

Submission

By



To the

New Zealand Immigration Service

On the

Essential Skills Policy

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**SUBMISSION BY BUSINESS NEW ZEALAND¹ ON THE ESSENTIAL SKILLS
POLICY
25 MARCH 2008**

1. INTRODUCTION

- 1.1. Business New Zealand welcomes the opportunity to provide input to the development of a new temporary work policy.
- 1.2. As the Immigration Service (NZIS) notes, labour shortages have since 1999 become a significant constraint on business expansion and they are likely to be a constant fixture of the New Zealand labour market. Indeed, as New Zealand's workforce ages and becomes more highly-educated, these shortages are likely to worsen, especially for some key sectors of the economy (e.g. agriculture, social services). Business New Zealand considers it imperative that the country takes action now to prepare for this scenario.
- 1.3. We therefore commend NZIS for taking the initiative to explore issues related to lower-skilled labour and immigration operational policy more broadly.

2. RECOMMENDATIONS

- 2.1. Business New Zealand **recommends** that:
 - the Department (and Minister) of Labour take a risk-based approach to processing Approval in Principle applications, under which employers that have a proven record of responsible behaviour would face a lighter level of scrutiny and could therefore have their applications processed faster;
 - the Department streamline the level, nature and detail of information required from prospective employers making an Approval in Principle application;
 - the Department provide greater and up-to-date information to prospective employers about the progress of their AIP application;
 - the Department be given more flexibility to include occupations on the Long-Term Skill Shortage List that fall slightly below the minimum base salary and skill requirements, provided there is clear evidence of a global shortage of workers;

¹ Background information about Business New Zealand is attached as Appendix 1

- a minimum English language requirement be implemented for prospective temporary workers, provided that it is not set so high that it acts as a barrier.
- temporary migrants' English language ability be assessed through the International English Language Testing System (IELTS);
- a limit on the time a temporary migrant can remain in New Zealand be introduced, provided (a) there are opportunities for talented and motivated workers to extend their time in New Zealand; and (b) the time limit is set at a sufficiently generous level to allow workers to earn and save enough money to make returning home an economically attractive and rational option;
- a minimum income threshold be introduced for temporary migrants wishing to bring dependent children to New Zealand;
- opportunities be created in the immigration system for talented and motivated temporary workers to extend their time in New Zealand through upskilling;
- opportunities be created in the immigration system for temporary workers who achieve a higher-than-average income level (such as the minimum income thresholds applied to the Accredited Employers Scheme or the Long-Term Skills Shortage List) to extend their time in New Zealand;
- overseas-based firms be able to use temporary work policy, provided they are held to the same standards (in terms of pay, conditions and accountability) as New Zealand-based firms.

3. BUSINESS NEW ZEALAND COMMENTS

How can we better facilitate the needs of New Zealand employers, while managing immigration risks?

What could be done better to assist New Zealand employers to access skilled temporary workers from offshore?

What advantages and disadvantages for your organisation would an employer-led application process have?

Considering the current Approval in Principle process as a potential model, what improvements would you like to see?

Are there alternative ways of refining the application process that you would prefer?

Do we provide enough information?

How could our service be improved?

- 3.1. Three themes that repeatedly emerge when employers are asked about accessing workers (both highly-skilled and lower-skilled) from offshore are:
- How slow it takes to have applications processed;
 - The uncertainty about the state and progress of their applications; and
 - The process and criteria applied to entering occupations on the Long-Term Skills Shortage List.
- 3.2. There is a need to streamline the application process, and improve communication to employers about where their cases are at.
- 3.3. Part of the problem for temporary work visas lies in the ‘one-size-fits’ all approach that is currently used. The Approval in Principle (AIP) process as it currently stands applies the same risk framework to all applicants – namely, all applications to bring in more than five workers must be forwarded to the Minister for his/her approval, regardless of whether the firm in question has acted responsibly and reliably with foreign staff in the past.
- 3.4. In our view, this is excessively onerous and inefficient. It also does not appear to represent a very good use of the Minister’s time. There would seem to be opportunities to take a more sophisticated risk-based approach, under which employers that have a proven record of responsible behaviour would face a lighter level of scrutiny and could therefore have their applications processed faster.

