



Immigration (Refugee and Protection Status Processing) Regulations 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 9th day of August 2010

Present:

His Excellency the Governor-General in Council

Pursuant to sections 400 and 403 of the Immigration Act 2009, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations

1 Title

These regulations are the Immigration (Refugee and Protection Status Processing) Regulations 2010.

2 Commencement

These regulations come into force at 2 am on 29 November 2010.

3 Interpretation

- (1) In these regulations, unless the context otherwise requires,—
- Act** means the Immigration Act 2009
- chief executive** means the chief executive of the Department
- claim** means a claim by a person in New Zealand for recognition, as the case may be, as—
- (a) a refugee in New Zealand under the Refugee Convention;
 - (b) a protected person in New Zealand under the Convention Against Torture;
 - (c) a protected person in New Zealand under the Covenant on Civil and Political Rights

claimant—

- (a) means a person who has made a claim; but
- (b) does not include a person whose claim has been finally determined (within the meaning of section 128 of the Act)

Department means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Act

independent interpreter means a person who a refugee and protection officer considers—

- (a) is competent to translate English into a foreign language that a claimant or a person whose recognition as a refugee or a protected person is being investigated can understand and speak, and translate that foreign language into English; and
- (b) is impartial

protected person means a person recognised as a protected person in New Zealand under section 130 or 131 of the Act

refugee means a person recognised as a refugee in New Zealand under section 126 or 129 of the Act

refugee and protection officer means a person designated under section 390 of the Act as a refugee and protection officer

Tribunal means the Immigration and Protection Tribunal established under section 217 of the Act.

- (2) Any term that is defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.

*Claims***4 Confirmation of claim or subsequent claim**

- (1) The confirmation of a claim or a subsequent claim must be made in a form approved by the chief executive for the purpose.
- (2) The form must be—
 - (a) completed in English; and
 - (b) signed by the claimant; and
 - (c) lodged with a refugee and protection officer.

- (3) The form must also be accompanied by the following details:
 - (a) a current residential address for the claimant;
 - (b) a current address to which communications relating to the case may be sent, including a fax number if appropriate;
 - (c) the name of any lawyer or agent authorised to represent the claimant; and
 - (d) the current postal address of the lawyer or agent referred to in paragraph (c), including a fax number for the lawyer or agent if appropriate.
- (4) A claimant must, as soon as possible, endeavour to provide the following to a refugee and protection officer:
 - (a) evidence of the claimant's identity, including—
 - (i) a recent photograph of the claimant; and
 - (ii) evidence of any identity documents that contain details of an alias or aliases used by the claimant; and
 - (iii) evidence of any identity documents that contain a different spelling of the claimant's name or a different date of birth for the claimant;
 - (b) evidence of the claimant's country of origin;
 - (c) any evidence supporting the claimant's claim;
 - (d) any evidence supporting any other potential claim by the claimant under section 129, 130, or 131 of the Act.
- (5) If more than 1 person in a family has made a claim or a subsequent claim,—
 - (a) a separate form confirming the claim or, as the case may be, the subsequent claim must be completed for, and signed by, each claimant; and
 - (b) all those forms should be lodged together with a refugee and protection officer.

5 Obligation to inform claimant of certain rights

When a claim reaches a refugee and protection officer, that officer must inform the claimant of the following rights:

- (a) the claimant's right to contact a representative of the Office of the United Nations High Commissioner for Refugees (including information about how to exercise that right):

- (b) the claimant's right to contact a lawyer:
- (c) the claimant's right for an independent interpreter engaged by the Department to attend at any interview of the claimant by a refugee and protection officer.

6 Other information to be provided by claimant

If a refugee and protection officer accepts a claim for consideration, the claimant must provide the following information to the officer:

- (a) any information about—
 - (i) whether the claimant has the protection of another country or has been recognised as a refugee by another country; and
 - (ii) whether the claimant can be received back and protected in that other country without risk of being returned to a country where he or she would be at risk of circumstances that would give rise to grounds for his or her recognition as a refugee or a protected person in New Zealand:
- (b) any information about whether the claimant has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes:
- (c) any information about whether the claimant has committed a serious non-political crime outside New Zealand before entering New Zealand:
- (d) any information about whether the claimant has been guilty of acts contrary to the purposes and principles of the United Nations.

