

## Thinking of setting up a Business in New Zealand?

It is crucial to get advice when setting up a new business. This is even more important when you are a potential migrant looking to establish a business in New Zealand.

A recent case highlighted in the New Zealand media clearly shows what happens when you get it wrong. A couple had invested a substantial amount of time and money getting their New Zealand business up and running. However, when the business later failed to meet the requirements for the couple to obtain residence, they were left with no real option but to leave New Zealand. Their hopes were dashed, dreams ruined and they were left with a considerable financial loss.

### The Business Entrepreneur Process

There are several steps to obtaining residence as a business entrepreneur in New Zealand. First, the businessperson must write a business plan which meets certain requirements, and apply for a 'long-term business visa'. Once this is granted the businessperson can set up their business in New Zealand.

After the business has successfully operated for two years the businessperson can then apply for New Zealand residence under the 'business (entrepreneur) category.' To succeed in an application for residence in this category certain requirements must also be met. First, the business must be benefiting New Zealand, and second the businessperson must have been self-employed in the business in New Zealand for the two-year period.

If you have invested at least NZ\$ 0.5 million in the business, and have created a minimum of three new full-time jobs for New Zealand citizens or residents, you may be eligible under the 'business (entrepreneur plus) category'. This is a faster track to residence, as you do not need to wait for two years before you are eligible for residence.

### Complications

While that all sounds reasonably straightforward, there are some complications that can arise.

Two particular complications include:

#### 1. Changes to your business plan.

For example, what if along the way you decide to deviate from your business plan? This may be necessary for a number of reasons such as the original plan being unrealistic or changes being needed to make the business more successful.

However, if you change your business plan without seeking the necessary approval from Immigration New Zealand, this could place you in breach of your long-term business visa. In order to change a business plan you must apply to a business immigration specialist for a variation of conditions. You then must meet certain criteria for the variation to be granted, including having a new business proposal, sufficient capital and an appropriate reason for abandoning/varying the initial proposal.

#### 2. "In New Zealand"

Also, operating a business *'in New Zealand'* means just that. We are aware of another example where a business was set up, but the owner frequently travelled outside of New Zealand. When the owner came to apply for residence Immigration New Zealand said the owner had not operated her business in New Zealand for two years, because she was out of the country too much, and not actively engaged in work on behalf of her New Zealand business for all of that time. This requirement is particularly relevant if you see yourself spending periods outside New Zealand while you are establishing your business.

These examples show how important it is to get advice early, at the stage that you are drawing up your business plan and working out whether it is realistic. They also show how important it is to get advice if your plans change along the way.

## Do you want to obtain a New Zealand Residence Visa? The essentials you need to know about the Skilled Migrant Category ...

The skilled migrant category (SMC) is one of the most popular avenues available for people who wish to immigrate to New Zealand. This article provides a brief overview of the SMC and illustrates a common problem which prospective migrants often face.

### **The basic requirements**

In order to apply under the SMC you must meet certain requirements. An applicant must:

- be aged between 20 and 55;
- be of good health;
- have good character; and
- have a proficiency in the English Language.

### **The process**

The first step in making an application is to submit an Expression of Interest (EOI), in which you claim points for:

- your qualifications;
- your work experience;
- an offer of employment in New Zealand;
- your partner's qualifications;
- your age; and
- other factors.

If you have claimed over 100 points on your EOI it goes into the pool for selection. Each fortnight, every EOI which has over 140 points is automatically selected from the pool.

If there are any places remaining, people who have between 100 and 140 points with favourable circumstances (such as an offer of skilled employment or being currently employed in New Zealand) are selected.

Once an EOI is selected from the pool, Immigration New Zealand will examine it. If Immigration New Zealand is satisfied with your application it will send you an 'Invitation to Apply' (ITA). At this point you will need to provide proof of the statements made on the EOI. This requirement includes providing medical certificates, police certificates, proof of English language ability, and evidence of skills and work experience.

Once Immigration New Zealand has received your application and documents it will do a further check to make sure that all requirements are met and that you have claimed points correctly. Immigration New Zealand

will also assess your capacity to settle in New Zealand, which may include an interview with you.

If Immigration New Zealand determines that you have met all the requirements it will offer you a residence visa. If Immigration New Zealand considers you have 'potential' to successfully settle in and contribute to New Zealand it may offer you a work to residence visa. This will provide you an opportunity to seek skilled employment in New Zealand for a period of nine months. If you are able to obtain employment this will satisfy Immigration New Zealand of your ability to settle in New Zealand and your residence application will be approved.

### **Common problem**

A common problem applicants often face is overestimating the number of points on their EOI. This can lead to false expectations and disappointment further down the track. The experience of Sam highlights the importance of obtaining advice before submitting an EOI.

Sam is a successful University Lecturer from China who has many years experience working in leading Universities throughout China. Sam is highly educated and has good English language skills, as does his wife Chun who is a school teacher.

Sam and his family are now looking at moving to New Zealand. Although Sam does not have a job offer in New Zealand, University Lecturer has been identified as an area of absolute skill shortage. Sam did a preliminary points check and was delighted to find that he had 145 points, so he promptly submitted an EOI. A couple of weeks later Sam received some unfortunate news. He was not automatically selected for an invitation to apply. This was because Sam miscalculated his points. He in fact only had 115 points, because he mistakenly assumed that China was a comparable labour market with New Zealand.

Fortunately this story ends well. After Sam got assistance and reassessed his options, he applied for a number of lecturing jobs in New Zealand and promptly received an offer. His second attempt at applying under the SMC was much more successful. However, had Sam sought advice before lodging his EOI he could have saved himself considerable time and money.



