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CHARACTER WAIVERS

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DISCLAIMER

This article is general in nature and is not intended as a substitute for specific professional advice on any matter and should not be relied upon for that purpose.

What is a Character Waiver?



All visa applicants must be of good character and not pose a potential security risk to New Zealand.

If an applicant is found to have not met the necessary character requirements, they may seek a waiver of the character requirements from Immigration New Zealand. This process is called requesting a character waiver for the grant of a visa.



How do I know if I need to request a character waiver?

A) Before making an application



Principal Applicant (Criminal conviction/charge)

If you are contemplating a visa application and have a criminal conviction or charge, you might not meet the character requirements.

Depending on the visa type(temporary or residence), your conviction or charge may make you ineligible for a visa unless a granted a character waiver.

The character requirements differ for a temporary and resident visas. Even if a conviction makes you ineligible for a resident visa, it may not necessarily affect your eligibility for a temporary visa. A review of each applicant's offence(s) against immigration instructions is required to make this determination. Contact us for a thorough assessment to see if your convictions or charges may impact your visa application.

Principal Applicant (False or misleading information)

If you wish to apply for a visa and have provided false or misleading, or withheld material information in a prior application, you will be ineligible for a visa unless granted a character waiver.



DO NOT PROVIDE FALSE OR MISLEADING INFORMATION

DO NOT provide false, or misleading information in your application. Immigration New Zealand has the legal mechanism to decline your application under Section 58(6) of the Immigration Act without explanation. Moreover, this will seriously impact any further visa applications as you will not be eligible for a visa unless granted a character waiver.

B) During an application

Immigration New Zealand sends you a letter stating you have not met character requirements during a visa application and will require a character waiver to be granted a visa. The letter presents the opportunity to request a character waiver. Get in touch with us to organise a consultation to deal with this.





How do I request a character waiver?

Applicants typically request a character waiver during their visa application when Immigration New Zealand provides a letter prompting the applicant to submit a character waiver request.

How do I make a request for a character waiver?

To request the grant of a character waiver, you will need to provide written submissions to Immigration New Zealand with supporting evidence proving you meet the character requirements for the grant of a visa.

As a guide, we provide below a suggested approach of preparing a character waiver request. Note, there is no set structure of how to approach this. Our suggestions are based on successful character waiver requests that had been approved in the past. Regardless, we advise you to seek our counsel in addressing any character concerns arising from a visa application to ensure the best chance of success.





1) READ and respond to the concerns

While this is the most obvious thing to do, applicants attempting to submit a character waiver, often miss reading critical details and shoot straight into preparing a prose on why they should be granted a character waiver.

It is important to read the Immigration officer's letter carefully and isolate the issues that require addressing. Sometimes, you may even find technical errors in the letter or poorly worded letters that cause confusion. You may consider having the letter rechecked by an immigration manager to ensure its accuracy.

2) Lay down the Law

Unlike other areas of civil/criminal law where it is the plaintiff v defendant or appellant v respondent with a Judge presiding, request for character waivers is dealt differently. It is your application with Immigration New Zealand. There is no presiding Judge.

It is important that you establish the principles of natural justice so that Immigration New Zealand acts within its powers. Setting out the applicable principles, serve as a guide and a reminder to Immigration New Zealand when considering your request.

A character waiver request is not an opportunity for you to prove your innocence, that is a matter dealt with by the Courts. Instead, it is a matter of maintaining border integrity and that Immigration New Zealand's grant of a visa does not pose any risk to the wider public.

Dealing with character waivers may require interpretation of criminal law. If the conviction was in New Zealand, the Sentencing Act 2002 is useful in providing an insight on the conviction. Depending on the type of offence that has occurred, some interpretation of the criminal breach may be required to show Immigration New Zealand the severity of the crime.

Should there be a conviction that was made overseas, you should be providing an opinion on the severity of the crime based on the applicable local law. At times, a foreign lawyer's opinion/statement can be useful to shed some light on the overseas offences(s).

3) Know your Audience

Having this in mind will assist you in preparing your request. Who will be the final reader of the character waiver request? Would it be the Immigration Manager, Immigration Officer, Technical Advisor from Immigration New Zealand? A Member of the Immigration and Protection Tribunal? The Minister of Immigration or their Delegated Decision Maker? A Judge overseeing a Judicial Review? The Ombudsmen?

If there may be opportunities to appeal your matter for instance, to the Immigration and Protection Tribunal, it may be worth preparing the Character waiver request to address the issues the Tribunal would consider. Or if you wish to explore other opportunities to appeal your matter in the event of a decline, it may be worth addressing the issues in the character waiver for the final reader to follow how the matter had been incorrectly decided.



