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**CAN YOU BRING THE FAMILY:**

**A REVIEW OF CURRENT IMMIGRATION TRENDS IN**

**FAMILY IMMIGRATION: NEW ZEALAND**

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# **Can You Bring the Family: A Review of Current Immigration Trends in Family Immigration: New Zealand**

## **1.0 Introduction**

1.1 New Zealand has liberal policies relating to those who may be included as dependants in a primary application for residence. Over the last ten years, subsequent sponsorships for family members however, have become more restrictive, unless the applicants have the means to support themselves, or to make a sizeable investment. This is part of a shift away from humanitarian and family migration towards skilled and employment-based and investment-based immigration.

## **2.0 Dependants**

2.1 A dependent partner must normally have lived with the principal applicant for 12 months or more. This includes de facto and same-sex partners. All children can be included as dependants up to the age of, and including the age of twenty-four (the application should be lodged before the dependent child's twenty-fifth birthday). Between the ages of 18 and 24 (inclusive) however, the child must be "dependent" and evidence needs to be filed to support the fact that the person is either in education or is unemployed and is dependent on his or her parents. Where a child is in a de facto or marriage relationship or has a child of their own, they cannot be included.

## **3.0 Sponsorship of parents and other close family members**

3.1 Siblings can no longer be sponsored for residence<sup>1</sup> as was once permitted. Under the Skilled Migrant Category an extra ten points is allocated if there

is “close family support” in New Zealand. To get these extra “points” the family member must be an adult sibling, adult child or parent of either the principal applicant or the principal applicant’s partner. The sponsor must have New Zealand as their primary place of established residence at the time the application is lodged.

#### **4.0 Parents**

4.1 New Zealand has three different parent categories that lead to residence. The centre of gravity policy however, although applications can still be lodged, is effectively defunct. This is because no selections have now been made for several years and no selection is ever likely to take place because the positions available are always taken up by the other categories.

4.2 Please note that all parents must meet health and character requirements. For this reason parent applications should be filed early, rather than later with the possible onset of advanced old-age and related health issues. As New Zealand ostensibly has universal healthcare, it is not possible to contract out of health requirements.

#### **5.0 Parents: Retirement Category (Residence)**

5.1 This policy is sometimes used because the sponsoring adult child has not yet completed their 3-year sponsorship residence requirement.<sup>2</sup> This category is also sometimes used to avoid delays under the main Parent Category discussed below.

5.2 Under the Parent Retirement Category there must be an investment of NZ \$1 million, and an annual income of at least NZ \$60,000 and a further

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<sup>1</sup> Except under our Refugee Quota Family Support category.

<sup>2</sup> There must be a sponsor who is however habitually resident (though not necessarily for 3 years).

fund of \$0.5 million for settlement held elsewhere. The investment must be placed into an approved investment for four years. The settlement funds do not need to be transferred. The annual income of \$60,000 would normally arise out of pensions, earnings from rental properties, dividends, interest from investments, profits from company ownership or share market trading. Australian citizens arriving in New Zealand can make use of this sponsorship immediately, as long as they are resident in New Zealand. They do not need to wait for three years.

- 5.3 This policy may also suit investor clients who as sponsors for their parents wish to seek to postpone becoming tax resident (see below), until they really have to.

## **6.0 Parent Category**

- 6.1 In this category a sponsor must have held residence for at least three years during which the sponsor has been ordinarily resident in New Zealand for each of the three 12-month portions within the three years immediately preceding the application<sup>3</sup>, for a total of 184 days or more in New Zealand. Investor Category applicants may wish to avoid becoming tax resident, because New Zealand will tax their worldwide income except that covered by a double-tax agreement<sup>4</sup> (an investor resident will become a tax resident

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<sup>3</sup> There is no discretion. *GR (Parent)* [2013] NZIPT 201324 (24 October 2013). Sponsor was overseas as an exchange student, but see *GE (Parent)* [2013] NZIPT 201780 (30 September 2013, Donald) where the Tribunal exercised its discretion by holding special circumstances. In *DY (Parent)* [2013] NZIPT 200915 (11 February 2013, Clayton) the Tribunal held that the time requirement was not met even though the sponsorship requirements were met two days after filing. The client stated that he had been advised by the call centre that it was ok to file ahead of time. A request to re-start the application was refused, and the appeal was unsuccessful. In *DE (Parent)* [2012] NZIPT 200733 (9 October 2012, Clayton) a 90-year-old parent was held to have special circumstances. Her sponsors had in fact been resident in New Zealand for several years but had spent a large proportion of their time overseas as missionaries. The appellant from the UK only had her son and grandchildren in New Zealand. Her only relative in the UK was an elderly sister. In good health, her family nexus was in New Zealand.

