



23 NOV 2018

Maria van Kleef

fyi-request-8978-9dae9a48@requests.fyi.org.nz

File No: DOIA 1819 – 0697

Dear Maria van Kleef

Thank you for your email of 1 November 2018, requesting the following information under the Official Information Act 1982 (the OIA):

Regarding my e-mail Wednesday, 5 September 2018 11:45 PM To: I Lees-Galloway Subject: Re: Immigration.

Under INZ, any breaches of employment standards can mean an employer won't be able to recruit migrant workers. If you receive a sanction for a breach of employment standards, you'll be placed on a list of non-compliant employers and unable to support visa applications for a set period.

As compliance with NZ employments is a requirement under INZ employer obligations, I would like to know what steps were taken by INZ between the 6-21 Sept to investigate and ensure the company I referred to in my e-mail was compliant with NZ Employment laws before being allowed to recruit workers.

Under the OIA I respectively request copies of all correspondence, memos, e-mails etc. regarding my e-mail on the 5 September 2018. Specifically, whether it was followed up and if so, who followed it up and how? How did INZ conclude the company in question was fit to recruit workers?

Are contracts and compliance with the law checked before making businesses accredited employers? Does INZ collect data on the actual job applications and reasons for declining them. Does anyone cross reference mediation data i.e. why it is required, to expose repeat offending by certain individuals? What checks are currently in place and are they followed?

Our response

Obtaining an Approval in Principle (AIP) enables an employer to recruit a specified number of overseas workers for a set period of time. Employers need to meet certain criteria and provide supporting evidence to be granted an AIP. This includes evidence to show that there are no New Zealand citizens or residents available or readily able to be trained to do the work. When a request for an AIP is received which asks for more than five workers, Immigration New Zealand (INZ) sends consultation emails to various third parties about the availability of any New Zealanders to do the work. These parties include the Labour Inspectorate, the New Zealand Council of Trade Unions (NZCTU), Work and Income, WorkSafe and Industry Training Organisations (ITO). When responses are received, they are considered as part of the AIP assessment.

The same process was followed for this particular application. In terms of the specific steps taken to ensure the company was compliant with New Zealand employment law between 6 and 21 September, INZ completed the following;

- 10 September: Christchurch Office received notification from National Office that an email from a member of the public addressed to the Minister had been received. Christchurch Office was asked by National Office to include the email as part of the assessment of the application. That same day, Christchurch Office emailed the NZCTU requesting comment on the concerns raised in the email.
- 14 September: Christchurch Office emailed the employer, noting that they had requested comment from NZCTU on some concerns detailed in an email from a member of the public. The employer subsequently asked for a copy of the email. Christchurch Office advised the employer that they would need to make a request under the OIA.
- 17 September: NZCTU provided their response to Christchurch Office's email.

You have made reference to the company "being allowed to recruit workers". Please note that the current AIP application is still under assessment and a decision has not yet been made.

Please find attached copies of "all correspondence, memos and emails" regarding your email dated 5 September 2018. Certain information has been withheld under the following sections of the OIA:

- Section 9(2)(a) which relates to the privacy of natural persons
- Section 9(2)(f)(iv) which relates to the maintenance of the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials
- Section 9(2)(h) which relates to the maintenance of legal professional privilege

You have asked whether your email "was followed up and if so, who followed it up and how". As noted by Hon Iain Lees-Galloway in his letter to you (reference 'MPOL 902'), you asked that your feedback be considered alongside any information presented to INZ by Alliance Group. The Minister confirmed to you that your comments were passed on to the relevant INZ processing branch for consideration. The Operations Support team, based in National Office, provided a copy of your email to the relevant INZ processing branch, which is located in Christchurch. The steps subsequently taken by Christchurch Office are detailed above.

You have also asked how INZ concluded that "the company in question was fit to recruit workers". As noted above, the current AIP application is still under assessment and a decision has not yet been made.

You have asked whether "contracts and compliance with the law are checked before making businesses accredited employers". Please note that the employer accreditation policy is different to the AIP policy. Employer accreditation is not relevant to this case. According to AIP immigration instructions WK3.15(a)(ii), an immigration officer must be satisfied that the employer has previously complied and will comply in future with all relevant New Zealand employment and immigration law and immigration instructions. The relevant immigration instructions are attached at Appendix 1.

