



# Immigration (Special Regularisation) Regulations 2000

Michael Hardie Boys, Governor-General

## Order in Council

At Wellington this 18th day of September 2000

Present:

His Excellency the Governor-General in Council

Pursuant to section 150 of the Immigration Act 1987, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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## Regulations

### 1 Title

These regulations are the Immigration (Special Regularisation) Regulations 2000.

## 2 Commencement

These regulations come into force on 1 October 2000.

## 3 Interpretation

For the purpose of these regulations,—

**Act** means the Immigration Act 1987

**de facto partner** means a de facto partner in a heterosexual or same sex relationship who is living with their partner

**dependent child** means, subject to regulations 4(4) and 5(4), a biological or adopted child of the person concerned who—

- (a) is either—
  - (i) aged 16 years or younger; or
  - (ii) aged 17 to 19 years and has no child of his or her own; and
- (b) is not legally married or living with a de facto partner; and
- (c) is totally or substantially reliant on his or her parent, or his or her parent's spouse or de facto partner, for financial support, whether living with them or not

**spouse** means a person who is legally married.

## 4 Exemption from requirement to hold permit to be in New Zealand

- (1) A person is exempt from the requirement to hold a permit to be in New Zealand, for the period specified in subclause (3), if—
  - (a) the person is unlawfully in New Zealand in terms of section 4(2) of the Act as at the time an immigration officer is presented with the application for a temporary permit referred to in paragraph (e); and
  - (b) the person arrived in New Zealand at any time before 1 October 1999, and is still in New Zealand as at 18 September 2000; and
  - (c) the person meets any 1 or more of the qualifying criteria set out in subclause (2); and
  - (d) the person is not, as at the time an immigration officer is presented with the application referred to in paragraph (e),—
    - (i) a person whose most recently held permit was a student permit; or

- (ii) the spouse or de facto partner or dependent child of a person whose current or most recently held permit, as at 18 September 2000, was a student permit; or
    - (iii) a person who has at any time in New Zealand sought to be recognised as a refugee in New Zealand under the Refugee Convention; and
  - (e) not later than 30 March 2001, an immigration officer is presented with an application under regulation 6 for a temporary permit for the person to be in New Zealand; and
  - (f) the person is not, at the time the immigration officer is presented with the application, a person to whom section 7(1) of the Act applies.
- (2) The qualifying criteria for the purposes of subclause (1)(c) are as follows:
  - (a) the person was the spouse of a New Zealand citizen or resident as at 18 September 2000, and is still the spouse of that citizen or resident at the time the application referred to in subclause (1)(e) is presented; or
  - (b) the person is the de facto partner of a New Zealand citizen or resident at the time the application referred to in subclause (1)(e) is presented, and has been that citizen's or resident's de facto partner since at least 18 September 1998; or
  - (c) as at 18 September 2000 the person was the biological or adoptive parent of 1 or more New Zealand-born dependent children then living in New Zealand, and is still the biological or adoptive parent of such a child or children still living in New Zealand at the time the application referred to in subclause (1)(e) is presented; or
  - (d) the person has been in New Zealand continuously for a period of 5 years or more, as at the time the application referred to in subclause (1)(e) is presented.
- (3) The exemption under subclause (1) applies for the period that—
  - (a) commences when an immigration officer is presented with the application for a temporary permit for the person to be in New Zealand; and
  - (b) ceases at the earliest of the following:

- (i) the person leaving New Zealand;
  - (ii) the end of the day on which an immigration officer makes a decision on the application to grant or decline the person a permit to be in New Zealand;
  - (iii) the close of 30 March 2001.
- (4) For the purposes of subclause (2)(c), a person will not be treated as the biological parent of a child that has been adopted before the application for a temporary permit for the person is presented.
- (5) For the purposes of subclause (2)(d), a person is to be treated as having been continuously in New Zealand during a particular period so long as they have not been absent from New Zealand for any single continuous period of more than 3 months in that period.

## 5 Exemption for spouse, partner, or dependent child of qualifying person

- (1) A person is exempt from the requirement to hold a permit to be in New Zealand, for the period specified in subclause (3), if—
  - (a) the person is unlawfully in New Zealand in terms of section 4(2) of the Act as at the time an immigration officer is presented with the application for a temporary permit referred to in paragraph (e); and
  - (b) the person was in New Zealand as at 18 September 2000; and
  - (c) the person qualifies under subclause (2) as the spouse, de facto partner, or dependent child, at the relevant time or times, of a person (the **qualifying person**) who at the time the application referred to in paragraph (e) is presented either—
    - (i) is exempt under regulation 4 from the requirement to hold a permit; or
    - (ii) would be exempt under that regulation if they had been unlawfully in New Zealand as at the time an immigration officer was presented with an application under regulation 6 for a temporary permit for them to be in New Zealand; and

