

IMMIGRATION
NEW ZEALAND



Immigration New Zealand Operational Manual

Border entry

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Note: Some of the instructions contained in this section of the Operational Manual are Immigration New Zealand operational instructions and do not constitute immigration instructions as described in section 22 of the Immigration Act 2009. The sections Y3 and Y4 have been certified as temporary entry and residence instructions as described in sections 22 or 23 of the 2009 Act.

Y1 OBJECTIVE

The objective of Border operational instructions are:

- a. to facilitate the entry of travellers to New Zealand who meet entry requirements; and
- b. to identify and manage the risks to New Zealand arising from those travellers who do not meet entry requirements.

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Y2 ARRIVALS AND DEPARTURES

Both passengers and carriers arriving in and departing from New Zealand have responsibilities under the Immigration Act 2009, the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, and the Immigration (Carriers' Information Obligations) Regulations 2010.

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Y2.1 Passenger responsibilities on arrival

See also Immigration Act 2009 ss 103, 104, 110, 342

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 regs 24, 29

- a. New Zealand citizens, if arriving at an immigration control area are responsible for:
 - i presenting themselves and producing their passport or certificate of identity and a completed arrival card to an immigration officer; and
 - ii complying with any requirements to confirm New Zealand citizenship; and
 - iii complying with any direction of an immigration officer while in the immigration control area ; and
 - iv allowing themselves to be photographed to confirm citizenship.
- b. Non citizens, including permanent residents and residents, if arriving at an immigration control area, are responsible, for:
 - i presenting themselves to an immigration officer with a completed arrival card (and thereby making an application for entry permission and a visa (if a visa waiver applies); and
 - ii producing their passport or certificate of identity to an immigration officer; and
 - iii producing, if required by an immigration officer, all or any of the following:
 - their visa (if held);
 - travel tickets or evidence of onward travel arrangements;
 - evidence of funds for maintenance or of sponsorship; and
 - iv complying with any direction of an immigration officer while in the immigration control area (see Y2.1.1).
- c. If a passenger is responsible for the care of a person who cannot comply with Y2.1(a) or Y2.1(b) because of age or disability, it is their responsibility to comply on behalf of that person.

Note: A passenger who applies for entry permission by completing an arrival card must provide a physical address in New Zealand under section 110 of the Immigration Act 2009.

- d. A person who arrives in New Zealand other than at an immigration control area (see Y2.1.1 below) must report to an immigration officer at an immigration control area within 72 hours after arriving and then comply with the responsibilities in Y2.1(a) or (b) above and any requirements prescribed in regulations.

Example: an ocean-going yacht which calls into the nearest New Zealand port for repairs or maintenance.

- e. A passenger who fails to comply with the responsibilities set out above or completes an arrival card in a manner that they know is false or misleading in any way, commits an offence and may be prosecuted.
- f. Any person who does not report, or in respect of whom it is suspected that they will not report, to an immigration officer at an immigration control area may be arrested by a constable and brought before an immigration officer.
- g. If a person arrives at a place other than an immigration control area and does not report to an immigration officer at an immigration control area within 72 hours - see reg 29, Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 - any visa they hold will be deemed to be cancelled under section 64, of the Immigration Act 2009.

Note: Y2.1 does not apply to people who arrive in New Zealand other than at an immigration control area who are deemed to have been granted a visa.

Y2.1.1 Definition of 'Immigration Control Area'

See also Immigration Act 2009 s 382

An immigration control area is that part of an airport or port or any other place so designated by the Chief Executive of the Department of Labour for the processing of people arriving in or departing from New Zealand. A list and description of all immigration control areas is available:

- at every office of Immigration New Zealand, both onshore and offshore that deals with immigration matters; and
- on the Immigration New Zealand website.

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Y2.5 Passenger responsibilities on departure

See also Immigration Act 2009 ss 119, 342

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 30

- a. Passengers are responsible on departure for:
- i presenting themselves to an immigration officer at an immigration control area with a completed departure card; and
 - ii producing their passport or certificate of identity to an immigration officer; and
 - iii complying with any direction of an immigration officer.
- b. If a passenger is responsible for the care of a person who cannot comply with Y2.5(a) above because of age or disability, it is their responsibility to comply on behalf of that person.

- c. A passenger who, without reasonable excuse, fails to comply with the responsibilities set out above or completes a departure card in a manner that they know is false or misleading in any way, commits an offence and may be prosecuted.

Note: Y2.5 does not apply to people in New Zealand who are deemed to hold a visa and leave New Zealand other than at an immigration control area.

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Y2.10 Who is exempt from passport requirement

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 11(3)

A member of the armed forces of any country, members of its civilian component or a crew member of any craft used to transport members of the armed forces of any country to New Zealand as defined in the Visiting Forces Act 2004 is exempt from having to produce a passport or certificate of identity if:

- a. members of that armed force are in New Zealand at the request or with the consent of the New Zealand Government; and
- b. that person's presence in New Zealand is in the ordinary course of their duty or employment.

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Y2.15 Who is exempt from need for arrival and departure cards

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 reg 25

A person is exempt from having to present an arrival card and a departure card if they are:

- a. crew or passengers on any ship carrying passengers or cargo or both (in the ordinary course of business of the ship) between any foreign port and New Zealand;
- b. crew on any foreign ship authorised by the Minister of Transport under section 198(2) of the Maritime Transport Act 1994 to carry coastal cargo (within the meaning of subsection (6) of that section);
- c. aircraft crew on any commercial aircraft flying between any other country and New Zealand;
- d. members of the armed forces of any country, members of its civilian component or crew members of any craft transporting such people in New Zealand at the request or with the consent of the New Zealand government, in the ordinary course of that member's duty or employment as defined in the Visiting Forces Act 2004 who arrive in New Zealand at a military base;
- e. members of, or a person associated with, any scientific programme or expedition under the auspices of a Contracting Party to the Antarctic Treaty within the meaning of the Antarctica Act 1960, or a person to whom section 5 of that Act applies who enter the Ross Dependency from a country other than mainland New Zealand;
- f. members of, or a person associated with, any scientific programme or expedition under the auspices of a Contracting Party to the Antarctic Treaty within the meaning of the Antarctica Act 1960, or a person to whom section 5 of that Act applies who:
 - i have entered the Ross Dependency from a country other than mainland New Zealand; and

- ii subsequently travel from the Ross Dependency to mainland New Zealand guests of government who have been granted a visa waiver to travel by special direction.
- g. guests of government who have been granted a visa waiver to travel by special direction.

Note: A request may also be made to waive, by special direction, the requirement for distinguished visitors to provide a passport or certificate of identity for inspection.

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Y2.20 Advance Passenger Processing

See also Immigration Act 2009 ss 96, 97, 349, 359, 360

See also Immigration (Carriers' Information Obligations) Regulations 2010, reg 4

- a. The Department of Labour requires airlines to initiate passenger checks and pre-processing of passengers prior to embarkation for travel to and through New Zealand by means of the Advance Passenger Processing (APP) system.
- b. APP assists in the facilitation of efficient and effective processing of all passengers on entry to, and through, New Zealand.

