Immigration and Protection Tribunal Guide 1

Making a Residence Visa Appeal

Under section 187 of the Immigration Act 2009

In this Guide, the term “residence visa” describes both a resident visa and a permanent resident visa. Both can also be known as “residence class visas”.

About 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.

How to use this Guide

You may be able to make a residence visa appeal to the Tribunal if Immigration New Zealand or the Minister of Immigration has:

a) declined your application for a residence visa;

b) cancelled your residence visa before you entered New Zealand; or

c) at the border, refused to allow you to enter New Zealand when you already hold a residence visa.

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).

Part 1 of the Guide tells you more about the Tribunal, who can appeal to it and for what reasons. It answers the following questions:

1.1 What is a residence visa appeal?
1.2 For what reasons can I appeal?
1.3 What can the Tribunal decide?
1.4 How many days do I have to appeal?
1.5 How many times can I appeal the Immigration New Zealand decision?
1.6 How much will it cost me to appeal?
1.7 Do I need a lawyer or representative if I want to appeal?
1.8 Can I appeal if I am under 18 years old?
1.9 Can I include other people in my appeal?
1.10 Will I need to speak to the Tribunal?
1.11 What information should I send the Tribunal?
1.12 What if things change after I appeal to the Tribunal?

Part 2 is a step-by-step checklist to use when making your appeal.

Part 3 explains what happens after you make an appeal.
IMPORTANT
(1) Do **not** leave it until the last minute to file your appeal.
(2) If it will take time to find a representative or lawyer, or to gather supporting documents, file the appeal **now** and do those other things later. The Tribunal will not start considering your appeal until after the 42 day period for filing it, so you will have that time to find a representative or lawyer, or to send your documents in. Filing the appeal early protects you against accidentally missing the 42-day deadline.

The following websites and documents will be especially useful:

This is the Immigration and Protection Tribunal’s website.

This is Immigration New Zealand’s website. It has fact sheets about immigration topics such as residence, refugee and protected person status and deportation. Some are in languages other than English.

This website has the residence instructions set by the Minister of Immigration. Immigration New Zealand must apply these instructions when it assesses residence applications.

[www.iaa.govt.nz](http://www.iaa.govt.nz)
This is the Immigration Advisors Authority website. The Authority regulates immigration advisers (also known as immigration consultants or agents) and lists all licensed advisers.

This is an official government website where you can read and download New Zealand laws – including the Immigration Act 2009, the Immigration Regulations and other laws referred to in this Guide.
Explanation of terms

Appellant Someone making an appeal to the Immigration and Protection Tribunal against an Immigration New Zealand decision (or in some cases, a decision made by the Minister of Immigration). For residence visa appeals, the appellant must be the same person who was the principal applicant in the visa application to Immigration New Zealand. A secondary applicant (such as a partner) cannot be substituted if, say, the principal applicant dies or for some reason cannot continue with the appeal.

Certified copy of a document A true copy, approved by someone legally allowed to approve it. If you are in New Zealand, certified copies must be approved by a lawyer, notary public, Justice of the Peace or court official.

Certified translation A written translation into English from another language, that has been done by a professional, independent translator. The translator must not be a friend or a family member.

Evidence Any information about your situation that affects your appeal. The evidence you give the Tribunal can include your own written statement about your situation, and any other documents that relate to your situation.

Immigration instructions The rules Immigration New Zealand follows when people apply for visas or permission to enter New Zealand. They are set by the Government.

Interim visa A visa granted to you while your application for another visa is being considered. You cannot appeal against a decision about an interim visa.

Lodgement fee The NZ$700 fee you must pay when appealing to the Tribunal.

Member The members of the Immigration Protection Tribunal are the people who make decisions about appeals. They are appointed by the Governor-General on the recommendation of the Minister of Justice.

Residence class visa Either a resident visa or a permanent resident visa; both are issued by Immigration New Zealand.

Resident or permanent resident Someone who holds a resident visa or a permanent resident visa.

Representative Someone who represents you during an appeal to the Tribunal. They must be a lawyer, a licensed immigration adviser or someone who is not licensed but is allowed by law to give immigration advice. However, if you want to, you can represent yourself, you do not need a representative.

Residence instructions Part of the Immigration instructions (the rules Immigration New Zealand follows when people apply for visas or permission to enter New Zealand) relating to residence visas.

Submissions The written reasons you give the Tribunal for why you think your appeal should succeed.
Part 1: About Residence Visa Appeals

1.1 What is a residence visa appeal?

You can appeal to the Tribunal if you have received:

a) an Immigration New Zealand decision saying you cannot have a residence visa, or

b) 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

c) an Immigration New Zealand decision saying you cannot enter New Zealand even though you already hold a residence visa, or

d) 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).

1.2 For what reasons can I appeal?

You can appeal these decisions only if you think:

a) the Immigration New Zealand decision is wrong because you do satisfy the residence instructions in place when you applied for your visa, and/or

b) 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”.

