

Hon Kris Faafoi

Minister of Justice
Minister for Broadcasting and Media
Minister of Immigration



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Ref: OIA 21-129

Paul Jacques-Mignault
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Dear Paul Jacques-Mignault

Thank you for your request of 18 June, under the Official Information Act (1982) (the Act). The questions and concerns you have raised are listed below with a response under each section.

I. EOI Selection Resumption and Residency Backlog

a. When will the EOI selection resume for the skilled migrant category? Please inform on any approximate timeframe, e.g. Q2 2021.

b. If no timeframe for resumption is currently set, when are you planning to announce the resumption of EOI selection for the skilled migrant category?

c. If no timeframe is set for the announcement, what is the specific motive hindering this decision? Is there a specific event you are expecting, e.g. borders opening up, SMC backlog being cleared, MBIE's productivity commission report being submitted to your attention, to resume the selection?

d. In a debate in Parliament during Question Time for Immigration in May 2021, National MP Erica Stanford asked you about work rights for onshore dependent children of migrants stuck in either the frozen EOI pool or the residency backlog. She asked you if there were specific work visa requiring no tertiary-level qualification, no work experience, an 18-year-old child of a residency applicant could apply to, knowing the job would likely be low-skilled and low-paid. Your answer was 'I'm sure there are many options available to them.' I looked at the INZ website and could not find a single work visa type that would be suitable for an 18-year-old dependent of a residency applicant with neither tertiary-level qualification, work experience, nor study rights as a domestic student. Could you please indicate which specific visa 'options' you were referring to?

e. What is the specific policy reason you are refusing to grant temporary work and/or study rights for the dependent children of skilled migrants in the EOI pool or in the SMC backlog, knowing their parents' residency process may at best take 2 years or at worst is frozen? What do you think would be the best use of their time for the years they wait for their parents' residency decision?

Response:

As you are aware, the Government decided to suspend selection of Expressions of Interest (EOIs) for the Skilled Migrant Category last year, due to COVID-19 pressures. This is a temporary measure, and while EOIs have not been selected since April 2020, previously selected applications continue to be processed. I cannot offer a timeline for when EOI selections will resume at this juncture. I am considering advice across a range of matters affecting the onshore migrant workforce, which will interplay with any decisions that will be taken regarding restarting EOI selections.

You are correct that there are people in New Zealand on temporary visas who are awaiting outcomes of residence applications that are delaying life decisions due to the wait, including dependent children included in skilled migrant residence applications who have completed high school. These dependents are not able to take up work without disqualifying themselves from eligibility for residence as a dependent, or study at university without paying international fees. They do have some options if they want to stay as a dependent for their parents' residence application. They could:

- return to their home country while awaiting the outcome of the residence application, to study as a domestic student. They do need to remain financially dependent on their family to retain eligibility for residence;
- enrol as an international student;
- do limited volunteering;
- travel around New Zealand and Australia.

They could also apply for a work or study visa independent of their parents. For example, they could apply for an Essential Skills visa if they can find a fulltime role and pass the labour market test (for example, some undersupplied roles may fit this profile). This would mean they would no longer be eligible as a dependent on their parents' skilled migrant residence application.

While I understand the difficulty faced by these people, this has been the situation for many years and the skilled migrant residence category had long wait times for applications prior to COVID-19 due to high levels of demand.

While this does cause uncertainty for some people, residence visa approval is not a guarantee. I encourage families and young adults to factor the wait time for visa decisions into their decision making when applying.

II. Split Migrant Families

a. Why did you limit the number of migrants eligible for family reunification to the migrants earning more than twice the median wage and/or critical health workers and/or holding a visa prior to border closure?

b. Are you currently planning a pathway to reunification for split migrant families of migrants not qualifying for the criteria mentioned in the previous question? The Trans-Tasman bubble being open, MIQ is operating with spare capacity with more than 1,000 rooms available per fortnight; MIQ capacity should not be the main constraint. -If so, when will that plan be announced? -If not, what is the specific policy reason you have decided not to offer a pathway to reunification for split migrant families of migrants earning less than twice the median wage? -What is the current number of migrants on temporary work visas that are currently still split from their family because they didn't meet the criteria for reunification?

Response:

I took decisions in April 2021 to match up the family reunification for visa holders already in New Zealand and those entering New Zealand as critical health worker or other critical workers. The decisions also allowed a number of families who already held visas prior to the border closure to be reunited.

This meant that temporary work visa holders already in New Zealand who met the criteria for 'critical health worker' or 'other critical worker' became eligible to bring their partners and dependents to New Zealand. For 'other critical workers' there is a salary threshold of two

times the median wage and they must also meet other criteria, including, for example, having unique experience and technical or specialist skills not readily obtainable in New Zealand.

