



18/01/2019

Helen Anderson
Email: fyi-request-9162-5db035e3@requests.fyi.org.nz

Ref: OIA 1819-0877

Dear Ms Anderson

Thank you for your email of 1 December 2018 to the Ministry of Business, Innovation and Employment requesting, under the Official Information Act 1982 (OIA), the following information:

"Could you please kindly let me know all the rationale and/or supporting arguments and act/legislation/policy/regulation for this specific instruction in Immigration Operational Manual V3.100.35, point a. (Guardians who wish to work or study once in New Zealand) which says: "Guardian visa holders are not eligible for: i. the grant of a work visa under Essential Skills work instructions or Specific Purpose or Event instructions; or ii. the grant of a student visa under Student instructions."."

The immigration instructions that your request refers to are an addition to the Guardian Visa Policy. The Guardian Visa Policy was introduced in September 2003 to enable parents and guardians of international students to live with and care for their children while those children study in New Zealand. The primary rationale for the introduction of this policy was to improve the pastoral care of young international students.

The immigration instructions that restrict guardians' work and study rights, V3.100.35(a), came into effect in May 2006. The primary rationale for the introduction of this policy was to ensure that the intent of the Guardian Visa Policy was maintained, as guardians who study and work outside school hours may not be primarily focused on caring for their child.

In response to your request I am releasing the Ministerial Briefing *Work opportunities for Guardian Visa/Permit holders*, dated 26 April 2006. This briefing sought the Minister's certification of the relevant amendments to the Guardian Visa policy i.e. the inclusion of V3.100.35(a). The briefing set out the supporting arguments and rationale for immigration instruction V3.100.35(a).

The released document can be found in the appendix. Please note that technical terminology has changed since 2006: "permits" are now called "visas", and "Government immigration policy" is now called "Immigration Instructions".

You also requested any relevant policy, regulations and legislation.

I note that any material which could fall into this scope is publicly available. Therefore, this part of your request is being refused under section 18(d) of the OIA. Immigration instructions are published at <https://www.immigration.govt.nz/opsmanual> (V3.100.35(a) can be found at <https://www.immigration.govt.nz/opsmanual/#34312.htm>), and immigration law and regulations are published at <http://www.legislation.govt.nz/>.



The relevant part of the Immigration Act 1987 is section 13A, which gives the Minister of Immigration the ability to set specific policy provisions. The Immigration Act 1987 was applicable in 2006 when V3.100.35(a) was made effective. The corresponding legislation is now set out in section 22 of the Immigration Act 2009.

You have the right to contest the decision to refuse 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

I trust that you find the information I have provided helpful. If you wish to discuss any aspect of your request or this response, or if you require any further assistance, please contact Lena Groenendijk, Business Analyst, Operational Policy, Immigration New Zealand, at [lena.groenendijk@mbie.govt.nz](mailto:lana.groenendijk@mbie.govt.nz).

Yours sincerely

Stephen Dunstan
General Manager, Service Design and Performance
Immigration New Zealand
Ministry of Business, Innovation and Employment



Appendix 1

Department of Labour
TE TARI MAHI



REPORT COVER SHEET

BRIEFING PAPER

	Action sought	Deadline
Minister of Immigration	To sign	
Associate Minister of Immigration	For information.	
<hr/>		
Subject:	Work opportunities for Guardian Visa / Permit holders	
Date:	28 April 2006	
Priority:	High	
Security:	Unclassified	
Ministers:	Hon David Cunliffe Minister of Immigration Hon Clayton Cosgrove Associate Minister of Immigration	
Agencies consulted:	Ministry of Education, Service Design, Service Delivery	
Prepared by:	Workforce: Immigration Policy	
Contact Information:	Stephen Dunstan, Manager - Immigration Policy DDI: 04 915 4255 Mobile: 027 4914 638	
	Chris Hubscher, Senior Policy Analyst DDI: 04 915 4209 Mobile: 021 036 2125	
Tracker Number:	06/56792	