Notifications

7 Notification of decision to decline to accept claim or subsequent claim for consideration

- (1) This regulation applies to a decision by a refugee and protection officer to decline to accept a claim or subsequent claim for consideration.
- (2) A refugee and protection officer must notify the claimant of—

- (a) a decision to which this regulation applies; and
 - (b) the reasons for the decision; and
 - (c) if applicable, the claimant's right to appeal against the decision to the Tribunal.
- (3) The notification must—
 - (a) be made in a form approved by the chief executive for the purpose; and
 - (b) be served on the claimant, or a lawyer or an agent authorised to represent the claimant, by—
 - (i) personal service; or
 - (ii) registered post, addressed to the last address supplied by the claimant; or
 - (iii) fax, sent to the last fax number supplied by the claimant.
- (4) If the claimant has a right of appeal, the notification must include information about—
 - (a) the time limit within which an appeal must be lodged; and
 - (b) the address where an appeal may be lodged; and
 - (c) the claimant's right to an oral hearing provided in accordance with section 233(2) of the Act if the claimant lodges an appeal.
- (5) If more than 1 person in a family has made a claim or a subsequent claim, the refugee and protection officer must notify each person separately in accordance with this regulation.

8 Notification of decision on claim or subsequent claim

- (1) This regulation applies to a decision by a refugee and protection officer on a claim or a subsequent claim accepted for consideration.
- (2) The notification by a refugee and protection officer to a claimant under section 138(4) of the Act must—
 - (a) be made in a form approved by the chief executive for the purpose; and
 - (b) be served on the claimant, or a lawyer or agent authorised to represent the claimant, by—
 - (i) personal service; or
 - (ii) registered post, addressed to the last address supplied by the claimant; or

- (iii) fax, sent to the last fax number supplied by the claimant.
- (3) If the decision is to decline the claimant's claim or subsequent claim and the claimant has a right of appeal, the notification must include information about—
 - (a) the time limit within which an appeal must be lodged; and
 - (b) the address where an appeal may be lodged; and
 - (c) the claimant's right to an oral hearing provided in accordance with section 233(2) of the Act if the claimant lodges an appeal.
- (4) If more than 1 person in a family has made a claim or subsequent claim, the refugee and protection officer must notify each person separately in accordance with this regulation.

9 Notification of decision to cease or cancel recognition as refugee or protected person

- (1) This regulation applies to the following decisions by a refugee and protection officer:
 - (a) a determination under section 143 of the Act in relation to ceasing to recognise a person as a refugee or a protected person;
 - (b) a determination under section 145 or 146 of the Act in relation to cancelling the recognition of a person as a refugee or a protected person.
- (2) A refugee and protection officer must notify the person of—
 - (a) a decision to which this regulation applies; and
 - (b) the reasons for the decision; and
 - (c) if applicable, the person's right to appeal against the decision to the Tribunal.
- (3) The notification under sections 138(4) and 148(b) of the Act must—
 - (a) be made in a form approved by the chief executive for the purpose; and
 - (b) be served on the person, or a lawyer or an agent authorised to represent the person, by—
 - (i) personal service; or
 - (ii) registered post, addressed to the last address supplied by the person; or

- (iii) fax, sent to the last fax number supplied by the person.
- (4) If the decision is to cease or cancel the recognition of the person as a refugee or a protected person and the person has a right of appeal against that decision, the notification must include information about—
 - (a) the time limit within which an appeal must be lodged; and
 - (b) the address where an appeal may be lodged; and
 - (c) the person's right to an oral hearing provided in accordance with section 233(2) of the Act if the person lodges an appeal.
- (5) If a decision to which this regulation applies relates to more than 1 person in a family, the refugee and protection officer must notify each person separately in accordance with this regulation.