Y2.20.1 Provision of information for the purpose of Advance Passenger Processing

- a. A carrier, and a person in charge of a commercial craft, who is notified by the Chief Executive of the Department of Labour (the Chief Executive) that they must comply with responsibilities under section 96 of the Immigration Act 2009 must, prior to their departure from another country to travel to New Zealand, obtain the information prescribed by regulation 4 of the Immigration (Carriers' Information Obligations) Regulations 2010, from every person who intends to board the craft for the purpose of travelling to New Zealand.
- b. Where the craft is either scheduled to, or it is proposed that it travels to New Zealand, prior to departure from another country, the carrier and person in charge of the craft, must provide the information required in (a) above to the Chief Executive by means of an approved system (see Y2.20.10).
- c. This information includes:
 - i the person's name, date of birth, nationality, gender, passport or certificate of identity number (if any) and passport or certificate of identity expiry date (if any); and
 - ii the issuer of the person's passport or certificate of identity, if it is not the person's country of nationality (if any); and
 - iii the person's status as a traveller (including but not limited to, whether the person is a member of the craft's crew, a passenger whose destination is New Zealand, or a passenger whose destination is other than New Zealand); and
 - iv information identifying the craft and its intended movements.
- d. A carrier or person in charge of a commercial craft who, without reasonable excuse, fails to meet the responsibilities set out above commits an offence and may:
 - i incur an infringement fee ; or
 - ii be prosecuted; or
 - iii have other action taken against them utilising any appropriate enforcement tools in order to encourage compliance.

- e. The Chief Executive of the Department of Labour may exempt, in writing, a carrier or a person in charge of a commercial craft from complying (in whole or in part) with the requirements set out in (a), (b) and (c) above.

Y2.20.5 Decisions about people boarding craft for the purpose of coming to New Zealand

- a. The Chief Executive of the Department of Labour may decide (including by automatic means) that a person about whom passenger information has been received:
 - i may or may not board a craft for the purpose of travelling to New Zealand;
 - ii may board a craft for the purpose of travelling to New Zealand if he or she complies with specified conditions.
- b. Where such a decision is made the Chief Executive must notify the relevant carrier or person in charge of the commercial craft of that decision.
- c. Notification may be in any form that the Chief Executive thinks is appropriate, including by means of an approved system or by means of an automated electronic notification.
- d. The Chief Executive may make decisions about whether a person may or may not board or may only board subject to specified conditions, whether or not the person holds a visa to travel to New Zealand, or is a person who is waived the requirement to obtain a visa to travel to New Zealand .
- e. The Chief Executive may not make decisions about whether a person may or may not board or may only board subject to specified conditions if that person is:
 - i a New Zealand citizen who, before boarding, holds and produces a New Zealand passport; or
 - ii a New Zealand citizen who, before boarding, holds and produces a foreign passport containing an endorsement indicating New Zealand citizenship; or
 - iii a New Zealand citizen who, before boarding, produces a foreign passport that contains a returning resident's visa issued under the Immigration Act 1987; or
 - iv a permanent resident; or
 - v a resident visa holder, unless the person has not previously travelled to New Zealand as the holder of that visa and the visa was granted outside New Zealand.
- f. The Chief Executive is not obliged to give reasons for decisions about whether a person may or may not board or may only board subject to specified conditions, other than that the decision is made in terms of section 97(1) of the Immigration Act 2009 and section 23 of the Official Information Act 1982 does not apply in respect of the decision.
- g. A person about whom a decision is made in terms of (a) above may not appeal the decision and may not bring review proceedings in relation to the decision except on the grounds that the decision should not have been made because they are a person listed in Y2.20.5(e) above.
- h. Every carrier or person in charge of a commercial craft commits an offence if:
 - i they allow a person to travel to New Zealand before a decision is made by the Chief Executive in terms of (a) above; or
 - ii they fail, without reasonable excuse, to ensure that such a decision is complied with.

- i. A carrier or person in charge of a commercial craft who fails, without reasonable excuse, to meet the responsibilities set out in (a) above commits an offence and may:
 - i incur an infringement fee; or
 - ii be prosecuted; or
 - iii have other action taken against them, utilising any appropriate enforcement tools in order to encourage compliance.

Y2.20.10 Definition of 'approved system'

See also Immigration Act 2009 s 4

An 'approved system' means a system, including an electronic system, approved by the Chief Executive of the Department of Labour for the purpose of:

- a. providing the information set out in Y2.20.1; or
- b. notifying a carrier or person in charge of a commercial craft of a decision of the Chief Executive about a person boarding a craft for the purpose of travelling to New Zealand. (Y2.20.5)

Y2.20.15 Delegation of Chief Executive's powers in relation to the operation of Advance Passenger Processing

- a. The Chief Executive of the Department of Labour has delegated to people occupying the positions set out in (b) below, the following powers relating to the operation of Advance Passenger Processing:
 - i the power, in accordance with section 97(1) of the Immigration Act 2009, to make a decision about whether or not a person may or may not board a craft for the purposes of travelling to New Zealand, including specifying conditions which must be complied with before a person boards a craft for travel to New Zealand; and
 - ii the power, in accordance with section 97(2) of the Immigration Act 2009, to determine the means by which any decision made under section 97(1) of that Act is to be notified to a carrier or person in charge of a commercial craft to whom section 96(2) applies;
 - iii the power, in accordance with section 102(3) of the Immigration Act 2009 to request information about a person who intended to board a craft for the purpose of travelling to New Zealand, whether or not he or she did in fact board the craft;
 - iv the power, in accordance with section 102(2)(b) of the Immigration Act 2009, to have access to information of the kind specified in the Immigration (Carrier's Information Obligations) Regulations 2010 about a person who intended to board a craft for the purpose of travelling to New Zealand, whether or not he or she did in fact board the craft, and to approve the manner and form of that access, and specify the dates on which the access is required in accordance with subsections 102(4) and (6) of Immigration Act 2009; and
 - v the power, in accordance with subsections 102(5)(d) and (e) of the Immigration Act 2009, to determine whether, in respect of information disclosed or accessed in accordance with subsections 102(2)(a) and (b) of that Act, there is good cause to suspect that an offence against that Act is being, or may have been, committed, or a risk to border security exists.

Deputy Chief Executive – Immigration
Group Manager, Border Security, Workforce
National Manager, Border and Compliance Operations, Workforce

Branch Manager, Immigration Border Operations Centre, Workforce
 Branch Manager, Onshore Border Operations, Workforce
 Branch Manager, Border and Compliance Central and Southern, Workforce
 Immigration Manager, Immigration Border Operations Centre, Workforce
 Immigration Manager, Onshore Border Operations, Workforce
 Immigration Manager, Border and Compliance Central and Southern, Workforce
 Technical Advisor, Onshore Border Operations
 Immigration Officer undertaking duties at an Immigration Control Area

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Y2.25 Carrier responsibilities prior to departure

See also Immigration Act 2009 ss 96, 101(1)

See also Immigration (Carriers' Information Obligations) Regulations 2010, reg 5

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations, reg 11(3), 29)

- a. The Immigration Act 2009 requires that the carrier or the person in charge of any craft en route to New Zealand, or that berths, lands or arrives in New Zealand is responsible for ensuring all persons boarding the craft have the appropriate immigration documentation. The Immigration (Carrier's Information Obligations) Regulations 2010 prescribe the immigration documentation which includes:
 - i a valid passport or certificate of identity (unless exempt); and
 - ii a visa (if required) or an endorsement indicating New Zealand citizenship.