28 April 2006

06/56792

Workforce (Immigration Policy): Hubscher

Minister of Immigration

Copy to: Associate Minister of Immigration

Work opportunities for Guardian Visa/Permit holders

Purpose

- 1 This paper addresses a question you have raised regarding a previous paper [the attached *Guardian visa holders acquiring work permits*], on the issue of Guardian visa/permit holders (guardians) gaining domestic student status for their children, and consequently avoiding paying international school fees.
- 2 You have asked if children of guardians who have subsequently become work permit holders can be exempted from obtaining domestic student status. This paper outlines how the Department of Labour (the Department) could give guardians the opportunity to seek part time work, while ensuring that their children still pay international fees to attend New Zealand schools.
- 3 This paper also addresses the issue of guardians acquiring student visas, and proposes that the Department facilitate guardians undertaking part time study in New Zealand. This issue was not addressed in the previous paper, but has subsequently emerged as a matter of concern for schools.

Background

- 4 Guardian policy was primarily instituted to protect the welfare of foreign children (under 18 years of age) in school years 1-13, by ensuring that one of their guardians lived with them in New Zealand. The Cabinet paper proposing Guardian policy [SDC (03) 120 refers] did not envisage guardians being granted work rights or changing their immigration status to become a work permit holder.
- 5 The paper did note that under current visitor policy, guardians would be able to undertake a single course of study lasting no more than three calendar months on a full fee basis.

- 6 School representatives are concerned that individuals present in New Zealand as guardians of Foreign Fee Paying (FFP) students are changing their guardian permit to a work permit. They are thereby no longer required to pay international student fees for their children, as children of work permit holders have domestic student status.
- 7 The Department has also been made aware of cases where, once guardians have changed their immigration status to become work or student permit holders, they have then left New Zealand. Their children have remained behind in the care of relatives or family contacts. This undermines the intent of Guardian policy.
- 8 Your previous briefing paper recommended that the Department develop a policy that would preclude guardians from gaining work permits through general work policy. The paper noted that while Cabinet did not envisage guardians being granted work rights, guardians could apply for a Variation of Conditions (VoC) to their Guardian permits that enabled them to work.

Ministry of Education policy on children of work permit holders

- 9 Ministry of Education (MoE) policy is that dependent school children of work permit holders are to be treated as domestic students for fee purposes. This policy dates back to the introduction of international student fees in 1990. The Department has raised the Guardian issue with the MoE, and the MoE has indicated that it can brief its Minister on this policy issue if requested.
- 10 Reviewing this MoE policy with a sole focus on guardians who subsequently become work permit holders, however, might be problematic. This is because a school fees policy that discriminated against work permit holders who had previously been guardians would necessarily be retrospective in nature, and would place the onus on schools to make the necessary determinations.
- 11 This would require that schools become responsible for checking the past and present immigration status of guardians. For example, some Guardian permit holders become work permit holders because their partner has gained a New Zealand work permit. This means that they are no longer a guardian as defined by this policy. Schools may not wish to make determinations on these situations, as they would be unfamiliar with the relevant aspects of the policy.

Work and study opportunities for guardians

Work opportunities

- 12 The Department recommends putting in place provisions that restrict Guardian permit holders from being granted work permits under general work policy and specific purpose or event work policy. While policy would, in general, prevent the grant of such permits, immigration officers do have discretion to make exceptions to temporary entry policy where this is warranted.

- 13 This measure would not apply to guardians seeking to become work permit holders on the basis of partnership or work to residence policies. Data indicates an almost even split between those guardians who acquire work permits on the basis of these policies, and those who acquire work permits on the basis of general work policy.
- 14 Any concerns regarding non-utilisation of guardians' work skills would be mitigated by maintaining the ability of guardians to obtain a work permit under work to residence policies including the Long Term Skills Shortage Work Policy and the Long Term Business Visa policy. This would ensure that guardians with skills that would help redress recognised skill shortages could still be employed.
- 15 Holders of Guardian permits who wish to work could be encouraged to apply for a VoC to their permits. To ensure that the intent of Guardian policy is not undermined, we propose that such VoCs be limited to allow for part time work only (up to 20 hours a week), during school hours (from 9.30am to 2.30pm Monday to Friday). A VoC to a Guardian permit would not change the foreign student status of the child.
- 16 Encouraging guardians who wish to work to apply for a VoC might enable them to better integrate with local communities, to enrich their experience in New Zealand, and to develop and/or make use of existing work skills. Given the current tight labour market, this may also benefit New Zealand employers.

