



**NEW ZEALAND  
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# Entrepreneur Residence Visa (ERV) applications

Aug 2019

# Entrepreneur Resident Visa (ERV)

## About Entrepreneur Resident Visa (ERV)

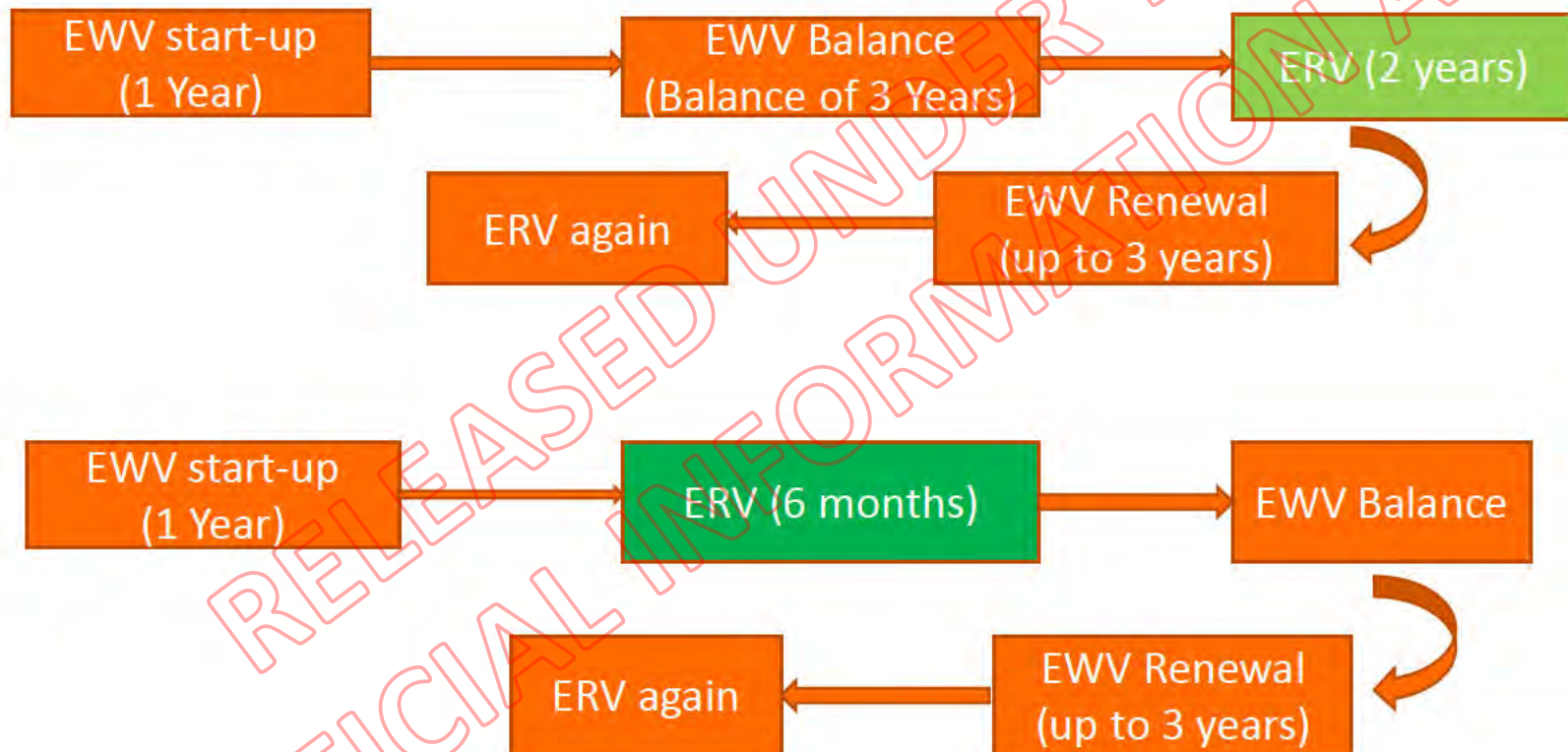
- The Entrepreneur Residence Category allows applicants to live in New Zealand permanently if they have established/purchased a business in New Zealand that meets the relevant immigration instructions.
- This visa is for people who have been self-employed in New Zealand at least 6 months, or have operated a business for two years on Entrepreneur Work Visa or other visas that allows self-employment.
- Applicants can include their partner, and dependent children in the visa application.

# Two Types of Entrepreneur Resident Visas

- Entrepreneur Residence Category (2 years) - Requires applicants to have successfully established or purchased a business in New Zealand and have been self-employed in that business for at least two years, and for your business to have significantly benefited New Zealand.
- Entrepreneur Residence Category (6 months) - This option provides a faster track to residence if applicants have invested at least NZ\$500,000 in the business and have created a minimum of three new full-time jobs for New Zealand citizens or residents.



# Procedure of Entrepreneur visas



# Key Instructions for ERV applications

- **BB – EWV instructions**
- **BH – ERV instructions**
- **R – Generic Residence instructions**
- **F – Family instructions**
- **A – Administration instructions**

## **BH – ERV instructions**

- BH1 - Objective
- BH2.1 - Successful Establishment And Operation Of A Business That Benefits New Zealand Significantly
- BH2.5 - Compliance With Employment And Immigration Law
- BH2.10 - English Language Requirements
- BH2.15 - Health And Character Requirement
- BH2.25 - Applicants Must Not Have Accessed Welfare Assistance
- BH3.1 - Consistency With Business Proposal Under The Entrepreneur Work Visa Category
- BH4.10 - Criteria For A Business Benefiting New Zealand
- BB6 - Definitions for Entrepreneur Category



## BH2.1 Successful establishment and operation of a business that benefits New Zealand significantly

Principal applicants in the Entrepreneur Residence Visa Category are required to:

- a) demonstrate that they have successfully established a business in New Zealand that realises the benefits outlined in their business plan, and have operated that business for at least:
  - i. two years, and meet the requirements of BH2.1.1; or
  - ii. six months, and meet the requirements of BH2.1.5; and
- b) demonstrate that the business is benefiting New Zealand significantly (see [BH4.10](#)); and
- c) demonstrate that the business complies with employment and immigration law (see [BH2.5](#)); and
- d) demonstrate that the same or greater amount of capital (see [BB3.5.10](#)) has been invested in the business as outlined in the business plan; and
- e) meet the fit and proper person requirements set out at [BM1](#).

## **BH2.1.1 Requirements for applicants who have operated a business for at least two years**

- a. To be granted an Entrepreneur Residence Visa on the basis of operating a business for two years, the principal applicant must:
  - i. have been self-employed in that business for two years prior to the date the application under the Entrepreneur Residence Visa Category is made; and
  - ii. hold an Entrepreneur Work Visa, Long Term Business Visa or other visa which allows self-employment.
- b. If a principal applicant does not hold an Entrepreneur Work Visa or Long Term Business Visa, they must demonstrate they meet the requirements for an Entrepreneur Work Visa set out at BB3.1.

## **BH2.1.5 Requirements for applicants who have operated a business for at least six months**

- a. To be granted an Entrepreneur Residence Visa on the basis of operating a business for six months, the principal applicant must:
  - i. have been self-employed in that business for at least six months prior to the date the application under the Entrepreneur Residence Visa Category is made; and
  - ii. have made a capital investment (see BB3.5.10) of at least NZ\$500,000 in their business; and
  - iii. have created at least three ongoing and sustainable full time jobs for New Zealand citizens or residents; and
  - iv. hold an Entrepreneur Work Visa or a Long Term Business Visa at the time the residence visa application is made.
- b. Applicants who have operated a business for six months must provide evidence:
  - i. of how their investment funds have been invested in their business and how this has benefited the business or increased its value; and
  - ii. that any jobs created meet the definition of full time employment at BB6.1.25, as shown by employment contracts, wage and salary records, or evidence of business turnover.
  - iii. If they have not done so previously, the principal applicant must provide evidence the investment capital, as stated in the business plan, has been transferred directly from the holder's bank account(s) through the banking system to New Zealand.

## BB6.1.15 Definition of self-employment

- a. Self-employment is lawful full time active involvement in the management and operating of a business which the principal applicant has established or purchased, or in which the principal applicant has made a substantial investment.
- b. Substantial investment is defined as the purchase of 25% or more of the shareholding of a business.
- c. For the avoidance of doubt, self-employment does not include involvement of a passive or speculative nature.
- d. Applicants for an Entrepreneur Work Visa (see [BB](#)) may claim points for experience of self-employment in the points scale at [BB3.10\(d\)](#) for businesses outside of New Zealand, and/or for self-employment in New Zealand while on a visa that permitted self-employment.
- e. Applicants for an Entrepreneur Residence Visa (see [BH](#)) must have been self-employed in New Zealand in order to be granted residence under this category.





## BH4.10 Criteria for a business benefiting New Zealand

- a. A business is considered to add significant benefit to New Zealand if it can demonstrate that it has promoted New Zealand's economic growth by for example:
- i. introducing new, or enhancing existing, technology, management or technical skills; or
  - ii. introducing new, or enhancing existing, products or services; or
  - iii. creating new, or significantly expanding existing, export markets; or
  - iv. creating sustained and ongoing full time employment for one or more New Zealand citizens or residents; or
  - v. the revitalisation of an existing New Zealand business that has led to significantly increased financial performance; or
  - vi. introducing productivity-enhancing spillover benefits or increased capacity utilisation (such as significant net new job creation); and
- b. The business is trading profitably on the date the application is lodged or a business immigration specialist is satisfied that it clearly has the potential to become profitable within the following 12 months.
- c. For definitions of “new products or services” and “trading profitably” please refer to the Definitions section at BB6.

## BB6.1.25 Definition of creation of full time employment

- a. The creation of full time employment means a new full time and ongoing job or jobs that will be created for New Zealand citizens or residents.
- b. A full time and ongoing job means a permanent role for at least 30 hours a week:
  - i. as demonstrated in written employment contracts for the role; and
  - ii. excluding contract or casual roles.
- c. The creation of full time employment may include cases where new permanent and ongoing part time jobs have been created which, when taken together, are equivalent to new full time roles. Evidence must be provided in respect of each claimed equivalent full time job to demonstrate the part time roles:
  - i. are for two or more new roles with fixed hours that are equivalent to one new full time job; and
  - ii. are for permanent and ongoing roles as demonstrated in written employment contracts for the roles;  
and
  - iii. meet all employment and immigration laws; and
  - iv. exclude contract, sub-contracted or casual roles.
- d. The creation of employment for non-New Zealand citizens or residents in new or existing jobs will not result in points being awarded in the points scale at BB3.10(d).
- e. The employment of New Zealand citizens and residents in existing jobs will not result in points being awarded in the points scale at BB3.10(d).

## BB6.1.40 Definition of trading profitably

For the purposes of the instructions in Entrepreneur Work Visa Category (BB) and the Entrepreneur Residence Visa Category (BH), "trading profitably" means:

- a. meeting or exceeding the forecasted annual turnover from the original business plan, and assessment from the points scale at BB3.10(d); and
- b. making sufficient profit to enable the principal applicant to pay themselves at least the minimum wage per annum.

## EWV point scale that is relevant to ERV

- Minimal of 120 points for an EWV to be approved.
- At the ERV stage, we need to assess the point scale below to see if the applicant meets the requirements of BH 4.10(b)

Points for benefit to New Zealand (can be awarded in up to two categories)	
<b>New full time employment creation</b>	
10+ new full time positions for New Zealand citizens or residents	80
5 or more new full time positions for New Zealand citizens or residents	50
3 or more new full time positions for New Zealand citizens or residents	30
2 new full time positions for New Zealand citizens or residents	20
1 new full time position for a New Zealand citizen or resident.	10
<b>Points for approved export businesses (based on annual turnover)</b>	
\$1,000,000 + turnover a year	80
\$750,000 + turnover a year	60
\$500,000 + turnover a year	40
\$400,000 + turnover a year	30
\$300,000 + turnover a year	20
\$200,000 + turnover a year	10
<b>Points for unique or new products or services to New Zealand</b>	
A credible business proposal that provides unique or new products/ services to New Zealand, or to a particular region.	30

Points for capital investment	
\$1,000,000 +	80
\$750,000 +	60
\$500,000 +	50
\$400,000 +	30
\$300,000 +	20
\$200,000 +	10
under \$200,000	0

Bonus points	
Business based outside Auckland as defined in BB6.1.35.	40

### BB6.1.35 Definition of a business based outside Auckland

A business based outside Auckland means a business with its headquarters or sites based outside the area covered by the authority of the Auckland Council. See the Auckland Council website for details of the area they cover

## BH2.5 Compliance with employment and immigration law

- a. Businesses established in New Zealand must comply with all relevant employment and immigration law in force in New Zealand. Compliance with relevant New Zealand employment and immigration law includes but is not limited to:
- i. paying employees no less than the appropriate minimum wage or other contracted industry standard; and
  - ii. meeting holiday and special leave requirements or other minimum statutory criteria, e.g. occupational safety and health obligations; and
  - iii. only employing people who have authority to undertake that work under the Immigration Act 2009.
- b. Despite BH2.5 (a) above, and except in cases where BH2.5(d) applies, where an application otherwise meets all requirements for approval and there is an incident of non-compliance with any relevant employment or immigration law in force in New Zealand, a business immigration specialist may nevertheless approve the application where:
- i. they are satisfied that the breach of requirements is of a minor nature; and
  - ii. evidence is provided that satisfies the business immigration specialist that the cause and consequences of the breach have been remedied.
- c. To determine the nature of a breach, the business immigration specialist may consult with WorkSafe New Zealand, the Labour Inspectorate and other sections of the Ministry of Business, Innovation and Employment, and/or the Accident Compensation Corporation.
- d. The business established is considered to not be compliant with employment law if it fails to meet the requirements set out at [R5.110](#), or if it is included on a list of non-compliant employers maintained by the Labour Inspectorate (see [Appendix 10](#)).

