



# Immigration Amendment Act 2003

Public Act 2003 No 30  
Date of assent 2 July 2003  
Commencement see section 2

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## The Parliament of New Zealand enacts as follows:

### 1 Title

- (1) This Act is the Immigration Amendment Act 2003.
- (2) In this Act, the Immigration Act 1987 is called “the principal Act”.

### 2 Commencement

This Act comes into force on the day on which it receives the Royal assent.

## Part 1

### Principal Act amended

### 3 Government residence policy

Section 13B of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) To avoid doubt, any policy of the Government that relates to the issuing of any type of temporary visa or limited purpose visa or the granting of any type of temporary permit or limited purpose permit is not Government residence policy, regardless of whether the issuing of the visa or the granting of the permit may affect eligibility for or otherwise relate to the issuing of a residence visa or the granting of a residence permit.”

#### **4 New section 13BA inserted**

The principal Act is amended by inserting, after section 13B, the following section:

#### **“13BA Chief executive may give general instructions as to order and manner of processing applications for visas and permits**

- “(1) The order and manner of processing any application for a visa or permit is a matter for the discretion of a visa officer or immigration officer.
- “(2) The chief executive may, from time to time, give general instructions to visa officers and immigration officers as to the order and manner of processing any application for a visa or permit.
- “(3) In giving any such general instructions, the chief executive may have regard to such matters as the chief executive thinks fit.
- “(4) Unless otherwise expressed by the chief executive, any general instructions as to the order and manner of processing applications, as given by the chief executive from time to time under this section, may apply to any or all applications for visas or permits regardless of the fact that—
- “(a) the general instructions may be different from those existing at the time that the applications were made; or
  - “(b) the general instructions may result in applications being processed in a different order or manner than would otherwise have occurred; or
  - “(c) any application may have been made before the commencement of the Immigration Amendment Act 2003.
- “(5) The general instructions, as given by the chief executive from time to time, are matters of departmental rules and practice, and do not form part of Government immigration policy under

section 13A or Government residence policy under section 13B.

- “(6) Nothing in this Act, or in any other law or enactment, requires a visa officer or an immigration officer to process an application for a visa or permit in any particular order or manner, whether or not consistent with any general instructions given by the chief executive from time to time.
- “(7) The question whether or not an application is processed in an order and manner consistent with any general instructions given by the chief executive from time to time is a matter for the discretion of a visa officer or immigration officer, and—
- “(a) no appeal lies against the decision of the officer concerned, whether to an Authority, the Tribunal, the Minister, any court, or otherwise; and
- “(b) no review proceedings may be brought in any court in respect of—
- “(i) any general instructions as to the order and manner of processing applications as given by the chief executive from time to time; or
- “(ii) the application of any such general instructions; or
- “(iii) any failure by the Minister or a visa officer or immigration officer to process or to continue to process an application for a visa or a permit; or
- “(iv) any decision by the Minister or a visa officer or immigration officer to process (including a decision to continue to process), or any decision not to process (including a decision not to continue to process), an application for a visa or permit.”

## Part 2

### Validation of processing, and lapsing, of applications

#### 5 Past order and manner of processing applications deemed valid

- (1) Any—
- (a) failure by a visa officer or an immigration officer or the Minister to process an application for a visa or permit (including a residence visa or residence permit); or
- (b) decision by a visa officer or an immigration officer or the Minister to process or not to process an application

for a visa or permit (including a residence visa or residence permit)—

occurring or made before the commencement of this Act is deemed to have been validly done in accordance with the discretion of a visa officer or immigration officer to determine the order and manner of processing an application.

- (2) No appeal lies against any decision to process or not to process an application for a visa or permit (including a residence visa or a residence permit, and including any such decision made before the commencement of this Act), whether to an Authority, the Tribunal, the Minister, any court, or otherwise.
- (3) No review proceedings may be brought in any court in respect of any failure to process, or any decision to process or not to process, an application for a visa or permit (including a residence visa or a residence permit, and including any such failure or any such decision occurring or made before the commencement of this Act).
- (4) In this section,—
  - (a) a reference to a failure to process an application includes a reference to a failure to continue to process an application;
  - (b) a reference to a decision to process an application includes a reference to a decision to continue to process an application;
  - (c) a reference to a decision not to process an application includes a reference to a decision not to continue to process an application.

## **6 Lapsing of certain applications made before 20 November 2002**

- (1) All applications for residence visas or residence permits made before 20 November 2002 under the general skills category of Government residence policy that have not been decided as at the commencement of this Act are treated as lapsed, except where, as at the beginning of 1 July 2003 in respect of any such application,—
  - (a) the principal applicant—
    - (i) had claimed points for an offer of employment classed as “relevant” under the Government residence policy applying to that application; or

- (ii) had claimed 28 or more points under the Government residence policy applying to that application; or
    - (iii) had been issued a work visa or granted a work permit for the purpose of obtaining an offer of employment in New Zealand; or
    - (iv) had been invited in writing by a visa officer or an immigration officer to apply for a work visa or work permit for the purpose of obtaining an offer of employment in New Zealand; or
  - (b) the application had been processed by a visa officer or an immigration officer to the point where the officer was satisfied that—
    - (i) the principal applicant and all other applicants included in the application met the health, character, and English language requirements applying to that application; and
    - (ii) the application had been awarded sufficient points to meet or exceed the points passmark applying to that application; and
    - (iii) all evidential and verification requirements necessary to demonstrate eligibility under the general skills category were met; or
  - (c) the application has been the subject of a decision by the Residence Appeal Authority made under section 18D(1)(d), (e), or (f) of the principal Act.
- (2) The effect of an application being treated as lapsed is that no further processing or decision in respect of the application is required.
  - (3) Where an application is lapsed under this section, the chief executive must refund any application fee paid in respect of the application to the person who paid it, or a person authorised by that person to receive it.
  - (4) Nothing in this Act or the principal Act or in any other law or enactment entitles a person whose application is lapsed under this section to recover from the Minister or the Department or any visa officer or immigration officer any costs associated with the application, other than the prescribed application fee.
  - (5) Section 13C of the principal Act does not apply to the lapsing of an application under this section.

- (6) The question whether or not an application meets the criteria set out in subsection (1) is a matter for the discretion of a visa officer or immigration officer, and no appeal lies against the decision of the officer concerned, or the lapsing of the application, whether to an Authority, the Minister, any court, or otherwise.
- (7) No review proceedings may be brought in any court in respect of the lapsing under this section of an application for a residence visa.
- (8) In this section, **decided**, in relation to an application for a visa or a permit, means that a decision whether or not to issue the visa or grant the permit has been made by the Minister or a visa officer or immigration officer, whether or not that decision has been communicated to the applicant and whether or not any associated visa or permit has been issued or granted.

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### Legislative history

1 July 2003	Introduction (Bill 63–1), first reading, second reading, committee of the whole House, third reading
2 July 2003	Royal assent

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This Act is administered in the Department of Labour.

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