The Government has introduced border exceptions throughout the past year as circumstances have permitted, including family reunification border exceptions. In making these decisions, the Government has had to balance benefits to New Zealand's economic, social and humanitarian objectives and the impacts on managed isolation and quarantine capacity.

I have asked for advice on broadening family reunification settings and this is under active consideration.

At present, there are around 900 offshore partners and dependents of temporary visa holders with expired visas who are unable to enter New Zealand.

Beyond this, it is difficult to know how many onshore temporary visa holders may have partners and dependent children offshore that they wish to bring to New Zealand if they have not already applied to do so.

III. Migrant Exploitation

a. Since you have said on numerous occasions that you aim to eliminate migrant exploitation, why do you not detach a temporary work visa to a specific employer? For instance, migrant workers could be attached to a profession and a region, e.g. Carpenter in Northland, rather than trapping migrant workers in a potentially abusive employer. What is the specific policy reason you chose not to implement this change in the recent rollout of new work visas?

b. How many staff at INZ work on enforcing regulation against migrant exploitation? Will their headcount increase in 2021 after the recent budget announcement?

Response:

Cabinet and the previous Minister of Immigration have agreed to implement a new Accredited Employer Work visa (AEWV). They considered whether to make employer-assisted visas 'open' work visas. However, the Cabinet paper said:

"I do not propose that foreign workers be granted 'open' work visas, because it would undermine the intent of the employer and job gates if foreign workers were able to work in a job with a different employer who may not be accredited, or a different occupation or region to that covered by a labour market test. This would create a risk that foreign workers could work in a job that is not in shortage, potentially competing with New Zealanders. It may also create an incentive for employers to avoid accreditation if they can employ foreign workers on open work visas. I also note that foreign workers on open work visas are not immune to exploitation, especially if they are working for employers who have not been checked."

The Minister at the time noted that to ensure that migrants are able to move between accredited employers, the "variation of conditions" rules would be made as streamlined as possible. The AEWV is due to be implemented from mid-2022.

Subsequently, Cabinet also agreed to the creation of a Migrant Exploitation Protection (MEP) visa, which was implemented on 1 July. This visa provides a six month visa for migrants who make a credible report of exploitation. The new visa will be granted free of any visa fees or levies and will enable exploited migrant workers to get out of exploitative situation quickly and easily.

Staff across many levels and occupations in Immigration New Zealand (INZ) contribute towards the work of mitigating exploitation of migrants. This includes but is not limited to such roles as Compliance Officers, Investigators, and Immigration Officers. It is not possible to establish the number of staff at Immigration New Zealand who work on mitigating migration exploitation due to differing levels of involvement in this work.

The creation of the MEP visa demonstrates that we are taking the issue of migrant exploitation seriously. The introduction of the MEP visa and other associated changes will be supported by increased funding for Employment New Zealand and Immigration New Zealand to work together to ensure that serious action is taken against non-compliance, and a new information and education action plan to ensure that migrant workers and employers understand their rights and obligations.

IV. Temporary Work Visa Extensions

a. You have recently extended several thousands of temporary work visas due to expire in the second half of 2021. What was the specific policy reason you chose to wait until up to 3 weeks before the earliest visa expiry dates to announce the extension? Why did you not give a more reasonable notice of, say, 2 months, given one could easily foresee borders remaining closed in the short term and INZ documents all visa expiry dates?

Response:

On 10 June 2021, the Government made the following immigration changes to manage our onshore migrant workforce:

- Extension of the onshore Working Holiday Scheme visas for visas expiring between 21 June 2021 and 31 December 2021
- Extension of the onshore SSE visas for visas expiring between 21 June 2021 and 31 December 2021, and granting these visa holders open work rights to enable them to work for any sector
- Extending the visa duration of migrants on an Essential Skills, who are paid below the median wage, from 6 months to 12 months
- Further extending the implementation of the Immigration stand-down for another 6 months
- Implementing the 2020 median wage to all of our immigration settings
- Allowing anyone on a work visa to apply for an SSE visa, under its current visa conditions of being restricted to the SSE sector
- Further extending the ability for non-Pacific RSE workers to work for more than one employer
- Further extending the ability for RSE workers to remain in NZ

In order to enable the above changes, officials had to undergo a series of consultations to consider all possible impacts the changes may have. This needed to look broader than the border restrictions and includes (but is not limited to) the following:

- assessing how the previous visa extensions impacted the immigration system
- how operationally viable the previous extensions were
- whether or not New Zealanders were displaced from roles as a result of the previous visa extensions
- whether or not further extensions would displace New Zealanders from roles
- whether these new proposed changes would have serious negative impacts on some sectors and options on how to mitigate these impacts
- which immigration settings would need to be adjusted to allow the changes to be implemented

The process to undertake this work naturally took time in order to land the settings at the right place.