### BB3.5.10 Recognition of capital investment

Capital investment includes all nominated funds used in the establishment and operation of the approved business, except those used for:

- a. passive or speculative investment(s), such as reserve funds or term deposits; or
- b. the purchase of items for the personal use of the applicant(s), such as personal residences, cars or boats; or
- c. remuneration paid to the applicant(s) or their immediate family; or
- d. investment in residential property, except where the development of residential property meets the requirements of BB6.1.50 and formed part of an applicant's business plan.



## BM1 Requirement to be a fit and proper person

- a. Principal applicants must meet fit and proper person requirements (see [BM2](#)), if applying under:
  - ...
  - ii. Entrepreneur Work Visa category; or
  - iii. Entrepreneur Resident Visa category; or
  - ...
- b. Requiring applicants to be 'fit and proper' people ensures applicants are accountable for the actions of businesses they influence.

## BM2 Definition of a 'fit and proper' person

- a. Applicants are 'fit and proper' people if:
  - i. all businesses they have influence over have complied with all relevant immigration, employment and taxation laws; and
  - ii. they have never been convicted of any offence arising in the course of, or resulting from, business dealings; and
  - iii. they have never been convicted of an offence involving dishonesty in New Zealand or a foreign country; and
  - iv. they have never been involved in business fraud or financial impropriety
- c. Relevant law includes, but is not limited to the:
  - i. Accident Compensation Act 2001; and
  - ii. Employment Relations Act 2000; and
  - iii. Health and Safety at Work Act 2015; and
  - iv. Holidays Act 2009; and
  - v. Immigration Act 2009; and
  - vi. Minimum Wage Act 1983.

## BH3.1 Consistency with business proposal under the Entrepreneur Work Visa Category

- a. An application under the Entrepreneur Residence Visa Category will be declined if:
- i. the business on the basis of which the application is made was established while the principal applicant was the holder of a work visa granted under the Entrepreneur Work Visa or Long Term Business Visa Category; and
  - ii. the business is different from the business proposal (except for a business proposal subsequently modified with the consent of a business immigration specialist) in respect of which the applicant was granted a work visa.
- b. Despite BH3.1(a) above, an application may be approved if:
- i. the business that has been established would have met the requirements for a business plan under the Entrepreneur Work Visa Category; and
  - ii. the business that has been established required the same or a greater level of capital investment (see BB3.5.10) than a business proposal in respect of which the applicant was granted a work visa under the Entrepreneur Work Visa Category; and
  - iii. the applicant has relevant experience for the new business; and
  - iv. the business has provided a significant benefit to New Zealand equal or greater than the original business as determined by a business immigration specialist (see BH4.10).
- c. Applications for an Entrepreneur Residence Visa which have not met one or any of the goals in the business plan, or realised their stated goal in one or any of the categories which were claimed in the points scale at BB3.10(d) in the original Entrepreneur Work Visa application, will be declined unless:
- i. the applicant can demonstrate that this failure was due to extraordinary circumstances outside their control; and
  - ii. the circumstances were not foreseeable; and
  - iii. the failure was not due to lack of planning or realistic goals on the part of the applicant or adviser working on their behalf.

## BH2.10 English language requirements

- a. Principal applicants in the Entrepreneur Residence Visa Category must meet the minimum standard of English (see [BF2](#)).
- b. Any partner or dependent children aged 16 years and over who are included in the application must meet a minimum standard of English (see [BF2](#)) or, where instructions allow, pre-purchase of ESOL tuition (see [BF1.1](#)).

### BF2 Minimum standards of English

- a. Unless instructions specify otherwise, principal applicants who lodge applications under any business immigration category, meet the minimum standard of English if:
  - i. they provide acceptable English language test results, as set out at [BF2.20](#) (no more than 2 years old at the time the application is lodged) or
  - ii. they provide evidence that they have an English-speaking background (see [BF2.1](#)) which is accepted by a business immigration specialist as meeting the minimum standard of English; or
  - iii. they provide other evidence which satisfies a business immigration specialist that, taking account of that evidence and all the circumstances of the application, the person meets the minimum standard of English (see [BF2.5](#)).
- b. In any case under (a) (ii) or (iii), a business immigration specialist may require an applicant to provide an English language test result in terms of paragraph (a)(i). In such cases, the English language test result will be used to determine whether the applicant meets the minimum standard of English.

### BF 2.20 Acceptable English Language Test Results

- IELTS (General or Academic) ----- Overall Score of 4.0 or more
- TOEFL iBT----- Overall Score of 31 or more
- PET Academic ----- Overall Score of 29 or more



# Partnership Requirements

## R2.1.15 When may partners included in an application be granted a residence class visa?

- a. For a 'partner' included in an application to be granted a residence class visa an immigration officer must be satisfied that they meet 'partnership' instructions which are:
- i. that the principal applicant and partner are living together in a genuine and stable partnership (see F2.10.1); and
  - ii. that the couple have been living together in such a relationship for 12 months or more at the time the application is assessed; and
  - iii. that the partnership meets the minimum requirements for the recognition of partnerships set out at F2.15 in that:
    - the couple were both aged 18 years or older at the time the application for residence class visa was made, or if aged 16 or 17 years old have the support of their parent(s) or guardian(s); and
    - the couple have met prior to the application being made; and
    - they are not close relatives (see F2.15(d)).
- b. When assessing if the duration of the partnership requirement in a. ii above is met immigration officers may include any period immediately prior to any marriage where they are satisfied the couple was living together in an interdependent partnership akin to a marriage.

# Partnership Requirements

## F2.30 Determining if the couple is living together in a partnership that is genuine and stable

- a. When determining if the couple is living together in a partnership that is genuine and stable the immigration officer will take into account those factors set out at [F2.20\(b\)](#) and must consider, and be satisfied, there is sufficient proof, (from documents, other corroborating evidence, or interviews) of all four of the following elements:
- i. 'Credibility': the principal applicant and the partner both separately and together, must be credible in any statements made and evidence presented by them.
  - ii. 'Living together': the principal applicant and partner must be living together unless there are genuine and compelling reasons for any period(s) of separation (see F2.30.1).
  - iii. 'Genuine partnership': the principal applicant and partner must both be found to be genuine as to their:
    - i. reasons for marrying, entering a civil union or entering into a de facto relationship; and
    - ii. intentions to maintain a long term partnership exclusive of others.
  - iv. 'Stable partnership': the principal applicant and partner must demonstrate that their partnership is likely to endure.
- b. A residence class visa must not be granted unless the immigration officer is satisfied, having considered each of the four elements in (a) above (both independently and together) that the couple is living together in a partnership that is genuine and stable

# Partnership Requirements

## F2.30.1 Assessment of periods of separation

- a. If a principal applicant and their partner have lived apart for periods during their partnership, the application should not automatically be declined. Instead, immigration officers should determine whether there are genuine and compelling reasons for any period(s) of separation.
- b. Determining whether there are genuine and compelling reasons will depend on the circumstances in each case, and may require consideration of:
  - either partner's family, education or employment commitments;
  - the duration of the partnership and the length of time the couple has spent apart;
  - the extent to which the couple has made efforts to be together during the time apart.



# Dependent Child Requirements

## R2.1.30 Definition of 'dependent child'

For the purpose of inclusion in an application, and despite the definition in section 4 of the Immigration Act 2009, a child is dependent if they:

- a. are:
  - i. aged 21 to 24, with no child(ren) of their own; and
  - ii. single (see [F5.5](#)); and
  - iii. totally or substantially reliant on the principal applicant and/or the principal applicant's partner for financial support, whether living with them or not; or
- b. are:
  - i. aged 18 to 20, with no child(ren) of their own; and
  - ii. single (see [F5.5](#)); or
- c. are:
  - i. aged 17 or younger; and
  - ii. single (see [F5.5](#)); or
- d. are applying for a South Island Contribution resident visa and were previously determined to be dependent under [WR7.20.1](#).
- e. When determining whether a child of 21 to 24 years of age is totally or substantially reliant on the principal applicant and/or the principal applicant's partner for financial support immigration officers must consider the whole application, taking into account all relevant factors including:
  - i. whether the child is in paid employment, whether this is full time or part time, and its duration;
  - ii. whether the child has any other independent means of financial support;
  - iii. whether the child is living with its parents or another family member, and the extent to which other support is provided;
  - iv. whether the child is studying, and whether this is full time or part time.

## BH2.15 Health and character requirement

Principal applicants and partners and/or dependent children included in the application must meet health and character requirements (see [A4](#) and [A5](#)).

*“Applicants for residence class visas must have an acceptable standard of health unless they have been granted a medical waiver or ... An application for a residence class visa must be declined if any person included in that application is assessed as not having an acceptable standard of health and a medical waiver is not granted (see [A4.60](#)).” - A4.10*

*“Applicants for all visas must:*

- a. be of good character; and*
- b. not pose a potential security risk.*

*If any person included in the application fails to meet the necessary character requirements and the character requirements are not waived, the application may be declined.” – a5.1*

## BH2.25 Applicants must not have accessed welfare assistance

Applications under the Entrepreneur Residence Visa Category will also be declined if the principal applicant and any partner or dependent child/ren applied for and was granted welfare assistance under the Social Security Act 1964 while in New Zealand during the currency of their temporary visas.



# Case Study

- The PA has been self-employed for 2 years since they were approved an EWV. Now they applied for ERV. The financial statements provided show the following:

Revenue	Buisness Plan	Actual
Year 1	\$210,000	\$5,880
Year 2	\$330,000	\$77,887
Year 3	\$480,000	\$190,979

Net Profit/Shareholder Salary	Buisness Plan	Actual
Year 1	\$37,200	\$(2,810)
Year 2	\$103,000	\$(15,507)
Year 3	\$161,000	\$8,148

Is there anything you should be concerned about? What instructions should those concerns be raised under?

BH4.10(b)

# Case Study

The PA was granted an EWV, the approved business plan states that the business will import printing materials and process in NZ, then export to overseas market. As the ERV stage, it appears that the business just meets its financial targets and that most of the business revenue was generated by export. However, the case officer noted the export documents provided show that products have been directly purchased from China and transported to their destinations. I.E. most of the products have never come to NZ to be processed.

If the applicant has been awarded points for export turnover at EWV stage, do we consider this is a problem? If so, what instructions this is under?

We would be concerned that if the applicant's business meets BH4.10 (b) as most of the revenue will not be classified as export turnover, therefore they are not able to meet the point assessment of EWV.

If the applicant's EWV was approved without points awarded for export turnover, do we consider this is a problem? If so what instructions this is under?

We would be concerned that if the applicant's business meet BH3.1 (consistency) as the business model is fundamentally different from the approved BP.

# Case Study

The approved business plan shows that the business will benefit New Zealand by creating 3 full time employees and generating \$400,000 export revenue. As the result, the applicant has been awarded for  $30 + 30 = 60$  points.

Evidence provided shows that the business has created 3 permanent positions (35 hours, 20 hours and 10 hours per week.) and generated \$300,000 annual export revenue by the time of lodgement.

How many full time employees positions does the business have?

How many points can the applicant be awarded under benefiting NZ?

Do you consider that the applicant meets BH4.10(a)? Why?

Do you consider that the applicant meets BH4.10(b) (if we do not take into account of the potential)? Why?

2 FTE

40 points can be awarded

Yes, applicants meets BH4.10(a) as per BH4.10(a)(iii) and (iv)

No, applicant does not meet BH4.10(b) as he does not meet the assessment of the points scale



# Case Study

PA's business plan was approved on the basis of:

- To establish a restaurant business
- To benefit NZ by creating 2 FTE
- The business has been awarded for 20 points for employment creation

At the ERV stage, CO noted that the applicant meets all other requirement but evidence provided shows that the business has 3 part time employees with 20 hours per week each. Evidence also shows that the business has been operated as a catering service provider rather than restaurant.

What would be your concern and what is the instruction you should consider.

BH3.1 as the nature of the business is different from the approved business plan.

Is this application to be declined?

We will need to assess if the applicant meets the despite clause BH3.1(b)

# Case Study

The PA granted an EWW and established a business in NZ in 2015. The PA applied for ERV in 2018. PA included his wife in the ERV application. Please see the movements in AMS below:

Date/Time	Arr/Dep	Days in NZ	Flight	Disembarkation Port	Ref.	Embarkation Port	Travel Doc	Visa	Expiry
22/Feb/2015	Arrive		KE129	Auckland		Incheon Airport	s 9(2)(a)	Work	02/Jul/2
10/Mar/2015	Depart	17	KE130	Incheon Airport		Auckland			
22/Sep/2015	Arrive		NZ80	Auckland		Hong Kong Airport		Work	02/Oct/
15/Oct/2015	Depart	24	NZ289	Shanghai		Auckland			
05/Feb/2016	Arrive		CX117	Auckland		Hong Kong Airport		Work	02/Oct/
23/Feb/2016	Depart	19	CX118	Hong Kong Airport		Auckland			
05/Nov/2016	Arrive		CZ335	Auckland		GuangZhou		Work	02/Oct/
12/Feb/2017	Depart	100	CZ336	GuangZhou		Auckland			
01/Dec/2017	Arrive		CZ305	Auckland		GuangZhou		Work	29/Jun/
17/Dec/2017	Depart	17	CZ306	GuangZhou		Auckland			
16/Feb/2018	Arrive		CZ335	Auckland		GuangZhou		Work	29/Jun/
05/Mar/2018	Depart	18	CZ336	GuangZhou		Auckland			
02/Jun/2018	Arrive		3U8909	Auckland		Chengdu		Work	29/Jun/
26/Jun/2018	Depart	25	MU780	Shanghai		Auckland			

If this is for the PA, what would be your concern?

