

Guide 1 - A guide to making a residence visa appeal

Immigration and Protection Tribunal

Using this guide

This guide will provide you with the information needed to complete your residence visa appeal (under section 187 of the Immigration Act 2009) to the Immigration and Protection Tribunal (the Tribunal).

This guide tells you whether you can make an appeal, and how to do it. If you decide to appeal, you must fill out *Form 1 – Notice of Appeal: Residence Visa*. A copy of the form may be downloaded from our website or you can ask the Tribunal for a copy (see the back of this Guide for the contact details).

In this guide, the term ‘residence visa’ describes both a resident visa and a permanent resident visa. Both can also be known as ‘residence visas’.

The Immigration and Protection Tribunal

The Tribunal is an independent body that hears appeals about residence visas, refugee or protected person claims, and deportation. It was set up under the Immigration Act 2009. It is not part of Immigration New Zealand and does not issue visas or deal with anything other than appeals and some applications by Immigration New Zealand.

What is a residence visa appeal?

You can appeal to the Tribunal if you have received:

- an Immigration New Zealand decision saying you cannot have a residence visa, or
- an Immigration New Zealand decision cancelling a residence visa granted when you were outside New Zealand because you no longer meet the residence instructions in place when you applied for your visa, or
- an Immigration New Zealand decision saying you cannot enter New Zealand even though you already hold a residence visa, or
- a decision by the Minister of Immigration saying that you cannot have a residence visa because of classified information (information you are not allowed to see for security reasons).

For what reasons can I appeal?

You can appeal these decisions only if you think:

- the Immigration New Zealand decision is wrong because you do not satisfy the residence instructions in place when you applied for your visa, and/or
- you have special circumstances that mean the Minister of Immigration should make an exception to those instructions.

See section 187(4) of the Immigration Act 2009 to find out more about “special circumstances”.

What can the Tribunal decide?

After it reviews your appeal, the Tribunal will either:

- turn down your appeal because it agrees the decision made was correct; or
- agree the decision was correct, but ask the Minister of Immigration to consider giving you a visa because of your special circumstances; or
- agree the decision was correct at the time it was made, but send it back to Immigration New Zealand because there is new information about a particular event that happened after the decision was made; or
- decide the decision was wrong and send it back to Immigration New Zealand so they can consider the application again; or
- decide the decision was wrong, and direct Immigration New Zealand to grant you a visa.


See section 188 of the Immigration Act 2009.

How many days do I have to appeal?

If your residence application was lodged with Immigration New Zealand before 7 May 2015 and you did not, after that date, advise Immigration New Zealand of an email contact address:

- the Tribunal must receive your appeal no more than 42 days from the date on which Immigration New Zealand notified you of its decision (which occurred when it was delivered to your contact address); or
- if it is not possible to establish when you were notified of the decision, then:
 - if your contact address was in New Zealand, the date that is 7 calendar days after it was sent;
 - if your contact address was outside New Zealand, the date that is 14 calendar days after it was sent.

Note: any copy of the decision which was sent to you by email was sent as a courtesy only and does not affect your appeal time



If your residence application was either:

- lodged with Immigration New Zealand before 7 May 2015 and, after that date, you advised Immigration New Zealand of an email contact address; OR
- lodged with Immigration New Zealand after 7 May 2015;

then the following applies:

- the Tribunal must receive your appeal no more than 42 days from the date on which Immigration New Zealand notified you of its decision, which occurred:
 - if it was sent by registered post or courier, when it was delivered to your contact address; or
 - if it was sent by email, when it was delivered to the server of your internet service provider or other server used by you for the receipt of email.
- if it is not possible to establish when you were notified of the decision, then:
 - if it was sent by registered post or courier to an address in New Zealand, the date that is 7 calendar days after it was sent;
 - if it was sent by registered post or courier to an address outside New Zealand, the date that is 14 calendar days after it was sent; or
 - if it was sent by email, the date that is 3 calendar days after it was sent.

How to count the 42 days

- Include Saturdays and Sundays when you count the 42 days
- Don't include the days from 26 December to 31 December
- Don't include the following New Zealand public holidays:
 - New Year's Day (1 January)
 - Day after New Year's Day (2 January)
 - Auckland Anniversary Day (usually the Monday closest to 29 January)
 - Waitangi Day (6 February, or the next Monday if it falls on a weekend)
 - Provincial Anniversary Day (if you are in New Zealand, the province where you live)
 - Good Friday (Friday before Easter Sunday)
 - Easter Monday (Monday after Easter Sunday)
 - Anzac Day (25 April, or the next Monday if it falls on a weekend)
 - Sovereign's Birthday (first Monday in June)
 - Labour Day (fourth Monday in October)
 - Christmas Day (25 December)
 - Boxing Day (26 December)

NOTE: If the Immigration New Zealand decision was sent to you by registered post or courier, the deadlines for lodgement do not apply if you can prove that you did not receive the decision within these time-frames and this was not your fault. If so, the days are counted from the date you actually received the decision.

