

## EMPLOYING OVERSEAS WORKERS

### WHAT IS INVOLVED AND WHAT THE RECENT IMMIGRATION POLICY CHANGES MEAN

Attracting New Zealand workers into the racing industry is a significant and ongoing challenge faced by many trainers and these roles are increasingly, and often necessarily, having to be filled by overseas workers. The reality is that without these overseas workers many racing stables would not be able to operate to the level, or as efficiently, as they would wish to.

When it comes to employing overseas workers there are processes and requirements which must be carefully followed and managed to ensure the employment can actually proceed and that it does not lead to additional problems. The changes in Immigration New Zealand (INZ) work visa policies made on 28 August 2017 have now introduced additional implications which trainers need to be aware of.

#### The requirement for a Work Visa

A person who is not a New Zealand (or Australian) citizen or resident must hold a work visa to undertake any work in New Zealand. This includes work which is rewarded with the provision of just food and lodgings and without any monetary compensation.

It is the employer's responsibility to ensure a person has the required and appropriate visa before they can begin any work. Any employer can check the visa status of a prospective worker from the INZ website by using the tools available at [www.immigration.govt.nz/visaview](http://www.immigration.govt.nz/visaview).

There are many types of work visas and those most relevant to the racing industry are discussed in this article.

#### Working Holiday Visa

Many people who come to New Zealand and work in the racing industry, especially those from the UK and Europe, first arrive on a Working Holiday Visa (WHV). The WHV application process is quick and flexible, and a good first option if someone is from a country with whom New Zealand has a WHV arrangement (but there is no WHV arrangement with India). WHV holders can undertake casual work but cannot work in permanent employment roles. There are also other conditions which apply to the various WHV schemes.

#### Essential Skills Work Visas

This is the main category by which overseas workers obtain work visas. It normally requires the New Zealand employer to show evidence that they have made a genuine attempt to recruit or train a New Zealander by advertising the position. However, no advertising is required if the position is on the current INZ Immediate Skills Shortage List (ISSL) as below and the overseas worker meets the stated requirements.

Position	Requirements	Location
Jockey	Completed an Apprenticeship under the Rules of Racing in their country of origin <b>and</b> clearance from that authority	Waikato/Bay of Plenty, Central North Island, Canterbury/ Upper South Island, Otago/Southland
Trackwork Rider	Completed an Apprenticeship under the Rules of Racing in their country of origin <b>or</b> a minimum of three years' relevant work experience	All regions

The positions of Stallion Master and Stud Groom for the Waikato/Bay of Plenty are also on the ISSL.

If the offered position is not on the ISSL, or the applicant does not have the stated requirements, then the role must be advertised and the vacancy listed with the local WINZ Office. If no suitable applicants apply and WINZ confirm, by issuing a Skills Match Report, that they have no one suitable then a work visa application can be progressed.

The majority of overseas workers in the racing industry are employed as trackwork riders. As these workers normally have more than three years of relevant work experience these work visa applications can be processed according to the ISSL and therefore do not require any advertising or WINZ involvement. The main challenge with Essential Skills work visa applications often relates to the documents evidencing the claimed work experience, as INZ will undertake checks to confirm these documents and the work experience is genuine and correct.

Essential Skills Work visas are issued on the basis of employment and it is not possible for a work visa to be issued on a 'per ride' basis. Such work visas can only be based on employment for which an employee is paid wages for time-based work and for a minimum of 30 hours per week.

#### **Apprentice Jockey work visas**

Apprentice jockey work visas are processed under a different visa category called the Student and Trainee work visa policy. These visa applications do not require any job advertising or WINZ involvement. Apprentice jockeys must be aged 16 years or older and their visa application requires an apprentice jockey employment offer and a guarantee of maintenance and accommodation from New Zealand Thoroughbred Racing. Apprentice jockey work visas can be issued for a 4 year period.

A worker holding a work visa to work as a trackwork rider and who is offered an apprenticeship must apply to change to an apprentice jockey work visa before they can work as an apprentice jockey.

#### **Partnership work visas**

In a small number of cases there may be workers who hold a work visa based on their partnership relationship with a New Zealand citizen or resident. These work visas allow work in any role.