Self-employment as per BH2.1.1

If this is for the PA's wife, and PA has been generally stayed in NZ to operate the business, what would be your concern?

Partnership as per R2.1.15(a)(ii)

# Case Study

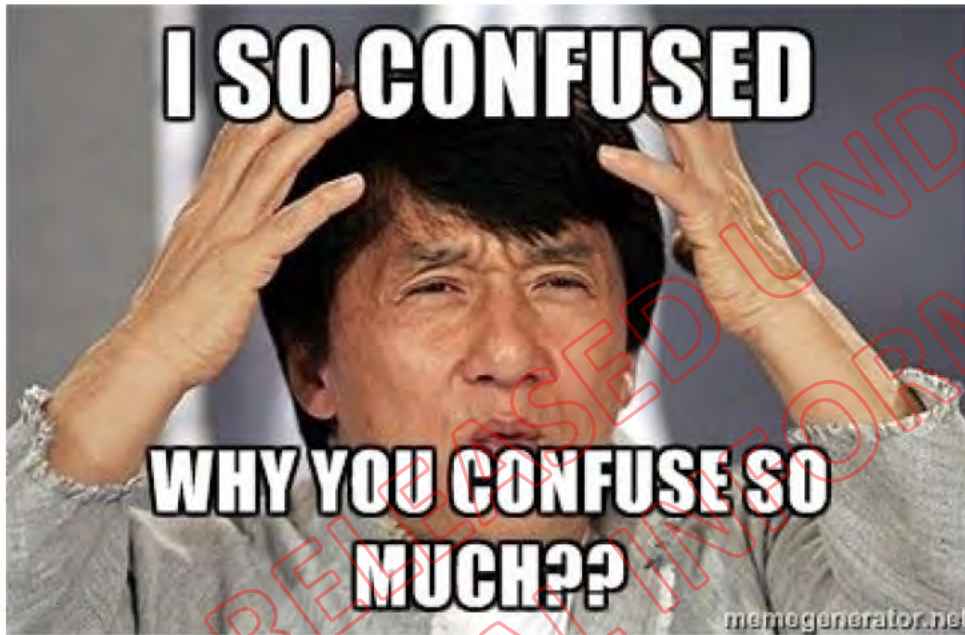
Investment items	investment expenditure	Actual investment
Motor vehicle	\$50,000	\$2,5000
Shop fit out	\$50,000	\$50,000
Other equipment	\$40,000	\$40,000
Stock	\$20,000	\$15,000
Working capital	\$90,000	\$50,000
Total		\$180,000

During the assessment, it appears that:

- Applicant paid \$50,000 for a car but it is for private use too (50%)
- Applicant provided evidence that demonstrates \$50,000 working capital has been used to cover start up cost and the rest of \$40,000 was sit in the business saving account for emergency use.
- It also appears that \$5,000 of stock was purchased form the profit that generated by the operation of the business.

Based on above, what is the actual investment for each item?

# Any Questions?



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# Entrepreneur Work Visa

**David Song**

**Nov 2020**

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# What is LTBV

LTBV stands for Long Term Business Visa. It was introduced in 1999; ceased on December 2013 and replaced by EWV on Mar 2014.

Long Term Business visas are a category of temporary entry class visa allowing self-employment in New Zealand. (BC2.a.)

The Long Term Business Visa category is for business people who are interested in establishing a business in New Zealand without living permanently in New Zealand, or with the intention of better enabling themselves to meet the relevant criteria for residence under the [Entrepreneur category](#). (BC1)

# What is Entrepreneur Work Visa (EWV)

- EWV is a category of temporary entry class visa with conditions that allow self-employment in NZ
- It is for an experienced business person who wants to work in their own business in New Zealand.
- If such visa is granted, applicants can buy an existing or set up a new business in New Zealand, as a first step towards New Zealand residence



## Basic EwV Requirements

- Applicants are required to meet the immigration instructions under BB (mainly BB3)
- Applicants must meet health and character requirements for residence as set out at A4 and A5
- Applicants must also meet other relevant requirements under generic temporary entry instructions

## Main Differences between LTBV and EWV

Requirements	LTBV	EWV
Capital Investment	N/A	>100,000 NZD
Point Scale	N/A	>120 points
Duration of Start-up	9 months	12 months
Bonus Points for Location	N/A	40 points
Nominated fund	N/A	Yes

## EWV Objective (BB1)

The objective of this category (EWV) is to contribute to economic growth by enabling experienced business people to grow or establish high growth and innovative businesses with export potential in New Zealand. (also refers to BB3.15 e., which will be discussed later)

# Types of Entrepreneur Work Visa Applications

- EWW Interim (start-up) application
- EWW Balance application
- EWW Renewal application
- EWW Change of Plan
- EWW Reconsideration (for above applications)

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# Currency of Entrepreneur Work Visas

EWV Start-up  
(12 month)

EWV Start-up stage is the first 12 months of the EWV. During the EWV Start-Up stage, the holder of the Entrepreneur Work Visa is expected to establish and commence the operation of the proposed business in New Zealand.



EWV Balance (balance of the 3 years)

Towards to the end of the start-up stage, if the EWV visa holder meets instruction requirements (BB4.5), further work visa can be granted for the balance of the 3 year period.



EWV Renewal

A further EWV may be granted beyond the 3 year period, if the conditions at [BB4.10](#) are met.



EWV Reconsideration

An applicant may apply for a reconsideration of the decision to decline if requirements are met

EWV Change of plan

The applicant can submit one (and only one) COP at anytime while holding an EWV visa.

# EWV Interim Application

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

English language

Minimum Capital investment of \$100,000

**Some Basic Requirments**

Minimum of 120 points

Specific business plan to the proposed business

Sufficient relevant business experience

Maintenance fund in addition to capital investment

RELEASED UNDER THE OFFICIAL INFORMATION ACT

# Business Plan

Business Plan: the most important evidence for EWP applications.





# Elements of Business Plan

## The business plan includes:

details of the proposed business venture, including type of business, industry, position in the market, targeted customers, suppliers and distributors, required assets

copies of any documents needed to show that you are able to operate this business in New Zealand

details of your intended involvement/role in the proposed business

outline of the proposed ownership structure of the business:

Sole trader/ Partnership/ Limited liability company/ Subsidiary of overseas company/ Other

a SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis of the proposed business

an outline of your knowledge of the New Zealand business environment and the market research you have done on the demand for your business

an outline of any contact made or advice sought from relevant trade associations in New Zealand

summary of any professional advice regarding the establishment of the business

list of any professional qualification or registrations required to run this business in New Zealand, and describe what you have done to obtain full registration or recognition of these qualifications in New Zealand

details of any other registration or consents you need to obtain, e.g. consent under the Resource Management Act or Overseas Investment Act, and what you have done to obtain these consents

details of any other relevant business or trade qualifications and university degrees you have achieved, including institution, date and qualification type, and attach certified copies

details of proposed marketing strategy of the business, market size, estimated market share, market positioning, competitor analysis, distribution and pricing strategy

outline of what you expect the business to achieve in its first three years

an operational plan and timeline for establishing the business in New Zealand, including an estimation of the time required for establishing the company, obtaining approvals (if required), finding premises, purchasing equipment, recruiting staff and establishing a distribution network etc

detailed financial information and financial forecasts, as outlined in Section P

any other information or documentation that you need to demonstrate that your proposed business is viable and has realistic chances of successfully meeting its objectives and trading profitably

# Elements of Business Plan

- I. Details of the proposed business, including type of business, industry, position in the market, targeted customers, suppliers and distributors, required assets
- II. Copies of any documents needed to show that you are able to operate this business in New Zealand
- III. Details of your intended involvement/role in the proposed business
- IV. Outline of the proposed ownership structure of the business:
  - Sole trader/ Partnership/ **Limited liability company**/ Subsidiary of overseas company/ Other
- V. A SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis of the proposed business
- VI. An outline of **your** knowledge of the New Zealand business environment and the market research **you** have done on the demand for your **business**

# Elements of Business Plan

- VII. Details of proposed marketing strategy of the business, market size, estimated market share, market positioning, competitor analysis, distribution and pricing strategy
- VIII. An operational plan and timeline for establishing the business in New Zealand, including an estimation of the time required for establishing the company, obtaining approvals (if required), finding premises, purchasing equipment, recruiting staff and establishing a distribution network etc
- IX. Detailed financial forecasts and financial information, inc detailed assumptions
- X. Any other information or documentation that is needed to demonstrate that the proposed business is viable and has realistic chances of successfully meeting its objectives and trading **profitably**

# Elements of Business Plan

Business Plan may also includes:

- ✓ An outline of any contact made or advice sought from relevant trade associations in New Zealand
- ✓ Summary of any professional advice regarding the establishment of the business.
- ✓ list of any professional qualification or registrations required to run this business in New Zealand, and describe what you have done to obtain full registration or recognition of these qualifications in New Zealand
- ✓ Details of any other registration or consents you need to obtain, e.g. consent under the Resource Management Act or Overseas Investment Act, and what you have done to obtain these consents
- ✓ Details of any other relevant business or trade qualifications and university degrees you have achieved, including institution, date and qualification type, and attach certified **copies**

# Requirements for a business plan (BB3.15)

Business plans must:

- a. demonstrate that it is to establish or purchase business in New Zealand; and
- b. be specific to the proposed business, not a generic or template business plan; and
- c. be no more than three months old and
- d. include evidence:
  - i. to support the claims for the proposed business; and
  - ii. that the PA has sufficient funds or assets to finance their proposed business; and
  - iii. that the PA has sufficient relevant business experience; and

# Requirements for a business plan (BB3.15)

- e. demonstrate that:
- i. the financial forecasts provided are realistic; and
  - ii. the **PA** has sufficient knowledge about the proposed business and the New Zealand business environment; and
  - iii. the **PA** has done sufficient market research; and
  - iv. the proposed business meets at least one of the 3 objectives elements
    - high growth
    - innovative, or
    - export potential; and
- f. include sufficient evidence to support the proposed business, applicant's skills, funds or experience **claimed**.

# Requirements for a business plan involving the purchase of an existing business (BB3.15.1)

If the applicant is proposing to purchase an existing business, they will need to provide additional evidence which demonstrates the existing employment, the financial position and the purchase price etc.

This is because they need to demonstrate that their operation of this business will offer a benefit over and above the benefit the existing business has already provided to NZ.

Such evidence may include but not limited to

- the (conditional) sale and purchase agreement,
- independent valuation,
- financial statements (for the previous two years)
- wage records/pay slips
- employment agreements
- job descriptions
- Employer Monthly Schedules

# Assessment of a business plan (BB3.15.5)

A business immigration specialist will assess applications based on:

- i. whether the proposed business is able to meet any of the objectives
  - high growth; or
  - innovative; or
  - export potential; and
- ii. whether applicant has sufficient business experience relevant to the proposed business; and
- iii. whether the proposed business will **benefit** New Zealand; and
- iv. whether the information provided can be considered as credible

Please note that BB instruction does not specify 'benefit' at iii above. We can consider BH4.10 a. but cannot use it for EWV assessment and be careful when you decline an application based on **that**.



# Assessment of a business plan (BB3.15.5)

## High Growth:

We do not have a bench mark for 'High Growth'. Applications are assessed on a case by case basis, we take a holistic approach on assessing applications and consider information including but not exclusively:

- the proposed industry,
- the proposed location,
- the proposed investment level,
- the forecast revenue,
- the proposed employment level,
- the principal applicant's business experience and skills and scalability of the proposed business etc.

When an application involves a pre-existing business, we assess growth in addition to the existing performance of the business – including revenue generated and employment within the **business**.

## Verification of a business plan (BB3.15.10)

A business immigration specialist must be satisfied that the evidence provided demonstrates the business plan is genuine and accurate, and may take necessary actions (for example an interview) to verify evidence provided if **needed**.



# Financial Information

Business Plan should include Financial Information of the proposed business, which is very important information for most Entrepreneur applications.