Note: The check for a visa or endorsement is not required if the carrier or person in charge of a commercial craft obtains the Advance Passenger Processing information as detailed in Y2.20 from every person who intends to board the craft for the purpose of travelling to New Zealand and provides that information to the Chief Executive of the Department of Labour.

- b. A carrier or person in charge of a commercial craft who, without reasonable excuse, fails to ensure that all persons boarding the craft have the appropriate immigration documentation except where a person is exempt under regulation 11(3) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 from holding certain documentation, commits an offence and may:
 - i incur an infringement fee; or
 - ii be prosecuted; or
 - iii have other action may be taken against them utilising any appropriate enforcement tools in order to encourage compliance.

Y2.25.1 Carrier responsibilities for ensuring or facilitating compliance with the Immigration Act 2009

- a. Carriers are responsible on arrival for:
 - i once inside the territorial limits of New Zealand and for the purpose of ensuring or facilitating compliance with the Immigration Act 2009, preventing, with such reasonable force as may be necessary, any person landing in New Zealand other than:
 - in an immigration control area; or
 - for the purpose of complying with the responsibilities in Y2.1(a) and (b); and
 - ii providing, as may be required by an immigration officer, any details about any persons who may have been on board the craft since its last port of call; and

- iii if the craft is unable to land at an immigration control area, to make appropriate arrangements for all persons on board to report to an immigration officer at an immigration control area, within 72 hours of arriving in New Zealand; and
 - iv reporting to an immigration officer as soon as practicable, the existence of any stowaway on board.
- b. A carrier who, without reasonable excuse, fails to meet the responsibilities set out above commits an offence and appropriate action will be taken against them utilising any appropriate enforcement tools in order to encourage compliance, including prosecution.

Y2.25.5 Definition of 'craft'

See also Immigration Act 2009 s 4

'Craft' means any form of aircraft, ship, or other vehicle or vessel capable of being or intended to be used to transport any person to or from New Zealand from or to any country outside New Zealand.

Y2.25.10 Definition of 'carrier'

See also Immigration Act 2009 s 4

'Carrier', in relation to a craft:

- a. means the owner or charterer of the craft; and
- b. if the owner or charterer is not in New Zealand, includes the agent in New Zealand of the owner or charterer; and
- c. if there is no agent in New Zealand, includes the person in charge of the craft.

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Y2.30 Carrier responsibilities on departure from New Zealand

See also Immigration Act 2009, s 118

See also Immigration (Carriers' Information Obligations) Regulations 2010, reg 7(2)

- a. Carriers (see Y2.25.10) are responsible on departure for:
 - i reporting to an immigration officer immediately before the craft (see Y2.25.5) leaves, details of any crew member or person described in regulation 7(2) of the Immigration (Carriers' Information Obligations) Regulations 2010 who:
 - was on board when the craft arrived in New Zealand; and
 - is not on board the departing craft; and
 - ii allowing on board the craft for carriage from New Zealand any person being deported or who is liable for turnaround, as long as an offer to pay the fare has been received in relation to the person being deported and the safety of the craft or other persons on board is not endangered; and
 - iii if a constable or an immigration officer delivers such a person to the craft, taking all reasonable steps (including the use of reasonable force) necessary to detain that person on board the craft until it has left New Zealand; and
 - iv providing, at the carrier's cost, carriage from New Zealand of any person who:
 - was on board the craft, or any other craft operated by the carrier, when it arrived in New Zealand but did not hold a visa permitting travel to New Zealand and was, on arrival in New Zealand, refused a visa and entry permission (see Y3); or
 - arrived as crew of the craft, or any other craft operated by the carrier and remained unlawfully in New Zealand after that craft left; and

- v meeting the costs (if any) incurred by the Crown in detaining and maintaining any person described in Y2.30(a)(iv) above until the person has left New Zealand on the first available craft.
- b. A carrier who fails to meet the responsibilities set out above commits an offence and appropriate action will be taken against them utilising any appropriate enforcement tools in order to encourage compliance, including prosecution.

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Y2.35 Requirement to provide further information

See also Immigration Act 2009 s 102

See also Immigration (Carriers' Information Obligations) Regulations 2010, reg 6(2)

- a. Airlines are required to provide information to the Department of Labour about passengers. This data assists the Department of Labour in the protection of border security.
- b. If the Chief Executive of the Department of Labour (the Chief Executive) has requested information about a person who intended to or did travel to New Zealand not more than 14 days before or after the arrival of the craft, regulation 6(2) of the Immigration (Carriers' Information Obligations) Regulations 2010 requires that the relevant carrier or person in charge of the craft must provide the Chief Executive with information about:
 - i where and on what date the person booked the intended travel; and
 - ii with whom, if anyone, the person intended to travel; and
 - iii with whom the person has previously travelled; and
 - iv whether or not the person paid for their own intended travel, and the manner of payment; and
 - v the person's travel movements before the intended travel; and
 - vi whether the route of the person's previous travel has changed from the way that he or she originally booked the travel, and if so, in what way; and
 - vii whether the person failed to undertake travel on a previous occasion; and
 - viii whether the person has unchecked baggage.
- c. The Chief Executive must have access to the information specified in (b) (i)-(viii) for the period from the date specified by the Chief Executive until 14 days after the arrival in New Zealand of the craft on which the person to whom the requested information relates intended to, or did, travel to New Zealand.
- d. The information specified in (b) (i)-(viii) above must be provided whether or not the person whom the information is about actually boarded the craft.
- e. The Chief Executive must have access to the information specified in (b)(i) -(viii) above directly from the airline's database in an approved form and manner for a period of 14 days before or after the arrival in New Zealand of the craft on which the person whom the information is about intended to, or did, travel to New Zealand.
- f. Information specified in (b) (i)-(viii) above may be retained by the Chief Executive if:
 - i the Chief Executive decided that the person to whom it relates may not board a craft for the purpose of travelling to New Zealand; or
 - ii the person has been refused a visa and entry permission on arrival or in a place designated by the Chief Executive outside New Zealand; or

- iii the information needs to be retained as part of a record of a particular action having been taken in relation to the person to whom it relates (e.g. a record that a person was interviewed on arrival); or
 - iv the information gives the Chief Executive good cause to suspect that an offence against this Act is being, or may have been, committed; or
 - v the information gives the Chief Executive good cause to suspect that a risk to border security exists.
- g. A carrier or person in charge of a commercial craft who fails, without reasonable excuse, to meet the responsibilities set out in (b)-(e) above commits an offence and may:
- i incur an infringement fee; or
 - ii be prosecuted; or
 - iii have other action taken against them, utilising any appropriate enforcement tools in order to encourage compliance.

