

Employer Immigration Update – 7 October 2021

On 30 September the Minister of Immigration Hon Kris Faafoi announced the introduction of a new one-off residence pathway to provide up to 165,000 migrants with the certainty of New Zealand residence over the next 12-18 months. Most migrants who are in New Zealand, and are holding work visas, will be able to qualify for this new resident visa.

This is very much a “game changer” and a very bold, and very welcome, move by the Government and one which will have the effect of permanently changing the immigration landscape in New Zealand.

As time passed, and with the border remaining closed, it has become increasingly apparent the Government had little choice but to go the extra mile and to do everything possible to retain the much relied upon, and highly valued, migrant workforce now in New Zealand. With the country facing a significant skills shortage those migrants who had left, or who were planning to leave for a more certain future overseas, were not able to be replaced and so the existing skill shortage was only being further exacerbated. Credit to the Government also for putting aside their earlier stance regarding lower skilled migrant workers and for recognizing with this new policy the valuable contribution they also make to the New Zealand workforce.

What is the One-off residence pathway?

Briefly, a person can qualify for the new 2021 Resident Visa if, on 29 September 2021, they held a qualifying work visa and, either;

- have lived in New Zealand for three years OR
- are being paid at \$27 ph or more OR
- are working in one of the many jobs on the “scarce role” list

Qualifying work visas include all of the main essential skills, work-to-residence and post-study work visas, and also some critical purpose visitor (border entry) visas. However holders of partnership, specific purpose and working holiday work visas do not qualify (although a case is being made for the inclusion of some specific purpose work visa holders as many doctors and IT contractors hold this visa type).

The jobs on the “scarce role” list are many and varied and include most roles in the IT, health, education and engineering sectors as well as many primary sector roles including, for example, farm and forestry workers, cooks, food factory workers, tanker divers, vegetable pickers and many others.

Those people who have already lodged a residence application, or who have submitted a Skilled Migrant EOI that includes children aged 17y or older, can make their new residence applications from 1 December. Everyone else must wait until 1 March 2022 to lodge their applications, and all applications must be lodged by 31 July 2022. Importantly there are no English and no age requirements. All applications will be lodged using a new online platform and while the application fee has not been set as yet it is expected to be between \$2,000 and \$3,000.

Applicants who have immediate family members overseas can include their family in their residence application.

The Minister has indicated that 80% of applications are expected to be decided within 12 months of the application being lodged. The challenge will be with Immigration New Zealand, as it has been for some time, and its ability to deliver the envisaged outcomes in an efficient and timely manner.

All indications are that the Government is using this one-off opportunity to “regularise” the long-term residence status of as many migrant workers as possible and, as such, we expect the final policy detail, when released later in October, to be appropriately focused on achieving this outcome and to not be overly concerned with complex policy detail.

What does this mean for employers?

This should be good news for all employers of migrant workers as they have had to deal with a multitude of immigration policy changes and visa uncertainty over the past 18 months. While there is still a process to be undertaken, the good news is the end outcome is one which provides long term certainty for everyone – and with no further need to manage employees' ongoing visa renewals.

Employers should firstly ensure that all their migrant workers are made aware of this residence opportunity and to encourage them to check their eligibility – information on the 2021 Resident Visa and a quick eligibility check is available on our website at <https://www.pathwaysnz.com/one-off-resident-visa>. If a worker is eligible, and most will be, then they should be encouraged to take up the opportunity as they will not get this chance again.

Because the new resident visa is expected to take some 12 months to process employers still need to ensure their migrant workers remain on valid (& qualifying) work visas through until their residence can be approved.

There are several areas where there is a need for greater understanding.