Financial information includes but not limited to:

- Total Capital investment
- Capital investment break-down
- Forecasted performance statement
- Projected cash flow forecasts
- Financial assumptions



# Example of Capital Investment Breakdown

<b>Fixed Asset:</b>		<b>\$37,000 inc:</b>	
Company Vehicle:	\$22,000	(will it be used purely for business purpose?)	
Office Furniture:	\$10,000		
Office redecoration:	\$5,000		
<b>Beginning Stock:</b>		<b>\$100,000</b>	(is this in line with the Financial Forecasts?)
<b>Start-up Expenses</b>		<b>\$8,500 inc</b>	
Legal Fees:	\$1,500		
Marketing Research:	\$2,000		
Recruitment:	\$1,000		
Initial advertisement :	\$4,000		
<b>Operational Cost for Year 1</b>		<b>\$64,290 inc</b>	
Total salary:	\$23,790	(does this match with proposed employment?)	
Advertising:	\$4,000		
Administration:	\$15,000		
Rent:	\$20,000	(does this match with office lease <a href="#">agreement?</a> )	
Accountant:	\$1,500		
<b>Total Proposed Capital Investment:</b>		<b>\$209,790</b>	

# Example of Forecasts Financial Performance

08 Forecasted Profit and Loss Statement

NZ\$	Year 1	Year 2	Year 3
<b>Revenue</b>	116,529	250,000	350,000
<b>Cost of Sale</b>			
- Purchases	20,975	45,000	63,000
<b>Gross Margin</b>	95,554	205,000	287,000
<b>Expenses</b>			
- Accounting fees	1,500	1,541	1,582
- Depreciation	8,160	6,818	5,699
- Director's Salary	5,310	23,815	24,649
- Legal Fees	1,000	1,027	1,055
- Lighting, power and heating expense	14,697	29,394	29,394
- Miscellaneous expense	5,000	5,135	5,274
- Recruitment Fees	500	-	-
- Rental expense	7,200	7,200	7,200
- Repairs and Maintenance	12,583	12,923	13,272
- Salaries and Wages	71,031	111,864	115,779
- Telecommunications Expense	1,728	1,775	1,823
- Transportation fees	11,760	12,078	12,404
<b>Total Expenses</b>	<b>140,469</b>	<b>213,570</b>	<b>218,131</b>
<b>Earnings before interest and tax</b>	(44,915)	(8,570)	68,869
<b>Tax (28%)</b>	0	0	(19,283)
<b>Net profit after tax</b>	<b>(44,915)</b>	<b>(8,570)</b>	<b>49,586</b>
<b>Ratios</b>			
- Gross margin %	82%	82%	82%
- Net profit after tax/revenue%	-39%	-3%	14%
- Interest cover	N/A	N/A	N/A

## Fields that we focus on

	Year 1	Year 2	Year 3
<b>Revenue</b>	116,529	250,000	350,000
<b>Purchases</b>	20,975	45,000	63,000
<b>Gross margin</b>	95,554	205,000	287,000
<b>Employee salaries</b>	71,031	111,864	115,779
<b>Shareholder salary</b>	5,310	23,815	24,649
<b>Net profit before tax</b>	(44,915)	(8,570)	68,869

This does not mean that we will not look at other fields of the provided financial forecasts.

# Financial Assumptions

All supporting assumptions should be included. Assumptions should be consistent and link together with other sections of the business plan

The following assumptions are particularly important.

- Revenue/sales – explain the basis for forecasts, such as past experience, undertakings from prospective customers, or market research. Where appropriate, assumptions should include number of units, price.
- Gross profit margin – as per revenue/sales, the basis for the gross profit margin should be explained and supported. Provide evidence where appropriate.
- Salaries – this should be reflected to the number of employees, their roles and working hours stated in the business plan.
- Drawings – list the drawings, including applicant’s salary.
- Rent – explain the basis for the forecast (for example, the cost of the existing lease, the current market rental for equivalent **premises**).

## Point Scales (BB3.10)

- Applications must meet a minimum score of 120 points in order to be granted an Entrepreneur Work Visa. Applications not meeting the minimum score of 120 points will be declined.
- Applicants must be able to demonstrate to the satisfaction of a business immigration specialist why they should be awarded the points they have claimed.
- Business immigration specialists must give written reasons for declining the application and not awarding any points claimed.



# Investment

Investment (NZD)		Claimed Points
1,000,000	80 points	
750,000	60	
500,000	50	
400,000	30	
300,000	20	
200,000	10	
Under 200,000	0	
Total Points		

# Capital Investment

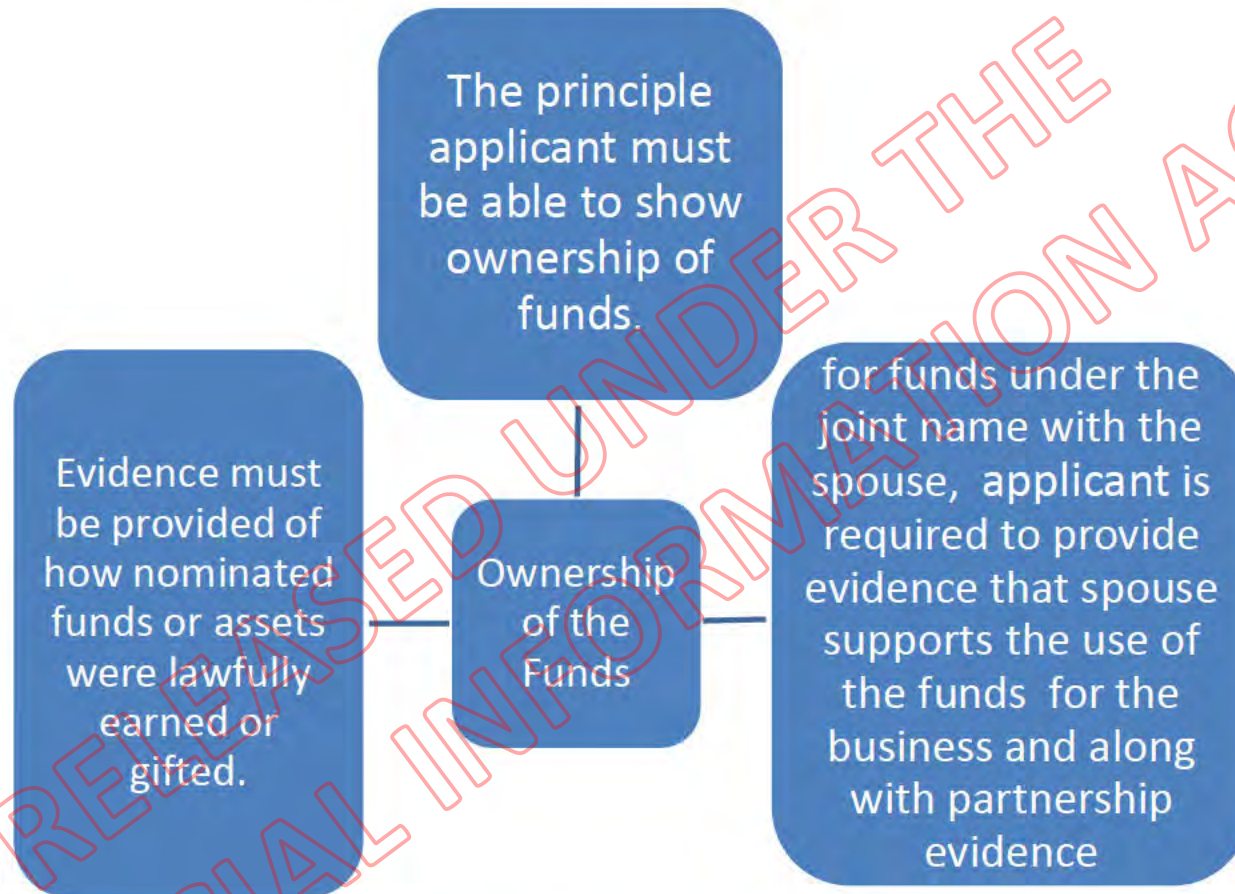
PA must demonstrate that

- nominate funds and/or assets equivalent in value to the total capital investment identified in the business plan; and
- demonstrate ownership of these funds and/or assets (see BB3.5.5); and
- the nominated funds and/or assets have been earned or acquired legally (see [BB6.1.5](#)).

Recognition of capital investment (BB3.5.10):

not all business expenditures can be considered as capital investment. Applicant is required to provide a break down of the proposed capital investment for consideration and this will be checked at later [stage](#).

# Ownership of Funds



Can the PA claim the full value of funds that are jointly owned by the PA and his/her partner?  
what if the nominated funds/assets are hold by the PA and a person other than their partner?

# Evidence of funds/assets legally earned or acquired

## Personal Income

- Individual income tax records
- Social insurance summaries
- Employment agreement
- Bank statements showing the receipt of the claimed income



## Property appreciation

- Property purchase and sales agreement for the property obtained from the archive of the property management center/bureau
- Invoice for real estate of deed tax records showing the original purchase amount of the property (which can be either the original or the copy obtained from the archive of the property management center/bureau)
- Current valuation of the property
- Evidence as to how the applicant legally earned/acquired the funds to purchase the property in the first place

PA provided purchase agreement and a valid valuation of the nominated asset, what else would you request for legally earning requirements?

# Evidence of funds legally earned or acquired

## Shareholder's equity in company

- Valuation of the company
- Evidence to support how the applicant legally earned/acquired the initial seed funds to purchase the shares in the company

## Proceeds from the stock/security market

- Statements of earnings from the stock/security companies
- Evidence to support how the applicant legally earned/acquired the initial seed funds to invest in the stock/security market

## Gifted funds

- Gift certificate/declaration
- Evidence as to how the donor legally/acquired the gifted funds
- Bank records indicating the gifted amount being transferred from the donor's account to the applicant's account and receipt from the applicant's bank showing the funds are in their **possession**

# Capital Investment Waiver

- Only the management team of the BMB is able to waive the minimum capital investment requirement.
- The requirement of NZ\$100,000 investment can only be waived for businesses in science, ICT, or other high value export-oriented sector, which demonstrate a high level of innovation or credible short-term high growth prospects.  
BB3.5.1
- A high value, export oriented business is one where a business plan aims to:
  - create 5 or more new full time positions for New Zealand citizens or residents (50 points); and
  - achieve an annual export turnover of NZ\$500,000 per annum or more

# Business Experience

can be awarded in only one category.

Relevant self-employment (BB6.1.15)		Claimed points
10 years	40 points	
5 years	30	
3 years	20	
Other Self-employment		
10 years	20 points	
5 years	15	
3 years	5	
Relevant Senior Management Experience (BB6.1.20)		
10 years	10 points	
5 years	5	
Total Points		

## Claimed Business Experience

- Self-employment is lawful **full time** active involvement (managing and operating) in a business where PA has made **substantial investment** (over or above 25% shareholding)
- “*Relevant self-employment*” implies an applicant intends to do the similar type of business with transferable skill in NZ that they owned and managed.
- “*Other self-employment*” implies they have business experience from a dissimilar business they owned and managed.

Evidence provided shows PA has 3 years ‘other self-employment’ experience and has been awarded 5 points, can you approved this application based on this business experience?



# Senior Management Experience

- Senior management experience means extensive experience at a senior level in a business (planning, organisation, control, change-management and direction-setting).
- To demonstrate senior management experience, an applicant will need to be able to show they held the day-to-day responsibilities of managing a business or company or function within a large company (with 5 or more full time employees, or a turnover in excess of \$1,000,000 per annum), with specific executive powers. (BB6.1.20)

Evidence provided shows PA has 5 years 'Senior Management' experience and has been awarded 5 points, can you approved this application based on this business experience?

# Evidence for Business Experience

- Company registration with date of incorporation
- Tax documents for each year points claimed
- Organisational Chart
- Financials for company upon which experience claimed.
- Job descriptions and letters of reference from employers noting their responsibilities and years of employment.
- Employment Contracts
- Balance Sheets/Cash Flow documents
- Business Invoices
- Business contracts/agreements signed by the PA

# Significant Economic Benefits

(Employment, Exports, Unique Product or Service, Revitalisation, etc. can be awarded in up to 2 categories)

New Full-Time Employment		Claimed Points
10+ F/T	80 points	
5 or more	50	
3 F/T	30	
2 F/T	20	
1 F/T	10	
Total Points		

# New Employment

- We must be satisfied that the new employment proposed are genuine (i.e. for business needs) and sustainable
- Multiple part-time positions may equal to one or more full-time positions if they are permanent positions (based on their working hours).
- Existing businesses is required to provide evidence to demonstrate previous employment level.

How many full time positions are created under each case?

- 1) 1 staff works 40 hours/week and 1 staff works 20 hours/week
- 2) 3 staff works 15 hours/week, 1 staff works 45 hours/week

# Exports

Exports "turnover a year" (NZD)		Claimed Points
1,000,000	80 points	
750,000	60	
500,000	40	
400,000	30	
300,000	20	
200,000	10	
<b>Total Points</b>		

# Exports

- Financial forecasts have to be based on realistic assumptions.
- Points are awarded as part of a **credible** business plan.
- There should be evidence of contact with potential local suppliers.
- We may ask PA to provide evidence to demonstrate that they meet export legislation, MPI and RMP (Risk Management Programmes) requirements.

We do not normally consider revenue generated from services provided by 3<sup>rd</sup> party (other than PA's business) as PA's revenue. For example, accommodation, air ticket, meals, tuition fee etc. included in PA's package. In those cases, we only consider the commission and the other revenues generated by services provided by PA's business (e.g. pick up/ drop off clients from/to airports).



# Bonus Points

## Business Based in Outside Auckland – 40 Points

- A business based outside Auckland means a business with its headquarters or sites based outside the area covered by the authority of the Auckland Council.
- If an applicant claims points for being outside of Auckland, but is found to be in Auckland, they *may* be denied at later stage (mainly residence or renewal).
- Core operation revenues do not come from Auckland.

\*Extra evidence is needed when the PA claims for bonus points and propose to have multiple offices/branches, which at least 1 of them is in Auckland



# Unique or New Products or Services BB.6.130

## Unique or New Products or Services – 30 Points

A product or service is considered “new” if it is:

- a significant enhancement or product line not being provided by existing businesses in New Zealand or the region of New Zealand in which the prospective business would be located; or
- a proposed enhancement that would promote New Zealand’s economic growth within the 3 year validity of the Entrepreneur Work Visa.