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Y2.40 Memorandum of understanding with airline carriers

- a. A Memorandum of Understanding (MOU) exists between Immigration New Zealand (INZ) and certain airlines. The MOU:
- i records an agreed approach to border responsibilities between the parties; and
 - ii clearly assigns responsibilities in developing and implementing best practices to minimise the number of breaches of airlines' legislative responsibilities; and
 - iii focuses on the level of airline infringements and their associated causes.
- b. If it is necessary to formally review the passenger check-in and processing procedures at a particular airport, the consent of the airline concerned must be obtained.
- c. Despite the existence of the MOU, INZ reserves the right to take appropriate action against carriers utilising any appropriate enforcement tools in order to encourage compliance, including prosecution.

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Y2.45 Persons returning to New Zealand through emergency

See also Immigration Act 2009 s 122

The holder of a temporary entry class visa, upon application, must be granted entry permission and a further temporary visa current for at least 14 days on their return if on leaving New Zealand for another country:

- if the craft is forced to return to New Zealand because of an emergency or circumstances beyond the person's control; and
- if their visa has expired or is due to expire at any time between their leaving New Zealand and 14 days after their return to New Zealand.

Note: This applies as long as the persons are not subject to sections 15 or 16 of the Immigration Act 2009.

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Y3 PEOPLE REFUSED ENTRY PERMISSION

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Y3.1 Categories of people who will normally be refused entry permission

See also Immigration Act 2009 ss 15, 16, 179, 180

- a. fall within the categories of people outlined in sections 15 or 16 of the Immigration Act 2009 including:
 - i people who, at any time, have been convicted and sentenced to imprisonment for a term of 5 years or more, or sentenced to an indeterminate period capable of running for five years or more; or
 - ii people who, at any time in the preceding 10 years, have been convicted and sentenced to imprisonment for a term of 12 months or more, or sentenced to an indeterminate period capable of running for 12 months or more; or
 - iii people who have been removed or deported from New Zealand under any enactment (subject to certain exclusions under section 15(3) of the Immigration Act 2009) or are subject to a period of prohibition on entry imposed under section 179 of the Immigration Act 2009 or if section 180 of the Immigration Act 2009 applies; or
 - iv people who are excluded from New Zealand under any enactment; or
 - v people who have been removed, excluded or deported from another country; or
 - vi people who the Minister of Immigration (the Minister) has reason to believe are likely to commit an offence in New Zealand that is punishable by imprisonment; or

- vii people who the Minister has reason to believe are, or are likely to be, a threat or risk to security; or
 - viii people who the Minister has reason to believe are, or are likely to be, a threat or risk to public order; or
 - ix people who the Minister has reason to believe are, or are likely to be, a threat or risk to the public interest; or
 - x any member of a terrorist entity designated under the Terrorism Suppression Act 2002.
- b. have made a false declaration in their arrival card or failed to comply with passenger responsibilities on arrival, including having failed to produce:
 - i an arrival card; or
 - ii a passport or certificate of identity; or
 - iii other immigration documentation required by an immigration officer; or
 - c. are unable to meet the requirements for entry permission or for a visa under the relevant instructions; or
 - d. hold false documentation; or
 - e. hold a transit visa; or
 - f. are stowaways; or
 - g. are members of groups on whom United Nations (UN) sanctions have been imposed (see Y3.45).

Y3.1.1 Refugee status or protection claimants

If a person who would normally be refused entry indicates that they wish to claim refugee or protection status they must not be removed from New Zealand until their refugee or protection status has been finally determined, and then only if their claim is unsuccessful or if section 164(3) of the 2009 Immigration Act 2009 allows. (see Y6).

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Y3.5 People convicted of criminal offences, subject to a removal order imposed under the Immigration Act 1987 or deported from any country

See also Immigration Act 2009 ss 15, 17

A person is not eligible for a visa and entry permission into New Zealand and no visa waiver may apply, unless a special direction is given or section 83 of the Immigration Act 2009 applies, if the person:

- a. at any time, has been convicted and sentenced to imprisonment for a term of 5 years or more, or sentenced to an indeterminate period capable of running for five years or more; or
- b. at any time in the preceding 10 years, has been convicted and sentenced to imprisonment for a term of 12 months or more, or sentenced to an indeterminate period capable of running for 12 months or more; or
- c. is subject to a current removal order imposed under the Immigration Act 1987; or

- d. is subject to a prohibition on entry imposed under section 179 of the Immigration Act 2009 or if section 180 of that Act applies; or
- e. has been removed or deported from New Zealand under any enactment (subject to certain exclusions under section 15(3) of the Immigration Act 2009); or
- f. is excluded from New Zealand under any enactment; or
- g. has been removed, excluded or deported from any country other than New Zealand.

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Y3.10 Persons who are or are likely to be a threat or risk to security, public order, the public interest or are members of a terrorist entity.

See also Immigration Act 2009 ss 16, 17

Unless a special direction is given or section 83 of the Immigration Act 2009 applies, a person is not eligible for a visa or entry permission and no visa waiver may apply if the Minister has reason to believe that the person:

- a. is likely to commit an offence in New Zealand that is punishable by imprisonment; or
- b. is, or is likely to be, a threat or risk to security; or
- c. is, or is likely to be, a threat or risk to public order; or
- d. is, or is likely to be, a threat or risk to the public interest; or
- e. is a member of a terrorist entity designated under the Terrorism Suppression Act 2002.

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Y3.15 Persons found in possession of illegal drugs

See also Immigration Act 2009 ss 16, s83

- a. A passenger found in possession of illegal drugs on arrival may have committed an offence, or may be considered likely to commit an offence punishable by imprisonment. Such persons will not normally be granted a visa or entry permission.
- b. A person apprehended at the border in possession of illegal drugs may be:
 - i charged by the Police for carrying or importing drugs; or
 - ii formally warned by the Police; or
 - iii referred by a Customs officer directly to an immigration officer.

Note: These provisions apply in any circumstance where it is considered that the person is likely to commit any offence which is punishable by imprisonment.

- c. If such a person has been charged and detained by the Police until a court appearance and they are subject to section 16, an appropriately delegated immigration officer may give a special direction under section 17 of the Immigration Act 2009 to grant the person a limited visa under section 83 of the Immigration Act 2009 for the express purpose of enabling the person to face the charge(s) laid or to serve any sentence imposed on the charge(s).

Note: The court action should be monitored with a view to having the person deported from New Zealand as soon as possible.

- d. If the person is only given a formal warning by the Police, or the person is referred to an immigration officer by a Customs officer, the person should be interviewed to determine whether section 16(1)(a)(i) of the Immigration Act 2009 applies to them.

