



<p>IMMIGRATION NEW ZEALAND INTERNAL ADMINISTRATION CIRCULAR NO: 13/09</p>

To:	All Immigration New Zealand Managers	Date: 8 November 2013
	All Immigration New Zealand Staff	

Assessing ‘bona fide applicant’ criteria

Please read this information and ensure all staff members who may be affected are aware of what is required of them.

Purpose

1. The purpose of this Internal Administration Circular (IAC) is to guide staff on the considerations and procedures to follow when assessing whether a person is a ‘bona fide applicant’. The advice contained is intended to support the assessment of bona fides in all offices processing temporary entry class visas, whether inside or outside New Zealand.

Temporary entry class visa applicants must be bona fide

2. Immigration instructions at E5.1 and E5.5 require all applicants for temporary entry class visas or entry permission to be ‘bona fide’ in that they must show that they ‘genuinely intend a temporary stay in New Zealand for a lawful purpose’ (E5.5(b)). E5.1 specifies that for an applicant to be bona fide immigration officers must also hold the opinion that the applicant is unlikely to:
 - remain in New Zealand unlawfully
 - breach any visa conditions, or
 - be unable to leave or be deported from New Zealand.
3. Immigration instructions E5.5.1 and E5.10 outline the evidence of genuine intent and lawful purpose that may indicate whether a person is a bona fide applicant, and the information that immigration officers must take into account. E5.10 states that immigration officers must take into account:
 - any evidence of genuine intent and lawful purpose submitted by the applicant
 - the ability of the applicant to leave or be deported from New Zealand to their country of citizenship
 - any relevant information held about previous applications, and
 - the personal circumstances of the applicant.

Assess all other application criteria before ‘bona fide applicant’ criteria

4. All of the criteria for the particular category should be assessed **before** the bona fide criteria. Assessing the substantive criteria before bona fides criteria ensures that due consideration will be given to the applicant’s personal circumstances and the other factors impacting on the assessment of bona fides, as listed at E5.10. The substantive application criteria may also be important for assessing the relevance and weight of each of the factors.
5. If the applicant does not meet the criteria of the particular category, there is no need to assess bona fides.
6. Health and character requirements should be assessed after the bona fides assessment. Nevertheless, information related to health and character should be considered if it is relevant to the applicant meeting the definition of a bona fide applicant.

Examples

7. If a person applies for a work visa to come to New Zealand as the partner of a work visa holder, an immigration officer should assess whether the applicant’s relationship is genuine and stable and the other criteria of the particular category before assessing bona fide criteria. The outcomes of this assessment may be a relevant factor when determining whether the person is considered to be a bona fide applicant.
8. If a visitor visa holder applies for a student visa from within New Zealand, an immigration officer should assess that the applicant meets the substantive requirements for a student visa (meeting offer of place, tuition fees, accommodation, maintenance funds, outward travel requirements etc.) before assessing bona fides requirements.

Assessing whether someone is a ‘bona fide applicant’

9. Each of the factors listed at E5.10 (summarised in paragraph 3 above) are important and should be given appropriate weight in the final assessment of bona fides. The factors should also be viewed in light of all relevant information that is held by INZ, including, but not limited to:
 - information submitted by the applicant
 - the objectives of temporary entry immigration instructions¹ (see E1), and
 - the objectives of the particular application category and visa type that is being applied for.
10. It is essential that in reaching a decision immigration officers apply the principles of fairness and natural justice (see A1.15), noting that the grant of temporary entry class visas or entry permission is discretionary (except when provisions at E2.35 apply, which detail when a person must be granted a temporary entry class visa). It is the applicant’s responsibility to ensure that all relevant information that may affect the assessment of an application, including bona fides, is provided with the application (see E4.75).
11. If an immigration officer is not satisfied that an applicant is bona fide and considers that an exception to instructions is not appropriate, they must decline the application or manage risks by other means, such as offering to grant a limited visa or imposing a bond.

¹ Temporary entry objectives are to facilitate the entry of genuine visitors, students and temporary workers, while managing the associated risks; and to contribute to building strong international links, attract foreign exchange earnings and addressing skills shortages (see E1).

Approval of applicants who are not bona fide can lead to adverse immigration outcomes such as the applicant becoming unlawful, breaching visa conditions or becoming vulnerable to exploitation. Therefore, bona fides is a key component of decision making for applications assessed **both** inside and outside New Zealand.

Intending a temporary stay in New Zealand for a lawful purpose

12. In order to be a bona fide applicant, a person must genuinely intend a temporary stay in New Zealand for a lawful purpose (see E5.1). Immigration instructions at E5.5 state evidence for genuine intent and lawful purpose includes, but is not limited to, documents and submissions that:
 - show the applicant has a legitimate need to be in New Zealand for the period of a visa, and
 - demonstrate the person meets the requirements in immigration instructions that relate to the visa applied for.
13. In this context, an intention for a temporary stay in New Zealand means that an applicant:
 - has applied for a visa with conditions that align with the applicant's purpose for coming to or remaining in New Zealand
 - plans to abide by the conditions of the visa granted and all other immigration requirements during their time in New Zealand on a temporary entry class visa, and
 - will leave New Zealand before the expiry of their temporary visa if they are not granted a subsequent visa to stay.
14. The potential that an applicant may apply for a further temporary visa, or apply for residence, within New Zealand does not in itself mean that they do not genuinely intend a temporary stay in New Zealand for a lawful purpose. A person may genuinely intend a temporary stay in New Zealand for a lawful purpose despite potentially applying for a further visa from within New Zealand.
15. For example, a person applying for an Essential Skills work visa who also expresses interest in applying for residence at a later stage may nevertheless be considered to meet the requirements of 'intending a temporary stay for a lawful purpose' if the immigration officer is satisfied that they will abide by the conditions of their work visa and, should they not obtain a further visa, they will leave New Zealand before the expiry of their work visa.
16. In some situations, however, the circumstances in which a person applies for a further temporary visa once in New Zealand may lead to significant concerns that they do not genuinely intend a temporary stay in New Zealand for a lawful purpose. For instance, where an applicant changes the length or intent of their stay in New Zealand abruptly and this change does not align with information that INZ has about the person. Such a situation may mean that the applicant is not considered bona fide.
17. An example of this is where a person is granted a three-week visa to visit New Zealand after informing INZ that they could undertake the visit because they had one month's leave from their job. Concerns may be raised when they apply for a further six-month visitor visa without a reasonable explanation. Information provided to INZ previously may still be relevant to the current application because the granting of a further visa would appear to endanger the person's livelihood in their home country. An immigration officer may therefore hold the opinion that the applicant is likely to remain in New Zealand