Study opportunities

- 17 There is anecdotal evidence that some guardians are changing to a student permit in order to discharge themselves of the obligations attached to the Guardian Visa (i.e. that they live with their child at all times while the child is in New Zealand). These guardians are then leaving the country while their children remain behind in the care of relatives or family contacts. This undermines the intent of Guardian policy.
- 18 Currently guardians are able to apply for a VoC to study part time for the duration of their Guardian permit. This ability has not been widely utilised, or advertised, to date. The Department proposes that it proactively encourages guardians wishing to study in New Zealand to apply for a VoC, rather than apply for a student permit.
- 19 To reflect the intent of Guardian policy, however, the Department recommends that guardians wanting to study be limited to up to 20 hours per week at Private Training Enterprises, or up to three papers per year at other tertiary institutions.
- 20 The Department also recommends that a policy rule be put in place restricting Guardian permit holders from being granted student permits under student policy while their Guardian permit is current. This would help ensure that the intent of Guardian policy is maintained.

Commitments to industry

21 Education news media have made statements to the effect that the Government is seeking with urgency to address issues around Guardian policy. This understanding is shared by Education New Zealand and other representative groups, including Study Auckland. If you agree, the Department will ensure that changes to Guardian policy will be implemented by 24 July, and will communicate this to industry stakeholders.

Recommendations

22 We recommend that you:

1. **agree** that temporary entry policy be amended to prevent Guardian permit holders being granted work permits under general work policy or specific purpose or event work policy; and

Agree/Disagree

2. **agree** that temporary entry policy be amended to prevent Guardian permit holders being granted student permits under student policy; and

Agree/Disagree

3. **agree** that temporary entry policy be amended to make explicit that Variation of Conditions may be made to Guardian permits to allow the holders of such permits to work or study part time; and

Agree/Disagree

4. If you agree to the recommendations above, **approve** the attached amendments to Government immigration policy in accordance with section 13A of the Immigration Act 1987 by:

- i. **initialling** each new and amended policy provision; and
- ii. **signing** the attached Ministerial certificate for Government immigration policy.

Stephen Dunstan
for Secretary of Labour

Hon David Cunliffe
Minister of Immigration

**GOVERNMENT IMMIGRATION POLICY
MINISTERIAL CERTIFICATE**

I hereby certify, in accordance with section 13A of the Immigration Act 1987, that the amendments contained in **Appendix One** of the submission dated 28 April 2006 are part of Government immigration policy, on and after 24 July 2006.

Hon David Cunliffe
Minister of Immigration

(day)

(month)

(year)

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Appendix One

V3.100 Guardians accompanying students to New Zealand

- a. A person may be issued a visitor's visa and granted a visitor's permit under this policy for the purpose of living with and caring for, a foreign fee paying student in New Zealand, if they are the legal guardian* of a person who:
 - i is the holder of a current student visa or student permit and aged 17 years of age or younger; or
 - ii is the holder of a current student visa or student permit and is enrolled in school years 1-13.
- b. Only one legal guardian* of the holder of a student visa or permit will be issued a visa or granted a permit under this policy at any one time.
- c. To be issued a visa or granted a permit under this policy applicants must meet the requirements for bona fide applicants* as set out at E5.
- d. If a student visa or permit is issued or granted to more than one person in a particular family, only one legal guardian* of those holders of student visas or permits will be issued a visa or granted a permit under this policy at any one time during the validity of those student visas and permits.