<sup>4</sup> In some circumstances this will be deferred for up to four years. Please note that there may also, depending on the treaty, be a sting in the tail of those wanting to make use of the double-tax agreements: if the type of income is not taxed in the other country, but New Zealand does tax

after either the purchase of a home or after 183 days in New Zealand) then this may become difficult, and they may prefer the Parent Retirement policy. They may wish to therefore make use of the Parent Retirement Category. Note that the sponsorship yearly requirement is 184 days, which triggers the potential for tax residence status at 183 days.

6.2 Another requirement often overlooked under the Parent Category is that the parent must not have dependent children.<sup>5</sup> There are three subcategories depending on how the sponsorship is supported:

- i. Sponsor's income (either \$65,000 per annum for the sponsor or their partner or \$90,000 per annum for the sponsor and their partner together).<sup>6</sup>
- ii. Guaranteed lifetime minimum income of \$27,584 per annum of a single parent or \$40,523 for a couple.
- iii. Settlement funds \$500K<sup>7</sup> to be invested in an approved investment for two years.

## 7.0 Grandparents

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that particular type of income, then the double-tax agreement may not prevent the taxation in New Zealand on the income elsewhere.

<sup>5</sup> See *IQ (Parent)* [2015] NZIPT 202267 for an example of a case that proceeded through to final determination where the applicants simply left their dependent children out of their application. The son aged 17 came within the definition of a dependent child. The argument that a regular payment from the NZ sponsor sister meant that the son was not dependent was rejected. Special circumstances were not found.

<sup>6</sup> Special problems arise where the income is from self-employment. The threshold amount must be sustainable. See *IR (Parent)* NZIPT 202343 (15 April 2015) where the threshold amount was not supported by tax and business documentation. Note also the second half of the sponsoring couple must also have spent 184 days each year for three years: see *HZ (Parent)* [2014] NZIPT 202064. The partnership must also have fulfilled the 12-month rule at the time of sponsorship.

<sup>7</sup> See *IK (Parent)* [2015] NZIPT 202089 (27 February 2015, S Pearson) where an appellant from Russia had been unable to establish that the settlement funds had been earned or acquired legally. No paperwork was available to verify the sale of properties in Russia in 1990 and 2005, nor that her employer had paid her taxes. This is in spite of the fact that the owner had been the appellant's husband, who had sold the business. There were too many gaps in the documentation. No special circumstances.

7.1 Grandparents can be sponsored directly by a sponsor but only where the sponsor's parents are deceased. Otherwise grandparents need to be sponsored by the parents (children) once they are settled for three years (or immediately through the Parent Retirement Category once their child is a resident).

## **8.0 Dependent children**

8.1 Children up to and including the age of 24 who are truly dependent can be sponsored by their parents, as long as they were listed on their parent(s) residence application. Children who are adopted can be sponsored but normally only if the adoption is registrable under the New Zealand Adoption Act 1955. Where a parent is a citizen at the time of adoption and the child is under 14 years of age, citizenship may pass by descent and it will not be necessary to apply for residence. A child can then be issued with a New Zealand passport.

8.2 Where a child has been omitted from the parent's residence application special problems arise and an appeal may be needed. Where a child is 16 or under and is sponsored by one parent only, consent by the remaining parent will also be required. In some circumstances New Zealand also recognises customary adoptions. Special issues arise in cases involving surrogate children, and advice on this complex area of the law should always be obtained beforehand. Intending commissioning parents must obtain a legal opinion before embarking on such an adventure. In certain circumstances New Zealand will recognise an adoption of a surrogate child of commissioning parents in a committed gay de facto or married relationship.

8.3 Dependent children are sometimes granted residence through an appeal to the IPT. Generally the Tribunal will look at the best interests of the child.<sup>8</sup>

## 9.0 Partners

9.1 New Zealand recognises all partnerships based on a genuine and stable relationship where the couple (including same-sex) have lived together for 12 months or more for residence. Where a couple have not lived together for 12 months the partner can be sponsored for temporary entry. Except in some rare cases medical waivers are not required (as also for dependent children), however where a partner has been previously “peeled off” or not included in a residence application of another sort (Skilled Migrant Category, Investor 1 and 2 etc) for medical reasons, they cannot then be sponsored under partnership (to sneak in via the side door). Otherwise sometimes quite serious medical conditions including HIV can be waived or will not be considered as prohibiting residence. This rule also applies to dependent children.

