

**RŌPŪ TAKE MANENE, TAKE WHAKAMARU
AOTEAROA**

Appellant:	UO (Partnership)
Respondent:	The Chief Executive of the Ministry of Business, Innovation and Employment
Before:	H Cochrane (Member)
Counsel for the Appellant:	S Shamia
Counsel for the Respondent:	No appearance
Date of Decision:	17 October 2025

RESIDENCE DECISION

[1] The appellant is a 53-year-old citizen of the Philippines whose application for residence under the Family (Partnership) category was declined by Immigration New Zealand.

THE ISSUE

[2] Immigration New Zealand declined the appellant's residence application because his wife was ineligible to support his application. This was because the wife had originally been granted residence as a secondary applicant in the appellant's first successful application for residence in 2008. The Tribunal finds this decision was correct.

[3] The principal issue for the Tribunal is whether the appellant has special circumstances, arising from his familial nexus to New Zealand through his New Zealand-citizen father, wife and son, their settlement and need for the appellant's support due to their health conditions.

[4] For the reasons that follow, the Tribunal finds that the appellant has special circumstances such as to warrant a recommendation that the Minister of Immigration consider an exception to Government residence instructions.

BACKGROUND

[5] The appellant was born in the 1970s in the Philippines. He has six siblings.

[6] The appellant's father left the Philippines in the 1990s and, in September 1991, he was granted refugee status in New Zealand.

[7] In July 1999, the appellant married and the couple have a son born in 2001.

[8] In November 2003, the appellant's ballot was selected under the Refugee (Family Quota) category of residence policy (as it was then known). In March 2004, the appellant made an application for residence under that category which was approved in February 2008 ("the first residence application").

[9] In January 2008, the appellant began employment with a maritime company in Japan.

[10] In March 2009, the appellant, his wife and son arrived in New Zealand as the holders of resident visas. The appellant departed a week later to his employment in Japan, but his wife and son remained in New Zealand.

[11] Between 2009 and 2011, the appellant made four trips back to New Zealand amounting to 56 days in the country.

[12] In May 2011, the appellant was granted a variation of travel conditions valid for 14 days as he did not qualify for a longer variation of travel conditions due to his time spent out of the country. As of June 2011, the appellant was no longer eligible for resident status.

[13] Between 2013 and 2019, the appellant returned on multiple occasions to visit his family, as the holder of visitor visas.

[14] In September 2019, the appellant made an application for second or subsequent resident visa ("SSRV"). He withdrew the application the following month, after Immigration New Zealand advised that he was not eligible but could pursue a partnership-based pathway to residence. The appellant was granted a

partnership-based visitor visa, travelled to New Zealand and departed on 17 January 2020.

[15] The appellant was precluded from entering New Zealand while the international borders were closed due to the COVID-19 pandemic, as his expression of interests for a border exception request was unsuccessful.

[16] In August 2022, the appellant returned to New Zealand where he has remained living, as the holder of partnership-based visitor and work visas, the most recent of which is valid until 21 March 2026.

Residence Application

[17] On 18 June 2024, the appellant made an online application under the Family (Partnership) category of residence instructions.

Immigration New Zealand's Concerns

[18] By letter dated 2 December 2024, Immigration New Zealand advised that the appellant could not rely on his partnership with his wife as a basis of his residence application because she had previously been a secondary applicant in his first residence application which meant she was not an eligible sponsor.

Appellant's Response to Immigration New Zealand's Concerns

[19] On 12 December 2024, the appellant explained that he was employed by a Japanese company at the time the first residence application was approved in February 2008 and the global financial crisis made it difficult for him to find a job in New Zealand which would enable him to support his wife, son, and father in New Zealand and his remaining family members in the Philippines. However, since August 2022, he had negotiated a work from home arrangement with the same Japanese employer.

Immigration New Zealand's Decision

[20] On 21 January 2025, Immigration New Zealand declined the appellant's application because it was based on his partnership to his wife, who had originally obtained residence as a secondary applicant in the appellant's first residence application. Therefore, the wife was not an acceptable sponsor and instruction R5.35 required his application be declined.