Send the Tribunal your appeal as soon as possible. Do not leave it until the last minute, as the Immigration Act 2009 does not allow us to extend the deadline for lodgement.

See sections 187(5), 386A, 387 and 387A of the Immigration Act 2009.

How many times can I appeal the Immigration New Zealand decision?

You can appeal each Immigration New Zealand decision only once. If you are not happy with the Tribunal's decision, you may be able to appeal it to the High Court.

How much will it cost me to appeal to the Tribunal?

An appeal costs NZ\$700. It must be paid at the time the appeal is lodged.

Do I need a lawyer or representative if I want to appeal?

You are not required to have a representative: you can represent yourself if you want. If you choose to have a representative, that person must be:

- a lawyer; or
- a licensed immigration adviser (they must be licensed with the Immigration Advisers Authority: this includes advisers outside New Zealand); or
- someone who is not a licensed immigration adviser but is allowed to represent you under section 11 of the Immigration Advisers Licensing Act 2007. They can be:
 - a person who provides informal immigration advice only sometimes and is not paid for it (such as a family member); or
 - current members of the New Zealand Parliament and their staff; or
 - foreign diplomats and consular staff; or
 - government employees whose employment agreement allows them to give immigration advice; or
 - staff of community law centres or Citizens Advice Bureau

These are the only representatives you are allowed to use. If you name someone else as your representative on Form 1, the Tribunal will contact you. You will need to find a different representative or represent yourself.

You can find out more from the Immigration Advisers Authority about choosing a representative. See <https://www.iaa.govt.nz/> , or phone them on 0508 422 422 (or +64 9 925 3838 if calling from overseas). See following information about changing you representative, or deciding to represent yourself, after you have sent in your appeal.

Can I appeal if I am under 18 years old?

Yes, but a responsible adult must act for you during the appeal. The responsible adult must be one of your parents. If this is impossible (say, if your parents are not in New Zealand), the Tribunal needs to know so it can appoint a responsible adult to act for you. Tick the relevant box in Step 7 of Form 1. This does not apply if you are married and under 18. In that case, you do not need a responsible adult to act for you.

See section 375 of the Immigration Act 2009.

Can I include other people in my appeal?

You can include other people (such as your partner and children) if they were also included in the residence visa application you made to Immigration New Zealand. You cannot include anyone else. If you do include other people in your appeal, you must fill out Step 3 of *Form 1 – Notice of Appeal: Residence Visa*.

See Regulation 6 of the Immigration and Protection Tribunal Regulations 2010.

Will I be able to speak to the Tribunal?

No – there will not be an oral hearing. The Tribunal decides all residence visa appeals “on the papers”. This means it makes its decision using the written information you have given. Immigration New Zealand will send the Tribunal your files: you do not need to send this information again. However, you can also send the Tribunal supporting documents you think will help it understand your case and why you are appealing – see below.

Will information should I send the Tribunal?

When you send the Tribunal your appeal, include any extra information that:


- would have been relevant to the decision made by Immigration New Zealand or the Minister, but you were unable to provide it at that time; or
- shows you have special circumstances that the Minister of Immigration should consider.

See section 189 of the Immigration Act 2009

This information can include written submissions, photographs, letters of support from an employer, medical records and other evidence that will help the Tribunal understand your circumstances and reasons for appealing.

It is not the Tribunal’s job to tell you which documents to send. You must decide what information we need to understand and determine your appeal, and then send that information to us. Send any documents which you think show that what you are telling the Tribunal is true.

Make sure everything you send is accurate, relevant and complete. All documents should be:

- originals or certified copies;
 - in English or accompanied by a certified English translation by a recognised translator. Translations by family or friends will not be accepted;
 - signed and dated, if the document contains a statement from a named person; and
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- on official letterhead paper, if possible. For example, if you are sending a letter from your child's teacher, ask him or her to write it on the school's stationery.

See sections 226(1) and 233 of the Immigration Act 2009; Regulation 11 of the Immigration and Protection Tribunal Regulations 2010

You must send two copies of all documents.

The Tribunal will usually keep any original documents you send (but not your passport) unless you ask for them back. Send certified copies of documents if you need to keep the originals.

What if things change after I appeal to the Tribunal?

You must tell the Tribunal immediately and in writing if:

- there are changes in your life which are relevant to your appeal;
- you change where you live, or want the Tribunal to contact you at a different address from the one on your appeal form;
- you change your representative. You and your representative must fill out *Form 8 – Authority to Act* form (available from www.justice.govt.nz/tribunals/immigration/immigration-and-protection/) and send it with your letter;
- you had a representative when you sent in your appeal and now want to represent yourself.

In all these cases, tell us where you want us to send letters, emails and information about your appeal from now on. If you do not do this, the Tribunal will keep sending everything to the address you gave on your appeal form.

