

Immigration issues involved with doing business in New Zealand

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1. Reference is made to the very helpful article on immigration issues involved with doing business in the United States, written by Zachary Norris and Ada Echetebe. Almost without exception the problems facing New Zealanders bound for the US are identical or parallel to the problems and issues awaiting unprepared business persons and corporate employees coming to carry out activities properly described as “work” in New Zealand.
2. The writer’s firm is often engaged very late in the process, sometimes after corporate transferees have actually arrived in New Zealand, and are already carrying out non-compliant (unlawful) activities. Sometimes these are individuals from major corporations, often senior executives who either incorrectly consider that their activity is “business” and does not require a work visa, or who for some reason are of the view that they can fly into New Zealand and begin work immediately. Law firms involved in joint ventures or in setting up company structures in New Zealand for multinational companies need to factor in as early as possible detailed immigration advice if it is intended that employees from overseas companies are required to work in New Zealand, be they specialist personnel, senior executives or business persons.

Business visitor visas

3. New Zealand allows the citizens of 58 countries to apply for entry at the border without a visa. This is sometimes referred to as “visa-free” but this is in fact a misnomer. The arrival card is in fact a visa application which is processed summarily.
4. Where an individual indicates they are not a genuine visitor, and for example does not have sufficient means of support or indicates at an interview an activity that does not come within the “business” visitor exception, then the individual can face immediate repatriation without obtaining entry. There is almost no opportunity to review this process prior to deportation and any future travel will be restricted to a pre-travel visa application.
5. Ticking “business” on the arrival card is therefore not enough. The misuse of the “business” exception is in fact endemic around the globe. Furthermore the definition of the “business” exception to the visitor visa rule differs from country to country. The Global Employment Institute, a section within the International Bar Association, has, as one of its projects, harmonisation of these rules. Currently the rules, though similar are not standardised. In New Zealand working on a

visitor visa, for up to three months, is allowed for the following (see Immigration New Zealand Operational Manual, V3.5):

- Representatives on official trade missions
 - Sales reps of overseas companies
 - Overseas buyers of New Zealand goods or services
 - Business persons conducting business negotiations or consultations
6. With regard to “business negotiations or consultations,” the exception only extends to the establishing, expanding or winding up of any business enterprise in New Zealand, or carrying on any business in New Zealand involving the authorised representatives of any overseas company or persons.
 7. The last part of the rule clearly indicates that the senior part of an organisation such as the CEO or a director who *represent* the company can make use of the flexibility surrounding the term “business consultations or negotiations.” This is limited to three months in any calendar year but it can be extended by way of application but this involves the granting of a work visa. It is a special type of work visa and does not require a job offer from a New Zealand company or entity.
 8. Business negotiations or consultations does not include, to give some examples, work as an engineer, a loss adjuster, as an architect or to work as a lawyer in a law firm, or to give paid expert evidence in court. These activities are *not* business negotiations or consultations. It might be work that is carried out to service a client, or it might be work for a subsidiary company already established in New Zealand. The notion that it is enough for “business” to be carried out, is quite wrong.
 9. Neither is there authorisation to carry out these activities post-arrival after an application has been lodged. Inward bound to the US in some circumstances a petition can be presented at the border. New Zealand does not have that facility and unless an applicant is prepared to go on a long holiday, post-arrival intra-corporate transferee visas should be avoided as it clearly may indicate to Immigration New Zealand that the company or individual or both are non-compliant, and already working. This is easily ascertained by a simple phone call to the business.
 10. We have found, particularly, with the Christchurch reconstruction project, a number of corporates have unfortunately mis-advised themselves of the parameters of the business visitor exception to the rule. An excuse we often hear is that because the remuneration is not within New Zealand, it is thought that a work visa is not required. This is not so. Foregoing wages until the visa is issued is also a well-tried argument that goes down like a lead balloon.

11. It is critical therefore that immigration/visa issues are examined carefully with all businesses setting up operations in New Zealand, if, to use the words of Mr Norris in his article, the client wants to avoid “catastrophic results.”
12. Please note that in addition to the business exception that allows remuneration whilst on a visitor visa, we have a number of other exceptions to the visitor visa rule including:
 - Media involved in sports events, etc
 - Sports persons involved in events etc
 - Academics
 - Owners and crew of super yachts
13. The exact parameters of these exceptions and others are set out in the Operational Manual, in the chapter on visitor visas.

Intra-corporate multinational transfer visas

14. Early advice is also important, particularly if visas are wanted urgently. We have two species of corporate work visa under WS2 (Operational Manual): a secondment visa and an intra-company transfer visa. With the intra-company transfer visa, it is not necessary to have a localised contract or in fact to have an employer in New Zealand. The company must however be a multinational. Sometimes there are advantages in relation to the documentation requirements involved in one category or the other. The important point is that both the secondment visa and the intra-company transfer visa do *not* require the employer to establish a local shortage. No market test is necessary.
15. Ordinarily for visas under the Essential Skills work visa category, unless the occupation comes within one of our shortages lists and the person has the required work experience and qualifications, it is imperative that the employer establishes a shortage. This is not required for intra-company transfer visas, however there are restrictions, as set out in the rules in the Operational Manual.
16. We also of course have employment-based residence options, but typically a corporation does not want to wait 6-9 months for this to be processed. Usually a temporary work visa solution is mandated.
17. In New Zealand we have a further option which is immigration accreditation. In our dealings with corporate business immigration clients, we find that this solution is very often misunderstood or simply has not been considered by the human resources section of the company, or by their business advisers. This does

however require a subsidiary in New Zealand, but one advantage of accreditation is that the market test does not apply and the employer can select its employees globally, provided that the company remains compliant and the position involves remuneration of \$55K or more. This is a two-year work-to-residence option, and is an option that is not available in other countries.

18. In summary, we find that corporate immigration solutions either short term or long term are poorly understood not only by foreign corporations wanting to set up business in New Zealand, but also by their advisers. It is critical to engage a business immigration corporate adviser at an early stage.