Effective 29/11/2010

Y3.20 Persons to whom sections 15 or 16 apply but who are not refused entry

See also Immigration Act 2009 ss 15, 16, 17, 83, 108

- a. If, after interviewing a person suspected of being subject to sections 15 or 16 of the Immigration Act 2009, an immigration officer determines that sections 15 or 16 applies but there are compelling reasons to grant a visa, an appropriately delegated immigration officer may give a special direction to grant a visa, under section 17(1)(a) of the Immigration Act 2009. If a special direction is given, the visa granted should be of a type and duration appropriate to the reasons for the special direction.
- b. An exception may also be made and a limited visa granted to a person if:
- i a certificate has been issued in respect of the person under specific sections of the Mutual Assistance in Criminal Matters Act 1992; and
 - ii the limited visa is for the sole purpose of enabling the person to be in New Zealand for the purpose of giving or providing evidence or assistance pursuant to a request under that Act or to be transported through New Zealand under that Act.
 - iii an exception may also be made and a limited visa granted to a person for the sole purpose of enabling the person to return to New Zealand to face a charge in New Zealand or to serve a sentence imposed on the person in New Zealand.

Note: Despite sections 15 and 16 of the Immigration Act 2009, entry permission must be granted under section 108 of the Immigration Act 2009 to:

- i. the holder of a permanent resident visa; and
- ii. the holder of a resident visa granted in New Zealand; and
- iii. the holder of a resident visa arriving in New Zealand for a second or subsequent time as the holder of the visa.

Effective 29/11/2010

Y3.25 People unable to meet the requirements for a visa or entry permission

See also Immigration Act 2009 s 103

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 24

- a. All passengers on craft arriving in New Zealand are required to complete an arrival card and present it, together with a current passport or certificate of identity and, if appropriate, the passenger's visa, at an immigration control area. Presenting the completed arrival card constitutes making an application for entry permission and a visa (where a visa waiver applies) in the prescribed manner.
- b. A passenger does not need to apply for a visa or entry permission if they are:
- i a New Zealand citizen who holds and produces a New Zealand passport; or
 - ii a transit passenger within the meaning of section 86(7) of the Immigration Act 2009.
- c. A New Zealand citizen who is a national of 1 or more other countries and who wishes to enter New Zealand other than as a New Zealander must apply for entry permission.

- d. Before determining whether a visa or entry permission should be granted, an immigration officer may require travel tickets or evidence of onward travel arrangements and evidence of maintenance funds or of sponsorship to be produced.
- e. People who do not meet the requirements for a visa or entry permission will be referred to an immigration officer who may refuse entry. Such people include, but are not limited to:
 - i people with expired travel documents or no travel documents; and
 - ii people with no visa, an inappropriate visa or an expired visa; and
 - iii people with insufficient funds and no sponsorship; and
 - iv people with no outward ticket; and
 - v people previously refused entry to New Zealand; and
 - vi people who do not meet the bona fide applicant requirements; and
 - vii people who fail to apply for a visa or entry permission.

Y3.25.1 People arriving without current passports or other acceptable travel documents

See also Immigration Act s 103

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 34

A person who arrives without a current passport or other acceptable travel document may have their requirement to produce a passport on arrival waived if an appropriately delegated immigration officer gives a special direction to that effect under regulation 34 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to give the person a waiver.

A special direction may only be given if, after interviewing the person, an immigration officer is satisfied that:

- a. there are compelling reasons why the person is travelling without a current passport or other acceptable travel document; and
- b. they have a genuine reason for visiting New Zealand; and
- c. there is no other impediment to the grant of a visa and entry permission.

Note: passport waivers are most frequently granted to New Zealand citizens who have no passport or whose passports are no longer current and who need to return home in emergencies.

Y3.25.5 People arriving without the required visa

See also Immigration Act 2009 s 103

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 34

A person who arrives without a required visa may have their requirement for the visa waived and be granted a visa and entry permission if an appropriately delegated immigration officer gives a special direction to that effect under regulation 34 of the (Visa, Entry Permission, and Related Matters) Regulations 2010.

A special direction may only be given if, after interviewing the person, an immigration officer is satisfied that:

- a. there are compelling reasons why the person is travelling without first having obtained a visa; and

- b. they have a genuine reason for travelling to New Zealand; and
- c. there is no other impediment to the grant of a visa and entry permission.

Y3.25.10 People who do not meet entry requirements

See also See also Immigration Act 2009 s 103

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 34

- a. A person who arrives without the necessary documents to meet entry requirements, such as an outward ticket or sufficient funds for maintenance while in New Zealand, may have these requirements waived and be granted a visa and entry permission if an appropriately delegated officer gives a special direction to that effect under regulation 34 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010.
- b. A special direction may only be given if after interviewing the person an immigration officer is satisfied that:
 - i. there are compelling reasons why the person does not meet the entry requirements; and
 - ii. they have a genuine reason for visiting New Zealand; and
 - iii. there is no other impediment to the grant of entry permission or a visa.
- c. The officer should also consider enabling the person to meet entry requirements through purchasing tickets or arranging sponsorship.

Y3.25.15 People who do not meet the bona fide applicant requirements

- a. If an immigration officer is not satisfied that a person who applies for a visa (where a visa waiver applies) and entry permission by tendering an arrival card is a bona fide applicant, then they may refuse a visa and entry permission and have the person placed on the first available craft (see Y3.70).
- b. If an officer refuses a visa or entry permission, although not required to provide reasons unless asked by the applicant under section 27 of the Immigration Act 2009, best practice requires that the officer records full reasons for the refusal against the person's Immigration New Zealand record and gives written advice of the refusal to a representative of the carrier on which the person arrived in New Zealand and, if requested, to the person refused entry permission or a visa.

Effective 29/11/2010

Y3.30 People with false documents

See also Passports Act 1992 s 31

See also Immigration Act 2009 s 342

A person commits an offence against the Immigration Act 2009 if they:

- a. make any statement, or provide any information, evidence, or submission, knowing that it is false or misleading in any material respect, in support of any application for a visa or entry permission, or any request for variation, waiver, or cancellation of the conditions of a visa; or
- b. produce or surrender any document or supply any information to an immigration officer or a refugee and protection officer knowing that it is false or misleading in any material respect; or

- c. complete any document required as part of a border requirement in a manner that the person knows to be false or misleading in any particular, or fails to comply with any of his or her other responsibilities under section 103 of the Immigration Act 2009.

Effective 29/11/2010

Y3.35 People who hold transit visas

See also Immigration Act 2009 ss 89, 90, 91

- a. Holders of transit visas are not entitled to apply for any entry permission or any other class or type of visa while in New Zealand during the transit period.
- b. An immigration officer may cancel a transit visa at any time. If the transit visa is cancelled after the holder has arrived in New Zealand, the person is liable for turnaround.
- c. An immigration officer may, in their absolute discretion, extend the period for which the person may remain in New Zealand under the transit visa, or grant the person a visa and entry permission where the person's transit visa expires while the person is in New Zealand. If the immigration officer does not extend the visa or grant a visa and entry permission, the person is liable for turnaround.
- d. A person whose transit visa is cancelled by an immigration officer after the person arrives in New Zealand, or who holds a transit visa and the transit period has expired is subject to section 115 of the Immigration Act 2009.