#### **About work visas**

All visa applicants must satisfy good character and health requirements, and any work visas issued on the basis of a specific employment role will only allow the worker to work in accordance with the conditions specified on their visa label. These conditions typically consist of the job title, the employer name and the employment location. An employer should not facilitate any visa holder to work in contravention of their visa conditions. To change the employer, job role or work location a new work visa application or a Variation of Visa Conditions must first be approved by INZ. The worker does not need to leave New Zealand to make these applications but they cannot begin working for any new employer, or any new role, until after the visa or variation has been approved.

The main changes to the work visa policies made in August relate to the introduction of pay thresholds and the impact these thresholds have on the period for which the visa is able to be issued, and whether family can accompany the visa holder.

<b>New Essential Skills pay rates, skill levels and associated visa conditions</b>					
<b>Skill level</b>	<b>Remuneration thresholds</b>		<b>ANZSCO Skill Level</b>	<b>Visa length</b>	<b>Children &amp; partner</b>
<b>Higher-skilled</b>	\$35.24+ per hour	<b>And</b>	1/2/3/4/5	Up to 5 years	Yes
<b>Mid-skilled</b>	\$19.97 - \$35.23 per hour	<b>And</b>	1/2/3	Up to 3 years	Yes

<b>Lower-skilled</b>	\$15.75 - \$19.96 per hour	<b>And</b>	1/2/3	Up to 1 year	No
	\$15.75 - \$35.23 per hour	<b>And</b>	4/5		

The reference to ANZSCO in the above table refers to the Australian and New Zealand Standard Classification of Occupations. ANZSCO is an exhaustive list of every occupation in all industries, and each occupation is given a Skill Level numbered between 1 and 5, with 1 being the highest and 5 the lowest Skill Level. Jockeys and Apprentice Jockeys are Skill level 3 occupations. Trackwork Riders are normally a Skill level 5 occupation, however if the worker can satisfy the requirements for the position as per the Immediate Skills Shortage List then INZ will accept Trackwork Rider as Skill level 3 occupation (and thus comparable to Jockey).

Once the Skill Level has been determined, the most important matter to consider for any Essential Skills and Apprentice Jockey work visa application is the hourly payrate. INZ will calculate the hourly payrate based on the gross offered wage and the work hours from the employment documentation. Based on our experience, this calculation can be complicated because of the varied work hours of many employees in the industry.

If the payrate is below \$19.97 per hour the position is classified as “Lower-skilled” which means the worker:

- Can only be issued a 12 month work visa at any time, and
- Can only hold Lower-skilled work visas for a maximum of 3 years before having to leave New Zealand. After holding a Lower-skilled work visa for 3 years a worker must leave New Zealand for 1 year after which they can apply again for a new Lower-skilled work visa (and can then stay another 3 years).The 3 years will begin from the date a new Lower-skilled work visa is issued after 28 August 2017 and any previous time prior to the issue of this new work visa will not count as part of the 3 years.
- Cannot support their partner or any children to accompany them to New Zealand while they are holding a Lower-skilled work visa (based on this work visa).

If the payrate is \$19.97 per hour or higher, and the Skill level is at Skill Level 1,2 or 3, the position can be classified as “Mid-skilled” which means the worker:

- Can be issued a 3 year work visa and
- Can continue to obtain Mid-skilled work visas without any limitation and
- May be able to be accompanied in New Zealand by their immediate family members

It can be possible for a Lower-skilled work visa holder to progress and transition to a Mid-skilled work visa.

Traditionally work visas have been issued as labels in an applicant’s passport but,with introduction of online applications, visas can now be issued electronically in a paper format. Trainers should always keep a copy of their overseas workers’ passport and visa with their employment documents and the visa expiry date should be monitored to ensure any new visa application is made at least 2 months before the visa expires.

It is now normal practise to apply for work visas using the INZ online system. Although hard copy applications are still possible the online system is much easier, as it enables applications to be lodged with document copies instead of original documents, and processing is quicker. Online work visa applications normally take about 2 weeks to prepare and can take from 3 to 5 weeks to process once lodged with INZ.

The INZ work visa online application fee is approximately \$300. Applicants or employers can appoint a New Zealand Licensed Immigration Adviser (see [www.iaa.govt.nz](http://www.iaa.govt.nz)) or a New Zealand lawyer to assist with their visa application or they may undertake the application directly.