10 Notification of decision relating to deportation

- (1) This regulation applies to the following decisions by a refugee and protection officer:
 - (a) a determination under section 164(5) of the Act in relation to the matter in section 164(3) of the Act about whether a refugee or a claimant for recognition as a refugee may be deported;
 - (b) a determination under section 164(5) of the Act in relation to the matter in section 164(4) of the Act about whether a protected person may be deported.
- (2) A refugee and protection officer must notify the person of—
 - (a) a decision to which this regulation applies; and
 - (b) the reasons for the decision; and
 - (c) if applicable, the person's right to appeal against the decision to the Tribunal.
- (3) The notification under sections 138(4) and 148(b) of the Act must—
 - (a) be made in a form approved by the chief executive for the purpose; and
 - (b) be served on the person, or a lawyer or an agent authorised to represent the person, by—
 - (i) personal service; or

- (ii) registered post, addressed to the last address supplied by the person; or
 - (iii) fax, sent to the last fax number supplied by the person.
- (4) If the decision is that the person may be deported and the person has a right of appeal against that decision, the notification must include information about—
 - (a) the time limit within which an appeal must be lodged; and
 - (b) the address where an appeal may be lodged; and
 - (c) the person's right to an oral hearing provided in accordance with section 233(2) of the Act if the person lodges an appeal.
- (5) If a decision to which this regulation applies relates to more than 1 person in a family, the refugee and protection officer must notify each person separately in accordance with this regulation.

Communications

11 Methods of communication

- (1) A matter that is to be communicated between a refugee and protection officer and a claimant or other person concerned may be communicated—
 - (a) in the ordinary course of post:
 - (b) by registered post:
 - (c) by personal service:
 - (d) by fax.
- (2) Subclause (1) applies subject to any provision of these regulations that provides otherwise.

12 Receipt of communication

- (1) If a document is given, served, or supplied in the ordinary course of post or by registered post, the document is to be treated as having been received 5 working days after the date on which it was posted.
- (2) If a document is given, served, or supplied by fax, the document is to be treated as having been received at the date and

time specified in a record of the successful transmission of the fax that is generated by the machine sending the fax.

13 Requirement to provide fax number, if available

- (1) A person who is required under section 133(5) of the Act to provide a current address in New Zealand to a refugee and protection officer must,—
 - (a) at the time of providing that address, notify the officer of a fax number to which communications can be sent, if a fax number is available; and
 - (b) in a timely manner, notify the officer of any subsequent changes to that fax number.
- (2) If the Act or these regulations allow reliance to be placed on, or a notification to be addressed to, the latest address provided to a refugee and protection officer for the purpose of communication, reliance may also be placed on, and a notification may be addressed to, the latest fax number provided to a refugee and protection officer.

Miscellaneous

14 Request for production of document by third party

- (1) A request by a refugee and protection officer under section 149(1)(d) of the Act for a third party to produce a document must be made in a form approved by the chief executive for the purpose.
- (2) The form must be—
 - (a) signed by the officer making the request; and
 - (b) served on the third party to whom it is addressed by personal service or registered post.
- (3) In this regulation,—

document—

 - (a) means a document of—
 - (i) a claimant; or
 - (ii) a person whose recognition as a refugee or a protected person is being investigated; and
 - (b) includes a passport or travel document

third party means a person who is other than—

 - (a) the claimant; or

- (b) the person whose recognition as a refugee or a protected person is being investigated.

15 Provision of independent interpreters at interviews

- (1) This regulation applies if—
 - (a) a refugee and protection officer is to interview a claimant or a person whose recognition as a refugee or a protected person is being investigated; and
 - (b) the first language of the claimant or the person is not English; and
 - (c) the refugee and protection officer considers that an independent interpreter is reasonably required for the purpose of conducting an interview of the claimant or the person.
- (2) The refugee and protection officer must arrange for an independent interpreter to attend at the interview unless—
 - (a) the claimant, or the person whose recognition as a refugee or a protected person is being investigated, requests that an independent interpreter does not attend the interview; and
 - (b) the refugee and protection officer agrees to the request.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force at 2 am on 29 November 2010, provide for various procedural matters relating to—

- claims by persons in New Zealand for recognition as—
 - a refugee in New Zealand under section 126 or 129 of the Immigration Act 2009; or
 - a protected person in New Zealand under section 130 or 131 of that Act; and

- decisions to cease or cancel the recognition of persons as a refugee or protected person under the Immigration Act 2009; and
- determinations under section 164(5) of the Immigration Act 2009 in relation to the matters in section 164(3) and (4) of that Act about whether a claimant for recognition as a refugee, or a refugee or a protected person, may be deported.

Issued under the authority of the Acts and Regulations Publication Act 1989.
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These regulations are administered by the Department of Labour.
