



## APPLYING FOR APPROVAL IN PRINCIPLE TO RECRUIT OVERSEAS WORKERS

### OVERVIEW

An application for Approval in Principle (“AIP”) allows an employer to follow a more straightforward process when seeking employees who require Essential Skills Work Visas to take up employment. Immigration New Zealand (“INZ”) will assess the availability of New Zealanders to do the work, and the requirements related to the employment and the employer, in advance of individual job candidates making a Work Visa application.

An AIP is not an application to be an Accredited Employer. Employers with Accredited Employer status can support applications for Talent Work to Residence Visas. See our [Guide to Employer Accreditation](#) for more information.

This is a paper-based application, requiring the completion of an INZ application form and providing supporting documents to INZ.

### AIP REQUIREMENTS

These are similar to the criteria for supporting an Essential Skills Work Visa. INZ will assess whether:

1. The employment is acceptable for an Essential Skills Work Visa. This involves working out the skill-band of the employment, which is based on the remuneration paid and the skill level of the job (see below);
2. There are New Zealand citizens or residents available for the work. The employer will be required to conduct a Labour Market Test by advertising the positions on offer, to see if any suitable New Zealand citizens or residents can be located;
3. The employer has a record of compliance with all relevant New Zealand employment and immigration law.

The standard to which the Labour Market Test must be performed is probably higher than for a single Essential Skills Work Visa application, depending on the number of positions an employer wishes to fill from overseas.

If an AIP is approved, migrants can then separately apply for the Essential Skills Work Visas based on those positions. They do not, however, have to satisfy the Labour Market Check in their individual applications.

If an employer is seeking more than 2 or 3 workers, the work required to handle both the AIP and to support individual visa applications is likely to be significantly less than what would be needed to support multiple stand-alone Essential Skills Work Visas.

No AIP will be granted for the recruitment of workers to plant, maintain, harvest, or pack crops in the horticulture or viticulture industries. This is reserved for the Recognised Seasonal Employer scheme.

## SKILL-BAND OF EMPLOYMENT

The skill level of the job on offer will determine the term and associated conditions of any visa granted under the AIP. It is based on:

1. Remuneration; and
2. Skill Level of the occupation as set out in the Australian and New Zealand Standard Classification of Occupations (ANZSCO).

An applicant's employment will be assessed as follows:

Skill-band	ANZSCO Skill Level	Remuneration	Work Visa Conditions
High-skilled	All	\$36.44 per hour or above	5 years
Mid-skilled	The employment substantially matches the description for an ANZSCO Skill Level 1, 2 or 3 occupation	\$20.65 and \$36.43 per hour (inclusive)	3 years
Low-skilled	All	Less than \$20.65 per hour	1 year for max of 3 years
	The employment substantially matches the description for an ANZSCO Skill Level 4 or 5 occupation	Less than \$36.44 per hour	

**Effective from 15/1/2018**

\*\* The hourly rates for Remuneration are reviewed in January of each year.

INZ will also only grant ESWVs for low-skilled employment for a maximum of 3 years - i.e., low skilled ESWV applicant can only get three lots of 1-year visas. After that, they must spend at least 1 year outside of New Zealand before they can apply for another ESWV for a low-skilled occupation.

## CALCULATION OF REMUNERATION

Remuneration is calculated on the basis of payment per hour. If the agreement specifies payment by salary, INZ will calculate the payment per hour by dividing the annual salary by 52 weeks followed by the number of hours that will be worked each week as stated on the employment agreement.

If work is specified for a range of hours (variable hours), the *maximum* hours worked or to be worked will be used to calculate the remuneration by the immigration officer.

### **Example:**

Applicant B is offered to work "at least 40 hours a week" with an annual salary of \$50,000. But B's employment agreement contains a clause that states that he is required to work additional hours from time to time. The employer says that the maximum hours B would be required to work will be 50 hours per week. The immigration officer will calculate the hourly rate as follows:

$$\$50,000 / 52 \text{ weeks} / 50 \text{ hours} = \$19.23 \text{ per hour}$$

Based on the above example, B's offer of employment will be determined as "low-skilled", which will result in B getting a 1-year Work Visa.

If we compare that to a fixed 40-hour work week:

$$\$50,000 / 52 \text{ weeks} / 40 \text{ hours} = \$24.04 \text{ per hour}$$

B's offer of employment will be determined as "mid-skilled" if the employment substantially matches a Skill Level 1, 2 or 3 occupation in the ANZSCO, which will result in B getting a 3-year Work Visa.

### **SKILL-BAND OF EMPLOYMENT – ANZSCO**

All occupations listed in the ANZSCO are assigned skill levels ranging from Level 1 (highly skilled) to Level 5 (low skilled).

Immigration must determine whether the applicant's duties and responsibilities are a "substantial match" to the description of the ANZSCO occupation which the applicant claims to be doing. This involves looking at both:

- ◇ The specific description of that occupation in ANZSCO; and
- ◇ The ANZSCO Core Tasks which are relevant to that particular occupation.

For each occupation, ANZSCO also indicates the level of relevant formal qualification, or the amount of relevant work experience and/or on-the-job training, that may be expected for an individual to competently carry out the job.

For further information on ANZSCO and Skill Level of Jobs, please refer to our blog post [here](#).

### **LABOUR MARKET TEST**

INZ must be satisfied that by issuing an AIP to a New Zealand employer, they are not displacing New Zealander from employment opportunities. INZ therefore requires the employer to make genuine attempts to recruit New Zealanders.

INZ only grants an AIP if it is satisfied that, as a result of a Labour Market Test, there were:

- ◇ No suitable New Zealand workers who can take up the work on offer; or
- ◇ No suitable New Zealand workers who can readily be trained to do the work on offer.

If the occupation is included on the current Long Term Skill Short List, Immediate Skill Shortage List or Canterbury Skill Shortage List (for employment in the Canterbury region only) AND the applicant's qualification and/or work experience meets the requirements on the List, then INZ will accept that there are no suitable New Zealanders available for the job. The Essential Skills in Demand Lists are published on the immigration website [here](#).

Employers are expected to advertise the vacancy on appropriate avenues of recruitment that are likely to attract New Zealand workers. This does not include the employer's own company website, or a niche job search website which New Zealanders are unlikely to visit.

Our advice to employers is to conduct a labour market test for at **least 3 weeks**. Advertising material usually needs to be less than 3 months old at the time a visa application is filed.

For Skill Level 4 or 5 occupations, the employer must **also** obtain a Skills Match Report from Work and Income New Zealand about the availability of local workers.

### **OUR SERVICE**

As your professional immigration advisers, our role is to ensure that all criteria are met and that all documentation provided in support of your application is in the form required by INZ, and that it assists your application and does not create confusion or difficulty.

We keep in contact with INZ to ensure that each application is processed promptly and in a manner that is "fair and in accord with natural justice".