STATUTORY GROUNDS

[21] The appellant's right of appeal arises from section 187(1) of the Immigration Act 2009 (the Act). Section 187(4) of the Act provides:

- (4) The grounds for an appeal under this section are that—
 - (a) the relevant decision was not correct in terms of the residence instructions applicable at the time the relevant application for the visa was made; or
 - (b) the special circumstances of the appellant are such that consideration of an exception to those residence instructions should be recommended.

[22] The residence instructions referred to in section 187(4) are the Government residence instructions contained in Immigration New Zealand's Operational Manual; see www.immigration.govt.nz.

THE APPELLANT'S CASE

[23] On 3 February 2025, the appellant lodged this appeal on the ground that his circumstances are special such that an exception to the residence instructions should be considered.

[24] Counsel submits that the appellant's reasons for not living in New Zealand to maintain his resident status were due to his commitment to support his family; that he received advice from Immigration New Zealand that he could apply for a partnership-based resident visa; that he has a strong familial nexus to New Zealand; his family has made a contribution through their settlement; and both his wife and father have serious medical conditions which require the appellant's support in New Zealand.

[25] With the appeal, counsel provided the following documents in support:

- (a) Written statements from the appellant and his wife (March 2025).
- (b) A written statement from the son (undated) and evidence of his employment and qualifications.
- (c) Evidence of the appellant's employment in Japan and a failed job application in New Zealand.
- (d) Medical evidence of the wife and father's medical conditions.

- (e) Updated partnership evidence.
- (f) Support letters (variously dated) from members of the community.
- (g) Employment statistics in New Zealand throughout the appellant's time outside the country.

[26] The Tribunal takes the above information into account, as necessary, for its determination of whether the appellant has special circumstances (section 189(3)(b) of the Act).

ASSESSMENT

[27] The Tribunal has considered the submissions and documents provided on appeal and the files provided by Immigration New Zealand in relation to the appellant's two residence applications, and Immigration New Zealand's relevant electronic records.

[28] Although the appellant appeals only on the ground of having special circumstances, the Tribunal's jurisdiction requires that it first assess whether Immigration New Zealand's decision to decline the application was correct in terms of the applicable residence instructions. This is set out below and is followed by an assessment of whether the appellant has special circumstances which warrant consideration of an exception by the Minister of Immigration.

Whether the Decision is Correct

[29] The application was made on 18 June 2024 and the relevant criteria are those in residence instructions as at that time. Immigration New Zealand declined the application because the appellant's wife was ineligible to support his application as she had originally been granted residence as his partner in his first residence application in 2008.

[30] The relevant instructions in this case, R5.35, provides that:

R5.35 Later application under any residence category by previous applicants

An applicant for a residence class visa in New Zealand must not be approved under those instructions if their application is based on their relationship to a New Zealand permanent resident, resident or citizen who originally obtained a residence class visa as the partner or dependent child(ren) of the applicant or the applicant's partner.

Effective 28/08/2017

[31] The Tribunal finds that Immigration New Zealand's decision to decline the appellant's application for residence was correct. It was based on his relationship with his New Zealand-citizen wife, who had originally obtained a residence class visa as the appellant's partner in his first residence application. Instruction R5.35 mandated that the appellant's residence application could not be approved. Counsel acknowledges the correctness of this decision on appeal.

Conclusion on correctness

[32] Immigration New Zealand's decision to decline the appellant's application for residence was correct. It could not succeed in line with instruction R5.35.

Whether there are Special Circumstances

[33] Where the Tribunal found the decision of Immigration New Zealand to be correct, it has the power to consider whether the circumstances of the appellant are special, such that they warrant consideration by the Minister of Immigration of an exception to the residence instructions.

[34] Whether an appellant has special circumstances will depend on the particular facts of each case. The Tribunal balances all relevant factors in each case to determine whether the appellant's circumstances, when considered cumulatively, are special.

[35] Special circumstances are "circumstances that are uncommon, not commonplace, out of the ordinary, abnormal"; *Rajan v Minister of Immigration* [2004] NZAR 615 (CA) at [24] per Glazebrook J.

Personal and family circumstances

[36] The appellant is 53 years old. He is a citizen of the Philippines. His wife, 24-year-old son and father are New Zealand citizens. His mother is deceased, and five of his six siblings remain living in the Philippines. His sixth sibling lives in the United States.