1.3 What can the Tribunal decide?

After it reviews your appeal, the Tribunal will either:

i. turn down your appeal because it agrees the decision made was correct; or

ii. agree the decision was correct, but ask the Minister of Immigration to consider giving you a visa because of your special circumstances; or

iii. 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

iv. decide the decision was wrong and send it back to Immigration New Zealand so they can consider the application again; or

v. decide the decision was wrong, and direct Immigration New Zealand to grant you a visa.

See section 188 of the Immigration Act 2009
1.4 How many days do I have to appeal?

**PLEASE READ THIS CAREFULLY TO SEE WHICH ONE APPLIES TO YOU**

A. **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:**

   a) 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

   b) if it is not possible to establish when you were notified of the decision, then:

      i) if your contact address was in New Zealand, the date that is 7 calendar days after it was sent;

      ii) 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.

B. **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;

   a) 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:

      i) if it was sent by registered post or courier, when it was delivered to your contact address; or

      ii) 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.

   b) if it is not possible to establish when you were notified of the decision, then:

      i) 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;

      ii) 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

      iii) 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 lodgment 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 lodgment.


1.5 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 – see section 3.5 of this Guide.

1.6 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.

1.7 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) a lawyer; or
b) a licensed immigration adviser (they must be licensed with the Immigration Advisers Authority: this includes advisers outside New Zealand); or
c) 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:
   i) a person who provides informal immigration advice only sometimes and is not paid for it (such as a family member); or
   ii) current members of the New Zealand Parliament and their staff; or
   iii) foreign diplomats and consular staff; or
   iv) government employees whose employment agreement allows them to give immigration advice; or
   v) staff of community law centres or Citizens Advice Bureaux.

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 www.iaa.govt.nz, or phone them on 0508 422 422 (or +64 9 925 3838 if calling from overseas). See section 1.12 of this Guide for information about changing your representative, or deciding to represent yourself, after you have sent in your appeal.

1.8 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 Part 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.

1.9 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 Part 3 of Form 1.

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

1.10 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.

1.11 What information should I send the Tribunal?

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

a) 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

b) 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:

a) originals or certified copies;

b) in English or accompanied by a certified English translation by a recognised translator. Translations by family or friends will not be accepted;

c) signed and dated, if the document contains a statement from a named person;

d) 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.
1.12 What if things change after I appeal to the Tribunal?

You must tell the Tribunal immediately and in writing if:

a) there are changes in your life which are relevant to your appeal;

b) you change where you live, or want the Tribunal to contact you at a different address from the one on your appeal form;

c) you change your representative. You and your representative must fill out Form 8 – Authority to Act form (available from the website) and send it with your letter;

d) 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.
Part 2: 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 section 6 and section 7.
☐ Include two copies of your supporting documents (see section 1.11 of this Guide).
☐ Include your fee of NZ$700. You must pay in New Zealand dollars, using either:
  • A personal cheque (New Zealand cheques only)
  • A bank cheque/bank draft. Cheques must be made payable to Ministry of Justice
  • A credit card (Visa or Mastercard)
  • Cash (only if you deliver your completed form to the Tribunal’s offices in Auckland).
  Note: whether or not your appeal succeeds, you will not get your fee back.
☐ Deliver or post your appeal to the Tribunal by one of these methods:

A. You (or a courier) can deliver it to:
   Immigration and Protection Tribunal
   Level 1 Chorus House
   41 Federal Street
   Auckland 1010
   New Zealand

B. 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.

C. If you think your appeal will not reach the Tribunal in time, you can fax or email us a copy (with your credit card details) in advance. Send it to:
   Fax: 64 9 914 5263
   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.
Part 3: What happens during the appeal?

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

1. Receiving the appeal
2. Preparation
3. Making the decision
4. After the decision

3.1 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 in section 1.4.

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

a) 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 (see sections 1.11 and 3.2 of this Guide). The Tribunal will also tell Immigration New Zealand that you have made an appeal. OR

b) 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 (see section 1.4 for the deadline).

3.2 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. See section 1.11 of this Guide.

3.3 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 NZ$700 fee.

3.4 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.

See section 1.3 of this Guide for more about the kinds of decision the Tribunal can make.
3.5 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.

a) 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.

b) 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.

3.6 Do I get my fee back after the appeal?

No.

See Regulation 16 of the Immigration and Protection Tribunal Regulations

Contact the Immigration and Protection Tribunal:

*Physical address* (anything sent to the Tribunal by courier must be to this address, not the postal address):

Level 1, Chorus House
41 Federal Street
Auckland 1010
New Zealand

*Postal address:*

DX: EX11086
Auckland
New Zealand

Ph: (0064) 9 914 4299
Fax: (0064) 9 914 5263
Email: IPT@justice.govt.nz

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**Disclaimer**

This Guide provides general information about making an appeal to the Immigration and Protection Tribunal. It is not legal advice. You should consult the Immigration Act 2009 and the Tribunal’s Practice Notes, which are on its website. You can get more detailed advice from lawyers, licensed immigration advisers, and certain other people who are legally allowed to give immigration advice (see section 1.6 of this Guide).