



LIVE IN NEW ZEALAND

Lane Neave LAWYERS

IMMIGRATION ARTICLE

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DAILY MAIL ARTICLE

The recent article that featured in the Daily Mail on or around 6 July 2009 drafted by Richard Shears has created significant concern amongst migrants contemplating a permanent move to New Zealand.

Some of the points made in the recent article appear quite alarming, although it is appropriate that an informed and balanced view is taken on this emotive issue.

New Zealand's immigration system is by and large split into two specific parts. First, temporary entry criteria which provides rules to allow individuals to obtain temporary permits to reside in New Zealand on a temporary basis only. Second, residence criteria allowing individuals to reside in New Zealand indefinitely once they have met specific criteria.

Whilst there is a loose connection between the two policies, in the current recession environment the Government have acted very differently by tightening temporary criteria (as in some areas there is no need to grant visas to fill temporary vacancies that no longer exist), although not materially adjusting residence criteria at all.

There have been no major changes to Government Residence Policy. Further, the New Zealand Government has recently confirmed that the target number of permanent migrants over the next 12 months has not been reduced below the level set for the last 3 years. Other countries (such as Australia for example) have however reduced their permanent intake. It is the view of the New Zealand Government therefore that for the long term sustained growth of New Zealand that it would be against New Zealand's interest to reduce the permanent resident intake where these individuals will be required to continue to bolster and build the economy in the envisaged recovery.

Unfortunately, however, the same can not be said for temporary entry criteria.

Temporary criteria has been largely designed to supplement New Zealand's requirements for skills on a short term basis (ie to allow the grant of temporary permits to individuals to fill shortages in the New Zealand market in times of need). This appears to have been misunderstood by many of the individuals who have recently had difficulty in obtaining work permit extensions or who have lost their work permits due to the fact that they have lost their full time offers of employment in New Zealand. The particular issues that are facing many individuals who have lost their jobs and not able to continue to reside in New Zealand demonstrates a gap in the connection between temporary entry and residence criteria, especially so for individuals residing in New Zealand on temporary work to residence visas.

Many of the individuals concerned and featured in recent articles have been residing in New Zealand on temporary work to residence visas. These visas are initially issued for a period of 30 months, and once the individual in question has been employed in their occupation for a period of two years, they can then apply for and obtain New Zealand residence under the residence from work category. If however an individual loses their position during the currency of the visa, and a replacement offer of employment is not able to be found, then this does not allow the individual to transfer from being a temporary entrant to a New Zealand resident.

The real concern here and what is uncomfortable for the writer to view, is that it is apparent that a lot of these individuals who have held these temporary permits for a long period of time seem to not have received accurate immigration advice. A case in point is the British family who featured recently in the Daily Mail article. Whilst not being privy to their entire immigration position, it appears that despite holding a skilled role on a temporary work to residence visa, the family have not understood or been advised that they could have applied for New Zealand residence under the Skilled Migrant Category (**SMC**) as soon as the offer was provided (some 8 months before the loss of the offer). Their understanding that they could not file an SMC residence application and that two years of employment was required before residency could be obtained under the work to residence scheme is a common misconception that migrants hold who have not received professional advice or assistance with their applications. With a standard SMC processing time of three to six months, had an application been filed in a timely manner they most likely would have held residence when the position was lost, and would have been eligible for financial and employment assistance from the New Zealand Government.

The writer however concurs with thoughts expressed by various parties that appropriate temporary visas should be granted to individuals to hold them over this difficult period of time if they have lost their position under the work to residence scheme. Clearly, the extent of the permanent shift to New Zealand undertaken by these families and the possibility that during the extended work to residence path a skilled position could be lost (and a replacement not found) does not appear to have been appropriately considered during the strong period of economic growth where this policy was born.

Whilst there are many examples of individuals who have been caught by the current situation, there are also significant examples of other individuals who are continuing to successfully migrate to New Zealand during the recession period.

Migrating from one side of the world to the other is a significant undertaking, and any individual who intends to do this should be fully informed and receive appropriate advice before undertaking this journey. Whether the migrant intends to file their own applications direct with Immigration New Zealand, or receive assistance, what is imperative is that they are fully informed. If they are not, then the issues recently publicised can be the unfortunate price to pay. It is very frustrating for the writer to read of the demise of a number of migrants resident in New Zealand on a work to residence visa where, quite simply, had applications for New Zealand residence been submitted at a much earlier stage these individuals would not be in the position of learning the meaning of the word “temporary” defined by Immigration New Zealand.

If in doubt seek professional advice before embarking on the migration process. There is more to this process than filling out a few forms. The writer has thought that a number of suggestions provided to migrants over the internet (from various sources) not to seek professional advice and to undertake the migration process themselves as it is “easy”, is frankly irresponsible when that advice is provided in a generic sense. Unfortunately, this misinformed attitude appears to have manifested itself in the number of individuals being required to return to their country of origin where, in a many instances, this could have been clearly avoided had appropriate advice and guidance been sought at a much earlier stage.

For further information or assistance with the immigration process please contact **Mark Williams** of Lane Neave Lawyers on **+64 3 379 3720** or email **liveinnewzealand@laneneave.co.nz**

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