Failure to maintain his resident status

[37] The appellant was granted residence, with his wife and son as secondary applications in February 2008. The appellant did not settle in New Zealand with his family. Rather, in March 2009, his wife and son moved in with his father and

the appellant returned to his job with a maritime company in Japan. He was paid in United States dollars which he remitted back to New Zealand and the Philippines.

[38] The appellant explains that he did not remain in New Zealand with his family because he was unable to find employment. He arrived in New Zealand during the Global Financial Crisis of 2008 and could not find work. The Ministry of Social Development's *Annual Report 2009/2010*, provided on appeal, records the economic situation as:

In early 2009, it was clear New Zealand was heading into a recession the country had not experienced in over 60 years. The job market contracted significantly, became increasingly competitive and making it harder than usual for [those without employment history] to find work.

[39] As the appellant was responsible for financially supporting his father, wife and son, as well as his siblings and mother (at that time) in the Philippines, he returned to his employment for a maritime company in Japan. The Tribunal accepts that the appellant and his family arrived in difficult economic circumstances. However, apart from providing evidence of one failed application for part time work in 2011, the appellant appears to only have made efforts to try to rejoin his family in 2019. It is mindful that the appellant had his resident visa until mid-2011. In 2019, Immigration New Zealand incorrectly advised the appellant that he could pursue a partnership-based residence application, without drawing his attention to the enduring impact of R5.35 on future applications, following the correct advice that he was not eligible for an SSRV. The appellant states that he did not realise that he would be permanently precluded from joining his family at a later date.

[40] The appellant's wife and son recount how much they missed him over the years while he was away but also recognise that his sacrifice enabled him to support them (along with his father) and the family in the Philippines. The appellant's son recalls how he missed his father who was absent for most of his adolescent years and having him living with them in New Zealand has made the family complete and their house a "home". Since arriving in New Zealand, the appellant has also celebrated his 50th birthday and renewed his wedding vows for his 25th wedding anniversary.

[41] The Tribunal accepts that the appellant and his family did not appreciate that the decision the appellant made to remain outside of New Zealand to provide for the family would prevent him from being reunited at a later date. This was exacerbated by incorrect advice received from Immigration New Zealand.

[42] The Tribunal (variously constituted) has previously observed that the purpose of instructions at R5.35 is to prevent an applicant from obtaining the right to live in New Zealand but not settling here, even though their spouse and children do. It aims to stop the potential abuse that arises when a person whose residence application is approved, continues to live predominantly overseas; see for example, *KM (Parent)* [2016] NZIPT 202935, where the appellant in that appeal had been granted residence on the basis that he would invest and run a business in New Zealand. However, the appellant in this appeal was granted residence under the Refugee Family Quota category, which allows refugees to sponsor family members who would not otherwise qualify for residence under any other category. The objective was to ensure the successful resettlement of refugees resident in New Zealand by allowing them to sponsor family members. Although the appellant did not remain in New Zealand, his wife and son joined his father, living with him on their arrival and supporting him over the following years. Further, the appellant made 11 trips to New Zealand over the 10 years before he attempted to return here on a permanent basis in 2019 and was finally able to join his family on a temporary basis since 2022. The Tribunal finds that the concerns outlined in *KM (Parent)* at [30] are not present in this current appeal.

[43] The Tribunal observes that the appellant's and his family's situation when they arrived is not unusual. It is a common enough occurrence that new residents experience difficulties adjusting to a new country, finding employment and the pressure to support family members (both here and in the home country). Further, it is not out of the ordinary that a person may lose their New Zealand residence because of absence from New Zealand.

[44] However, the Tribunal considers that given the purpose of the Refugee Family Quota category was to allow family members to join recognised refugees in New Zealand, the timing of the appellant's arrival during an economic downturn, and the pressure that the appellant felt to support his siblings and mother in the Philippines and his wife, son and father in New Zealand, his reasons for not settling in New Zealand are out of the ordinary and did not result from an abuse of the immigration system.

Connections to New Zealand

[45] Despite not settling in New Zealand, the appellant has maintained a strong connection here through his family members and the regular visits he has made to New Zealand. The appellant's wife and son are both New Zealand citizens and

have made only short trips away from New Zealand, the majority of which were to Japan or the Philippines, corresponding with the husband's annual leave. Evidence was presented of the family's ties to the Catholic Church and the Filipino community in New Zealand and the various charitable organisations they have supported, some for more than a decade.