When assessing AIPs, INZ checks the Employment Agreement, Job Description and advertising to ensure they are consistent with the requirements of the Australian and New Zealand Standard Classification of Occupations (ANZSCO). INZ also checks that the Employment Agreement is compliant with immigration and employment Law. All AIP decisions are reviewed by a number of INZ staff and follow a strict sign-out process before a decision can be made. Your question about “actual job applications and reasons for declining them” appears to refer to the resulting Essential Skills applications. INZ’s Application Management System records and holds data on the final decision on application (i.e. approval or decline), but we do not have data on the reasons that applications are declined. INZ does conduct quality checks on a portion of decisions to ensure they are made in line with relevant immigration instructions. INZ does not currently conduct post-decision checks on Essential Skills applicants; however the matter of post-decision assurance is currently under consideration. Mediation data is confidential and as such INZ has no ability to cross reference it. In terms of AIP applications, an employer’s previous immigration history is always reviewed by INZ when a new application is under assessment.

You have the right to contest the decision to withhold information by seeking an investigation and review of that decision by the Ombudsman, whose address for contact purpose is:

The Ombudsman

PO Box 10152

Wellington 6143

If you wish to discuss any aspect of your request or this response, please contact Claire Owens, Business Advisor, Operations Support, Immigration New Zealand at claire.owens@mbie.govt.nz.

Yours sincerely



Karen Bishop
Assistant General Manager – Visa Services
Immigration New Zealand
Ministry of Business, Innovation and Employment

WK3.15 Requirements for employers

- a. To grant an Essential Skills work visa, an immigration officer must be satisfied that:
- i. the employer is the direct employer, responsible for such things as:
 - o payment of salaries;
 - o PAYE tax instalments;
 - o conditions of employment;
 - o day-to-day supervision of the workplace and the employee; and
 - ii. the employer has previously complied and will comply in future with all relevant New Zealand employment and immigration law and immigration instructions; and
 - iii. the employer has previously paid any employees who were holders of an Essential Skills work visa the remuneration required by those employees' work visa conditions (see [WK4.5\(d\)](#)); and
 - iv. the employer meets the requirements set out at [W2.10.15](#) and is not included on a list of non-compliant employers maintained by the Labour Inspectorate (see [Appendix 10](#)).
- b. Where the job offer is in the construction sector in the Canterbury region and the employer is a labour hire company, the application must be declined unless the labour hire company holds accreditation (see [WK5](#)).

Note: Employment is in the Canterbury region if the entire or principal place of work is within the territorial authorities of Christchurch City Council, Selwyn District Council or Waimakariri District Council

WK3.15.1 Evidence required from employers

- a. Employers requesting approval in principle to employ a non-New Zealand citizen or residence class visa holder worker or supporting an individual work visa application must provide:
- i. job offer(s) containing all the information specified in the generic work visa provisions at [W2.10.10](#); and
 - ii. confirmation of whether or not the worker requires occupational registration in New Zealand; and
 - iii. if more than one, the number of temporary workers sought; and
 - iv. the names of suitable applicants (if known); and

- v. evidence of genuine attempts to recruit suitable New Zealand citizens or residence class visa holders (see [WK3.10.5](#)), including the reasons why;
- vi. any particular job specifications were considered necessary for the performance of the work; and
- vii. any New Zealand applicants who applied were either not suitable, or refused to perform the work; and
- viii. if requested by an immigration officer, evidence and/or confirmation of past compliance with employment and immigration law (see [W2.10.5](#)); and
- ix. if the job offer(s) is in the construction sector in Canterbury region and the employer is a labour hire company, confirmation of the labour hire company's accreditation.

Note: Employment is in the Canterbury region if the entire or principal place of work is within the territorial authorities of Christchurch City Council, Selwyn District Council or Waimakariri District Council.

b. Evidence and/or confirmation of past and future compliance with employment and immigration law may include but is not limited to:

- i. employment agreements with workers which demonstrate compliance;
- ii. tax records that show compliance with employment agreements and visa conditions;
- iii. a history with the Ministry of Business, Innovation and Employment and WorkSafe New Zealand of past compliance.

c. Employers who are included on a list of non-compliant employers maintained by the Labour Inspectorate are considered to not have a history of compliance with employment law (see [W2.10.15](#) and [Appendix 10](#)).

d. Employers who have previously failed to pay any employee the remuneration required by the employee's visa conditions are considered to not have a history of compliance with immigration law.

Effective 21/05/2018