

## Immigration Service reviews returning residents visa policy following complaint

<b>Legislation</b>	Ombudsmen Act 1975, Immigration Act 1987
<b>Ombudsman</b>	Anand Satyanand
<b>Case number(s)</b>	W40851
<b>Date</b>	1998

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*Refusal of application for returning resident's visa—failure of New Zealand Immigration Service to advise applicant of discretion to make exception to policy—applicant incurred additional costs in changing travel plans—NZIS accepted responsibility for omission and reimbursed additional costs—policy on returning resident's visa reviewed and amended*

The complainant was granted a residence permit in May 1996. At the same time she was issued with an initial returning resident's visa valid for two years, which allowed her to re-enter New Zealand after travelling overseas. In early 1998 the complainant made reservations to travel overseas, departing in June 1998, and submitted an application for a further returning resident's visa to allow her to return to New Zealand after her trip. The New Zealand Immigration Service (NZIS) declined to accept this application. The relevant government policy was that further returning residents' visas for either an indefinite or twelve-month period could only be issued two years after the applicant was first granted a residence permit. Under the policy at the time she applied, the complainant would only have been entitled to a 14-day returning resident's visa, less than the validity of the returning resident's visa which she already held.

The complainant said that she had been informed by the NZIS that she would not be able to obtain a returning resident's visa to suit her purposes until the date of her planned departure from New Zealand. Accordingly, she changed her travel arrangements to a later departure date, incurring an extra cost of over \$300. However, in May 1998, the complainant made an application for a returning resident's visa at a different branch of the NZIS. This was approved

as an exception to policy, and the complainant was issued with an indefinite returning resident's visa.

The complainant considered that she had been misled to her financial detriment by the NZIS branch she had first approached. She believed she should have been advised that the NZIS had the discretion to grant a visa as an exception to policy, and that if she submitted her application closer to the date of her departure she could request that this discretion be exercised. The complainant therefore believed that the NZIS should compensate her for the extra cost incurred in changing her travel plans.

The NZIS confirmed that it was able to make exceptions to returning residents' visa policy. It would have been appropriate in this case for the complainant to have been advised that she could come back a few days prior to her departure to be issued with an indefinite returning resident's visa on sighting evidence that she was departing New Zealand in June 1998. This would not have been contrary to the objectives of returning resident's visa policy, as it seemed clear that the complainant was a genuine long-term resident of New Zealand. In the circumstances, the NZIS agreed to pay the extra cost incurred by the complainant in changing her travel arrangements, and the investigation was concluded on the basis that the complaint was resolved.

### **Comment**

NZIS also advised that this complaint had highlighted a shortcoming in returning resident's visa policy, namely the problems applicants may face if they wish to leave New Zealand for more than two weeks around the time of the expiry of their initial returning resident's visa. The NZIS undertook to review this aspect of the policy and later advised that the policy had been amended to allow a further 12 month returning resident's visa to be issued to an applicant who had held a residence permit for one year.

*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.*