



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HIKINA WHAKATUTUKI

Work Visa Objectives, and Using Your Discretion (ETIs)

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ON THE AGENDA

- What is an ETI?
- What do instructions say?
- What are our objectives/what are they about?
- Considering an ETI
- ETI examples
- Documenting an ETI
- When not to ETI



What is an Exception to Instructions (ETI)?

- It's a tool to allow a visa to be issued, despite the visa application not meeting immigration instructions
- It recognises that immigration policy is not perfect
- Sometimes an ETI is the best way for us to meet the overall objectives, balance the situation of clients and employers, and to enable the best outcome for NZ



What do instructions say?

- Immigration Instructions E7.10(b):
“If an application fails to meet the requirements of temporary entry instructions, officers must then consider all the circumstances of the application to see if an exception to instructions is justified, taking into account the objectives of temporary entry instructions and the situation and purpose of the applicant.”



What are objectives about?

What are you/we trying to achieve?

There are objectives at E1 (generic temp), and also at W1 (generic work)
– have you read them?

Understanding the objectives helps us make a robust holistic assessment when considering an ETI



Remember: You are not a gatekeeper



So what *are* the temporary work visa objectives specifically?

W1 Objective

1. The objective of work visa instructions is to contribute to developing New Zealand's human capability base.

2. Work visa instructions seek to achieve this by:

1. facilitating the access of New Zealand employers and New Zealand industry to global skills and knowledge; while
2. complementing the Government's education, training, employment and economic development policies; and
3. ensuring that the employment in New Zealand of non-New Zealand citizens and residence class visa holders does not undermine the wages and conditions of New Zealand workers.

In a policy sense, this is what we are here to achieve! 😊



Category Objectives: Specific Purpose Work Visa

WS1 Objective

The objective of the Specific Purpose or Event Instructions is to facilitate entry to New Zealand for a specific purpose or event for which the applicant has demonstrated skills, expertise or attributes that are likely to benefit individuals and/or New Zealand and where there is no risk of a negative impact on opportunities for New Zealand citizens or residents.



What other kinds of things should we consider?

Remember our ETI instructions at E7.10(b)?

When considering an ETI, we also need to take into account the circumstances of the application as well as the situation and purpose of the applicant

What are some examples?



EXAMPLES

Is there actually any real risk in granting an ETI?

Who else would step into the role if not this client/is the role urgent?

Does it otherwise meet the objectives/instructions, such as supporting NZ businesses?

Is the role on an SSL or the under supply list – does the client almost meet SSL requirements?

Is the location of employment or type of position difficult to recruit for?

Is it an opportunity to educate, rather than being punitive – short term visa to train someone?

Is the issue the client's fault?

Does the client work in a high value industry (even if low-skilled), such as caregiving, hospitality, wineries, etc?

Have they studied high level NZ quals, or shown a clear pathway of increasing skill that NZ might like to retain?

Is the client already doing the job?

What is their immigration history like?

Would they otherwise have a potential pathway to PR?

How long has the client spent in NZ?



Considering an ETI

- You must consider an ETI when declining an application
- An ETI is not the norm – you must weigh and balance each situation
- An ETI should be made only when there is satisfactory evidence available to justify an exception being made
- Remember you're working on behalf of the Minister, for New Zealand
- Application has unique circumstances:
 - It doesn't quite meet instructions but **still meets objectives**, or
 - The circumstances of an individual applicant are such that refusal is likely to cause a significantly adverse reaction



Example of ETI #1

Specific Purpose Work Visa Application:

- A Client has been offered a National Development Contract to work as a contracted Rugby Player for NZ Rugby and Manawatu Rugby.
- Client was not eligible for a further visa under Column D as he was initially granted 12 months visa.
- Due to COVID -19 lockdowns the client was not able to play many of the games that he was contracted to play.

What is best for New Zealand?

Would you be likely to make an ETI – why/why not?



Example of ETI #2

Dependent of an Accredited Employer Work Visa Application:

- Client's supporting parent holds a position as a Herd Manager.
- The parent's employment agreement states that on a 30 hour (guaranteed hours) week, they earn slightly less than the \$43,322.76 p.a. required under V3.10.10(b)
- The applicant has provided solid evidence that they usually work over 50 hours a week and will continue to do so.
- No other risks attached.



What is best for New Zealand?

Would you be likely to make an ETI – why/why not?

Is there any other ways we could address this?

Example of ETI #3

Foreign Fishing Crew Work Visa Application:

- Client has an offer to work as a Deckhand on a Gisborne based vessel, being paid median wage for all hours worked.
- Documents requested under RFI show the employer hasn't kept time and wage records for employees.
- The same non-compliance was identified with a previous application; this was approved as an ETI and employer education was undertaken.
- In the PPI response, the employer has shown a timesheet template to be used in future and stated non-compliance was a genuine error.
- The employer has requested an ETI, stating no NZers are available, and that without foreign crew the vessel cannot be operated, meaning quota would not be caught and the employer's company would fail.

What is best for New Zealand?

Would you be likely to make an ETI – why/why not?



Documenting an ETI

In the event of a decline decision where an applicant identifies matters that they consider warrant an exception, Immigration Officers *must* address those matters when documenting the decision in-house, *and* when communicating the decision to the client (eg: Where someone has asked for an ETI due to inadequate genuine attempts)

Essentially, just remember to document your rationale/reasons for granting or not granting an ETI, especially where an ETI has been specifically requested



Documenting an ETI: ETI Unjustified

- Complex responses can be summarised
- You can note in the decision letter for a declined application that an exception was considered but not given, and provide a short explanation. ETIs are mentioned in template letters, so just include your rationale below that
- If there is no case made at all by a client, you can just note this, and also note in the application that an exception was considered but not given. This is also automatically mentioned in template letters and you do not need to supply additional rationale



Documenting an ETI: AMS Determination Screen

ETI Determination:
Remember to click
“Yes” on me!



No	Yes	Waive	In Progress	Description	Details
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Genuine visit	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Total time in NZ is within maximum allowed	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Do all applicants have an Acceptable Standard of Health?	ASH
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Character requirements met?	CCHAR
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exception to instructions	EXCP TYPE
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	All other requirements met?	

When NOT to ETI

These scenarios would not *normally* justify an ETI unless discussed prior with a TA/IM:

- An ETI for character if a character waiver was declined
- An ETI for health if client was found “Not ASH”, and is not eligible for a waiver (unless recommended by the MA)
- Clearly non-compliant Employer
- Recently arrived and low skilled (ie: of lower value to NZ)



CONCLUSION

- An ETI is a tool to help IOs meet overall INZ objectives – make sure you know your objectives
- You must consider an ETI, and the case for and against making one, including undertaking a holistic assessment of the wider circumstances
- You must provide rationale/reasons for granting, or not granting an ETI, both in your decision notes and in your decision letter

Questions?