The Immigration Act 2009 says it is your responsibility to tell the Tribunal about these changes.

A step by step guide to making an appeal

Read this guide carefully.

- Fill out *Form 1 – Notice of Appeal: Residence Visa*. If you need one, download it from the website or get a copy from the Tribunal – see the contact details at the end of this Guide.
- Sign the form. You must sign steps 6 and 7 on *Form 1*.
- Include two copies of your supporting documents.
- Include your fee of NZ\$700. You must pay in New Zealand dollars. To confirm how to pay the application fee, please visit:

www.justice.govt.nz/tribunals/immigration/immigration-and-protection/make-an-appeal/forms-and-fees/

- Deliver or post your appeal to the Tribunal by one of these methods:
 - You (or a courier) can deliver it to:
Immigration and Protection Tribunal
Level 1, Chorus House
41 Federal Street
Auckland 1010 New Zealand
 - Or you can post it to:
Immigration and Protection Tribunal
DX: EX11086 Auckland New Zealand

Write the address as written here and send it the same way as any other mail. You can use an NZ Post mail box. If you use a DX mail box your mail will get to us faster, however.

- If you think your appeal will not reach the Tribunal in time, you can fax or email us a copy (with a copy of your receipt) in advance. Send it to:
 - Fax: 0064 9 914 5263, or
 - Email: IPT@justice.govt.nz

After you have sent the fax or email, you still need to deliver or post the original appeal form and your supporting documents to the Tribunal.

Make sure the Tribunal receives your appeal no more than 42 days after the date on which you were notified of the Immigration New Zealand decision. The Tribunal will not accept late appeals, unless you were sent it by registered post or courier and can prove you were not notified of the decision and it was not your fault.

What happens during the appeal?

Residence visa appeals are decided “on the papers”. There is no oral hearing. Appeals go through four stages:

- Receiving the appeal
- Preparation
- Making the decision
- After the decision

Receiving the appeal

At this stage, the Tribunal receives your appeal and checks that everything is correct. The Tribunal cannot accept your appeal unless you have used the right form, signed it and included the fee. It must receive it by the deadline explained earlier in this guide.

The Tribunal will then write to you to let you know either:

- that your appeal has been received, and everything is correct and complete. You do not need to do anything more, unless you still want to send the Tribunal information to support your appeal. The Tribunal will also tell Immigration New Zealand that you have made an appeal. OR
- that your appeal has been received but needs to be corrected. It will return it to you so you can correct it and send it again if there is still time.

Preparation

At this stage, the Tribunal sends a copy of your appeal to Immigration New Zealand or the Minister of Immigration (whichever made the decision you are appealing).

Immigration New Zealand or the Minister then gives the Tribunal your immigration file. If you have information or documents you think will help the Tribunal decide your appeal and you did not send them with your appeal, send them now.

Remember: it is your responsibility to give the Tribunal the information it needs to understand and decide your appeal.

Withdrawing your appeal

You can withdraw your appeal any time before the Tribunal releases its decision.

To withdraw your appeal, you must complete Form 9 - Withdrawal of Appeal Form (copies available from the Tribunal or download from the website) and send it to the Tribunal OR write a letter to the Tribunal saying you want to withdraw your appeal. You must sign the letter.

If you withdraw your appeal, you will not get back your fee.

Making the decision

After the Tribunal has considered your appeal, it makes its decision. It posts or emails a copy to you or your representative (if you have one) and to Immigration New Zealand or the Minister of Immigration (whichever made the original decision).

The Tribunal publishes its decisions on its website, removing names and other information that would identify you or anyone else.

After the decision

Once the Tribunal makes its decision, it can do nothing more.

If you disagree with the Tribunal's decision, you have the right to ask the High Court for permission to appeal to the High Court on a point of law or to ask the High Court for judicial review – but only if you can show the Tribunal got something wrong.

If you are thinking about appealing or asking for judicial review, you should talk to a lawyer first.

- Appeal to the High Court on point of law: Your appeal can only raise legal issues, not questions of fact. You must apply to the High Court for permission to appeal no more than 28 days after you were notified of the Tribunal's decision.
- Judicial review by the High Court: If you apply for judicial review, you are asking the High Court to review how the Tribunal carried out its statutory (legal) powers when it decided your appeal. You must apply to the High Court for permission to seek judicial review no more than 28 days after you were notified of the Tribunal's decision.


See sections 245 and 247 of the Immigration Act 2009; and the Judicature Amendment Act 1972

If you do not appeal to the High Court or apply for judicial review within 28 days, the Tribunal's decision becomes final.

Do I get my fee back after the appeal?

No.

See Regulation 16 of the Immigration and Protection Tribunal Regulations.



Immigration and Protection Tribunal

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Address: Level 1 Chorus House , 41 Federal Street, Auckland 1010

Phone: 64 9 914 4299

Email: ipt@justice.govt.nz

Website: www.justice.govt.nz/tribunals/immigration/immigration-and-protection/