A product or service is considered “unique” if it is:

- the only product or service of its type being provided in New Zealand; or
- a product or service that is not available elsewhere in New Zealand or the region of New Zealand in which the prospective business would be located.

Region – not whole New Zealand, not a city of New Zealand either.

Advisors and lawyers often mix up the definition of ‘Unique/New products or services’ with the definition of ‘innovation’. What is the difference?



## Point for age of prospective applicants (at date of the **lodgement**)

Age	Points Claimed	Points Awarded
24 and under	<b>15</b>	
25 - 29	<b>20</b>	
30 - 39	<b>20</b>	
40 - 49	<b>20</b>	
50 - 59	<b>10</b>	
60 and over	<b>0</b>	
<b>Claimed points</b>		

# Final Assessment for Points

Areas to claim points against	Points Claimed	Points Awarded
Type of Experience	30	20
Claimed F/T Employment	10	10
Exports per year	20	20
Capital investment	30	20
Age	20	20
Outside Auckland	40	40
Unique Good or Service	N/A	N/A
<b>Claimed 150 points</b>		<b>130 Awarded</b>

Earning 120 points allows further consideration and assessment of application. It does not guarantee approval.

# Visa Granted : Conditions of Entrepreneur Work Visas

The conditions specified on an Entrepreneur Work Visa will include the following conditions relating to work:

**As:** Self-employed business owner

**In:** (Location of business)

The travel conditions on the visa will give permission to travel to New Zealand for multiple journeys.

**For:** (Business type and trading name of business)



# EWV – Balance Application

## BB4.1 During the Entrepreneur Start-Up stage

If an application for an Entrepreneur Work Visa has been approved, holders of Entrepreneur Work Visas must establish and commence their proposed business in New Zealand during the first 12 months (the Entrepreneur Start-Up stage).

## BB4.5 Requirements at the end of the Entrepreneur Start-Up stage

- a. Towards the end of the Entrepreneur Start-Up stage, the holder must provide evidence to satisfy a business immigration specialist that:
  - i. the investment capital for the proposed business, as stated in the business plan, has been transferred directly from the holder's bank account(s) through the banking system to New Zealand; and
  - ii. reasonable steps have been taken to establish or invest in the business as set out in the business plan.
- b. A business immigration specialist must also be satisfied the applicant continues to meet the fit and proper person requirements set out at [BM1](#).

# EWV – Balance Application

- Once a EWV interim application has been approved, the PA must establish and commence their proposed business in New Zealand during the first 12 months (the Entrepreneur Start-Up stage) (BB4.1) and submit a balance application towards the end of EWV start-up stage
- The PA is required to provide evidence to demonstrate that the **nominated funds/assets** has been transferred **directly** from the **PA's bank account** through the **banking system** to New Zealand; and reasonable steps have been taken to establish or invest in the business as set out in the business plan.
- The PA is required to provide evidence to demonstrate reasonable steps have been taken to establish or invest in the business as set out in the business plan.
- If the balance application is approved, the PA will be granted a work visa with the duration of **the rest** of 3 years.

Some countries (e.g. China, Vietnam etc.) have strict foreign exchange policy, which makes harder for some PAs to transfer the nominated funds. In that case, we may consider an ETI against BB4.5 a. i. if:

- Applicant only used immediate family member's quotes, and
- Provided clear trail of how the funds were transferred, and
- Funds have not been stayed in their account for long, and
- No any other issues identified during the **assessment**.

# EWV – Balance Application

Interpretation of BB4.5 a.

**Towards** the end of the Entrepreneur Start-Up stage, the **holder** must provide evidence to satisfy a business immigration specialist that:

- i. the investment capital for the proposed business, **as stated in the business plan**, has been transferred directly from the holder's bank account(s) through the banking system to New Zealand; and
- ii. **reasonable steps** have been taken to establish or invest in the business as set out in the business plan.

**Towards** – implying that the balance application needs to be submitted within the validate of the EWV start-up stage.

**Holder** – this refers to the EWV visa holder rather than bank account holder, despite some LIAs argued about it before. This is because:

- BB4.5 a. ii. Shows the requirements for the holder to demonstrate reasonable steps have been taken... This clearly is the requirement for the EWV visa holder, not a bank account holder.
- BB4.5 is the continuation of BB4.1, where states holders of EWV ...

**Stated in the business plan** – implying that it is the nominated funds/assets that required to be transferred, not other random funds/assets.

**Reasonable steps** –means that we do not assess the fact that whether **all** of the proposed capital investment needs to be spent, unless it is stated in the business **plan**.

# EWV – Start-Up Extension

- A business immigration specialist may extend the Entrepreneur Start-Up stage, in cases where they are not satisfied that the requirements of BB4.5(a) have been met, but are satisfied that the holder may be able to meet these requirements within a specified time, to allow the holder to take further steps to establish and operate their business.
- Towards the end of the Entrepreneur Start-Up stage, the holder must provide evidence to satisfy a business immigration specialist that they meet the requirements at BB4.5(a) to be granted an Entrepreneur Balance at the expiry of that second period.
- Further Entrepreneur Start-Ups will not extend the maximum length of the Entrepreneur Work Visa, which will still be for a period of up to 3 years (that is, the maximum duration remains up to 3 years from the date the Entrepreneur Work Visa was granted).

The length of the extension is subjective. We need to consider the facts that what is the reasonable time frame the PA needed to be able to meet the Balance requirements.

# EWV – Renewal Application (BB4.10)

A further Entrepreneur Work Visa (or Renewal) may be granted beyond the initial 3-year work visa if we are satisfied that there are valid reasons for the PA needing further time to meet the requirements to apply for or be granted residence under the Entrepreneur Residence Visa Category.

Applicants can only **be granted one** EWV renewal. If they still wish to run their business beyond the period of the further (or renewed) EWV, they will need to make a new application under the EWV instructions, or any other applicable category, in force when they apply.

Basic requirements:

- ✓ no changes have been made from the original BP, if there are any, they have to be granted by BIS (COP).
- ✓ PA intends to spend the further time either implementing the original BP or approved BP in an approved COP.
- ✓ the principal applicant has, extra sufficient funds for financing the business and their maintenance
- ✓ Valid reason for renew the EWV visa

If an Renewal application is submitted along with a COP and an ERV. In what order should you normally assess those applications?

Would you assess the legal earning on those funds provided with a Renewal application?

It is possible to issue a visa beyond the expiry date of applicants' passports ([E3.10 b.](#))



## Other EWV applications

Change of Plan (COP)



Reconsideration



# EWV - Change of Plan (BB5)

- The holder of an Entrepreneur Work Visa may submit one request to change their business plan within the validity of their visa. Any changes proposed must be minimal, or the request will be declined.
- Change requests may be granted if a business immigration specialist is satisfied that:
  - the changes proposed are minimal and do not significantly alter the nature of the proposed business; and
  - there are genuine reasons for changing the original business proposal; and
  - the business still requires the same or a greater level of capital investment (see [BB3.5.10](#)) than the original business proposal; and
  - the proposed changes would have been granted the same or greater points in the points scale set out in [BB3.10\(d\)](#); and
  - the business still meets the requirements for a business plan as set out in [BB3.15](#); and
  - the applicant has sufficient business experience relevant to the proposed business; and
  - the business continues to offer at least the same level of benefit to New Zealand, including full time positions created for New Zealand citizens or residents, annual turnover, new exports and/or the introduction of unique products or services to New Zealand or to a particular region; and
  - the applicant continues to meet the fit and proper person requirements set out at [BM1](#).

# EWV - Change of Plan (BB5)

## Key Points

- Once the EWV start up application is approved, the PA may submit one **(and only one) request** to change their business plan **within** the validity of their visa.
- Any changes proposed must be minimal and do not significantly alter the nature of the proposed business.
- We also need to consider if there are genuine reasons for such COP and that there are no decreases on: level of capital investment, points awarded, level of benefit to NZ etc.
- A genuine reason for changing the original business proposal does not include inadequate market research.
- If such COP is refused, the applicant has the option of continuing with the original business plan.
- If the applicant still wishes to carry on with the new business, they must lodge a new EWV application.
- If the applicant does not continue with the original business proposal, but starts the new business without approval or a new application being approved, they may be made liable for **deportation**.

# EWV – Reconsideration(E7.35.1)

## Key Points

An applicant may apply for a reconsideration of the decision to decline a further temporary visa if, and only if:

- the Minister did not make the decision to decline the application; and
- the application for reconsideration is made not later than 14 days after the date on which the applicant received notice of the decision to decline the further visa; and
- the applicant is lawfully in New Zealand at the time of the application for reconsideration.

Reconsideration does not need to be a full assessment. You are allowed to assess only on the decline grounds (and other concerns that were left outstanding if necessary). You can have a full assessment if you want to.

## Common Issues for EWB applications

- Businesses must meet at least one of the objective characters I.E. *“high growth, innovative or export potential”*.
- The business should make sufficient profit to enable the principal applicant to pay themselves at least the minimum wage per annum (BB 6.1.40). (this will be assessed at residence stage)
- 3<sup>rd</sup> party fees may not be considered as business revenue. (for example air tickets fee, tuition fee etc.)
- Capital investment transferred to NZ are not from nominated funds or assets, or not transferred directly from PA’s bank account via banking **system**.

# Common Issues for EWB applications

- The purchase of items for the personal use of the applicant(s), such as personal residences, cars or boats, may not be considered as capital investment. (BB3.5.10 b)
- “Innovative” refers to “applying **new ways to produce more with the same quantity of inputs**”. (BB6.1.70)
- Buying an existing business requires sufficient evidence to demonstrate employment and financial level before PA takes over the business.
- Working capital may not be considered as capital investment if it is passive or speculative. (for example reserve funds or term deposit)
- Business operating needs to be consistent with the original **BP.**

# Differences between EWV and ERV

	EWV	ERV
Partnership (living together)	Not required to be living together for 12 mths ( <a href="#">E4.5.30</a> )	Required to be living together for 12 mths ( <a href="#">R2.1.15 a.ii.</a> )
Age of Dependent Children	Up to 19 ( <a href="#">E4.1.10</a> )	Up to 24 ( <a href="#">R2.1.30</a> )
Custody of DC under 16	Evidence is required for custody as per <a href="#">E4.1.15 b.</a>	Evidence is required for custody as per <a href="#">R2.1.45 c.</a>
Character section in Determination tab	Will pop up the PC window, where we need to click 'Yes' if a PC is provided	No PC pop up window for ERV applications, while it does for other Resident application
Triage	Normally triaged as Med by default (no specific risk)	Normally not applicable

# AMS – things you need to be aware

- To complete the AMS:
  - Tick ‘Waive’ for ‘Qualification’ in the determination tab. If tick ‘No’, then it leads to a decline.
  - No need to worry SA’s Health and English details in the EWW application as they will be removed after QC.
  - Complete SA’s applications (open work/visitor/student)
- Visa Label:
  - if the applicant is offshore, then we need to put the ‘first entry date’, which is the same of the Expiry Date Travel. But if the applicant is onshore then put N/A
  - As ‘self-employed business owner’; In ‘Auckland’; For ‘his own export business’



# Case Study 1

- Jack's EWB start-up application was approved.
- During the EWB stage, he has set-up a business which is different with the approved BP
- Towards to the end of the start-up stage, Jack submitted an Balance application along with a COP knowing the business is not consistent with the BP.
- Jack's COP and Balance was declined and the EWB interim visa has been expired.
- Jack has been granted a SPWB to keep him lawfully stay in NZ.
- Jack submitted another COP while holding the SPWB visa.

If you are the case officer handling the 2<sup>nd</sup> COP, what would you be concerned?

1: Applicants are only allowed to submit 1 COP.

2: COP has to be submitted within the validity of EWB visa

## Case Study 2

- Jack has submitted an EWB application.
- He has proposed 300K capital investment.
- Nominated fund evidence: a joint bank account balance of 500k NZD, which is under both his brother and his name.
- His brother and him are both 50% shareholder of an business in UK and they are both the directors, receive the same level of salaries from the business.

is this any potential issue we should be aware?

If nominated funds and/or assets are held jointly by the principal applicant and a person other than their partner, the principal applicant may only claim the value of that portion of funds and/or assets for which they provide evidence of ownership (BB3.5.5 b.)

What if the balance of the joint bank account is 1M NZD?

Not an issue as Jack's has 50% of the 1M which is enough to cover the proposed 300K

## Case Study 3

- Jack has submitted an EWB application.
- He has proposed 300K capital investment.
- Nominated fund evidence: a joint bank account balance of 500k NZD, which is under both his wife and his name.

Is this any potential issue we should be aware of?

As per BB3.5.5 a. ii. We need to be satisfied that they meet partnership requirements (inc living together for 12 mths, which is not a partnership requirement for temp entry) and that the partner supports the use of these funds for the proposed business then Jack can claim the full value of such fund

## Case Study 4

- Jack's EWW start-up was lodged on 23/12/2017 approved on 17/02/2018.
- His Balance submitted on 17/12/2018 and approved on 23/02/2019.

What is the start date of the Balance visa?

What is the expiry date of the Balance visa?

Start date: 23/02/2019 and expiry date: 17/02/2021

## Case Study 5

Jack is a 52 years old man from England. He is applying for EWB start-up application on the basis of setting up a new business in NZ mainly focusing on export.

