

Failure of Immigration New Zealand to provide interpreter at border

Legislation	Ombudsmen Act 1975, section 22(1)(b)
Agency	Immigration New Zealand (Ministry of Business, Innovation and Employment)
Ombudsman	Peter Boshier
Case number(s)	517209
Date	4 September 2020

The complainant consented to be interviewed at New Zealand border without an interpreter – INZ refused entry - Ombudsman not convinced that complainant adequately understood the questions - Ombudsman formed the opinion that INZ’s decision to conduct the interview without the assistance of an interpreter was unreasonable, notwithstanding the consent given – Ombudsman recommended that INZ apologise to the complainant, use an interpreter in future interviews, and disregard information obtained during interview in future applications.

Background

In March 2016, an Immigration New Zealand (INZ) officer interviewed the complainant upon their arrival to New Zealand. The complainant’s first language is Hindi and they speak relatively limited English. The interview was conducted in English and was video-recorded. The INZ officer concluded that the complainant had breached the conditions of previous visitor visas by unlawfully working in New Zealand, and that they had failed to inform INZ they were coming to New Zealand for a meeting about a marriage proposal. As a result, INZ refused the complainant entry to New Zealand and they were returned to their home country.

The person complained to the Chief Ombudsman in November 2019, after INZ’s conclusions from the 2016 interview had an adverse effect on the assessment of their bona fides in a subsequent visa application.¹

¹ A bone fide applicant for temporary entry is a person who genuinely intends to stay in New Zealand for a lawful purposes and is considered not likely to breach the conditions of any visa granted, or be unable to be deported (see [immigration instruction](#) E5.1).

Investigation

The investigation concerned INZ's actions when interviewing the complainant upon their arrival at the New Zealand border. INZ's position was that it had conducted the interview in a fair and reasonable manner. INZ stated that the complainant was given the opportunity to use an interpreter but that they had declined.

The Ombudsman reviewed the footage of the interview. The footage confirmed that the complainant had consented to being interviewed without an interpreter. However, it also clearly showed the complainant was not fluent in English. The complainant appeared visibly confused through-out the interview and struggled to answer many of the questions put to them. The INZ officer often had to restate their questions or comments and there were multiple instances of misunderstandings. It was clear to the Ombudsman that the complainant did not fully understand many of the interviewer's questions and was unable to provide adequate answers to these questions.

The Immigration Instructions and Border Operations Guide place a clear onus on INZ to use interpreters when interviewing applicants who are not fluent in English:

- Immigration Instruction A1.15(f) states that an interpreter should be used in an interview if the applicant is not fluent in English, as a practical step towards achieving fairness and natural justice in decision-making. Additionally, Immigration Instruction A14.1(a) states that an *'immigration officer may require the assistance of an interpreter when interviewing a person who is unable to understand the questions fully and give adequate answers in English'*.
- INZ's Immigration Border Operations Guide states *'when interacting with persons who are not fluent in English you **must** arrange for an Interpreter to assist with the interview process [emphasis added]'*.

The Ombudsman considered it was important that INZ officers ensure applicants fully understand the purpose of the interview and the questions put to them in situations such as a border interview. This is because the conclusions drawn by INZ from these interviews can have serious and lasting consequences for the applicant.

The Ombudsman was concerned the INZ officer did not exercise their discretion and arrange for an interpreter, once it became clear during the interview that the complainant was not fluent in English. The Ombudsman noted that there was no video recording of the pre-interview discussion, so was unable to review how the INZ officer explained the interview and whether the complainant fully understood its importance and their right to an interpreter.

Outcome

The Ombudsman formed the opinion that INZ's decision to conduct the interview without the assistance of interpreter was unreasonable. The Ombudsman recommended that INZ:

- Formally apologise to the complainant for interviewing them without the use of an interpreter; and
- Place an alert on the complainant's file advising that:
 - INZ should have used an interpreter when interviewing the complainant, so all information from the March 2016 interview must be disregarded in the assessment of any future visa applications;
 - Any future interview with the complainant must include an interpreter; and
 - If INZ has concerns, which are not based on information gathered during the interview, about whether the complainant has breached conditions of their visas, then these must be put to the complainant for comment.

INZ accepted the Ombudsman's opinion and recommendations.

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