Note: Where a transit passenger mistakenly attempts to apply for a visa or entry permission, an immigration officer will not normally accept their application and will assist them to return to the transit area. Y3.35b and d will not apply.

Effective 29/11/2010

Y3.40 Restrictions on the grant of a visa or entry permission to certain groups as designated by the United Nations Security Council (UNSC)

See also United Nations Sanctions (Sierra Leone) Regulations 1997 reg. 11; United Nations Sanctions (Liberia) Regulations 2001 reg 16; United Nations Sanctions (Al-Qaida and Taliban) Regulations 2007 reg 13; United Nations Sanctions (Côte d'Ivoire) Regulations 2005rReg 13; United Nations Sanctions (Democratic People's Republic of Korea) Regulations 2006 reg 17; United Nations Sanctions (Iran) Regulations 2010 reg 25; United Nations Sanctions (Lebanon) Regulations 2008 reg 17; United Nations Sanctions (Democratic Republic of the Congo) Regulations 2004 reg 12D; United Nations Sanctions (Sudan) Regulations 2004 reg 13D; United Nations Sanctions (Somalia) Regulations 1992 reg 10F; United Nations Sanctions (Eritrea) Regulations 2010, reg 3

- a. In accordance with United Nations sanctions, no person who is a designated individual or specified entity may enter New Zealand or transit through New Zealand, meaning that no such person may be granted a visa or entry permission. This restriction is in place for the following people:
- i designated individuals from Sierra Leone
 - ii designated individuals from Liberia
 - iii designated individuals from Cote d'Ivoire
 - iv designated individuals, and their immediate family members, from the Democratic People's Republic of Korea (DPRK)
 - v designated individuals and specified entities from Al-Qaida and Taliban
 - vi designated individuals from Iran

- vii designated individuals from Lebanon
 - viii designated individuals from the Democratic Republic of Congo (DRC)
 - ix designated individuals from Sudan.
 - x designated individuals from Somalia
 - xi designated individuals from Eritrea
- b. Immigration case officers must contact the Ministry of Foreign Affairs and Trade (MFAT) when processing any immigration application from a person to whom (a) above applies.
- c. A visa or entry permission may only be granted to a designated individual or specified entity on the advice of the Secretary of Foreign Affairs and Trade.

Note: For the purposes of these instructions, a designated individual and a specified entity is someone who is named on a list of such persons held by Immigration New Zealand and updated from time to time.

Effective 29/11/2010

Y3.45 People with expired resident visa (including expired returning resident's visas (RRVs) issued under the Immigration Act 1987)

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 6

- a. A person who has previously held a resident visa will be referred to an immigration officer on arrival in New Zealand, whether or not they appear to meet the requirements for entry as a resident, if their resident visa has expired.

Note: an RRV of limited duration issued under the Immigration Act 1987 is deemed to be a resident visa allowing travel to New Zealand for an unlimited number of journeys valid until the date of expiry of the RRV.

Note: Under section 63 (2) of the Immigration Act 2009, the date a resident visa expires is the earlier of:

- ~ the day and time the holder left New Zealand, if the visa has no travel conditions allowing further travel to New Zealand;
- ~ the beginning of the day after the date that is specified by the travel conditions of the visa as the last day of the period of time within which travel is allowed to New Zealand.

- b. If the person's foreign passport shows that they have held a resident visa, an appropriately delegated officer may :
- i give a special direction under regulation 34 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive any requirements for entry permission, if necessary; and
 - ii grant a resident visa, if the officer determines that the principal applicant:
 - iii would have met the criteria to be granted a variation of travel conditions had they applied for it on the date their resident visa expired and those travel conditions would still be valid on the date the application for a second or subsequent resident visa was made; or
 - iv would have met the criteria to be granted a permanent resident visa had they applied for it on the date their resident visa expired and that date was less than 24 months before the date the application for a second or subsequent resident visa is made.

- c. If the person is not eligible for a resident visa, the officer may grant a one month temporary visa.
- d. If the person's passport does not show that they have held a resident visa but the person claims to have been a New Zealand resident, an immigration officer must establish whether the person has in fact been a resident and held a resident visa.
- e. If the officer clearly establishes that the person has been a resident and held a resident visa then they may permit the person entry under (b) above.
- f. If the officer cannot clearly establish whether the person has been a resident and held a resident visa but is satisfied that the person is more likely than not to have been a resident and held a resident visa the officer may:
 - i give a special direction under regulation 34 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive any entry
 - ii grant a one month temporary visa.
- g. If the officer cannot clearly establish whether the person has been a resident and held a resident visa and is not satisfied that the person is more likely than not to have been a resident and held a resident visa the officer may:
 - i grant a one month temporary visa, if the person meets the requirements for a temporary visa; or
 - ii refuse entry under section 107 of the Immigration Act 2009, if the person does not meet the requirements for a temporary visa.
- h. A person who is granted entry under (b) or (e) above must be advised that, in order to facilitate future travel to New Zealand they must apply for further travel conditions on their resident visa or a permanent resident visa.

Effective 29/11/2010

Y3.50 New Zealand citizens with expired endorsements or no endorsement, or no returning resident's visa (RRV)

See also Immigration Act 2009 ss 13(1), 13(2), 103(1)

- a. A person who is a New Zealand citizen will be referred to an immigration officer on arrival in New Zealand, whether or not they appear to meet the requirements for entry as a New Zealand citizen, if they arrive back in New Zealand and present
 - i a foreign passport with no endorsement under section 384 of the Immigration Act 2009, or no RRV issued under the Immigration Act 2009 on the basis of being a New Zealand citizen.
- b. If the officer establishes that the records of the Department of Labour show the person has an endorsement, then they must grant the person entry as a New Zealand citizen.

Effective 29/11/2010

Y3.55 Stowaways

See also Immigration Act 2009 ss 101, 115, 116.

- a. The carrier and the person in charge of a craft must report the presence of a stowaway on board the craft as soon as practicable (see Y2.20(a)). In most cases the ship's agent will have informed New Zealand Customs Service (Customs) or Immigration New Zealand well in advance of the craft's arrival.

- b. If there are reasonable grounds for believing that there are stowaways or other people intent on avoiding arrival procedures on board a craft, members of the New Zealand Police (Police) and Customs officers undertaking immigration duties have powers under the Immigration Act 2009 to enter and search that craft (see Y3.60).

Note: Immigration officers do not have powers to enter or search a craft, and may only enter or search a craft if invited to do so or if called upon by the Police or Customs officers to assist with an arrest.