9.2 There is no advantage to an intending couple to marry prior to applying for residence. This is because even for those who are married, the 12-month living together period is still required.

9.3 A New Zealand sponsor can only sponsor two partners or one where they themselves were sponsored. The sponsorships must be five years apart. Special permission can be obtained to depart from this rule though temporary entry is usually difficult, but not impossible.

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<sup>8</sup> See *CW (Dependent Child)* NZIPT 201292, 20 January 2014; *DC (Dependent Child)* [2014] NZIPT 201432, 433; *DI (Dependent Child)* [2014] NZIPT 2014926, 22 May 2014; *DL (Dependent Child)* [2014] NZIPT 201606 24 June 2014; *DN* [2014] NZIPT 201476, 9 July 2014. In all of these cases the best interests of the child lead to special circumstances and a recommended approval.

9.4 New Zealand requires significant documentary proof to establish a partnership because of the prevalence of false claims. Where a partner is already in the country and an overstayer, a partnership is often not enough to regularise temporary stay. Such couples often have to go offshore together in order to come back, and must remain together unless there is a special reason.

## **10.0 Temporary Entry: Parents**

10.1 New Zealand has two options for those families who wish to bring their parents temporarily, to New Zealand. This can be used where the sponsor has not completed their three-year sponsorship requirement. First there is the parent or grandparent multiple entry visitor visa. This visa allows three six-month stays over a three-year period.

10.2 The second option is the Temporary Retirement Category. This category does not require sponsorship and also allows people without family to retire in New Zealand. For this the applicant must be 60 years of age or above, have \$750,000 to invest for 2 years, plus hold a further maintenance and assets to be applied for their maintenance and hold an income of New Zealand \$60,000 per annum. This is similar to the Retirement Residence category discussed above, except the investment amount is less by \$250K. In this category the applicant (and dependent spouse) must hold acceptable travel and/or health insurance. The visa can be rolled over as long as the investment has been maintained and acceptable travel and/or health insurance continues.

## **11.0 Temporary Entry: Other Family**

11.1 New Zealand allows “visa free” entry for the nationals of some 58 countries. For those with relatives in non-visa-free countries, particularly

those countries that generate refugees or persons who regularly overstay, obtaining a visa to visit is a challenge. New Zealand does have a bond system to manage risk in borderline cases, however this is seldom used. Clients migrating from high-risk countries have to factor in the risk that they may have difficulties sponsoring their close family to visit. For that reason it is important to establish and then maintain a good portfolio of past compliance with the immigration authorities. The visit rule is 9 months in any eighteen-month period. Many folk retire in New Zealand on visitor visas but obviously this becomes precarious as old age deepens. New Zealand is a favourite retirement destination for French civil servants in French Polynesia for example.

11.2 We are then asked about nannies or care-workers for the elderly. New Zealand has no special categories and because such workers would displace local labour (and are low paid), obtaining work visas for domestic workers is not normally possible except for diplomats, or on a temporary basis for special events or projects. We cannot rule out the possibility of a visa for a bilingual nanny, or a nanny that speaks a language and the children are growing up bilingually, if it can be established that such an employee would not be available on the market.

## **12.0 Conclusion**

12.1 New Zealand continues down the line it has previously adopted, shifting its immigration focus away from immigration through families, and opting for income and skill-based immigration. Although the rules are available online, they are hard to navigate and digest and it is therefore quite common for folk who are in the process of migrating through the Skilled Migrant Category, one of our Work to Residence categories or one of our Investor categories, not to realise the future limitations on opportunities to sponsor family. This paper hopefully addresses that.

- 12.2 Clearly there is now a built-in incentive to establish an income, surrounding most of the above policies. The income required for sponsors of parents at \$65k, and \$90k for a couple, are significant but not insurmountable for average working couples. Similarly where the sponsor is self-employed this threshold is not onerous.
- 12.3 What is however often not appreciated is that visa entry is severely restricted for visits from high risk (usually refugee-source) countries. Migrants coming from such countries are often not aware that entry to New Zealand for visits by their close family will not happen easily. Although New Zealand is a refugee quota country, the refugees themselves are seldom (probably never) told what lies ahead.
- 12.4 New Zealand does however have a special category of 300 places per year, called the Refugee Quota Family Support Category, to reunite existing refugees with at least one close family member and his or her dependants. Further, temporary entry can be facilitated by the payment of a bond.

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