

VISA PAK ISSUE 445 — 07 AUGUST 2020

REQUESTS UNDER SECTION 61A OF THE IMMIGRATION ACT

This item provides offices with a process to follow if an applicant or their representative requests a visa under section 61A of the Immigration Act.

On 16 May 2020, the Immigration (COVID-19 Response) Amendment Act (Amendment Act) came into force. The Act contains a number of powers which are intended to enable the Government to respond flexibly and efficiently to the effects of COVID-19 on migrants and the immigration system.

A new section 61A (s61A) was created by the Amendment Act. This section allows the Minister to grant visas in his or her own volition, to:

- a) An individual (on a case by case basis) – s61A(1)
- b) A class of people – s61A(2)

These special direction powers are available in respect of persons who are outside New Zealand, or who are onshore temporary entry class visa holders.

On 22 June 2020, the Minister delegated to Delegated Decision Makers (DDMs) the power under s61A(1) to grant a visa in an individual case.

The primary purpose of this new provision was to allow the Minister or Immigration New Zealand (INZ) freedom to grant visas where a person or group is unable to submit a further visa application, such as for those affected by Whakaari / White Island eruption and who remained in hospital. Having said that, the legislation does not limit the Minister's power to just this type of situation, and applicant's representative may see it as another avenue to gain a visa for their clients. Nevertheless, given the policy intent noted above, and the fact that the normal application process is available to the vast majority of individuals, it is expected that visas would only be granted under s61A(1) in extreme circumstances.

This does not negate INZ's responsibility to deal with correspondence and requests related to this new power in a consistent and professional manner. This advice is primarily about what officers should do if they receive a request for a visa under s61A(1), and what to do if a s61A(1) request is approved by a DDM or a Minister.

Process

Receiving a request under s61A(1) - individual

There is no established process for the public or a client's representative to submit a request under s61A(1) of the Act. Nevertheless, immigration officers may on occasion receive written requests for visas from people who are offshore, or who are onshore and already hold visas.

If any such email or letter does not cite s61A(1), the response should simply state that the person needs to apply or express interest in applying through the established process as outlined on the INZ website. Similarly, if the letter/email (including any packet of supporting documents) purports to be an "application" but does not include the normal lodgement requirements, the application can be returned failed lodgements (RFL'd) as per the normal process.

However, if the cover email/letter or supporting documentation does cite s61A(1)¹, then the officer should respond to the requestor with the following:

Dear xxxx, thank you for your email/letter dated [date]. Please note that the Minister of Immigration has not delegated the power under 61A(1) to any immigration officer in an Immigration New Zealand processing office.

¹ Or simply 61A.



Therefore, your request will not be taken further. You are welcome to submit a visa application, or express interest in applying for a visa, in accordance with the guidance on our website immigration.govt.nz.

The officer should copy the response into the requestor's AMS record, if applicable. If the requestor has no AMS record or the officer cannot locate it on the information available, the officer should add this paragraph to the response above:

Please note that this response is not being copied into our electronic system; you should therefore keep a copy of your request and this response if you wish to use it for future reference.

Implementing and recording any positive s61A(1) decisions by a DDM or a Minister

In the event a DDM or a Minister chooses to intervene in any particular case, the special direction will normally be subject to requirements that need to be met by the requestor, such as submitting a fee and/or an application form. The requestor will be advised of any such requirements in the decision letter, and the 'application' will be submitted in the normal manner to an INZ receiving office. The requestor should submit a copy of the decision letter with the 'application'.

Application types should be selected, and other Ministerial-approval processes should be completed, in accordance with [visa pak 393 \(15 March 2019\)](#) and [IAC 12-02 Processes for Ministerial Requests and Directions](#).

In addition, CN: **[client number]** (section 61A request) should be added to the contacts tab against the application. This step is necessary so that INZ can report on the number of s61A requests approved by a DDM or a Minister.

If the special direction is not subject to any requirements (this might occur, for example, in a Whakaari / White Island type scenario), Henderson office will be tasked with implementing the direction on AMS.

Receiving a request under s61A(2) – class

In the rare event a request for a class special direction is received, the request should simply be forwarded to the Minister of Immigration's office.