- c. Action to deal with stowaways may begin as soon as the craft on which they are travelling crosses into New Zealand's territorial limits. The territorial limit is any point 12 miles seaward from the New Zealand shore or baseline, as defined by the Territorial Sea and Exclusive Economic Zone Act 1977.
- d. A stowaway
- i is unlawfully in New Zealand; and
 - ii does not have any rights of appeal on humanitarian grounds so long as section 115 of the Immigration Act 2009 applies to the person; and
 - iii is liable to be arrested and detained under Part 9 of the Immigration Act 2009; and
 - iv is liable for turnaround.
- e. Stowaways must be arrested and detained within 72 hours of the craft berthing, landing or otherwise arriving in New Zealand (see D4.25). After 72 hours have passed stowaways can only be dealt with by way of deportation.

Effective 29/11/2010

Y3.60 Powers of entry and search by members of the Police, and Customs officers

See also Immigration Act 2009 ss 283, 284, 285

- a. A member of the Police or a Customs officer undertaking immigration duties may enter and search any craft that arrives in New Zealand, enter and search any land or premises in any airport or port including an immigration control area, without warrant or any other authority than sections 283–285 of the Immigration Act 2009 if they believe on reasonable grounds that this is necessary for the purpose of:
- i detecting any offence against the Immigration Act 2009; or
 - ii apprehending any person who is, or is likely to be, liable for deportation or turnaround; or
 - iii processing arriving passengers; or
 - iv locating any stowaway; or
 - v deporting any person or facilitating the departure of persons liable for turnaround.
- b. A member of the Police or a Customs officer undertaking immigration duties may enter and search any border place where they have good cause to suspect an offence against the Immigration Act 2009 is being or is likely to be committed or to apprehend a person liable, or likely to be, liable for deportation or turnaround who is in the place.
- c. In Y3.60(b), a 'border place' means:
- i any part of the foreshore; or
 - ii the shores or banks of any port, bay, harbour, lake, river, or other waters; or

- iii any land or premises in any port, including any container-base, immigration control area, wharf, or transit building; or
- iv any pier or such structure attached to or extending from any such shore or bank described in (c)(ii) above; or
- v on board any ship or any other form of sea-borne vessel that is within the contiguous zone or territorial sea of New Zealand.

Effective 29/11/2010

Y3.65 Effect of international conventions on refusing entry

As the Government recognises New Zealand's obligations under international law, it is essential that such obligations be taken into account when refusing entry. International obligations which may apply in such circumstances include but are not limited to:

- a. the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees;
- b. the 1948 Universal Declaration of Human Rights;
- c. the 1966 International Covenant on Civil and Political Rights and the optional Protocol relating to that Covenant;
- d. the 1989 Convention on the Rights of the Child and New Zealand's reservations to that Convention; and
- e. the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Effective 29/11/2010

Y3.70 Obligations of carriers and persons in charge of craft

See also Immigration Act 2009 ss 10, 118.

- a. The carrier, and the person in charge, of a craft leaving New Zealand must allow a person who has been refused a visa or entry permission to board the craft for passage from New Zealand.
- b. The carrier of a craft leaving New Zealand must also provide passage from New Zealand at the cost in all respects of the carrier, or bear the cost of passage from New Zealand by any other carrier, of a person:
 - i who was on board the craft, or any other craft operated by the carrier, when it arrived in New Zealand and did not hold a visa permitting travel to New Zealand and was, on arrival in New Zealand, refused a visa and entry permission; or
 - ii who arrived in New Zealand as a member of the crew of the craft, or of any other craft operated by the carrier, and who remained unlawfully in New Zealand after the departure of that craft:
- c. The responsibility of the carrier and person in charge of a craft to allow people refused entry to board is subject to the safety of the craft and the safety of other persons on the craft.

Effective 29/11/2010

Y4 VISAS IN ERROR

IN THIS SECTION

Y4.1 Visas granted as a result of administrative error	4-1
Y4.5 Entry permission granted in error	4-2

Y4.1 Visas granted as a result of administrative error

See also Immigration Act 2009 ss 8, 64, 67, 68

See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 34

- a. An immigration officer may cancel a visa that the officer believes on reasonable grounds was granted because of an administrative error, if the visa was granted in the immigration control area and the person is still there, provided that the holder has not taken the visa out of the immigration control area. Such a cancellation will take effect immediately.
- b. A visa is granted as a result of administrative error if:
 - i it is granted to a New Zealand citizen (unless the person is a New Zealand citizen entering New Zealand in the circumstances described in section 13(4)(b) of the Immigration Act 2009); or
 - ii it is granted to an excluded person, unless section 17 of the Immigration Act 2009 applies; or
 - iii the person granting it intended to grant a visa of some type other than the one that was actually granted; or
 - iv it is granted for a period exceeding the period specified in immigration instructions for visas of that type (unless deliberately and properly granted as an exception); or
 - v it is granted contrary to:
 - a special direction; or
 - immigration instructions (unless the Minister of Immigration or an immigration officer deliberately and properly granted it as an exception to immigration instructions); or
 - an instruction of a kind referred to in section 378(7) of the Immigration Act 2009; or
 - vi it is granted on the basis of an administrative error (of any of the types in (b)(i) to (v) above) in determining an earlier application for a visa.
- c. Customs staff designated as immigration officers may, at the border, cancel a visa granted in error and grant a new visa, in all cases. If, however, they believe that the person does not meet the requirements for entry to New Zealand the visa must not be cancelled but the matter must be referred to the duty immigration officer for investigation.
- d. If after making inquiries, the duty immigration officer is satisfied that such a person does meet entry requirements, the officer should cancel the visa granted in error and grant the correct visa.
- e. If an immigration officer is not satisfied that the person meets visa requirements, an appropriately delegated immigration officer may give a special direction under regulation 34 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive any requirements for entry permission and the person may be granted a visa if, after making enquiries and interviewing the person, the officer is satisfied that:
 - i there are compelling reasons why the person does not meet the entry requirements; and
 - ii the person has a genuine reason for visiting New Zealand; and

- iii there is no other impediment to the grant of a visa and entry permission.
- f. If appropriate, the immigration officer should also consider enabling the person to meet entry requirements through purchasing tickets or arranging sponsorship.
- g. If a person is to be refused entry the visa must be cancelled on the basis that it was issued in contravention of immigration instructions.
- h. If a temporary entry class or resident visa granted in error is cancelled and the person is still within the immigration control area where the error was made and discovered, the provisions of section 115 of the Immigration Act 2009 will apply, unless some other visa has been granted.

Effective 29/11/2010

Y4.5 Entry permission granted in error

See also Immigration Act 2009 ss 8, 113

- a. An immigration officer may revoke entry permission before the person leaves the immigration control area where the error was made, if the immigration officer believes on reasonable grounds that the entry permission was granted as a result of an administrative error. Such a revocation will take effect immediately.
- b. Any visa held is cancelled when entry permission is revoked.
- c. Entry permission is granted as a result of administrative error if:
 - i it is granted to a New Zealand citizen (unless the citizen is entering in circumstances described in section 13(4)(b) of the Immigration Act 2009); or
 - ii it is granted to an excluded person to whom section 15 or 16 of the Immigration Act 2009 applies; or
 - iii it is granted contrary to:
 - a special direction; or
 - immigration instructions (unless the Minister of Immigration or an immigration officer deliberately and properly granted it as an exception to immigration instructions); or
 - iv it is granted on the basis of, or in conjunction with:
 - a visa that was granted on the basis of an administrative error; or
 - a visa that was granted for a period longer than the instructions for a visa of that type (unless deliberately and properly granted as an exception); or
 - a visa of a class or type other than that intended to be granted.

