

7 April 2020

Greg Patchell  
Head of Immigration New Zealand and Deputy Chief Executive  
Immigration  
Ministry of Business, Innovation and Employment  
**Wellington**

By email c/o: [Louise.Hamilton@mbie.govt.nz](mailto:Louise.Hamilton@mbie.govt.nz)

Dear Greg,

**Re: Effects of COVID-19 on visas and visa applications**

I write to you as convenor of the New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) Immigration and Refugee Law Committee and on behalf of immigration lawyers. Members of the legal profession have raised concerns regarding several operational issues that have arisen following the COVID-19 pandemic and declaration of a national state of emergency. These issues primarily relate to visas that have been granted and visa applications that are currently being considered by Immigration New Zealand (**INZ**) during the pandemic.

We are very conscious of the enormous pressure and workloads on INZ during these unprecedented times and appreciate the updates and announcements INZ has provided the profession to date. The Law Society is closely monitoring potential problems which could arise for visa holders, visa applicants and lawyers who provide immigration advice during this time. In doing so, we have identified the following operational issues which we consider are likely to present barriers to access to justice in New Zealand.

*Deportation and detention of individuals*

1. It is unclear whether deportations which were scheduled to take place during the period covered by the Epidemic Notice<sup>1</sup> have been postponed or cancelled (as allowed under s 177 of the Immigration Act 2009 (**Immigration Act**)). It would be helpful if INZ clarifies whether such deportations have now been postponed or cancelled (particularly in light of the recent border closures and international flight cancellations).
2. Similarly, we suggest that INZ clarify whether individuals who are being detained (under an existing warrant of commitment) may instead be directed to reside at a specified place where they may have family or an acceptable place in which to self-isolate (as allowed under section 315(1) of the Immigration Act).

*Individuals who are in New Zealand unlawfully*

3. INZ has requested individuals holding temporary visas which expire before 2 April 2020 to apply for interim visas. Individuals who fail to apply for interim visas will be considered to be in New

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<sup>1</sup> The Epidemic Preparedness (Epidemic Management—COVID-19) Notice 2020 activates section 339 of the Immigration Act 2009 which provides that existing warrants of commitment have effect for 28 days but does not consider the status of existing deportations prior to the notice coming into effect.

Zealand unlawfully and therefore eligible to be granted a visa under section 61 of the Immigration Act.

4. Under normal circumstances, 'unlawful' individuals may be penalised under various provisions of the Immigration Act. However, we understand INZ may not intend to penalise those individuals who have been classed as 'unlawful' simply as a result of the COVID-19 pandemic (particularly given that INZ is currently processing priority section 61 requests to provide certainty for temporary migrants in New Zealand). The Law Society therefore suggests that INZ clarify whether the offences and penalties set out in the Immigration Act apply to those individuals.
5. We also understand INZ may ordinarily issue a one-day visa to allow 'unlawful' individuals to lodge appeals to the Immigration and Protection Tribunal (**Tribunal**) on humanitarian grounds. Appeals to the Tribunal are strictly time-limited with no power of extension (except in the case of refugee and protection appeals, where special circumstances are established). The Tribunal is now closed to the public and all hearings have been adjourned. Similarly, INZ offices are closed for the foreseeable future. INZ is therefore unlikely to process complaints submitted by 'unlawful' individuals within the prescribed timeframe of 25 working days.
6. We suggest INZ may wish to consider the position of individuals who would have ordinarily been issued a one-day visa to ensure they are not unduly penalised whilst the Tribunal is not open to the public. This may include considering whether an interim visa under section 61 may be available to those 'unlawful' individuals who might otherwise be able to lodge an appeal to the Tribunal.

#### Time frames

7. The Law Society suggests that INZ consider extending the following timeframes to ensure access to justice remains paramount for those individuals that are directly, or indirectly, affected by the COVID-19 pandemic:
  - a. time frame for filing an application for a residence visa upon receiving an invitation to apply for such a visa;<sup>2</sup>
  - b. time frame to apply for a permanent resident visa without needing to apply for a variation of travel conditions or a second or subsequent residence visa;<sup>3</sup>
  - c. time frame relating to validity of medical and chest X-ray certificates which have been provided to INZ as part of a previous visa application;<sup>4</sup> and
  - d. time frame relating to validity of police certificates which form part of a visa application (or have been provided to INZ as part of a previous visa application).<sup>5</sup>

#### Document and filing requirements

8. The Immigration Act requires certain visa applicants to submit original or certified copies of key documents which form a part of their application.<sup>6</sup> It is unclear whether INZ intends to update

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<sup>2</sup> The timeframe is four months: refer Immigration NZ Operational Manual (Instructions), SM3.1(b).

<sup>3</sup> The timeframe is three months: refer Immigration NZ Operational Manual (Instructions), RV 2.5(a)(ii).

<sup>4</sup> The timeframe is 36 months: refer Immigration NZ Operational Manual (Instructions), A4.5(g).

<sup>5</sup> The timeframe is 24 to 36 months depending on the visa application made: refer see Immigration NZ Operational Manual (Instructions), A5.10(d).

<sup>6</sup> See Immigration NZ Operational Manual (Instructions) R2.40 and R2.40.1 and also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, R 5, 6, 10 and 23A.

these requirements by instead accepting uncertified copies which is occurring in other jurisdictions. It is similarly unclear whether INZ intends to allow electronic filing of applications (e.g. by email). It would be helpful if INZ provide some clarity as to whether it intends to update these requirements for the duration in which the Epidemic Notice is in force.

We understand INZ is currently prioritising work arising out of visa applications that are being submitted by those who are looking to travel to New Zealand for a critical purpose. However, we ask that you consider the issues we have identified above to address concerns raised by members of the profession due to COVID-19 as INZ is an essential service provider and as such those services should not only be limited to a response directly related to COVID-19.

The Law Society would be grateful for an update on progress in relation to these issues. If further discussion would be helpful, I can be contacted in the first instance via the Law Society's Law Reform Advisor, Amanda Frank ([amanda.frank@lawsociety.org.nz](mailto:amanda.frank@lawsociety.org.nz)).

We look forward to hearing from you.

Yours sincerely



Mark Williams  
**NZLS Immigration and Refugee Law Convenor**