Based on the evidence provided, it appears that:

- He has 4 years of relevant self-employment experience and 5 years of relevant senior management experience.
- The business will create 1 FTE
- Proposed to have 500K annual turnover inc 100K domestic sales
- Proposed capital investment is \$180K
- Claimed to provide unique/new products but no supporting evidence provided
- Business will be based in Wellington

How many points can Jack be awarded in the initial assessment?

110 = Age: 10; Biz exp: 20; Job creation: 10; Exp T/O: 30; Capital: 0; unique product: 0; Location: 40

## Case Study 6

Matt, who is 25 years old, applied for EWB and claims to establish an export business in New Zealand.

Based on the evidence provided, it appears that:

- His only work experience is being a custom officer in an export business overseas for 4 years.
- The business will create 2 FTE
- Proposed to have 300K export turnover
- Proposed capital investment is \$150K
- Business will be based in CHCH

How many points can Jack be awarded in the initial assessment?

100 = Age: 20; Biz exp: 0; Job creation: 20; Exp T/O: 20; Capital: 0;  
Location: 40

# Case Study 7

Ting's EWV has been approved and applying now for EWV Balance. Based on the evidence provided, it appears that she transferred a total of 200K NZD from China by using the quota from the people below:

- Husband's quota 50k
- Son's quota 50k
- Sister in law's quota 50k
- a friend's (Jiang) quota 50k

Would you be concerned about the funds transfer?

- 1, why the applicant did not use her own quota
- 2, we normally only consider quota of immediate family members.

You noted that before Ting made the transfer, she lent her nominated fund to a friend who paid her back in 3 months later with 10% interest. Would you be concerned?

Lost ownership so we would be concerned whether the fund transferred to NZ is still legally owned (i.e. the fund may not be the nominated fund anymore)

# QUESTIONS?



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**NEW ZEALAND  
IMMIGRATION**

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# Entrepreneur Residence Visa (ERV) Applications

March 2021

# Entrepreneur Residence Visa (ERV)

## About Entrepreneur Resident Visas

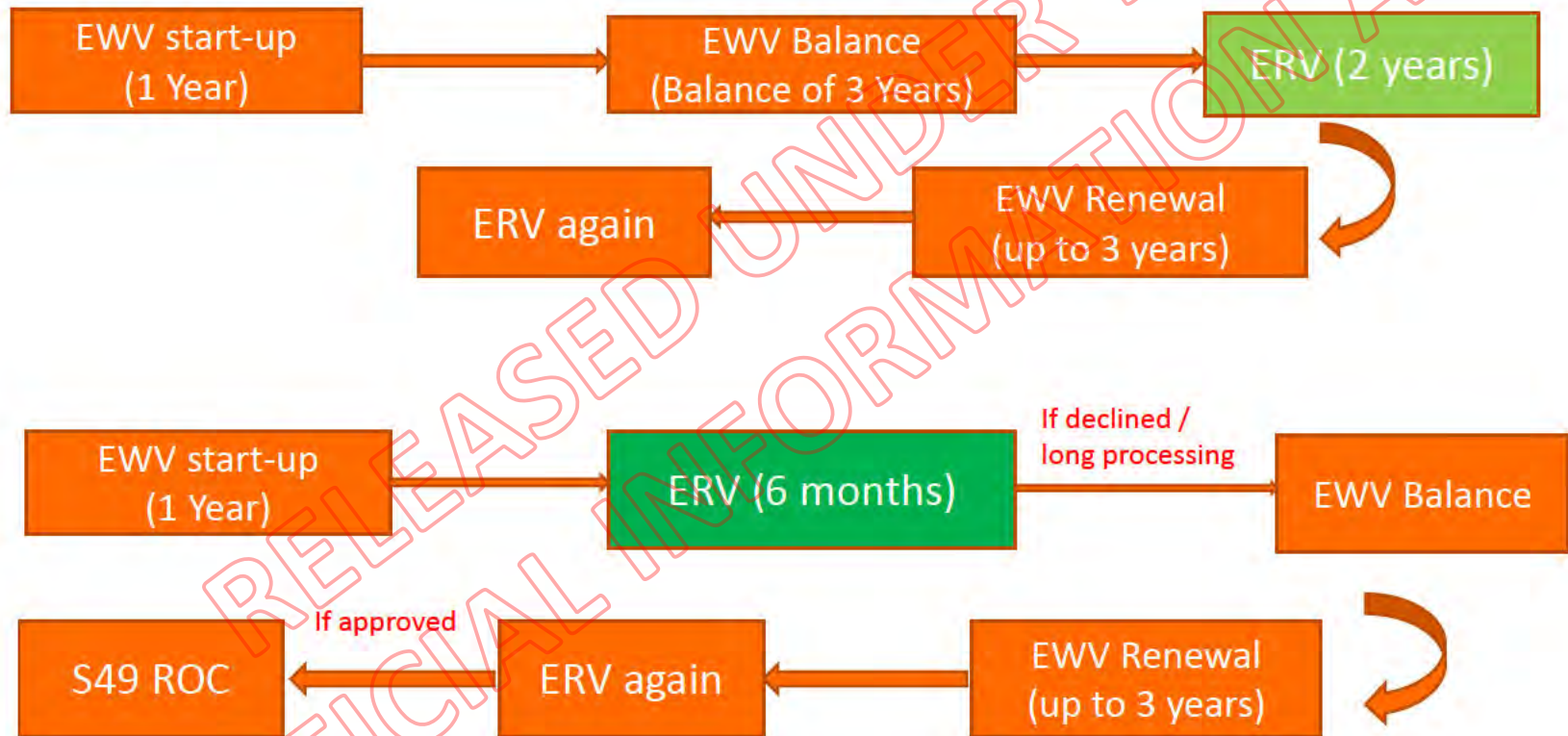
- The Entrepreneur Residence Category allows applicants to live in New Zealand permanently if they have established/purchased a business in New Zealand that meets the relevant immigration instructions.
- This visa is for people who have been self-employed in New Zealand on an Entrepreneur Work Visa (or other visa that allows self-employment) for six months or two years.
- Applicants can include their partner and dependent children in the visa application.

## Two Types of Entrepreneur Residence Visas

- Two year category - Requires applicants to have successfully established or purchased a business in New Zealand and have been self-employed in that business for at least two years, and for the business to have significantly benefited New Zealand.
- Six month category - This option provides a faster track to residence if the applicants have invested at least NZ\$500,000 in the business and have created a minimum of three new full-time jobs for New Zealand citizens or residents, but it comes with conditions.



# Entrepreneur Visa Process



# Key Instructions for ERV applications

- **BB – EWV instructions**
- **BH – ERV instructions**
- **R – Generic Residence instructions**
- **F – Family instructions**
- **A – Administration instructions**



## BH – ERV instructions

- BH1 - Objective
- BH2.1 - Successful Establishment And Operation Of A Business That Benefits New Zealand Significantly
- BH2.5 - Compliance With Employment And Immigration Law
- BH2.10 - English Language Requirements
- BH2.15 - Health And Character Requirement
- BH2.25 - Applicants Must Not Have Accessed Welfare Assistance
- BH3.1 - Consistency With Business Proposal Under The Entrepreneur Work Visa Category
- BH4.10 - Criteria For A Business Benefiting New Zealand

## **BH2.1 Successful establishment and operation of a business that benefits New Zealand significantly**

Principal applicants in the Entrepreneur Residence Visa Category are required to:

- a) demonstrate that they have successfully established a business in New Zealand that realises the benefits outlined in their business plan, and have operated that business for at least:
  - i. two years, and meet the requirements of BH2.1.1; or
  - ii. six months, and meet the requirements of BH2.1.5; and
- b) demonstrate that the business is benefiting New Zealand significantly (see [BH4.10](#)); and
- c) demonstrate that the business complies with employment and immigration law (see [BH2.5](#)); and
- d) demonstrate that the same or greater amount of capital (see [BB3.5.10](#)) has been invested in the business as outlined in the business plan; and
- e) meet the fit and proper person requirements set out at [BM1](#).

## **BH2.1.1 Requirements for applicants who have operated a business for at least two years**

- a. To be granted an Entrepreneur Residence Visa on the basis of operating a business for two years, the principal applicant must:
  - i. have been self-employed in that business for two years prior to the date the application under the Entrepreneur Residence Visa Category is made; and
  - ii. hold an Entrepreneur Work Visa, Long Term Business Visa or other visa which allows self-employment.
  
- b. If a principal applicant does not hold an Entrepreneur Work Visa or Long Term Business Visa, they must demonstrate they meet the requirements for an Entrepreneur Work Visa set out at BB3.1.

## BH2.1.1.b

“If a principal applicant does not hold an Entrepreneur Work Visa or Long Term Business Visa, they must demonstrate they meet the requirements for an Entrepreneur Work Visa set out at BB3.1.”

*[Reminder: if the PA does not hold an EWW or LTBV, they must hold another visa that allows self-employment as per BH2.1.a.ii.]*

NZIPT 205757:

- BH2.1.1.b is additional to BH2.1 assessment, not a replacement.
- Intended to apply to applicants who do not, **at the time their residence application is lodged**, hold an EWW/LTBV.
- Applicants who have never held an EWW/LTBV still have to meet BH2.1 requirements.
- Applicants under BH2.1.1.b who have previously held an EWW are bound by the commitments set out in their approved business plan submitted as part of that EWW. This would be the case even where a business that was developed was **not consistent with that proposed at EWW (Interim) stage or when an applicant has held a series of SPWVs.**



## **BH2.1.5 Requirements for applicants who have operated a business for at least six months**

- a. To be granted an Entrepreneur Residence Visa on the basis of operating a business for six months, the principal applicant must:
  - i. have been self-employed in that business for at least six months prior to the date the application under the Entrepreneur Residence Visa Category is made; and
  - ii. have made a capital investment (see [BB3.5.10](#)) of at least NZ\$500,000 in their business; and
  - iii. have created at least three ongoing and sustainable full time jobs for New Zealand citizens or residents; and
  - iv. hold an Entrepreneur Work Visa or a Long Term Business Visa at the time the residence visa application is made.
  
- b. Applicants who have operated a business for six months must provide evidence:
  - i. of how their investment funds have been invested in their business and how this has benefited the business or increased its value; and
  - ii. that any jobs created meet the definition of full time employment at [BB6.1.25](#), as shown by employment contracts, wage and salary records, or evidence of business turnover.
  - iii. If they have not done so previously, the principal applicant must provide evidence the investment capital, as stated in the business plan, has been transferred directly from the holder's bank account(s) through the banking system to New Zealand.

## Interpretation of BH2.1.1 and BH2.1.5

### Length of being self-employed (both two year and six month categories)

- Have been self-employed in that business for two years (or six months) **directly prior** to the lodgement of the application (NZIPT 205655)

### Special requirements for two year category

- Have to hold a visa that allows self-employment 'when the application is made' (NZIPT 204956) as per BH2.1.1.a.ii e.g. not a visitor visa
- If applicant holds other work visa (rather than LTBV or EWW, e.g. SPWV) which allows self-employment at the time of lodgement, they must demonstrate they meet the requirements for an Entrepreneur Work Visa set out at BB3.1.

### Special requirements for six month category

- For an ERV six month category, applicant has to hold an EWW or LTBV at the time of lodgement as per BH2.1.5 a. iv.
- If they have not done so previously, the principal applicant must provide evidence the investment capital, as stated in the business plan, has been transferred directly from the holder's bank account(s) through the banking system to New Zealand. (BH2.1.5 b. iii)

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## Self-employment principles

BB6.1.15.e – Self-employment ‘in New Zealand’

NZIPT 205530:

- An applicant is not required spend all of his or her time in New Zealand.
- The criterion to work *in New Zealand* = The centre of an applicant’s domestic and business life must be in New Zealand for at least the two years before the residence application.
- The greater number of days spent in NZ, the easier it is to establish that the individual has been working in his or her business in New Zealand.
- If considerable time is spent overseas, even if on behalf of a New Zealand company, there will come a point where so little time is spent here that it cannot be said that the applicant is self-employed in New Zealand. The actual presence of the applicant in New Zealand, actively managing the business, for a substantial period, is required.
- Bottom line = The more time the applicant has spent outside NZ, the more evidence they will need to give us to show that they have been working full time **for their NZ business** over the relevant period.

## Self-employment

- NZIPT 205655 - An assessment of the centre of an applicant's domestic life should be conducted differently when the applicant's children are adults.
- 'Lawful' self-employment means the employment must be permitted by NZ law (Residence appeal no: 15315 (24 May 2007))
  - Does not include employment which is, of itself, lawful but in which the employee, in the course of performing his or her duties, commits an act which is against the law.
- Check shareholders register for PA to see what companies they are a shareholder/director of.

## BH4.10 Criteria for a business benefiting New Zealand

- a. A business is considered to add significant benefit to New Zealand if it can demonstrate that it has promoted New Zealand's economic growth by for example:
  - i. introducing new, or enhancing existing, technology, management or technical skills; or
  - ii. introducing new, or enhancing existing, products or services; or
  - iii. creating new, or significantly expanding existing, export markets; or
  - iv. creating sustained and ongoing full time employment for one or more New Zealand citizens or residents; or
  - v. the revitalisation of an existing New Zealand business that has led to significantly increased financial performance; or
  - vi. introducing productivity-enhancing spillover benefits or increased capacity utilisation (such as significant net new job creation); and
- b. The business is trading profitably on the date the application is lodged or a business immigration specialist is satisfied that it clearly has the potential to become profitable within the following 12 months.
  - a. For definitions of “new products or services” and “trading profitably” please refer to the Definitions section at [BB6](#).