Effective 29/11/2010

Y5 TRANSIT PASSENGERS

IN THIS SECTION

Y5.1 Definition of 'transit passenger'	5-1
Y5.5 Bona fide transit passengers	5-1
Y5.10 Contact with immigration officers	5-2

Y5.1 Definition of 'transit passenger'

See also Immigration Act 2009 ss 86-91

Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, reg 17

- a. The period of time for which a person may be in New Zealand as the holder of a transit visa is set in the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 and is currently 24 hours.
- b. Transit passengers are persons who:
 - i arrive in New Zealand from another country while in transit to another overseas destination; and
 - ii throughout the whole 24 hour transit period that they are in New Zealand, remain:
 - on board the craft in or on which they came to New Zealand on; or
 - in an immigration control area; or
 - in the custody of the Police.

Effective 29/11/2010

Y5.5 Bona fide transit passengers

See also Immigration Act 2009 ss 86, 89

- a. A bona fide transit passenger is one who:
 - i has a stated and genuine intention to be in New Zealand only for the purpose of reaching a further destination; and
 - ii will be confined to a place listed in Y5.1b(ii) during the whole of their stay in New Zealand; and
 - iii will not be in New Zealand longer than the transit period of 24 hours.
- b. All transit passengers must obtain a transit visa before travelling to New Zealand, unless they are persons to whom a transit visa waiver applies (see N2.1).
- c. Holders of transit visas may not remain in New Zealand for more than the transit period of 24 hours.
- d. Holders of transit visas are not entitled to apply for entry permission or any type of visa to be in New Zealand.
- e. If a person who holds a transit visa applies for entry permission or any other type of visa, an immigration officer may refuse their application, in which case section 115 of the Immigration Act 2009 will apply to that person.

Note: Where a transit passenger mistakenly attempts to apply for a visa or entry permission, an immigration officer will not normally accept their application and will assist them to return to the transit area - in which case (e) above will not apply.

Effective 29/11/2010

Y5.10 Contact with immigration officers

- a. In most circumstances, immigration officers will not have contact with transit passengers, who will be confined to the transit section of the immigration control area.
- b. If a transit passenger makes themselves known to an immigration officer in order to claim refugee or protection status, the immigration officer must follow the procedures set out in Y6.

Effective 29/11/2010

Y6 REFUGEE AND PROTECTION CLAIMANTS

IN THIS SECTION

Y6.1 Claims for refugee or protection status at port of entry 6-1

Y6.5 Detention of refugee or protection claimants 6-2

Y6.1 Claims for refugee or protection status at port of entry

See also Immigration Act 2009 ss 125, 133

- a. Under the guidelines set down by the United Nations High Commissioner for Refugees (UNHCR) and the obligations set out in the Immigration Act 2009 with reference to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR), New Zealand has a general obligation to admit people who make a claim for refugee or protection status on arrival in New Zealand.
- b. An indication of intent is all that is required to initiate the processing of a refugee or protection claim.
- c. Immigration officers should give due consideration to people who wish to claim refugee or protection status, because they may be tired, disoriented, distressed, and incapable of communicating in English, either orally or in writing.
- d. People may express an intention to seek refugee or protection status in a variety of ways, to a representative of the Department of Labour or a constable including, but not limited to, statements of the following kind:
 - i they have been persecuted; or
 - ii they are in fear of being persecuted; or
 - iii they have been imprisoned for political reasons; or
 - iv they are afraid of being imprisoned in their home country; or
 - v they want to 'see the United Nations' (ie the United Nations High Commissioner for Refugees ('UNHCR')); or
 - vi they want to know if there is a United Nations office in New Zealand; or
 - vii they are 'stateless' or 'homeless' persons; or
 - viii they want to see a lawyer; or
 - ix they are afraid to return to their home country; or
 - x they are in danger of being subjected to cruel, inhuman or degrading treatment if they are returned home; or
 - xi they will be in danger of being arbitrarily killed; or
 - xii they simply "do not want to return".
- e. No person who is a refugee or protection status claimant may be deported from New Zealand until their refugee or protection status has been finally determined.
- f. Assessment against the general instructions at A16.2 will indicate where a person is not someone to whom a visa should be granted.
- g. Other than where (f) above applies, the following visas may be granted:

- i for an individual adult, a work visa current for up to 6 months;
 - ii in a family group, one adult may be granted a work visa current for up to 6 months; and
 - iii for a child of school age, a student visa current for up to 6 months; and
 - iv all other family members, a visa for up to 6 months appropriate to their circumstances.
- h. Where a claimant is not granted a visa and is subject to turnaround under section 115 of the Immigration Act 2009, they may not be removed from New Zealand until their refugee or protection status has been finally determined.
- i. If the claimant is the holder of a limited visa, the claimant, unless subject to sections 15 or 16 of the Immigration Act 2009, should be granted entry permission for the period required to achieve the express purpose for which they were granted the limited visa.
- j. A representative of the Department of Labour may request that the claimant confirms their claim in writing in the prescribed manner. If a claimant does not confirm their claim in the prescribed manner (see C4.20) at the border, an immigration officer must advise that they have five working days to do so, or to otherwise establish contact with the Refugee Status Branch. If they do not do so their claim will be treated as not made, and they will become liable for deportation.
- k. If the claimant is the holder of a limited visa, they should be told that an application for a further limited visa will only be considered after they have confirmed their claim in the prescribed manner.

Effective 29/11/2010

Y6.5 Detention of refugee or protection claimants

- a. A visa may be refused, and a claimant may be detained under Part 9 of the Immigration Act 2009 (see Y3) so that a refugee and protection officer can finally determine their claim, if, after interviewing a claimant, a preliminary assessment against the general instructions at A16.2 indicates that:
- i the claim for refugee or protection status appears to be 'abusive' or 'manifestly unfounded'; or
 - ii sections 15 or 16 of the Immigration Act 2009 apply; or
 - iii the claimant otherwise does not meet bona fide entry requirements.
- b. A refugee or protection status claim is abusive or manifestly unfounded if:
- i it is clearly fraudulent or unrelated to the criteria for granting refugee or protection status; or
 - ii the claimant is claiming refugee or protection status in an attempt to evade normal immigration requirements.
- c. The National Manager, Border and Compliance Operations, must be advised of any proposed detention of a refugee or protection status claimant under Part 9 of the Immigration Act 2009.
- d. If a claimant is to be detained for a period longer than 96 hours a warrant of commitment must be obtained (see D5.5).

- e. If it is apparent that a claim for refugee or protection status cannot be determined within the period of custody of up to 28 days, an officer may apply for an extension to the warrant (see D5.5).

Effective 29/11/2010