

Entrepreneur Residence Visa

In recent times many have had the preconceived notion that the Entrepreneur Residence Visa Category is a relatively simple way of obtaining residence in New Zealand. Prospective applicants believe they only have to either set up or purchase a business, work on it for a couple of years and they are entitled to residence. This is a fairy-tale. In reality, the Entrepreneur Residence Visa Category is one of the more difficult categories to use when looking to obtain residency in New Zealand due to its many complicated hurdles, and the time and money required to jump over them.

Entry into the Entrepreneur Work Visa stream is restricted now to businesses that are either innovative, high-growth or export-related. This is a threshold requirement without exceptions for new applicants.

This paper will examine the requirements of the Entrepreneur Residence Visa Category and will provide a further explanation of the requirements where applications most frequently fail.

Entrepreneur Residence Visa requirements

Minimum requirements for the principal applicant.	Entrepreneur Residence Category (2 years)	Entrepreneur Residence Category (6 months)
Time required in New Zealand	You must be self-employed in your business for at least two years prior to the date of application.	You must be self-employed in your business for at least six months prior to the date of application.
Significant benefit to New Zealand	You must demonstrate that you have established a high growth or innovative business or one that has export potential.	You must demonstrate that you have established a high growth, innovative business or one that has export potential. In addition, three <i>new</i> full-time jobs must be created for New Zealand citizens or residents.
Investment capital	You must match your investment with what was declared on your business plan submitted when you were granted your Entrepreneur Work Visa.	At least NZ\$500,000 must have been invested into the business prior to the date of application.
Held a valid visa	You must have held a valid working visa (including EWR and LTBV) prior to the date of application.	You must hold an EWR or LTBV to apply.
English language	You must have a score of 4 or more in the International English Language Testing System (IELTS) test or provide evidence that you have an English speaking background.	
Health and character	You must meet the requirements set out in A4 and A5 of the Immigration New Zealand Operation Manual	
Business plan requirements	You must show that the business is not materially different from the business plan submitted when applying for the work visa. There are four exceptions to this rule listed in BH3.1(b) and you must meet all of them. If BH3.1(b) is not met, then there is another set of three exceptions listed in BH3.1(c), and you must meet all three.	

Self-employed

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.
- ...
- e. Applicants for an Entrepreneur Residence Visa (see BH) must have been self-employed in New Zealand

Under the Entrepreneur Residence Visa instructions the applicant must demonstrate, *inter alia*, that:

- a. he or she has been self-employed in that business for two years “prior to the date the application under the Entrepreneur Residence Visa Category is made” (BH2.1.1.a.i);
- b. in being self-employed, he or she was actively involved in the management and operation of his or her business on a full-time and lawful basis (BB6.1.15.a); and
- c. he or she was self-employed in New Zealand (BB6.1.15.e).

The Tribunal and its predecessor body, the Residence Review Board, have consistently held that this requirement to have been self-employed in New Zealand does not mean that an applicant is required to have spent the entire period of self-employment physically in New Zealand. However, the centre of the applicant’s domestic and business life must be in New Zealand over the two year period. While there is no set requirement of days to spend in New Zealand like the Business (Investor) Visa Category, we can advise that the applicant must have an actual presence in New Zealand where he/she resides and actively manages the business for a substantial period of time. The greater number of days spent in New Zealand the easier it will be to establish that the applicant works on the business in New Zealand. Approximately, from the decisions published on the Immigration and Protection Tribunal website, 70% of the applicant’s time over the two year period must be spent in New Zealand.

The Tribunal also examines the co-applicants domestic life in New Zealand and how long they spent in New Zealand over the two year period. The Tribunal usually concludes New Zealand is not the centre of the applicant’s domestic life when an applicant’s family spent a significant time outside of New Zealand over the two year period. This category is not intended for applicants to merely “park” money in New Zealand or to just purchase a company. The applicant must be actively involved in the business in New Zealand.

The applicants “self-employment” in their company must be on a full-time basis (over 30 hours per week). Evidence must be provided to Immigration New Zealand which shows that the applicant spent 30 or more hours per week working at the business. This can be shown through email records, timesheets etc. The applicant will not normally be able to obtain an Entrepreneur Residence Visa if they are operating a business on a part-time basis while primarily being engaged in some other business overseas.

Under BB6.1.40 of the Operational Manual, in order to show that the business is trading profitably, the principal applicant must be able to pay themselves at least the minimum wage per annum. Whilst this provision is not mentioned under the definition of “self-employment” under BB6.1.15, it is relevant in showing Immigration New Zealand that the applicant is self-employed by their own company if that company pays their wage. As of 1 April 2021 the minimum hourly wage in New Zealand is \$20.00 per.

Significant benefit to New Zealand

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;
 - v. the revitalisation of an existing New Zealand business that has led to significantly increased financial performance; or
 - vi. introducing productivity-enhancing spill over 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.

The list provided in BH4.10(a) is inclusive, therefore there are other examples what may be taken into account by Immigration New Zealand. However, from the examination of the decisions by the Immigration and Protection Tribunal, the decision-maker will first look at whether the business is trading profitably (BH4.10(b)) as this factor is interlinked with the growth of the business and its contribution to the New Zealand economy. In other words, if the business is trading profitably the applicant is likely to start employing more New Zealand citizen/residents to maintain growth and/or provide evidence of new technologies/innovative methods of production to maintain and increase the growth of the

company. If the decision-maker identifies that the business is not profitable, then it is unlikely to add a significant benefit to New Zealand.

The definition of trading profitably is stated in BB6.1.40 of the Operation Manual. While there does not need to be a net profit made in the business, the applicant must show that the annual turnover meets or exceeds the forecasted annual turnover of the business plan *and* (as mentioned above) makes enough profit to enable the applicant to receive at least the minimum wage (\$20 per hour) from the business.

By Sahadev Naran