Recommendation: that the Department (and Minister) of Labour take a risk-based approach to processing Approval in Principle applications, under which employers that have a proven record of responsible behaviour would face a lighter level of scrutiny and could therefore have their applications processed faster.

- 3.5. A key area in which the AIP process could be streamlined based on risk is the level and nature of information and consultation required to support AIP applications. The current levels – which are required of all applicants – seem unnecessarily burdensome and duplicative. For example, prospective employers are not only obliged to provide:

“Evidence of vacancy listed with MSD (Work and Income) and the outcome of that listing (e.g. number of unemployed referred,

percentage of those referred who took up employment, duration of employment of those who took up employment)”²

But they also have to provide:

“Comment from MSD as to the availability (or suitability to be trained) of New Zealanders for the positions and whether MSD support your request for approval to bring workers from overseas into New Zealand. The contact name and number of the work broker should be included.”³

As well as:

“Confirmation from MSD as to whether there have been any recent local redundancies and if so, evidence of attempts to employ local and regional NZ workers recently made redundant for the positions on offer.”⁴

3.6. Similarly, a prospective employer of foreign workers must provide:

“Details of any past, present and planned future involvement the company has in training and upskilling of New Zealanders.”

As well as:

“Comment from relevant Industry Training Organisation (ITO) in relation to the involvement the company has in training and upskilling the New Zealand workforce.”

and

“Full and detailed reasons any New Zealand applicants were not suitable, or unable to be trained.”

3.7. Moreover, while a prospective employer must provide copies of relevant employment contracts, outlining terms and conditions and “evidence that wage/salary on offer meets market rates”, he/she must also provide:

“Comment from the relevant Industry Training Organisation/Union. This comment/opinion should provide recent information on the terms and conditions of employment being offered and any other relevant information concerning the stated need for foreign labour and the availability of New Zealanders for the positions on offer. They should

²<http://www.immigration.govt.nz/community/stream/employ/employmentprocesses/employingtemporaryworkers/whatisrequired/approvalinprincipal/checklist.htm>

³ Ibid

⁴ Ibid

also comment on the availability of New Zealanders for the positions on offer and whether they support your request.”

- 3.8. Not only are these requirements unnecessarily duplicative, but in our view, many of them are also inappropriate. For example:
- ITOs are certainly one potential source of information about a firm's training activity. However, we are not convinced that they should always be required to comment on applications. Only 35,000 firms currently train with ITOs and some sectors are not covered by an ITO. Some ITOs are likely therefore to only have a limited knowledge of total training activity across their industries or the economy.
 - It is unclear to us why an ITO should comment on “the terms and conditions of employment being offered”, when ITOs are *training* organisations.
 - We have some concerns that requiring union approval for an AIP application may create incentives to use industrial relations disputes as a barrier to employment decisions.
- 3.9. We also understand that another factor contributing to the slowness of some AIP applications is the fact that union and ITO representatives can be tardy in responding. There seem to be no incentives for these parties to be prompt in replying.

Recommendation: that the Department streamline the level, nature and detail of information and consultation required from prospective employers making an Approval in Principle application.

- 3.10. We consider that the Department could improve the level of information provided to prospective employers about the progress of their AIP application. One option could be to set up a computer tracking system – similar to those used by courier companies – whereby an employer could log in to a website and check what stage their application was at and how much longer they could expect to wait for a decision.

Recommendation: that the Department provide greater and up-to-date information to prospective employers about the progress of their AIP application.

- 3.11. The third matter of substance for employers is the process by which occupations are added to the Long-Term Skills Shortage List (LTSSL).
- 3.12. Because the number of people who are able to enter the country for employment on a permanent basis is subject to an annual cap,

Business New Zealand accepts that there is a need for some mechanism to ration these places. We absolutely agree that economic need should be the main criterion for rationing, and that skill is a major component of economic need.