I have since announced further changes to onshore settings, to allow those temporary workers already working in a full time role to apply for a further work visa to remain in the same role for two years and to provide those applicants with a simplified application process.

V. Ongoing Productivity Improvements at INZ

*a. How many residency decisions since the beginning of 2021 has INZ output for the skilled migrant category? How many staff members are working on processing SMC applications?
b. Is the number of residency decisions per INZ employee in the SMC team per week expected to increase in the second half of 2021?*

Since 01 January 2021 to 07 July 2021 a total of 2,947 residence applications under the Skilled Migrant Category (SMC) have been approved.

INZ has one queue for skilled residence applications. The applications in this queue include SMC and Residence from Work (RFW) applications and are not split into two separate queues based on the application category. In 2018, INZ centralised the processing of skilled residence applications to the INZ Manukau Office. As at 28 June 2021 there were a total of 83 Immigration Officers processing skilled residence applications in the INZ Manukau Office.

Allocations of applications to Immigration Officers occur weekly and the number of applications that are allocated is dependent upon processing capacity. The Government is currently reviewing its approach to the New Zealand Residence Programme (NZRP) and is considering replacing the planning range with a more targeted approach that focuses on management of specific residence visa types. In the meantime, INZ will continue to process applications at the same volume and with the same level of resourcing as the previous NZRP allowed for. This has an impact on the number of applications that can be allocated and the timeliness of application processing.

VI. Statistics and Policy-making

a. You have put forward New Zealand's ubiquitous use of migrant labour as a reason for the immigration reset, citing migrants accounted for more than 4% of the labour force, higher than any country in the OECD. However, that statistic is flawed since: -It does not include the undocumented migrant workforce - which in the U.S. is estimated to account for 4-5% of the labour force (Source: brookings.edu) - on top of the documented migrant workforce. For instance, there are 13.6 million green card holders (Source: immigrationhelp.org), which (Assuming half of them are in the workforce) already accounts for 4.3% of the U.S. workforce. Including all other temporary work rights and undocumented migrants would further increase that statistic. -It does not include migrant labour which is granted systematic work rights when entering - Kiwis in Australia, EU workers relocating to other EU countries, Irish in the U.K., etc. There are roughly 650,000 Kiwis in Australia (Source: Parliament of Australia). Assuming half of them are in the workforce, they would account for 2.4% of the country's labour force, a further 3.6% of the workforce includes visa holders of other nationalities (Including temporary resident, protection, & graduate, working holiday makers, and half of 'bridging' visa holders). Australia's total would be then amount to roughly 6%. - Australians living in NZ according to the 2018 Census amount up to roughly 30K; not reaching 1% of NZ's workforce. -The OECD reported New Zealand had the third highest diaspora of its citizen workforce after Ireland and Portugal in 2015/2016 - thus shrinking the local workforce by roughly 14% (Source: Improving Well-Being in New Zealand through Migration, 2019, OECD). When drafting the immigration reset, did you not seek a thorough understanding of the statistic you were using to justify new immigration policy, particularly

when further research indicates NZ does not use disproportionately more migrant labour, at least compared to Australia and the US?

b. The other reason you mentioned for the immigration reset was NZ's low productivity. What is the specific causal relationship you established between low productivity and migration?

Response:

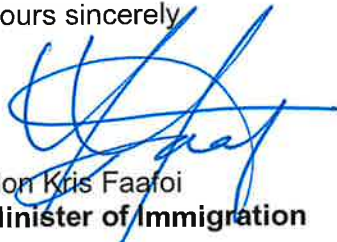
Thank you for flagging your concerns about the data used in the immigration reset speech, which I have passed on to officials. The statistic you are referring to, that temporary work visa holders make up almost 5 per cent of New Zealand's labour force, the highest share compared to other OECD countries, was taken from the OECD Economic Surveys: New Zealand 2019 (in the thematic chapter 'Improving well-being through migration'). This material was used due to the reputation of the source agency and its use of comparable data.

There is little good evidence on the relationship between migration and productivity in New Zealand to draw on and we are not suggesting a causal link necessarily, but that there is scope for further action to support productivity growth. We can be fairly certain, given the experience of the last decade, that high levels of immigration have not been the panacea to New Zealand's poor productivity performance.

Expert views (from OECD, NZIER, Motu) support the premise that policy settings could be doing more to encourage productivity enhancing action from firms. For example, immigration settings may reduce the incentive to invest in productivity-enhancing capital – perhaps the availability of low-skilled labour makes it uneconomic to invest in automation – and in this way constrain productivity. It might also reduce the incentive to train existing workers, if immigrants with the required skills are already available.

I trust you will find the information helpful. You have the right to seek an investigation and review by the Ombudsman of my response to your request. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Yours sincerely



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