## BB6.1.25 Definition of creation of full time employment

- a. The creation of full time employment means a new full time and ongoing job or jobs that will be created for New Zealand citizens or residents.
- b. A full time and ongoing job means a permanent role for at least 30 hours a week:
  - i. as demonstrated in written employment contracts for the role; and
  - ii. excluding contract or casual roles.
- c. The creation of full time employment may include cases where new permanent and ongoing part time jobs have been created which, when taken together, are equivalent to new full time roles. Evidence must be provided in respect of each claimed equivalent full time job to demonstrate the part time roles:
  - i. are for two or more new roles with fixed hours that are equivalent to one new full time job; and
  - ii. are for permanent and ongoing roles as demonstrated in written employment contracts for the roles; and
  - iii. meet all employment and immigration laws; and
  - iv. exclude contract, sub-contracted or casual roles.
- d. The creation of employment for non-New Zealand citizens or residents in new or existing jobs will not result in points being awarded in the points scale at [BB3.10\(d\)](#).
- e. The employment of New Zealand citizens and residents in existing jobs will not result in points being awarded in the points scale at [BB3.10\(d\)](#).

## Employment credibility and sustainability

- Check bank statements to ensure the employees are being paid their wages (when due and as per EA). Also check IRD is being paid the PAYE deducted and the amount agrees to the EMS filed.
- Check movements tab of the employees to ensure they were in country during the time they were meant to be working in the business.
- Verification call – Hours of work, wage, what do they do (does it match up to job description; enough work to be full time employed?); who else works with them; what the PA does; what hours the PA works.)
  - Ask questions about entitlements e.g. breaks? Sick days?
- Check shareholders register for employees to see what companies they are owners/directors of.



## Employment credibility and sustainability

- If PA has not demonstrated there is enough work, the employment is not considered genuine, ongoing, and sustainable (e.g. NZIPT 205496)
  - We have often raised concerns that the employees aren't really occupied full time.
- If business operating at a loss (i.e. not financially sustainable), employment not ongoing and permanent/sustainable (e.g. NZIPT 205768).
  - Relevant for significant benefit and consistency BH3.1(c) as employment is a 'goal'.

## For a purchased business

- 'Created' employment positions must be on top of existing ones and must result in an increase in total employment.
- NZIPT 202215:
  - The words “creating employment” refer to the business “growing or expanding such that another person or persons are required to work in it”.
  - Applicant must evidence who was working in the business before it was purchased and that they have created employment positions *in addition* to those positions that existed pre-acquisition (regardless of whether they were employee or contractor positions).
  - Relevant for significant benefit and consistency BH3.1(c).

## BB6.1.40 Definition of trading profitably

For the purposes of the instructions in Entrepreneur Work Visa Category (BB) and the Entrepreneur Residence Visa Category (BH), "trading profitably" means:

- a. meeting or exceeding the forecasted annual turnover from the original business plan, and assessment from the points scale at BB3.10(d); and
- b. making sufficient profit to enable the principal applicant to pay themselves at least the minimum wage per annum.

**Interpretation of making sufficient profit:** The business generates sufficient net profit after depreciation (before tax, before applicants take out their salaries) to allow applicant to pay themselves at least the minimum wage per annum - this does **not** mean that they have to pay themselves salaries.

## Trading profitably – clear potential (BH4.10.b)

- Depending on allocation time, 12 months may have passed or not. If passed, can consider actual financial statements as per IPT.
- If the business has not yet been trading for 12 months from the date of lodgement, we can ask for documentation such as invoices for sales already incurred to-date and contracts signed/being prepared etc. In most cases they will send us sale forecasts – this must be based on realistic assumptions/rationale for us to be satisfied that the forecast will be met.

## Trading profitably

- NZIPT 204649 – Reasonable to rely on recent trading results if only small gap between FY and application date, but if substantially into new trading period (we say after four months) then updated financials and/or proportional calculation needed.
  - ‘Rely on’ = If applicant does not provide us with more closely aligned financials, as we always have to give them the chance to provide special purpose financials that match the dates we are considering.
- Revenue forecasts for the fourth and subsequent years of trading should be based on the third year's forecast revenue in the business plan.
- NZIPT 205570 - No logical interpretation of the instructions which suggests that the trading period can be measured from any point other than when the business clearly began trading and became operational, even if the PA's direct involvement did not occur until a year later.

## Example of proportional revenue (when the FY and OY don't align)

- “You lodged your ERV on 15 April 2019, which was substantially into year five of your business operations”
  - Note: Always tell the applicant in the PPI letter how you selected their operating start date and be clear that they are allowed to provide evidence to the contrary.

Table 3: Business plan revenue targets and subsequent progress

Revenue	Business plan	Actual
Year 1	\$427,686	\$96,841 (March 2015 FY)
Year 2	\$526,053	\$388,323 (March 2016 FY)
Year 3	\$631,264	\$519,740 (March 2017 FY)
Year 4	\$631,264	\$669,961 (March 2018 FY)
Year 5	\$631,264	\$787,644 (March 2019 FY)

We note *Table 3* shows that your forecasted annual turnover for year five is \$631,264.<sup>2</sup> As you lodged your ERV approximately nine months into your fifth trading year, on a proportional basis we need to see that you have met 9/12 of your year five revenue target **between the beginning of year five (i.e. 16 July 2018) and the date of lodgement (15 April 2019)** to consider your business as trading profitably at lodgement. This amounts to \$473,448 of proportional revenue. As we do not have

## EWV Point scale that is relevant to ERV

- Minimum of 120 points for an EWV to be approved.
- At the ERV stage, we need to assess the point scale below to see if the application meets the requirements of BH4.10(b)

Points for benefit to New Zealand (can be awarded in up to two categories)	
<b>New full time employment creation</b>	
10+ new full time positions for New Zealand citizens or residents	80
5 or more new full time positions for New Zealand citizens or residents	50
3 or more new full time positions for New Zealand citizens or residents	30
2 new full time positions for New Zealand citizens or residents	20
1 new full time position for a New Zealand citizen or resident.	10
<b>Points for approved export businesses (based on annual turnover)</b>	
\$1,000,000 + turnover a year	80
\$750,000 + turnover a year	60
\$500,000 + turnover a year	40
\$400,000 + turnover a year	30
\$300,000 + turnover a year	20
\$200,000 + turnover a year	10
<b>Points for unique or new products or services to New Zealand</b>	
A credible business proposal that provides unique or new products/ services to New Zealand, or to a particular region.	30

Points for capital investment	
\$1,000,000 +	80
\$750,000 +	60
\$500,000 +	50
\$400,000 +	30
\$300,000 +	20
\$200,000 +	10
under \$200,000	0

Bonus points	
Business based outside Auckland as defined in BB6.1.35.	40

### BB6.1.35 Definition of a business based outside Auckland

A business based outside Auckland means a business with its headquarters or sites based outside the area covered by the authority of the Auckland Council. See the Auckland Council website for details of the area they cover

## Points scale

- Cannot swap points between categories for residence applications e.g. they claimed / we awarded 10 points for employment of one full time employee and they ended up employing two employees but didn't meet the approved export points awarded - we cannot swap the employment points for the export points.
- Note: points can be swapped in change of plan applications



## BH2.5 Compliance with employment and immigration law

- a. Businesses established in New Zealand must comply with all relevant employment and immigration law in force in New Zealand. Compliance with relevant New Zealand employment and immigration law includes but is not limited to:
- i. paying employees no less than the appropriate minimum wage or other contracted industry standard; and
  - ii. meeting holiday and special leave requirements or other minimum statutory criteria, e.g. occupational safety and health obligations; and
  - iii. only employing people who have authority to undertake that work under the Immigration Act 2009.
- b. Despite BH2.5 (a) above, and except in cases where BH2.5(d) applies, where an application otherwise meets all requirements for approval and there is an incident of non-compliance with any relevant employment or immigration law in force in New Zealand, a business immigration specialist may nevertheless approve the application where:
- i. they are satisfied that the breach of requirements is of a minor nature; and
  - ii. evidence is provided that satisfies the business immigration specialist that the cause and consequences of the breach have been remedied.
- c. To determine the nature of a breach, the business immigration specialist may consult with WorkSafe New Zealand, the Labour Inspectorate and other sections of the Ministry of Business, Innovation and Employment, and/or the Accident Compensation Corporation.
- d. The business established is considered to not be compliant with employment law if it fails to meet the requirements set out at [R5.110](#), or if it is included on a list of non-compliant employers maintained by the Labour Inspectorate (see [Appendix 10](#)).

### BB3.5.10 Recognition of capital investment

Capital investment includes all nominated funds used in the establishment and operation of the approved business, except those used for:

- a. passive or speculative investment(s), such as reserve funds or term deposits; or
- b. the purchase of items for the personal use of the applicant(s), such as personal residences, cars or boats; or
- c. remuneration paid to the applicant(s) or their immediate family; or
- d. investment in residential property, except where the development of residential property meets the requirements of BB6.1.50 and formed part of an applicant's business plan.



## BM1 Requirement to be a fit and proper person

- a. Principal applicants must meet fit and proper person requirements (see [BM2](#)), if applying under:
  - ...
  - ii. Entrepreneur Work Visa category; or
  - iii. Entrepreneur Resident Visa category; or
  - ...
- b. Requiring applicants to be 'fit and proper' people ensures applicants are accountable for the actions of businesses they influence.

## BM2 Definition of a 'fit and proper' person

- a. Applicants are 'fit and proper' people if:
  - i. all businesses they have influence over have complied with all relevant immigration, employment and taxation laws; and
  - ii. they have never been convicted of any offence arising in the course of, or resulting from, business dealings; and
  - iii. they have never been convicted of an offence involving dishonesty in New Zealand or a foreign country; and
  - iv. they have never been involved in business fraud or financial impropriety
- c. Relevant law includes, but is not limited to the:
  - i. Accident Compensation Act 2001; and
  - ii. Employment Relations Act 2000; and
  - iii. Health and Safety at Work Act 2015; and
  - iv. Holidays Act 2009; and
  - v. Immigration Act 2009; and
  - vi. Minimum Wage Act 1983.

## **BH3.1 Consistency with business proposal under the Entrepreneur Work Visa Category**

- a. An application under the Entrepreneur Residence Visa Category will be declined if:
  - i. the business on the basis of which the application is made was established while the principal applicant was the holder of a work visa granted under the Entrepreneur Work Visa or Long Term Business Visa Category; and
  - ii. the business is different from the business proposal (except for a business proposal subsequently modified with the consent of a business immigration specialist) in respect of which the applicant was granted a work visa.

Please note that for BH3.1.a, we are talking about fundamental differences or a clearly different type/nature of business.

### **BH3.1 Consistency with business proposal under the Entrepreneur Work Visa Category**

- b. Despite BH3.1(a) above, an application may be approved if:
- i. the business that has been established would have met the requirements for a business plan under the Entrepreneur Work Visa Category; and
  - ii. the business that has been established required the same or a greater level of capital investment (see [BB3.5.10](#)) than a business proposal in respect of which the applicant was granted a work visa under the Entrepreneur Work Visa Category; and
  - iii. the applicant has relevant experience for the new business; and
  - iv. the business has provided a significant benefit to New Zealand equal or greater than the original business as determined by a business immigration specialist (see [BH4.10](#)).

### **BH3.1 Consistency with business proposal under the Entrepreneur Work Visa Category**

- NZIPT 205628 - A business is not a 'different' business unless it is a clearly different type of business from that described in the business proposal, such as a far lower scale, a significantly lower investment, or significantly different business activities.
  - NZIPT 205768 - The Tribunal considers that a business consistently operating at only around half of its proposed revenue figures may well be considered to be different in size and scale to what was proposed.
  - NZIPT 204513 - PA sold significant amount of products within NZ not overseas as outlined in BP. A third of revenue not consistent with the business plan - decision still upheld as not consistent.
- Don't deduct inconsistent business activity revenue from trading profitably calculations (NZIPT 204778) – PPI on consistency instead. IPT said consistency should be assessed before trading profitably and if business is consistent then case officer can move on to trading profitably.
  - However, IPT said that an applicant can avoid 'failing the consistency trap' if they abandon, for the purpose of the application, all inconsistent revenue.

### **BH3.1 Consistency with business proposal under the Entrepreneur Work Visa Category**

- c. Applications for an Entrepreneur Residence Visa which have not met one or any of the goals in the business plan, or realised their stated goal in one or any of the categories which were claimed in the points scale at BB3.10(d) in the original Entrepreneur Work Visa application, will be declined unless:
- i. the applicant can demonstrate that this failure was due to extraordinary circumstances outside their control; **and**
  - ii. the circumstances were not foreseeable; **and**
  - iii. the failure was not due to lack of planning or realistic goals on the part of the applicant or adviser working on their behalf.

## Interpretation of Consistency under BH3.1

There are two types of inconsistency, the first is in BH3.1.a, to which exceptions in BH3.1.b apply. The second type of inconsistency is in BH3.1.c., with exceptions to that set out under BH3.1.c.

The two different types of inconsistency are:

1. If the business that the applicant has established is fundamentally different (e.g. in nature/type or business activities, size and scale) from the business proposal relied upon to gain their Entrepreneur Work or LTBV category visa (that business being what the residence application is based on).
2. If the applicant failed to meet one or any of the goals in their EWV business plan, or have not realised a stated goal for which points were claimed against the points scale in their EWV.

