

## Be prepared - work visa changes are coming....

Last week the Minister of Immigration announced changes to how employer-assisted work visas would be applied for in the future.

These changes will take up to 18 months to be designed and implemented, and will see six current work visa categories replaced by one single category. They will also result in employers having more direct responsibility for the work visa process and costs rather than the visa applicant. The Government's view is that it is the employer who is benefitting from the migrant worker so they should be more involved in, and responsible for, the visa process.

In fact what has been announced are really just high level "signposts" of what the Government is intending to introduce in the future and the nuts and bolts policy detail will follow later. It is this detail which will determine if, how and when these policy changes will actually be implemented.

However one key and immediate change is the increase in the accredited employer work-to-residence annual salary threshold from \$55,000 to \$79,560. This change is effective very soon from 7 October and existing accredited employers should urgently review whether to support any employees with a work-to-residence work visa application before this date. For many farm workers the current employer accreditation is the only pathway they have to obtain residence and to live permanently in New Zealand. Once the changes are fully rolled out this salary threshold will increase further to a level equivalent to twice the New Zealand median wage (ie; the salary threshold will increase to over \$106,000 pa). This will mean most farm workers will only ever be able to stay temporarily in New Zealand and once their children complete secondary school the family will either leave New Zealand or their children will need to return to their home country for further education.

There are about 54,000 workers on employer-assisted work visas out of a total of around 235,000 work visa holders now in New Zealand. The majority of work visas are "open" work visas issued under the working holiday, partnership or graduate student visa categories. Employer-assisted work visas are those that are generally issued once an employer has demonstrated through labour market tests that there are no suitable local employees available, together with those work visas issued under the accredited employer and various skill shortage lists.

The changes will see;

- The introduction of a "gateway framework" which will comprise three stages (gateways);

### Stage 1 - An Employer Check

It will be mandatory for all employers, including those with an existing accreditation, to be accredited under the new regime before they can hire any migrant on a work visa.

Three categories of accreditation are proposed comprising standard accreditation, labour hire accreditation and premium or high-volume accreditation. Due to the large number of employers requiring accreditation we envisage the standard accreditation will comprise a

relatively low level process and so long as an employer has nothing adverse recorded against them this process should not be unduly onerous. Only the high-volume accreditation will have the work-to-residence option as per the existing employer accreditation regime and then only for highly paid employees earning twice the median income. High volume accredited employers will be required to provide significant support and assistance to their migrant workers.

Indications are that the annual cost of standard employer accreditation will be around \$600 and high-volume and labour hire accreditation will be around \$2,000. It will be compulsory for those employers who employ 6 or more work visa holders in a year to hold the high-volume accreditation status. The original Cabinet briefing paper indicated that initial accreditation would be for 12 months and standard and labour hire accreditation would then need to be annually renewed, while the high volume accreditation would be renewed two yearly. Given the fact that some 16,000 employers are currently employing migrants on employer-assisted work visas this mandatory accreditation is set to contribute over \$10 million a year to the Immigration New Zealand coffers.

#### Stage 2 - A Job Check

The normal labour market checks will apply except if the role is:

- On the Regional Skill Shortage List
- A higher-paid job in a provincial area (ie; NZ median pay rate or higher)
- Covered within an industry sector agreement
- Remunerated with a salary of \$101,046 pa or more

#### Stage 3 - An Applicant Check

The applicant check is the last stage and involves an assessment of the applicant's identity, character, health and suitability to undertake the offered role.

- The present requirement for low-skilled work visa holders to leave New Zealand for one year after holding a low-skilled work visa for three years is to remain. However these workers will have their ability to be accompanied to New Zealand by their families reinstated. Subject to the final policy details partners may be eligible for partnership-based visitor visas and their school aged children may apply for student visas provided (currently) the worker is earning more than \$43,323 pa.
- Introducing industry sector agreements with the residential aged care and meat processing sectors to be negotiated towards the end of 2020 with dairy farming, forestry, transport and tourism/hospitality to follow. Sector agreements will include a workforce plan to show how the sector plans to place more New Zealanders in jobs and details about how migrant workers will be employed in the sector. Employers who are recruiting migrants for occupations covered by a sector agreement must still be accredited, and comply with the sector agreement if their workers are to be paid below the median wage.
- Replacing the existing reference to skill bands (low/mid/high) with a simplified pay classification system. Basically, jobs that are paid at or above the median wage (currently

\$25 per hour) will be defined as higher-paid jobs and those paid below this level will be defined as lower-paid jobs. Migrant workers who are working in provincial areas in a higher-paid job (ie; \$25 ph) will not have to undergo any labour market testing. This change will also remove the longstanding reliance on the ANZSCO for job classification.

The Government is promoting these changes on the basis it will help fill skill shortages, reduce migrant exploitation and improve conditions for New Zealand workers.

In reality the changes will do little to combat migrant exploitation as only law-abiding employers will promote themselves through the accreditation process and pay the Government \$10 million for this privilege. Those less scrupulous employers still have some 180,000 work visa holders with open work visas to ply their trade on and this is where the majority of migrant exploitation will continue to occur. The reality is that there are few checks and balances of employers and migrant workers because of the open work visa status of these workers.

The long lead in time (18 months) for these changes is disappointing especially when the original Cabinet paper stated the first two sector agreements would be implemented by January 2020 and the new gateway model would be fully implemented by June 2020. We are now looking at sector agreements being negotiated at the end of 2020 and implementation of all the announced changes sometime in 2021. A great deal can happen in this time and which can lead to significant changes in what is currently proposed. It is difficult to understand why sector agreements cannot be expedited now as it would seem that this is something the Government should, at least, have a keen interest in promoting given the current and significant workforce shortfall in the aged care and hospitality industries in particular.

We suspect the delays are as much about Immigration New Zealand's resource limitations as they are about the Government's reticence to commit to the finer details of what is proposed and to actually make it happen. Next year's General Election may also be a factor in the revised timing.

Apart from the forthcoming salary threshold increase for existing accredited employer work-to-residence visa applications our view is that employers and farmers should just get on with business and work with the visa categories and challenges we have now. Employers should also take care to avoid any employment disputes or Labour Inspectorate involvement in their businesses as this is something which could count against them with the new accreditation and could, potentially, result in them not being able to employ migrants in the future.

Yes, work visa changes may be coming but what will happen in 18 months – who knows?

*To discuss these proposed changes, or any immigration matter, please contact Ivy Obillo-Rodriguez Licenced Immigration Advisor at Pathways to New Zealand Ltd. Pathways, established in 1992, is one of New Zealand's leading immigration specialists with 12 Licenced Immigration Advisors in its Hamilton and Wellington Offices. Ivy can be contacted at 07-834 9222 and by email at [ivy@pathwaysnz.com](mailto:ivy@pathwaysnz.com)*

