

## Immigration New Zealand unreasonable to stamp person's passport when visa application declined

<b>Legislation</b>	Ombudsmen Act 1975
<b>Agency</b>	Immigration New Zealand
<b>Ombudsman</b>	Chief Ombudsman Beverley Wakem
<b>Case number(s)</b>	174117
<b>Date</b>	May 2010

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*Whether Immigration New Zealand (INZ) was reasonable to stamp words in a person's passport when that person had been declined a residence visa application—Ombudsman concluded the stamp had no legal authority and the practice was unreasonable*

The complainant was concerned that words were stamped in his passport denoting a declined visa application. The complainant believed that there was no justification for the practice and that INZ had not satisfactorily explained why this had happened. The Secretary for Labour advised the complainant that it had been common practice among 'embassies abroad' to stamp a person's passport when their application for a residence visa had been declined but the complainant was not satisfied with the response.

The Ombudsman investigated the matter, considering issues including privacy aspects of the complaint.

The Chief Ombudsman formed the view that INZ's action in placing an endorsement in the complainant's passport was unreasonable to the extent that: INZ failed to advise the complainant that his passport would be used for a purpose falling outside the primary purpose of a passport by placing an endorsement in it that went beyond recording the right to enter a country (together with any associated dates of entry or departure); and the complainant was therefore, not aware, before producing his passport to INZ, that it may be endorsed with a stamp that was not a visa stamp but one which denoted that an earlier application for a visa had been declined.

While INZ maintained that its practice was not unlawful, it did agree with the Chief Ombudsman's view that such a practice did not fall within the primary purpose of a passport which is to provide a means of establishing the identity and nationality of the holder. The Ombudsman concluded that the stamp INZ put into this passport provided no connection to a passport holder's travel to or presence in New Zealand and appeared unrelated to the purpose for which the passport was produced. The Ombudsman also noted that as the complainant had not received any notice before his passport was stamped, it was not reasonable to assume that the complainant gave implied consent to reference being made in his passport to the declined decision. Unless otherwise advised, a person is entitled to expect that any such endorsement by INZ be limited to a visa stamp.

In the present case, the endorsement in the passport did not detrimentally affect the complainant's ability to travel to New Zealand so the Chief Ombudsman did not make any recommendations in this case.

During the course of this investigation, INZ advised that it was carrying out a review of its practice of endorsing the passports of foreign nationals who had been declined visas to enter New Zealand. Consequently, it decided to modify the practice and advised its staff in the Internal Administration Circular no. 09/01(IAC 09/01) issued on 11 February 2009. IAC 09/01 limits the practice to situations where a person's application has been declined for not meeting character requirements. It also states that applicants will be alerted to the possibility of this occurring by way of a notation that will be added to the application forms.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*