unlawfully after the expiry of their visitor visa (if they are not granted a subsequent visa), or breach the conditions of their visa.

Ability for a person to leave or be deported from New Zealand

18. Circumstances that inhibit a person from leaving or being deported from New Zealand, or discourage them from returning to their home country, need to be considered when assessing bona fides.
19. These circumstances include, but are not limited to, whether they:
 - have the income or funds to be able to return to their country of citizenship if they are required to do so
 - do not have or cannot get documentation required to return to their country of citizenship, or
 - are a citizen of a country to which they may not be able to return, including restrictions on deportation (such as those experiencing conflict).
20. Where an immigration officer has concerns about a person's ability to leave or be deported from New Zealand, they should consider whether there are compelling personal reasons for the applicant to be granted a New Zealand visa or entry permission (see E5.10(b)(ii)).

Information held by INZ

21. Immigration officers should also consider relevant information the applicant has provided previously, or which is otherwise held by INZ. An applicant's history of compliance or non-compliance, for example, may indicate whether they are likely to abide by the conditions of a visa if it is granted.
22. Adverse information should not lead to an automatic decline, but should be considered in the context of the applicant's present situation, the particular category under which they are applying and any other relevant factors.

Personal circumstances of the applicant

23. A wide array of personal circumstances could affect whether a person is a bona fide applicant. These should be considered on a case-by-case basis, and in the broader context of all relevant information and immigration instruction objectives.
24. An example of this is whether a person has family in their home country or in New Zealand, and whether this family situation either adds weight to the legitimacy of their declared reason to be in New Zealand or, conversely, increases the likelihood that they will remain in New Zealand unlawfully after the expiry of their visa. In the case of a partner of a worker, greater legitimacy may be given to an applicant's declared reason to come to New Zealand if the partner in New Zealand has demonstrated compliance with the conditions of their visa. In addition, the fact that an applicant may not be able to demonstrate strong financial or occupational reasons for returning to the home country may be balanced or outweighed by the fact that they may have little or no reason for wishing to remain in New Zealand beyond the duration of the visa sought.
25. The phrase 'incentives to return home' has been used previously to summarise several personal circumstances affecting a person's application; however, this is not referred to in immigration instructions and should not be used as a basis of assessment. Instead,

immigration officers should clearly state the specific circumstances of concern and logically demonstrate how those circumstances affect whether the applicant does or does not meet the 'definition of a bona fide applicant' as stated at E5.1.

26. The significance of some commitments (for instance, financial or occupational), or the lack thereof, may vary according to the applicant's cultural norms. Immigration officers should seek guidance when they are unclear of the relevance and weight to attach to such factors.

Correspondence with applicant before decisions is made

27. Immigration officers should follow the relevant guidance relating to what is considered to be potentially prejudicial information (PPI) (see E7.15); when applicants should be provided with an opportunity to comment on PPI; and processes for considering whether to decline an application. If the information leading to a potential decline is PPI, applicants must be given an opportunity to comment on that information. For temporary entry visa applications being processed outside New Zealand, see *IAC 11-09 Change in approach to TE decision making* for more guidance.
28. It is also good practice for immigration officers to request further information even though they have no obligation to do so, if the information needed can be obtained easily from the applicant.

Recording a decision based on not meeting 'bona fide applicant' criteria

29. Any information, either positive or negative, used to determine whether a person meets bona fide criteria should be linked to the definition of a bona fide applicant at E5.1, and recorded as part of the decision making process. The record should clearly explain the assessment undertaken, the factors considered, and the link between the factors and definition of a bona fide applicant. In all cases, immigration officers should be confident in their determination and be able to justify their decision. Some examples of bona fides assessments can be found in the staff toolkit (search for 'bona fides' on your office's toolkit page). Further material to aid the assessment of bona fides will be released on the staff toolkit shortly.
30. Reasons for declining an application based on an applicant not being bona fide should be credible, understandable and reference relevant instructions. The applicant should be informed of the reasons for the decline clearly in the decline letter, including being given a clear explanation of how the information that led to the decision relates to the applicant not meeting the definition of a bona fide applicant at E5.1.
31. If this IAC is inconsistent with any previous IAC, the advice contained here prevails.

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Disclaimer

Every care has been taken to ensure the information in this circular is accurate and current as at the date of this circular. The information on this circular is to assist you; however applications will be assessed by Immigration New Zealand according to the published Government immigration and Government residence instructions as set out in the Operational Manual. This circular is not a substitute for that policy.