



## IMMIGRATION TO NEW ZEALAND ESSENTIAL SKILLS WORK VISA

An Essential Skills Work Visa (“ESWV”) is for people who have been offered a full-time job by a New Zealand employer.

### VISA OVERVIEW

To apply for an ESWV, the visa applicant must have the necessary qualifications and experience to work in that job and the New Zealand employer must be able to demonstrate that there are no New Zealand Citizens or Residents available to do the work, or be trained to do the work.

This visa can be applied for online. An electronic visa is granted which allows the applicant to work for a New Zealand employer for up to 5 years depending on the skill level of the job on offer. The visa specifies the employer, the occupation, the location (town) and the skill level of the job.

A partner and dependent children cannot be included in this application, but they can separately apply for visas based on their relationship to the visa applicant. The type of visas they can get may differ depending on the skill level of the job being offered.

### THE ESSENTIAL SKILLS WORK VISA HAS THE FOLLOWING REQUIREMENTS

To be granted an ESWV, Immigration New Zealand (“INZ”) must be satisfied that

1. the applicant’s offer of employment is genuine, sustainable and full-time;
2. payment is by wages or salary, and is not paid at less than the market rate;
3. the applicant meets health and character requirements for temporary entry visas, and is a *bona fide* applicant – this usually means that they will not breach their visa conditions.

For Essential Skills Work Visas, two requirements are critical:

1. Skill-band of employment
2. Labour Market Test

### SKILL-BAND OF EMPLOYMENT

The skill level of the job on offer 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	\$37.50 per hour or above	5 years
Mid-skilled	The employment substantially matches the description for an ANZSCO Skill Level 1, 2 or 3 occupation	\$21.25 and \$37.49 per hour (inclusive)	3 years
Low-skilled	All	Less than \$21.25 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 \$37.49 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 of 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 the applicant is offered to work 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 is 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 granting an ESWV to a non-New Zealander, they are not displacing New Zealander from employment opportunities. INZ therefore requires the employer to make genuine attempts to recruit New Zealanders.

INZ will only grant an ESWV if they are satisfied that, if 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](#).

The labour market test must be undertaken by the New Zealand employer. They 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 would not generally 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** seek advice from Work and Income New Zealand about the availability of New Zealand workers by obtaining a Skills Match Report.

## **PARTNERS AND DEPENDENT CHILDREN**

Partners and dependent children cannot be included in the Essential Skills Work Visa, but they can seek a visa based on the applicant's ESWV as a dependent of a work visa holder.

If the ESWV applicant has been offered a position that is **mid to high-skilled**:

- ◇ Partners can seek a Partnership Work Visa based on their marital or de facto relationship which allows them to work for any employer, in any position and in any location.
- ◇ Dependent children can seek Visitor Visas (if under 5) or Student Visas (if 5 and over) which allows them to study as a domestic student in New Zealand.

If the ESWV applicant has been offered a position that is **low-skilled**:

- ◇ Partners can seek a Partnership Visitor Visa based on their marital or de facto relationship which does not allow them to work in New Zealand. If they wish to work in New Zealand, they must qualify for a Work Visa in their own right based on an offer of employment.
- ◇ Dependent children can seek Visitor Visas which allow them to accompany their parents to New Zealand however this Visa does not allow them to study in New Zealand as domestic students for more than 3 months. If they wish to study, they must apply for a Student Visa as an international student paying international fees in order to study in New Zealand.

If partners and dependent children wish to apply for visas, they must submit their own applications. All applications can now be filed online as a Group Application.

Their applications will only be approved if the applicant obtains an ESWV. The duration of their visas will be the same as the applicant's ESWV.

## **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 difficulties.

We prefer to work with employers at the very outset in order to ensure that:

- ◇ the job description accurately reflects the actual work to be done;
- ◇ the ANZSCO classification is chosen in a way that maximises chances of approval for the particular applicant; and
- ◇ advertising is consistent with the actual job and the intended visa application.

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".