4) Provide background information

This is your opportunity to paint the picture of your circumstances. Immigration New Zealand views a high volume of applications at any one time. This is your chance to stand out to show who you are or your worth. You would want to express your strong ties or deep connection to New Zealand based on the length of time you've been in New Zealand, what skills you have to offer, your familial ties in New Zealand etc.

In some cases, it may be worth describing in detail the offence that has occurred. Describing how the offence has occurred can aid the reader to understand how it happened. To aid in this, you may wish to include the Summary of Facts, sentencing documents of your offence as reference.

5) Apply facts/ develop arguments

With reference to applicable immigration instructions, apply the relevant facts that relate to you. This is your chance to craft your arguments and show that the grant of a character waiver is the right outcome.

For instance in a character waiver request for a residence application(A5.25.10 of the INZ Operational Manual), you want to discuss the seriousness of the offence(s), the number of offences, how long ago they occurred, etc.



6) Use of external resources

There is an abundance of resources that you can tap into to prepare your character waiver request. It is very useful to refer to them to substantiate your request.

Case law is often used in character waiver requests to highlight the applicable legal principles that has developed over time. Decisions by the Tribunal or the Courts provide an authority for your matter and should be consistently applied by Immigration New Zealand.

Apart from case law, you may want to delve into statistics or literature from legitimate sources to back up your claims. For example, if your offence relates to possession of a controlled substance, you may want to refer to statistics on drug offences from the Ministry of Justice to determine where your offence sits when considered among all the drug offences that has occurred. If there are credible legal commentaries or reports that can provide information on your offence(s), this can be weighed in as well to strengthen your request.



7) Rope in specialist reports (if needed)

Depending on your convictions/offence, getting the help of specialists such as psychologists/psychiatrists can be useful to provide a third party's opinion on your risk of re-offending.

Do note that these specialist reports can be costly. You should consult with your immigration lawyer to decide if it may be required. If you are wanting to engage a specialist to provide an opinion, it is important to ascertain what to cover in the report so that it can coherently apply to the character waiver request. If you have been working with a specialist who can provide some support, they can be roped in to aid in your request.

8) Other considerations

Do not be tempted to simply gloss over this segment of your character waiver request. This section has the potential to add significant weight to your request when addressed properly.

In this section, you should alert your reader to other considerations for granting you a visa. This can include but not limited to, your familial ties; your partner, their skills and contributions to New Zealand. Your children and their best interests. Family members who are in New Zealand. Your own skills and contributions. What you have done to contribute to the community. What people of standing in the community say about you. There can be other considerations that apply which are unique to your circumstances.





9) Any new changes of the law that apply to your matter?

Immigration law is ever changing. It is important to stay up to date with the latest changes. You should stay updated on the changes to see how it applies to your request. Immigration instructions are constantly updated through amendment circulars. Visa Pak and Internal Amendment Circulars are released from time to time and may change the way your matter is dealt with.

Application declined and did not meet character requirements? What to do next?

Did Immigration NZ decline your character waiver request? There may be other options open to you.

If you are onshore, you could consider putting in a reconsideration request. Reconsideration requests gives your matter the opportunity to be re-assessed by a different immigration officer. Additionally, you can use this opportunity to highlight the errors made in your decline decision. This option should be exhausted first before pursuing any other appeals.

At this stage, you should be conscious of your rights to appeal to the Tribunal. Appeals must be lodged within a fixed time frame. It may be worth filing an appeal to the Tribunal to protect your legal status first. Thereafter, if your reconsideration fails, you can then provide substantive submissions to appeal based on the relevant grounds.

If you are offshore, depending on the type of visa application made, you may or may not have appeal rights. If there is no avenue for you to appeal, there could be an opportunity to have your matter heard by the Minister or the Ombudsmen instead. Speak to us to discuss how we can resolve your matter.

In conclusion, always re-state what you are requesting from Immigration New Zealand. Be clear. Your request ought to have covered the most important points and you could fire home your arguments one last time in a persuasive manner to the reader that the grant of a character waiver is the necessary outcome.



ABOUT US

Pier Law has been supporting the local community with all of their legal needs for over 25 years. With three convenient locations in Christchurch - Northwood, Kaiapoi, and New Brighton, we specialise in many different areas of law including residential property, elder law, family law, estates, trusts, commercial law and immigration law.

About our Immigration Law Team

Muhammad Bin Kamarudin is an accomplished immigration lawyer who specialises in advising both corporate clients and individuals on immigration matters. His experience spans complex applications from corporate accreditation, to assisting individuals with diverse cases, including humanitarian concerns and compliance issues. His proficiency in navigating the intricacies of immigration law is evident through his tenure at esteemed international law firms and local New Zealand law firms.

Fluent in English, Malay, and Bahasa Indonesia, Muhammad brings a diverse skill set and a commitment to excellence, making him an invaluable addition to the Pier Law team.



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