[46] The appellant's wife holds full-time permanent employment and has done so for at least five years. The appellant's son completed his education in New Zealand, including a New Zealand Certificate in Advanced Professional Cookery (Level 4) and currently works as a warehouse assistant after six years as a head chef in a restaurant. The Tribunal accepts that the appellant's family are well-settled in New Zealand where their lives are now centred.

[47] The appellant's wife, aged 47, has advanced glaucoma in one eye and moderate glaucoma in the other eye. Her physician reports to the Tribunal that the stress around the uncertainty as to the appellant's immigration status has been having a detrimental effect on her health and that she needs the support of the appellant.

[48] The appellant's father is now aged 83. His doctor reports that he has a series of serious health conditions: advanced smoking-related lung disease, including chronic obstructive pulmonary disease and emphysema, chronic kidney disease, heart failure and type 2 diabetes. He currently lives with his *de facto* partner and one of her adult children.

Health and character requirements

[49] The appellant provided clear police certificates from the Philippines (13 May 2024) and Japan (13 May 2024) to Immigration New Zealand. Immigration New Zealand also obtained a clear police certificate for the appellant from New Zealand (10 July 2024).

[50] Immigration New Zealand found that the appellant had an acceptable standard of health (limited) in 2024 because he had not provided an updated chest x-ray. With the appellant's most recent partnership-based work visa, he provided updated medicals, including a chest x-ray, and was found to be of an acceptable standard of health. The appellant has not declared any significant health conditions and there is currently no indication that he will cause any significant cost or demand on New Zealand public health services.

Discussion on special circumstances

[51] The appellant is the only member of his family in New Zealand who does not have citizenship. He and his family were granted residence as a means of supporting the appellant's father who had been recognised as refugee and had no immediate family members who would otherwise be eligible for New Zealand residence. While the appellant did not settle upon arrival in 2009, his wife and son moved in with the father and provided support. His father, wife and son successfully settled in New Zealand, with his son completing his education and entering the workforce and his wife finding full-time permanent employment. Since then, New Zealand is also the country to which the appellant has maintained the strongest nexus through regular visits and his family's settlement. He has not lived or maintained a home in the Philippines since 2008, and he has no permanent right to remain in Japan, despite working for a Japanese company for close to 18 years.

[52] The appellant's need to support his young family in New Zealand and multiple siblings in the Philippines, at a time when unemployment was high in New Zealand, drove his decision to return to his overseas employment despite being granted residence. Because his wife is not an eligible sponsor for a residence application, he is unlikely to be granted further work visas on the basis of his partnership (as per temporary visa instructions at WF2). Further, he has no apparent pathway to residence (including under the Family (Parent) category) given that R5.35 operates as a permanent bar to a residence application sponsored by his wife or son. His wife and father have serious health conditions and would benefit from the appellant's presence in New Zealand. Since 2022, the family have been reunited and a grant of residence would provide them with certainty that the appellant will be able to remain permanently in New Zealand.

Conclusion on special circumstances

[53] Having regard to circumstances of the appellant and his family the Tribunal finds that, considered cumulatively, the appellant has special circumstances that warrant a recommendation that the Minister of Immigration consider an exception to residence instructions.

DETERMINATION

[54] Pursuant to section 188(1)(f) of the Immigration Act 2009, the Tribunal confirms the decision of Immigration New Zealand to be correct in terms of the applicable residence instructions but considers that the special circumstances of the appellant are such as to warrant consideration by the Minister of Immigration as an exception to those instructions.

[55] Pursuant to section 190(5) of the Act, the Minister of Immigration:

- (a) is requested to consider whether a residence class visa should be granted, as an exception to residence instructions, to the appellant; and
- (b) may, if granting a resident visa, impose conditions on the visa in accordance with section 50 of the Act.

[56] Pursuant to section 190(6) of the Act, the Minister of Immigration is not obliged to give reasons in relation to any decision made as a result of a consideration of the Tribunal's recommendation.

Order as to Depersonalised Research Copy

[57] Pursuant to clause 19 of Schedule 2 of the Act, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellant's name and any particulars likely to lead to the identification of the appellant or his family members.

"H. Cochrane"
H Cochrane
Member

[On 20 November 2025, the Minister determined to grant residence to the appellant as an exception to instructions.]

Certified to be the Research
Copy released for publication.

H Cochrane
Member