The 'goals' mentioned in #2 above refers to revenue (inc both domestic revenue and export revenue) and # of employment. Capital investment not a 'goal' but a requirement (as per NZIPT 205128).

In some cases, huge drops of export revenue or # employment can potentially be considered as fundamental difference from the approved business plan and therefore triggers both BH3.1.a and BH3.1.c.



## BH2.10 English language requirements

- a. Principal applicants in the Entrepreneur Residence Visa Category must meet the minimum standard of English (see [BF2](#)).
- b. Any partner or dependent children aged 16 years and over who are included in the application must meet a minimum standard of English (see [BF2](#)) or, where instructions allow, pre-purchase of ESOL tuition (see [BF1.1](#)).

### BF2 Minimum standards of English

- a. Unless instructions specify otherwise, principal applicants who lodge applications under any business immigration category, meet the minimum standard of English if:
  - i. they provide acceptable English language test results, as set out at [BF2.20](#) (no more than 2 years old at the time the application is lodged) or
  - ii. they provide evidence that they have an English-speaking background (see [BF2.1](#)) which is accepted by a business immigration specialist as meeting the minimum standard of English; or
  - iii. they provide other evidence which satisfies a business immigration specialist that, taking account of that evidence and all the circumstances of the application, the person meets the minimum standard of English (see [BF2.5](#)).
- b. In any case under (a) (ii) or (iii), a business immigration specialist may require an applicant to provide an English language test result in terms of paragraph (a)(i). In such cases, the English language test result will be used to determine whether the applicant meets the minimum standard of English.

### BF 2.20 Acceptable English Language Test Results

- IELTS (General or Academic) ----- Overall Score of 4.0 or more
- TOEFL iBT----- Overall Score of 31 or more
- PET Academic ----- Overall Score of 29 or more

## IPT reassessments

- Fairly common argument from advisors is that the business should be assessed in terms of meeting the goals/significant benefit etc. *when the original decision was made* rather than now.
- NZIPT 203772 – Info required to assess the application not frozen at the point when the original decision was made.
  - In reassessing the appellant’s application, Immigration New Zealand needed to ensure that business still met the instructions and was contributing to the New Zealand economy in the way envisaged in original application.
  - Instructions such as significant benefit (and consistency), which are not frozen at lodgement, should be assessed at the time of the reassessment.
  - Instructions that are focused on lodgement (such as trading profitably) should be assessed at the time of the original decision, not the reassessment lodgement date.

## Partnership Requirements

### R2.1.15 When may partners included in an application be granted a residence class visa?

- a. For a 'partner' included in an application to be granted a residence class visa an immigration officer must be satisfied that they meet 'partnership' instructions which are:
  - i. that the principal applicant and partner are living together in a genuine and stable partnership (see [F2.10.1](#)); and
  - ii. that the couple have been living together in such a relationship for 12 months or more at the time the application is assessed; and
  - iii. that the partnership meets the minimum requirements for the recognition of partnerships set out at [F2.15](#) in that:
    - the couple were both aged 18 years or older at the time the application for residence class visa was made, or if aged 16 or 17 years old have the support of their parent(s) or guardian(s); and
    - the couple have met prior to the application being made; and
    - they are not close relatives (see [F2.15\(d\)](#)).
- b. When assessing if the duration of the partnership requirement in a. ii above is met immigration officers may include any period immediately prior to any marriage where they are satisfied the couple was living together in an interdependent partnership akin to a marriage.

## Partnership Requirements

### F2.30 Determining if the couple is living together in a partnership that is genuine and stable

- a. When determining if the couple is living together in a partnership that is genuine and stable the immigration officer will take into account those factors set out at [F2.20\(b\)](#) and must consider, and be satisfied, there is sufficient proof, (from documents, other corroborating evidence, or interviews) of all four of the following elements:
- i. **'Credibility'**: the principal applicant and the partner both separately and together, must be credible in any statements made and evidence presented by them.
  - ii. **'Living together'**: the principal applicant and partner must be living together unless there are genuine and compelling reasons for any period(s) of separation (see F2.30.1).
  - iii. **'Genuine partnership'**: the principal applicant and partner must both be found to be genuine as to their:
    - i. reasons for marrying, entering a civil union or entering into a de facto relationship; and
    - ii. intentions to maintain a long term partnership exclusive of others.
  - iv. **'Stable partnership'**: the principal applicant and partner must demonstrate that their partnership is likely to endure.
- b. A residence class visa must not be granted unless the immigration officer is satisfied, having considered each of the four elements in (a) above (both independently and together) that the couple is living together in a partnership that is genuine and stable

# Partnership Requirements

## F2.30.1 Assessment of periods of separation

- a. If a principal applicant and their partner have lived apart for periods during their partnership, the application should not automatically be declined. Instead, immigration officers should determine whether there are genuine and compelling reasons for any period(s) of separation.
- b. Determining whether there are genuine and compelling reasons will depend on the circumstances in each case, and may require consideration of:
  - either partner's family, education or employment commitments;
  - the duration of the partnership and the length of time the couple has spent apart;
  - the extent to which the couple has made efforts to be together during the time apart.



## Dependent Child Requirements

### R2.1.30 Definition of 'dependent child'

For the purpose of inclusion in an application, and despite the definition in section 4 of the Immigration Act 2009, a child is dependent if they:

- a. are:
  - i. aged 21 to 24, with no child(ren) of their own; and
  - ii. single (see [F5.5](#)); and
  - iii. totally or substantially reliant on the principal applicant and/or the principal applicant's partner for financial support, whether living with them or not; or
- b. are:
  - i. aged 18 to 20, with no child(ren) of their own; and
  - ii. single (see [F5.5](#)); or
- c. are:
  - i. aged 17 or younger; and
  - ii. single (see [F5.5](#)); or
- d. are applying for a South Island Contribution resident visa and were previously determined to be dependent under [WR7.20.1](#).
- e. When determining whether a child of 21 to 24 years of age is totally or substantially reliant on the principal applicant and/or the principal applicant's partner for financial support immigration officers must consider the whole application, taking into account all relevant factors including:
  - i. whether the child is in paid employment, whether this is full time or part time, and its duration;
  - ii. whether the child has any other independent means of financial support;
  - iii. whether the child is living with its parents or another family member, and the extent to which other support is provided;
  - iv. whether the child is studying, and whether this is full time or part time.

## BH2.15 Health and character requirements

Principal applicants and partners and/or dependent children included in the application must meet health and character requirements (see [A4](#) and [A5](#)).

*“Applicants for residence class visas must have an acceptable standard of health unless they have been granted a medical waiver or ... An application for a residence class visa must be declined if any person included in that application is assessed as not having an acceptable standard of health and a medical waiver is not granted (see [A4.60](#)).” - A4.10*

*“Applicants for all visas must:*

- a. be of good character; and*
- b. not pose a potential security risk.*

*If any person included in the application fails to meet the necessary character requirements and the character requirements are not waived, the application may be declined.” – a5.1*

## BH2.25 Applicants must not have accessed welfare assistance

Applications under the Entrepreneur Residence Visa Category will also be declined if the principal applicant and any partner or dependent child/ren applied for and was granted welfare assistance under the Social Security Act 1964 while in New Zealand during the currency of their temporary visas.



# Quiz 1

- The PA has been self-employed for 2 years since they were approved an EWV. Now they have applied for an ERV. The financial statements provided show the following:

Revenue	Business Plan	Actual
Year 1	\$210,000	\$5,880
Year 2	\$330,000	\$77,887
Year 3	\$480,000	\$190,979

Net Profit/Shareholder Salary	Business Plan	Actual
Year 1	\$37,200	\$(2,810)
Year 2	\$103,000	\$(15,507)
Year 3	\$161,000	\$8,148

Is there anything you should be concerned about? What instructions should those concerns be raised under?

BH4.10(b) as the business is not trading profitably by:

- meeting or exceeding the forecasted annual turnover from the original business plan as per BB6.1.40(a)
- making sufficient profit to enable the principal applicant to pay themselves at least the minimum wage per annum as per BB6.1.40(b)

If business lodged at **year two** instead of year three: BH3.1(c) – as the business has not met employment goal (if at least one employee is proposed) as the employment is not ongoing and sustainable while business not financially sustainable (but remember that consistency is at the time of assessment not lodgement) and BH4.10(b) (trading profitably - points scale - employment).



## Quiz 2

The approved EWV business plan states that the business will import printing materials and process them in NZ, then export to overseas markets. At the ERV stage, it appears that the business just meets its financial targets and that most of the business revenue was generated by export. However, the case officer noted the export documents provided show that products have been directly purchased from China and transported to their destinations i.e. most of the products have never come to NZ to be processed.

If the applicant has been awarded points for export turnover at EWV stage, do we consider this is a problem? If so, what instructions this is under?

We would be concerned about whether the applicant's business meets BH4.10(b) as most of the revenue will not be classified as export turnover, therefore they are not able to meet the point assessment of EWV.

We would also be concerned about whether the business meets BH3.1(c) if points were awarded for export turnover, which is a 'goal'.

If the applicant's EWV was approved without points awarded for export turnover, do we consider this is a problem? If so what instructions this is under?

We would be concerned about whether the applicant's business meet BH3.1 (consistency) as the business model is fundamentally different from the approved BP.

# Quiz 3

The approved business plan shows that the business will benefit New Zealand by creating 3 full time employees and generating \$400,000 export revenue. As the result, the applicant has been awarded for  $30 + 30 = 60$  points.

At the ERV stage, evidence provided shows that the business has created 3 permanent positions (35 hours, 20 hours and 10 hours per week.) and generated \$300,000 annual export revenue by the time of lodgement.

How many full time employees positions does the business have?

2 FTE

How many points can the applicant be awarded under benefiting NZ?

40 points can be awarded – 20 for employment and 20 for export

Do you consider that the applicant meets BH4.10(a)? Why?

Yes, applicants meets BH4.10(a) as per BH4.10(a)(iii) and (iv)

Do you consider that the applicant meets BH4.10(b) (if we do not take into account of the potential)? Why?

No, applicant does not meet BH4.10(b) as he does not meet the assessment of the points scale

# Quiz 4

PA's business plan was approved on the basis of:

- To establish a restaurant business
- To benefit NZ by creating 2 FTE
- The business has been awarded for 20 points for employment creation

At the ERV stage, CO noted that the applicant meets all other requirements but evidence provided shows that the business has 4 permanent part time employees (NZ resident) with 20 hours per week each. Evidence also shows that the business has been operated as a catering service provider rather than a restaurant.

What would be your concern and what instructions should you consider.

BH3.1 as the nature of the business is different from the approved business plan.

Is this application to be declined?

We will need to assess if the applicant meets the despite clause BH3.1(b)

# Quiz 5

The PA granted an EWW and established a business in NZ in 2015. The PA applied for ERV in 2018. PA included his wife in the ERV application. Please see the movements in AMS below:

Date/Time	Arr/Dep	Days in NZ	Flight	Disembarkation Port	Ref.	Embarkation Port	Travel Docs	Visa	Expiry
22/Feb/2015	Arrive		KE129	Auckland		Incheon Airport	s 9(2)(a)	Work	02/Jul/2
10/Mar/2015	Depart	17	KE130	Incheon Airport		Auckland			
22/Sep/2015	Arrive		NZ80	Auckland		Hong Kong Airport		Work	02/Oct/
15/Oct/2015	Depart	24	NZ289	Shanghai		Auckland			
05/Feb/2016	Arrive		CX117	Auckland		Hong Kong Airport		Work	02/Oct/
23/Feb/2016	Depart	19	CX118	Hong Kong Airport		Auckland			
05/Nov/2016	Arrive		CZ335	Auckland		GuangZhou		Work	02/Oct/
12/Feb/2017	Depart	100	CZ336	GuangZhou		Auckland			
01/Dec/2017	Arrive		CZ305	Auckland		GuangZhou		Work	29/Jun/
17/Dec/2017	Depart	17	CZ306	GuangZhou		Auckland			
16/Feb/2018	Arrive		CZ335	Auckland		GuangZhou		Work	29/Jun/
05/Mar/2018	Depart	18	CZ336	GuangZhou		Auckland			
02/Jun/2018	Arrive		3U8909	Auckland		Chengdu		Work	29/Jun/
26/Jun/2018	Depart	25	MU780	Shanghai		Auckland			

If this is for the PA, what would be your concern?

Self-employment as per BH2.1.1

If this is for the PA's wife, and PA has been generally stayed in NZ to operate the business, what would be your concern?

Partnership as per R2.1.15(a)(ii)

# Quiz 6

Investment items	investment expenditure	Actual investment
Motor vehicle	\$50,000	?
Shop fit out	\$50,000	\$50,000
Other equipment	\$40,000	\$40,000
Stock	\$20,000	?
Working capital	\$90,000	?
Total		

During the assessment, it appears that:

- Applicant paid \$50,000 for a car but it is for private use too (50%)
- It also appears that \$5,000 of stock was purchased from the profit that generated by the operation of the business.
- Applicant provided evidence that demonstrates \$50,000 working capital has been used to cover start up cost and the rest of \$40,000 is kept in the business saving account for emergency use.

Based on above, what is the actual investment for each item? (check [BB3.5.10](#) Recognition of capital investment)

- Motor Vehicle \$25,000
- Stock \$15,000
- Working capital \$50,000

# Any Questions?