Workers who have already lodged a residence application can also lodge a 2021 Resident Visa application, and can then rely on the approval of whichever application is decided first. Factors to consider in making this decision will relate to the expected processing time of the already lodged application versus that of a new application, whether there are any particular risks with the existing application which would not be the case with the new policy, and the additional cost involved in making a new application. Currently lodged residence applications are taking 23 months to process, unless they are in the priority queue which comprises applicants who hold occupational registration or who are on an annual salary of \$112,320 or higher. These priority applications would normally be processed within 3-5 months however as most residence applications are processed by the INZ Auckland office the current, and ongoing, lockdown is significantly impacting on these processing times.

There are also significant matters which relate to workers who hold a work-to-residence (WTR) work visa to work for an INZ accredited employer and who have already lodged a residence-from-work (RFW) residence application, or who will soon be eligible to make such an application. Under current policy a worker can only extend their WTR work visa if they have already lodged a RFW application, and they must remain on a WTR work visa through until their RFW application is approved. INZ has also advised that WTR work visa applications will not be accepted after 31/10/2021. Applicants in the above situation need to decide whether to protect their current WTR pathway to residence and/or take the opportunity afforded by the new 2021 Resident Visa. Again, cost and processing times will be important considerations. There is also the ability of RFW applicants earning \$90,000 pa to directly gain their Permanent Resident Visa as the outcome of their application which will not be the case with the new 2021 Resident Visa application which will result in the normal 2 year Resident Visa. If WTR visa holders decide not to continue along the RFW pathway they can easily transition to an Essential Skills work visa (no job advertising required) and then rely solely on the new resident visa to gain their residence.

Employers who followed the Government's signals over the last year to become accredited, and to transition their workers on to WTR work visas to protect their only pathway to residence, and retain their migrant staff will, understandably, be somewhat "gutted" at this change in circumstances, and the comparative ease with which their migrant workers will now be able obtain residence. However, from the workers point of view they finally can now plan their, and their family's, future in New Zealand with real certainty.

Once a migrant worker has obtained their New Zealand residence they then hold the same employment status as any other NZ employee and there are no immigration-related ties to the employer. Employers should therefore be proactive from now on in investing and progressing their migrant workers as long-term employees to minimize the risk that they will leave the employment after gaining residence.

While there will still be a reasonable number of temporary visa holders who do not qualify for the 2021 Resident Visa, employers can expect that following the conclusion of this one-off residence category the likelihood is that the threshold to get new migrant workers into New Zealand will be set much higher than what has been the case in the past. While the new residence policy is constructively dealing with the present we can expect the Government's immigration "reset" will deal with the future, and we will all hear more on this probably in the first half of 2022.

Unfortunately, we expect there will continue to be some migrant exploitation happening over this next period while workers undertake the residence process reliant on jobs and payrates that may not actually be what they appear to be. This is an area of real concern but the good news is that if these workers do finally gain their residence then they should never be in this situation again. Similarly, those exploitative employers will no longer have any visa-holding employees to exploit.

While the Government is making bold, and forward-thinking, policy decisions there is another they should make, and that is to declare a one-off amnesty for the 14,000 overstayers now in New Zealand. The reality is these people are most unlikely to front-up to be vaccinated, or Covid tested, and as such they present a significant and ongoing health risk to the country – and a source of much needed labour if their visa situations can also be regularized.

This Update on the new 2021 Resident Visa is based on the information that has been released to date and is subject to the final policy detail being published. As each employer's and employee's circumstances differ, we recommend that professional advice be obtained to clarify the application of immigration policy for each situation. Pathways is also able to offer a service to assess employees' eligibility for this new Resident Visa and for the processing of their applications. Please do not hesitate to contact a Pathways Licenced Immigration Adviser for any immigration matter.

Watch out for our next Employer Immigration Update!

About Pathways

Pathways to New Zealand is one of the longest established (since 1992), most successful and reputable professional providers of immigration and visa services in New Zealand. Our 11 Licensed Immigration Advisers have assisted more than 20,000 people from over 110 different countries to achieve their New Zealand immigration requirements. Pathways also acts for a number of multi-national, national and local corporates, and many SMEs, with their NZ immigration matters. Our team is fluent in ten language and includes four qualified lawyers.