- (d) the person is not a person who has at any time in New Zealand sought to be recognised as a refugee in New Zealand under the Refugee Convention; and
  - (e) not later than 30 March 2001, an immigration officer is presented with an application under regulation 6 for a temporary permit for the person to be in New Zealand; and
  - (f) the person is not, at the time the immigration officer is presented with the application, a person to whom section 7(1) of the Act applies.
- (2) A person meets the requirements of subclause (1)(a) if—
- (a) the person was the spouse of a qualifying person as at 18 September 2000, and is still the spouse of that qualifying person at the time the application referred to in subclause (1)(e) is presented; or
  - (b) as at the time the application referred to in subclause (1)(e) is presented, the person is the de facto partner of a qualifying person, and has been that qualifying person's de facto partner since at least 18 September 1998; or
  - (c) the person was, as at both 18 September 2000 and the time the application referred to in subclause (1)(e) is presented, a dependent child of a qualifying person.
- (3) The exemption under subclause (1) applies for the period that—
- (a) commences when an immigration officer is presented with the application for a temporary permit for the person to be in New Zealand; and
  - (b) ceases at the earliest of the following:
    - (i) the person leaving New Zealand;
    - (ii) the end of the day on which an immigration officer makes a decision on the application to grant or decline the person a permit to be in New Zealand;
    - (iii) the close of 30 March 2001.
- (4) For the purposes of subclause (2)(c), a child who has been adopted before the application for a temporary permit for the child is presented is not to be treated as the child of its biological parent or parents.

**6 Application for temporary permit under October 2000 Transitional Policy by exempt person or person who holds temporary permit**

- (1) An application for a temporary permit under section 13(2), section 25(1)(c) or (d), section 29(1), or section 30(1) of the Act by a person who may be granted a temporary permit under the Government immigration policy known as the October 2000 Transitional Policy must be tendered to an immigration officer at an office of the Department of Labour, together with—
- (a) the applicant's valid passport or certificate of identity; and
  - (b) 2 passport-sized photographs of the applicant; and
  - (c) an original or certified copy of the full birth certificate of the applicant, or, if this is unobtainable, an original or certified copy of an identity card; and
  - (d) the appropriate fee (if any); and
  - (e) such information and evidence as is required by the approved application form to be tendered in order to demonstrate that the applicant fits the October 2000 Transitional Policy; and
  - (f) except in the case of an applicant under the age of 17 years, a police or similar certificate, less than 6 months old, indicating the applicant's record of convictions or lack of a record of conviction for the applicant's country of citizenship and for each country in which the applicant has lived for 12 months or more during the past 10 years, except where the authorities of any such country will not generally provide such certificates; and
  - (g) any information, evidence, or submissions that the applicant considers demonstrate that the applicant should be granted a temporary permit under the Government immigration policy known as the October 2000 Transitional Policy.
- (2) Where an application is made in accordance with subclause (1), the immigration officer processing the application may, before determining the application, require the applicant—
- (a) to produce any photographs, documents, evidence, and information that the officer thinks necessary to help in determining the application:

- (b) to appear before an immigration officer for an interview.
- (3) This regulation prevails over regulation 13 of the Immigration Regulations 1999, and that regulation does not apply to a person who may make an application under this regulation.
- (4) Regulation 3 of the Immigration Regulations 1999 (which relates to applications generally) applies to an application made under this regulation.

## **7 Application for residence permit under October 2000 Residence Policy by temporary permit holders**

- (1) An application for a residence permit under section 17(1)(b) of the Act by a person who may be granted a resident permit under the Government residence policy known as the October 2000 Residence Policy must be tendered to an immigration officer at an office of the Department of Labour, together with—
  - (a) the applicant's valid passport or certificate of identity; and
  - (b) the appropriate fee (if any); and
  - (c) such information and evidence as is required by the approved application form to be tendered in order to demonstrate that the applicant fits the October 2000 Residence Policy; and
  - (d) any information, evidence, or submissions that the applicant considers demonstrate that the applicant should be granted a residence permit under the Government residence policy known as the October 2000 Residence Policy.
- (2) Where an application is made in accordance with subclause (1), the immigration officer processing the application may, before determining the application, require the applicant—
  - (a) to produce any photographs, documents, evidence, and information that the officer thinks necessary to help in determining the application;
  - (b) to appear before an immigration officer for an interview.
- (3) This regulation prevails over regulation 10 of the Immigration Regulations 1999, and that regulation does not apply to a person who may make an application under this regulation.

- (4) Regulation 3 of the Immigration Regulations 1999 (which relates to applications generally) applies to an application made under this regulation.