- 3.13. The question that our members have raised with the LTSSL is the extent to which it focuses on higher-skilled and higher-paid occupations. We accept at a general level that minimum income thresholds and minimum definitions of “skilled employment” can be useful tools for managing demand. However, we are conscious also that there are a number of occupations for which there are long-term shortages, both here in New Zealand and around the world (e.g. truck drivers), but which sit just below the current cut-off point for “skilled employment” of ANZSCO skill level 3. These skill shortages are currently being met through temporary work policy, which creates churn and other costs for employers who are hiring low-risk foreign staff.
- 3.14. From our perspective, there would be merit in the Department having the flexibility to include occupations on the LTSSL which fall below the minimum base salary and skill requirements, where:
- i. There is clear evidence of a global shortage of workers in this occupation;
 - ii. The occupations fall within ANZSCO skill level 4 (not level 5); and
 - iii. Base salary rates are not significantly lower than the current general minimum base salary requirements for LTSSL.

Recommendation: that the Department be given more flexibility to include occupations on the Long-Term Skill Shortage List that fall slightly below the minimum base salary and skill requirements, provided there is clear evidence of a global shortage of workers.

What advantages and disadvantages for your organisation would the introduction of an English language requirement have?

If there was an English language requirement, who should it apply to? Are there any cases for exemptions?

- 3.15. The main disadvantage of an English language requirement would be the compliance requirements associated with certifying to the Immigration Service that foreign workers have the necessary skill levels. These burdens can, however, be minimised if suitably credible and easily-accessible assessment tools are used (see para 3.19 below).

3.16. Business New Zealand supports the introduction of an English language requirement, provided it is not set so high that it acts as a barrier. Some form of minimum language requirement could:

- i. Reduce the potential for exploitation or staff-management misunderstandings;
- ii. Better allow the temporary workers to fully experience and enjoy life in New Zealand; and
- iii. Promote more productive workplaces.

3.17. We note also that Australia has introduced an English language requirement for its 457 temporary work visa.

3.18. The English language requirement should be applied to all prospective temporary workers.

Recommendation: that a minimum English language requirement be implemented for prospective temporary workers, provided that it is not set so high that it acts as a barrier.

What would be an appropriate way to assess temporary migrants' English language ability?

3.19. The simplest and most effective way to assess temporary migrants' English language ability would be to use existing and reputable private sector assessment tools, such as the International English Language Testing System (IELTS) exams. IELTS is already used for immigration approval purposes in a number of countries and has an international network of testing providers.

Recommendation: that temporary migrants' English language ability be assessed through the International English Language Testing System (IELTS)

What advantages and disadvantages would a minimum income threshold for temporary migrants to bring dependent children have?

Would the income measure used by other policies be appropriate for temporary workers? Are there better alternative measures?

Are there any cases for exceptions? Why?

3.20. Given that dependents will not be eligible for income support, it is appropriate to have mechanisms in place to ensure that temporary workers have sufficient means to look after their families in New Zealand (or prevent them from bringing family into New Zealand

without these means). Some form of minimum income threshold therefore seems sensible to us.

- 3.21. Business New Zealand does not have a fixed view on what the minimum income threshold will be, although we note suggestions from officials that it would make sense to align any minimum threshold with those used by other policies (e.g. Pacific Access Category, Samoan Quota and Parent Policy, which require a gross minimum income of \$29,430.96).

Recommendation: that a minimum income threshold be introduced for temporary migrants wishing to bring dependent children to New Zealand

Do you see any advantages or disadvantages from limiting the time migrants are allowed to spend working in lower skilled occupations in New Zealand?

If there is a limit on the amount of time migrants are allowed to spend working in lower skilled occupations here, how long should it be? Why?

- 3.22. Limiting the time migrants are allowed to spend in lower skilled occupations may reduce the chance that these individuals become attached to New Zealand and try to avoid returning to their home countries. On the other hand, placing a limit on the length of time an individual may work in New Zealand will create some costs for businesses, which will be required to rehire staff once an employee's work visa runs out. Depending on their duration, work visa limits may also reduce incentives for employers to train temporary workers.
- 3.23. On balance, Business New Zealand is inclined to support limits on the time a temporary migrant can remain in New Zealand, provided there are opportunities for talented workers to extend their time in New Zealand by upgrading their visa category (see paras 3.25-28 below).
- 3.24. Business New Zealand does not have a set view on what exact time limit should be applied for migrants in lower-skilled occupations. In order to minimise incentives for migrants to overstay, it will be important that any time limit is sufficiently generous to allow workers to earn and save enough money to make returning home an economically attractive and rational option. Retaining the current General Work visa maximum limit of three years would seem to be a reasonable starting point, although we note that the maximum duration of the 457 temporary work visa in Australia is four years.