The wage thresholds introduced in August are unfavourable to the racing industry as any worker who is paid less than \$19.97 per hour can now only be eligible for a 12 month work visa. The Minister of Immigration has committed to further reviews of work visa settings which will take into account affected industry sectors, and

the regional implications. These reviews are due to be undertaken by December 2017 and by mid-2018 respectively and it is hoped they will result in more favourable outcomes for the racing industry - but this is likely to be influenced by the incoming Government.

### **Employment documentation**

INZ is now adopting a very strict approach to employment documentation, and employment and safety laws and records. Any employer who is found not to be compliant, or have any history of non-compliance, with these laws may not be able to obtain visas for any overseas workers and this situation may remain for an extended time. As such a consequence can have serious implications for trainers it is important they review their documentation and record-keeping with their professional advisers to ensure everything is in order.

Based on our experience the main issues focussed upon by INZ with employers are:

- That the offer of employment letter and individual employment agreement and job description contain all the lawfully required information (The New Zealand Trainers' Association website has useful templates)
- That work times and weekly work hours are clearly detailed.
- The hourly payrate. Many industry employees are paid a set wage each week or fortnight, and the working of additional hours directly impacts on the hourly payrate with the potential to reduce this payrate below the legal minimum wage (currently \$15.75 ph). It is likely employers may need to move to an hourly payrate in the future instead of the current gross weekly/fortnightly pay model.
- That work on public holidays is lawfully recognised and remunerated (an issue which applies particularly to the racing industry workers who often work on public holidays).
- The keeping of the required daily time and wage, and holiday, records and that wage payments are paid and taxed correctly, and in accordance with the employment agreement and law.

### **Residence visas**

Work visas are temporary visas and allow the holder to remain in New Zealand for the period for which their visa is valid. In order to remain permanently in New Zealand a person is required to hold a Resident Visa.

The process to obtain a Resident Visa is significantly different and more involved than that of a work visa. The main resident category is the Skilled Migrant Category (SMC). To be eligible to apply for SMC residence an applicant must be under 56 years old, satisfy the English language requirement, have skilled employment in New Zealand and be able to obtain sufficient points to achieve the required passmark. SMC points are awarded mainly on the basis of age, skilled employment, skilled work experience and qualifications, and applicants are unlikely to achieve the passmark without having a recognised qualification.

The Level 4 qualification which forms part of a New Zealand jockey apprenticeship is a recognised qualification and employment as an apprentice jockey is considered skilled employment. Under current policy settings it may be possible for an apprentice jockey, who is still employed as an apprentice jockey, and who has 2 years of experience working as an apprentice jockey (gained after completing the level 4 qualification) to be eligible for a SMC residence application. Such employment will also require an hourly payrate of at least \$23.49. Residence applications require individual assessment and planning and professional guidance is recommended.

The eligibility of senior jockeys to similarly qualify for SMC residence is currently being discussed with INZ. Their situation is complicated by the fact they are normally self-employed and remunerated on a ride and Stakes percentage basis rather than a normal waged-employment arrangement.

Workers who are in a longstanding and genuine partnership relationship with a New Zealand citizen or resident can be eligible to apply for residence on the basis of this relationship after living together as a couple for 12 months or more.

#### **Disclosure**

This is a general article based on current immigration policies and on the writers' experience in the processing of such visa applications. Reliance on this article is completely at the discretion of the reader and Pathways does not accept any responsibility for the decisions any reader may make as a consequence of this article alone. It should be appreciated immigration policies change frequently and applicants should seek professional advice which is appropriate to their own circumstances.

#### ***Pathways to New Zealand Ltd***

*Article provided by Richard Howard, Managing Director of Pathways to New Zealand. Pathways' is one of the largest and longest established immigration companies in New Zealand and is a regular raceday sponsor at the Waikato Racing Club. Pathways' undertakes visa application work and provides visa advice to many New Zealand horse trainers and their overseas workers. Richard and the Pathways team are available to assist with any enquiries regarding this article or any immigration matter – Tel; 07 8349222, email:[info@pathwaysnz.com](mailto:info@pathwaysnz.com)*