applicant is in the UK, then the application would be submitted and processed by the INZ Branch in London. If the applicant is already in NZ, residing in Napier but applying for a work visa to work in Darfield, then the application would be processed by the INZ Branch in Palmerston North (being the processing office that has jurisdiction over people living in Napier).

If an application is submitted to the wrong Branch or processing office, it will be delayed whilst it is transferred internally to the correct office, and so submitting it initially at the correct office is recommended.

Note, however, that the Christchurch Branch of INZ is currently closed as the office was located well within the red zone. Therefore applications from the Canterbury and Marlborough/Nelson regions are being processed by other offices in the interim, which may cause processing delays. Wellington or Dunedin Branches are the best to send applications to but you can obtain further updated information as it comes to hand on the INZ website at [www.immigration.govt.nz](http://www.immigration.govt.nz)

## *How Long Do They Take to be Processed?*

Processing times vary significantly around the world, and even within NZ. The variation is caused by spikes in work loads, eg Palmerston North Branch is always at its busiest, and hence has the longest queues, in January to April due to the dramatic increase in student and seasonal employment visa applications being made.

In general terms, you should allow up to 4 weeks for a work visa to be finalised in the current economic climate. The fact of the matter is that almost all applications under the Essential Skills work instructions are being referred to WINZ for comment on the local labour market (and whether there are people locally who are able to do the work) which takes time, along with ongoing and significant delays due to medical issues being referred for further assessment. Any medical issues will likely add a further 4-6 weeks at least to the processing time.

## *What Documentation is Required?*

The level of documentation required varies according to what category the visa application is being made under. For locally employed roles, the application is likely to be made under Essential Skills and therefore it will be necessary for documents to be provided in support of:

- ✚ the nature and details of the employment offered (eg employment contract, evidence and/or comments on local labour market searches, position description etc)
- ✚ application forms for each family member and the Employer Supplementary Form
- ✚ evidence that the applicant has suitable qualifications and experience to undertake the role
- ✚ evidence showing the relationship between the principal applicant and any accompanying family members (partner and children)
- ✚ health and character clearances as required

## ***Red Flags/Questions to be Answered Early On***

There are many factors which may impact on a person's ability to move to New Zealand and take up a permanent or fixed term role in a timely manner. Sadly many of these factors are misunderstood or not known, which means that a lot of stress and anxiety could have been alleviated for all concerned if some prior planning had been undertaken. Some of the issues that should be established as early in the recruitment process as possible include:

- ✚ Does the applicant/new employee have family who will also travel to New Zealand – if so, what ages are the children, can they be classified as ‘dependent’ for immigration purposes, are there custody issues to be addressed, is the family medically well?
- ✚ Does the applicant/new employee have medical issues that require ongoing treatment of some kind? – might not be sufficient to prevent them undertaking their work but it might impact on the visa application either through processing delays or, worst case, cause the application to be declined
- ✚ Is the applicant/new employee and/or their partner from a country that might take lengthy times to obtain police clearances (eg Sth Africa, Canada for those who are residing outside of Canada, the US) thus impacting on the timeliness of being able to submit the visa application for processing?
- ✚ Does the applicant/new employee and any accompanying family members have a valid passport, or one that will remain valid for at least some time to come? (Immigration NZ will not issue any visas beyond 1-3 months prior to the expiry date of a passport, thereby potentially limiting the validity of a new visa and perhaps impacting on the ability for the holder to gain access to public health care and other services)
- ✚ Is the role to be undertaken in New Zealand deemed to be in an occupation that has mandatory registration? If so then the visa will not be granted until the registration requirements have been met
- ✚ Does the applicant/new employee frequently travel internationally at present? Will they be in one country long enough to support the logistics of getting the visa application processed?
- ✚ Are there pressing project commitments or other issues that the business has in New Zealand that dictate when the new employee absolutely must start by?
- ✚ Have the local labour market issues been resolved or can you show as the employer that you have made a genuine attempt to recruit locally?

These are some of many issues that can derail the timeliness of a move to New Zealand. Going through the issues and addressing any potential delays upfront can ensure that everyone involved in the process is aware of a likely timeline, and if necessary alternative immigration options can be considered to accommodate immovable or difficult deadlines.

We are frequently asked by employers to assist with the remainder of a visa application that has been initiated, but somehow has become derailed with ongoing delays. Typically, in this situation, the wrong type of visa has been applied for given the particular circumstances, or there are ongoing delays with medical examinations and/or obtaining police clearances. There are solutions to these problems, however these solutions can only be a realistic option at the start of the process. Once an application has been made to Immigration New Zealand it is difficult to redirect it down another, perhaps more timely path. This underlines the need for prior planning and trust that all potential issues have at least been raised and discussed.

For further immigration queries contact either Karen Justice or Christiaan Arns:

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## Immediate Skill Shortage List



This is the revised Immediate Skill Shortage List (ISSL), agreed changes will come into effect on 13 September 2010.

Occupational Group	Occupation and ANZSCO number	Recommended standard for work permit applicants with an offer of employment	Regions
<b>Agriculture and Forestry</b>	Apiarist (121311)	National Certificate in Apiculture Level 3 AND at least two years' relevant experience	Auckland/Upper North Island, Waikato/Bay of Plenty, Central North Island, Wellington, Canterbury/Upper South Island, Otago/Southland
<b>Agriculture and Forestry</b>	Arborist (362212)	Trade Certificate AND/OR National Certificate in Horticulture Arboriculture Level 4 AND a minimum of two years' relevant experience	Auckland/Upper North Island, Waikato/Bay of Plenty, Central North Island, Wellington, Canterbury/Upper South Island, Otago/Southland
<b>Agriculture and Forestry</b>	Beef Cattle Farmer (Assistant Herd Manager) (121312), Dairy Cattle Farmer (Assistant Herd Manager) (121313)	National Certificate in Agriculture (Level 2) or above AND/OR two or more years' relevant experience	Auckland/Upper North Island, Waikato/Bay of Plenty, Central North Island, Wellington, Canterbury/Upper South Island, Otago/Southland
<b>Agriculture and Forestry</b>	Beef Cattle Farmer (Farm Manager) (121312), Dairy Cattle Farmer (Farm Manager) (121313)	National Certificate in Agriculture Level 4 AND minimum of three years' relevant experience	Auckland/Upper North Island, Waikato/Bay of Plenty, Central North Island, Wellington, Canterbury/Upper South Island, Otago/Southland
<b>Agriculture and Forestry</b>	Beef Cattle Farmer (Herd Manager) (121312), Dairy Cattle Farmer (Herd Manager) (121313)	National Certificate in Agriculture (Level 2) or above AND two or more years' relevant experience	Auckland/Upper North Island, Waikato/Bay of Plenty, Central North Island, Wellington, Canterbury/Upper South Island, Otago/Southland
<b>Agriculture and Forestry</b>	Dairy Cattle Farmer (Assistant Farm Manager) (121313)	National Certificate in Agriculture Level 3 AND three years' relevant experience	Auckland/Upper North Island, Waikato/Bay of Plenty, Central North Island, Wellington, Canterbury/Upper South Island, Otago/Southland