

## Immigration New Zealand unreasonably fails to accept Court Order arising from domestic violence as evidence

<b>Legislation</b>	Ombudsmen Act 1975, Immigration Act 1987, Domestic Violence Act 1995
<b>Agency</b>	Immigration New Zealand — Department of Labour
<b>Ombudsman</b>	Beverley Wakem
<b>Case number(s)</b>	130413 (W54975)
<b>Date</b>	December 2006

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*Immigration New Zealand (INZ), declined an application for a work permit made under its victims of domestic violence policy—Ombudsman concluded INZ incorrect to ignore the evidence provided of domestic violence—INZ agreed to amend policy to include final protection orders as evidence of domestic violence*

The relevant policy provides that acceptable evidence of domestic violence is a criminal conviction or a Police report stating that domestic violence has occurred. In this case the applicant provided a final protection order made by the Court but INZ did not accept the Court order as evidence of domestic violence under the policy.

The Ombudsman formed the opinion that the plain wording of the policy does not permit an INZ immigration officer to dispute a finding by a Court that domestic violence has occurred. It is the function of a Court to make findings of fact and it is unreasonable for an immigration officer to ignore such a finding.

As a result of the Ombudsman’s opinion, INZ amended its policy to include final protection orders as evidence of domestic violence.

INZ accepted that there had been other errors in the decision making process. In light of these errors, INZ agreed to grant the complainant a temporary work permit so that she could remain in New Zealand lawfully until her appeal to the Residence Review Board had been decided. In the event, the Residence Review Board decided the complainant’s appeal shortly before INZ wrote to the Ombudsman. The Board cancelled INZ’s decision to refuse the complainant’s residence application and referred the application back to INZ for a correct assessment. The

Ombudsman wrote again to the Secretary of Labour advising that in her provisional opinion it was unreasonable for INZ to decline the complainant's work permit application on the grounds that no evidence of domestic violence had been provided despite a final protection order having been made against the complainant's husband. The Ombudsman referred to section 14 of the Domestic Violence Act 1995, which states that a protection order may be made if a Court is satisfied: 'that the respondent is using, or has used, domestic violence against the applicant, or a child of the applicant's family, or both; and that the making of an order is necessary for the protection of the applicant, or a child of the applicant's family, or both.'. The Ombudsman considered that, while a final protection order was not included in the definition of 'evidence' of domestic violence in immigration policy, this should not exclude an order from establishing that domestic violence has occurred. The Ombudsman noted that the aim of the policy for victims of domestic violence appeared clear and that the definition of 'evidence of domestic violence' in the policy referred expressly to a conviction as 'evidence' but made no reference to final protection orders. However, the Ombudsman did not see this as excluding a protection order from establishing that domestic violence had occurred. In her view, if the Manual was '...a working document providing guidance to immigration officials', the definition of 'evidence' in the policy was no more than guidance on the types of matters that would provide evidence of domestic violence, '*rather than a prohibition on considering all other material that is recognised at law as establishing a fact...*'.

The Ombudsman noted that the significance of the issues raised by the complaint had general application and asked INZ what it would be doing to ensure that immigration officers were aware of the effect of final protection orders when considering applications under the domestic violence policy. INZ agreed to issue an Internal Administration Circular to staff advising them of the effect of final protection orders. In addition, the definition of 'evidence of domestic violence' in INZ's policy manual was amended to include final protection orders.

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