V3.100.1 Revocation of permits

- a. A permit granted under this policy will be revoked if the student permit of the student whom the applicant accompanied to New Zealand is revoked.
- b. All permits granted under this policy are subject to the condition that the holder live in New Zealand with the student they are accompanying. If this condition is breached, the permit may be revoked.

Note: If the presence of a student's legal guardian* in New Zealand (and that legal guardian's support for the student) is material to the decision of a New Zealand education provider to enrol that student, any failure of the legal guardian* to live with and care for that student (either through withdrawal of their support or absence from New Zealand) may result in the revocation of the student's permit (see U7.15 (b)).

V3.100.5 Definition of 'legal guardian'

For the purposes of this policy, a 'legal guardian' is

- a. the person with the legal right and responsibility to provide for the care (including education and health) of an international student. This includes the student's biological or adoptive parents, testamentary guardian, or court-appointed guardian; and
- b. the person who usually provides for the care of the student in the student's home country.

V3.100.10 Length of permitted stay

Successful applicants under this policy will be issued multiple entry visitor's visas and/or granted visitors permits:

- i allowing a stay in New Zealand of 12 months, or
- ii if the student they are accompanying is attending a course of study of less than 12 months, for a stay in New Zealand of a period consistent with the student's permit.

V3.100.15 Issue and grant of further visitor's visas and permits

- a. Despite V2.5 (b), where the student that the applicant is accompanying has been issued a student visa or permit allowing a stay in New Zealand of more than 12 months, further 12 month visitor permits may be granted to the applicant upon application and payment of the fee.
- b. In determining whether further visas and/or permits may be issued or granted, visa and immigration officers must take into consideration whether, during the currency of a previous permit granted under this policy, the guardian* lived with and cared for the student on the basis of whose stay in New Zealand they were issued with a permit under this policy.

V3.100.20 Funds for maintenance in New Zealand

Applicants for a visitor's visa or permit under this policy must have funds of at least NZ\$1000 per month for maintenance and accommodation, or NZ\$400 per month if their accommodation has been prepaid.

V3.100.25 Evidence of onward travel arrangements

Applicants must provide evidence of travel tickets, onward travel arrangements or sufficient funds for the purchase of onward travel tickets (see V2.25).

V3.100.30 Health and character requirements

Applicants who intend to stay in New Zealand for a total of more than 24 months must undergo a medical and x-ray examination and provide police certificates (see E6.1 and E6.5).

V3.100.35 Guardians who wish to work or study once in New Zealand

- a. Guardian permit holders are not eligible for:
 - i. the grant of a work permit under General work policy or Specific Purpose or Event policy; or
 - ii. the grant of a student permit under Student policy.
- b. Guardian permit holders who wish to work or study may apply for a variation of conditions to their visitor permit to allow for part time work between the hours of 9:30am and 2:30pm, or part time study.
- d. Applications for variations of conditions by guardians must meet general work policy requirements (with the exception of the labour market test requirement) or student policy requirements.

U3.1 Summary

- a. Unless otherwise specified, to be issued with a student visa or granted a student permit to attend a course of more than three months, applicants must:
 - i have an offer of a place in an approved course with an education provider in New Zealand that meets policy requirements (see U5.1 and U3.5), and
 - ii be exempted from or have paid course fees, and
 - iii have a guarantee of accommodation (see U3.15), and
 - iv meet the conditions set out in U2.10, and
 - v not be the holder of a current visitor permit granted under V3.100 Guardians accompanying students to New Zealand policy (see V3.100.35).
- b. All applicants must meet the requirements under Generic Temporary Entry policy for:
 - i lodging an application for a temporary entry visa or permit as set out at E4, and
 - ii bona fide applicants* as set out at E5, and
 - iii health and character as set out at E6.
- c. Educational institutions may provide evidence that applicants have met the requirements in the template 'Offer of a place to a foreign student' (see U3.5), which may be amended to meet the needs of the issuing institution.