Recommendation: that a limit on the time a temporary migrant can remain in New Zealand be introduced, provided (a) there are opportunities for talented workers to extend their time in New Zealand by upgrading their visa category; and (b) the time limit is set at a sufficiently generous level to

allow workers to earn and save enough money to make returning home an economically attractive and rational option.

If some migrants working in lower skilled occupations are allowed to remain in New Zealand for a long period of time, what would be the most appropriate immigration response for them (i.e. a temporary or residence permit)? Why?

- 3.25. As noted above, Business New Zealand considers that there should be opportunities for talented and motivated temporary workers to extend their time in New Zealand. In our view, the best response would be to create incentives for temporary workers to upskill (ideally with the support of their employers).
- 3.26. By way of example, the extension or upgrade of a temporary worker's visa could be linked to enrolment in (and completion of, within a reasonable timeframe) of a programme of learning that led to an industry-relevant qualification.⁵ Upon completion, the worker could have the opportunity to apply for a more permanent status.

Recommendation: that opportunities be created in the immigration system for talented and motivated temporary workers to extend their time in New Zealand through upskilling.

- 3.27. Immigration policies in New Zealand and in other comparable countries tend to apply minimum income thresholds as measures to minimise risk to communities. In other words, people who can earn higher incomes than average are deemed to present less of a risk. By way of example, New Zealand businesses can only utilise the Accredited Employers Scheme for workers who earn more than \$50,000 per annum,⁶ and occupations can only be listed on the Long-Term Skills Shortage List where the base salary is at least \$45,000.
- 3.28. It would seem logical to apply this same principle to temporary workers. We therefore believe that there would be merit in creating opportunities for temporary workers who reach a higher-than-average income level – perhaps those that are applied to the Accredited Employers Scheme or Long-Term Skills Shortage List – to extend their time in New Zealand.

Recommendation: that temporary workers who achieve a higher-than-average income level (such as the minimum income thresholds applied to the Accredited Employers Scheme or Long-Term Skills Shortage List) should have opportunities to extend their time in New Zealand.

Should overseas employers be able to use temporary work policy?

⁵ Such as a National Certificate or Diploma

⁶ And who meet other key criteria, such as being younger than 55.

Which (if any) of these approaches to ensuring New Zealand accountability do you support? Why?

Would alternative measures (not included above) be preferable? If so, what?

- 3.29. Business New Zealand believes that it is important to ensure that immigration and labour law do not create unfair advantages for some firms over others. New Zealand-based firms who bring in foreign workers themselves are required to pay them local market rates, and there is no reason why overseas companies should not face the same obligations and the same level of accountability for any breaches of the law. Provided overseas firms can be held to the same standards, we would not have any problem with them being able to use temporary work policy.
- 3.30. Business New Zealand does not have a particular preference in terms of possible policy responses (i.e. requiring all wages to be paid in New Zealand; requiring workers in lower skilled occupations to have a New Zealand employer; or requiring the New Zealand party to guarantee any wages or payments owing on behalf of the foreign contractor and that foreign employees have recourse to New Zealand employment institutions). The key tests from our perspective are:
- Does the response ensure a level playing field for New Zealand- and overseas-based firms?
 - Will the response provide a clear point of accountability?
 - Is the response cost-effective?

Recommendation: that overseas-based firms be able to use temporary work policy, provided they can be held to the same standards (in terms of pay, conditions and accountability) as New Zealand-based firms.

APPENDIX 1

BACKGROUND INFORMATION ON BUSINESS NEW ZEALAND

Business New Zealand is New Zealand's largest business advocacy organisation.

Through its four founding member organisations – EMA Northern, EMA Central, Canterbury Employers' Chamber of Commerce and the Otago-Southland Employers' Association – and 67 affiliated trade and industry associations, Business NZ represents the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, Business NZ contributes to Governmental and tripartite working parties and international bodies including the International Labour Organisation, the International Organisation of Employers and the Business and Industry Advisory Council to the Organisation for Economic Cooperation and Development.