## Business Investor Categories... for New Zealand

### Could you be eligible for New Zealand Residence?

The New Zealand Government has made a number of changes to its business investor scheme to increase its appeal to potential investors. These changes may make New Zealand residence a realistic option for potential investors who would not previously have been eligible.

One such change makes it easier for potential investors to be able to claim points for their business experience. Business migrants now just need to have either owned or managed a business with five full time employees *or* at least \$1million in annual turnover. Previously, the business needed to have met **both** of these requirements.

Also, many potential investors previously had difficulty meeting the requirement to transfer their investment funds 'through the banking system' to New Zealand. However, a further change now also allows migrants to transfer funds through approved foreign exchange companies. Migrants can also now request an extension to the 12-month timeframe for transferring their investment funds to New Zealand.

The changes may also make the category more attractive to investors by diversifying the range of investment opportunities. Previously, migrants were limited to investing in government bonds, equity in New Zealand firms, or bonds in New Zealand firms that met certain requirements. Options now also include investment in bank bonds and equities, residential property development, and bonds in finance companies.

It is important to get advice early under these categories as you do not want to find yourself in a situation where you have transferred substantial funds to New Zealand, only for Immigration New Zealand to say you have not met requirements. However, with the right advice, and careful planning, you may find this scheme an attractive option for securing your future in New Zealand.

## Immigration requirements for parents who want to migrate to New Zealand...

Gita, originally from India, moved to New Zealand 15 years ago. She got married to New Zealander Simon, and is now happily a citizen of New Zealand. She is content, except for the fact that her mother and father live alone in India. She would love for her parents to retire to New Zealand.

There are two options available for parents wishing to apply for a New Zealand residence visa, based on the presence of their children in New Zealand. These are the Parent Retirement Category and the Parent Category.

For both of these categories, the parent must:

- Be the parent of an adult New Zealand citizen or resident; and
- Show that either:
  - i. They have no dependent children and all of their adult children are outside the country they currently live in (in our example above, this would be India); or
  - ii. The 'centre of gravity' of their family is in New Zealand. Usually, this means that on balance they

have at least as many children in New Zealand as in any other country.

Under the **Parent Retirement Category** the parent must also:

- Invest NZ\$1m of their assets in New Zealand for a period of four years;
- Show that they have NZ\$500,000 to support themselves; and
- Prove that they have an annual income of at least NZ\$60,000.

Under the **Parent Category** the parent must also:

- Have one of their adult children who is a New Zealand citizen or resident sponsor them; and
- Meet health and character requirements.

There is currently a significant demand for Parent Category residence places, well over and above the yearly quota, and there is an 18 to 24 month waiting time. Parent Retirement Category applications are given priority and are therefore processed faster.

### The Rainey Collins Team

Based in Wellington, New Zealand, we can assist you with all your immigration, employment, business and property needs.

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# Checklist for those thinking of migrating to New Zealand...

Are you looking to migrate to New Zealand? If so, it is important to start your preparation early to avoid delays down the track. Here are some things you can start doing now to get prepared...

## **Travel documents**

In order to travel to New Zealand, you will need a passport or certificate of identity. It is also important to ensure that this will be valid for at least three months after you arrive in New Zealand.

## **Police Certificate**

Immigration New Zealand must be satisfied that you and any other family members who are included in your application are of 'good character'. If you are applying for a visa for 24 months or longer, you and your family members over the age of 17 must provide a police certificate from your country of citizenship and any other country you have lived in for 12 months or more in the last 10 years.

Police Certificates can take some time to process depending on the country – so it is particularly important to apply for these early.

## **Medical and X-ray Certificate**

Immigration New Zealand must also be satisfied that you and your family meet health requirements. If you and your family are planning on staying in New Zealand for more than 12 months then you must provide medical certificates. Family members 11 years and over are also required to have a chest X-ray.

Depending on where you live, you may need to use an approved panel doctor. Sometimes this may require you to travel, so again it pays to find this out early. You can find a list of panel doctors at Immigration New Zealand's website: [www.immigration.govt.nz](http://www.immigration.govt.nz).

## **English Language ability**

If you are applying under the skilled migrant category or business categories (except the investor plus category) then you will need to meet the minimum English Language requirements. You may be able to satisfy an immigration officer that you meet these requirements because, for example, you come from an English speaking background, or have studied in English. However, an immigration officer can always require you to provide a certificate from the International English Language Testing System (IELTS).

If you require an IELTS certificate for your immigration application, it pays to sit the test early so that you have your results when you submit your application. You will also need to find out where your nearest testing centre is.

## **Translations**

If you are submitting documents in a language other than English, you will generally need to provide a certified translation. You should make sure that any such translation will meet Immigration New Zealand's requirements.

## **Requirements for different categories**

Depending on the category you are applying under, you will also need further documents to support your immigration application. Not providing all these documents when you apply can delay your application. Also, if you are travelling to New Zealand on a temporary visa but intend to apply for a residence visa in future, it pays to think ahead and bring the documents with you that you might need down the track. Otherwise, you may find yourself chasing up friends and family to find and send these documents to you.

Some key documents under different categories are listed below:

### **Skilled Migrant Category**

- Evidence of your job offer
- Evidence of your qualification
- Evidence of your work experience

### **Business Categories**

#### *Business Investor*

- Evidence of your investment funds
- Evidence of your business experience (if required)
- Evidence of your settlement funds (if required)

#### *Business Entrepreneur*

- Your business plan
- Evidence of your business experience
- Evidence of your investment capital
- Evidence of funds to maintain yourself and your family