## **8 Fees and exemptions from fees**

- (1) A person applying for a residence permit under the October 2000 Residence Policy is exempted from the requirement to pay the application fee that would normally apply under regulation 42 of the Immigration Regulations 1999.
- (2) A person granted a residence permit in accordance with the October 2000 Residence Policy is exempt from the requirement to pay the settlement information fee that would normally apply under regulation 44 of the Immigration Regulations 1999.
- (3) A person applying for a work permit or a student permit under the October 2000 Transitional Policy must pay an application fee of \$500, and is exempt from the requirement to pay any other work or student permit application fee that would normally apply under regulation 42 of the Immigration Regulations 1999.
- (4) Except as otherwise provided in subclauses (1) to (3), a person applying for a permit under these regulations must pay any relevant fee specified in the Immigration Regulations 1999.

Martin Bell,  
for Clerk of the Executive Council.

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### **Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations allow for the regularisation of the immigration status of certain persons and their immediate family who are or become unlawfully in New Zealand on or before 30 March 2001 but who, by reason of personal circumstances, could be considered to be well-settled in New Zealand. The regulations provide the procedures for such people to apply for an initial temporary permit under a

transitional immigration policy, and then for a residence permit under a special residence policy.

*Regulation 1* gives the Title of the regulations.

*Regulation 2* provides that the regulations are to come into force on 1 October 2000.

*Regulation 3* defines certain terms that are relevant to a person's eligibility for the exemptions in *regulations 4 and 5*.

*Regulation 4(1) and (2)* set out criteria for a time-limited exemption from the requirement to have a permit. The criteria are as follows:

- the person must have arrived in New Zealand before 1 October 1999 and still be in New Zealand as at 18 September 2000
- at least 1 of the following must apply to the person:
  - (a) the person was as at 18 September 2000 the spouse of a New Zealand citizen or resident (and still is the person's spouse at the time the relevant permit application is presented); or
  - (b) the person is, at the time the relevant permit application is presented, the de facto partner of a New Zealand citizen or resident in a relationship that has been in existence since at least 18 September 1998; or
  - (c) the person was as at 18 September 2000 (and still is, at the time the relevant permit application is presented) the biological or adoptive parent of 1 or more New Zealand-born dependent children living in New Zealand; or
  - (d) as at the time the relevant permit application is presented, the person had been in New Zealand continuously for at least 5 years, without any individual period of absence exceeding 3 months during that period
- the person must not have claimed refugee status in New Zealand
- the person's most recent permit must not have been a student permit, and they must not be the spouse or partner of a person whose current or most recent permit, as at 18 September 2000, was a student permit
- an application for a temporary permit for the person must be presented by 30 March 2001

- at the time the application is presented the person must not be a person prevented from getting an exemption by section 7(1) of the Immigration Act 1987 (which relates generally to serious crime, terrorism, previous deportation, or existence of a current removal order).

Under *regulation 4(3)*, the exemption runs from the time when the application for a permit for the person is presented up until the time the application is granted or declined (or until 30 March 2001, if the application is not granted or declined by then). The exemption will also cease if the person earlier leaves New Zealand.

*Regulation 5(1) and (2)* set out criteria for exemption for a person who, as at 18 September 2000, was present in New Zealand and was the spouse, de facto partner, or dependent child (as those terms are defined in *regulation 3*) of a person qualifying for exemption under *regulation 4* or a person who would have qualified for such an exemption if they had been unlawfully in New Zealand at the relevant time or period.

In addition to being the spouse, long-term de facto partner (at least 2 years), or dependent child of such a person (both as at 18 September 2000 and as at the date an immigration officer is presented with their permit application), the person must not have claimed refugee status in New Zealand, or be a person prevented from obtaining an exemption by section 7(1) of the Act. For the exemption to apply, an application for a permit for the person must be presented by 30 March 2001.

As with a *regulation 4* exemption, the exemption runs from the time the application for the permit for the spouse, partner, or child is presented up until the time the application is granted or declined (or until 30 March 2001 or until the person leaves New Zealand, if earlier).

*Regulation 6* sets out the things that must accompany an application for a temporary permit under the October 2000 Transitional Policy.

*Regulation 7* similarly sets out the things that must accompany an application for a residence permit under the October 2000 Residence Policy.

*Regulation 8* relates to fees, and provides that—

- a person applying for a residence permit under the October 2000 Residence Policy is exempt from the normal residence application fee; and

- a person granted such a residence permit is exempt from the requirement to pay the normal settlement information fee; and
  - the application fee for a work permit or a student permit under the October 2000 Transitional Policy is \$500; and
  - in all other cases the normal fees payable under the Immigration Regulations 1999 will apply.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

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These regulations are administered in the Department of Labour.

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