U6.20 Variations to work permits and visitors' permits to allow study

- a. Holders of work or visitors' permits must apply for a variation of conditions to their current permit if:
 - i they wish to undertake a course of study longer than 3 months; and
 - ii it is inappropriate for some other reason to apply for a student permit.
- b. Immigration officers with Schedule 3 delegations and above may grant a variation of conditions current for the length of the course, provided that they sight evidence that the applicant has:
 - i an offer of a place at an educational institution, and
 - ii paid the course fees or is exempt from having to pay them.
- c. Holders of visitor permits issued under the special category V3.100 Guardians accompanying students to New Zealand may only be granted a variation of conditions for part time study.

WG1 General work policy

See WG1 Effective 29/04/2004

- a. General work policy contributes to the overall work policy objective (see W1) by allowing New Zealand employers to recruit temporary workers from overseas to meet particular or seasonal worker shortages that cannot be met from within New Zealand while protecting employment opportunities, for New Zealand citizens and residents.
- b. To be issued with a work visa or granted a work permit under general work policy applicants must:
 - i provide an offer of employment in an occupation that is included on the current Immediate Skill Shortage List (ISSL) (see WG2) issued by the NZIS; or
 - ii provide an offer of employment from a New Zealand employer who has a current approval in principle from the NZIS (see WG3) for the recruitment of the applicant(s); or
 - iii provide an offer of employment and a supporting case from a New Zealand employer (see WG4) establishing that there are no New Zealand citizens or residents suitably qualified by training and experience who are available (see WG1.1); or
 - iv meet the requirements specified for one of the other categories listed in WG5 and WG6; and
 - v not be the holder of a current visitor permit granted under V3.100 Guardians accompanying students to New Zealand policy (see V3.100.35).
- c. Employers must meet the requirements in W2.10.5 relating to compliance with employment and immigration law in force in New Zealand and offers of employment must contain the information in W2.10.10.
- d. Where required by general work policy the availability of New Zealand citizens or residents will be determined by carrying out a labour market test (see WG3.10).

WS1.5 Who is eligible for a Specific Purpose or Event Visa or Permit

See WS before 04/07/2005

- a. Applicants may be issued with a work visa and/or granted a work permit under specific purpose or event policy, if visa and immigration officers are satisfied that they:
 - i. are coming to New Zealand for a specific purpose or event for a particular period; and
 - ii. are skilled in areas relevant to that specific purpose or event.

Note: Unless specified in WS2 there is no need for a labour market test.

- b. Applications for work permits made* under this category from applicants who currently hold a visitor permit granted under V3.100 Guardians accompanying students to New Zealand must not be approved (see V3.100.35).

W2.25 Conditions of work visas and permits

Immigration Act 1987 s 27(5), (7)

- a. A work visa may be issued with any or all of the following conditions imposed by special direction:
 - i the holder may work only in a specified industry, trade, occupation or profession;
 - ii the holder may work only for a specified employer;

- iii the holder may work only in a specified area or location;
 - iv any other condition the visa officer considers is appropriate to reflect the reason for which the visa is being issued.
- b. Any conditions (or variation of them by special direction) on the work visa also apply to the work permit granted on arrival in New Zealand.
- c. Work permits granted in New Zealand may also have any of the conditions in paragraph (a) above imposed by special direction.

W2.25.1 Varying the conditions of temporary permits

- a. Holders of temporary permits should apply for a variation of the conditions of their permit if:
- i they wish to work and do not have a permit that allows work in New Zealand; or
 - ii they hold a work permit limited by conditions and wish to change employers or the place of employment; or
 - iii it is inappropriate for some other reason to apply for a work permit.
- b. Immigration officers may issue a variation of conditions in such cases provided that the applicant completes an Application for Variation of Conditions and produces:
- i the appropriate fee; and
 - ii a valid passport or travel document; and
 - iii any other documents or information requested by the immigration officer.
- c. Holders of visitor permits granted under V3.100 Guardians accompanying students to New Zealand may only be granted a variation of conditions for part time work between the hours 9:30am and 2:30pm (see V3.100.35).