RESIDENCE REVIEW BOARD
NEW ZEALAND

AT WELLINGTON	**RESIDENCE APPEAL NO: 16639**
Before:	J Donald (Member)
Representative for the Appellant:	H Weischede
Date of Decision:	9 November 2010
Category:	Skilled Migrant
Decision Outcome:	Section 18D(1)(e)

DECISION

INTRODUCTION

[1] The appellant is a citizen of the Republic of the Philippines, aged 36 years. The application for residence includes her spouse, aged 38 years, and their two daughters, aged 8 and 6 years, respectively.

[2] This is an appeal against the decision of Immigration New Zealand (INZ) declining the application because the appellant had not demonstrated that she had the ability to, or could realise her potential to, successfully settle in and contribute to New Zealand. The principal issues for the Board are whether the INZ decision was arrived at following a proper process, which should have included a correct application of the settlement and contribution requirements of policy and an interview which focused on relevant issues, and whether INZ properly articulated reasons for its decision.

BACKGROUND

[3] The appellant's Expression of Interest (EOI) was selected from the pool on 7 November 2007. She was invited to apply for residence under the Skilled

Migrant category by letter dated 2 April 2008 on the basis that she appeared to be entitled to 120 points, calculated as follows:

Age	25 points
Qualification	50 points
Work experience	25 points
Partner's qualification	20 points

[4] The appellant's application for residence was made on 18 August 2008. She did not claim points for an offer of skilled employment in New Zealand.

Recognised Qualifications and Work Experience

[5] The appellant was awarded a Bachelor of Science in Civil Engineering in 1996 by a university in the Philippines. Her qualification was included on the List of Recognised Qualifications (31 March 2008) and INZ determined that she was entitled to 50 points.

[6] The appellant's spouse was awarded a Bachelor of Science in Architecture in 1993 by a university in the Philippines. The New Zealand Qualifications Authority (NZQA) assessed his degree as comparable to a Level 6 National Diploma in Architectural Technology. INZ accepted that the appellant was entitled to 20 points for her spouse's qualification.

[7] In her residence application, the appellant identified her main occupation as Civil Engineer. She claimed 30 points for over 10 years' experience as an Engineer, Structural Detailer and Junior Structural Designer. Her work experience comprised the following periods of employment:

3/2/1997 to 12/1/1998	Junior Structural Designer (Philippines)
1/2/1998 to 30/6/1999	Structural Detailer (Philippines)
1/7/1999 to 12/9/2007	Engineer (Philippines)
15/9/2007 to 8/2008	Structural Engineer (United Arab Emirates)

INZ awarded the appellant 25 points for 8-10 years' work experience. It found that she was not entitled to points for her employment in the United Arab Emirates (UAE) because it was not gained in a labour market that was comparable to the

New Zealand labour market and did not meet the requirements set out at SM13.20 for work experience in an area of absolute skill shortage.

[8] INZ does not appear to have taken into account the first and second periods of employment noted on the list above. Together with her eight years' employment as an engineer in the Philippines, they give the appellant a total of more than 10 years' work experience. Regardless, the appellant scored sufficient points to meet the selection criteria.

Health, Character and English Language Requirements

[9] The appellant and her spouse met the character requirements of policy. The appellant, her spouse and their children all met the health requirements of policy. The spouse appears to have contracted and been treated for tuberculosis in 2000. His medical information was referred to the INZ Medical Assessor who after receiving additional information found that the spouse was likely to have an acceptable standard of health (18 June 2009).

[10] At INZ's request, the appellant and her spouse provided International English Language Testing System (IELTS) certificates. Their initial overall band scores were 6.0 and 5.5, respectively. INZ gave the appellant and her spouse a further opportunity to sit the IELTS test and they both achieved an overall band score of 6.5 (8 October 2009) which met the English language requirements of policy.

Invitation to Attend an Interview

[11] By letter dated 28 October 2009, INZ invited the appellant and her spouse to attend a telephone interview scheduled for 11 November 2009. The appellant was advised that because she did not have an offer of skilled employment in New Zealand and had not obtained a Master's degree or higher qualification in New Zealand, her application would be further assessed to determine whether she could otherwise demonstrate an ability to successfully settle in and contribute or could realise the potential to successfully settle in and contribute to New Zealand.

[12] INZ also asked the appellant to complete an enclosed questionnaire and return it by 9 November 2009. She did so. The completed questionnaire was seven pages long and divided into the following sections: Employment prospects, Preparedness of partner/family, Familiarity with New Zealand and Linkages and Support.

Telephone Interview with the Appellant

[13] The appellant's interview was rescheduled to 16 November 2009. The INZ file includes a recording of the interview on CD, the interviewing officer's two pages of handwritten notes and a one-page typed document entitled "Interview Report".

[14] The interview was approximately 25 minutes long. The appellant had some difficulty understanding the interviewing officer due apparently to the telephone line. It appears to the Board that on occasion, communication difficulties stemmed from the interviewing officer's practice of simply repeating questions which were ambiguous, or which did not receive the expected response, rather than endeavouring to rephrase them.

[15] The interview covered the appellant's attempts to find employment in New Zealand, her application for membership of the Institution of Professional Engineers New Zealand (IPENZ), and where she planned to live in New Zealand. The interviewing officer spent some time exploring why the appellant chose to apply to migrate to New Zealand, rather than Australia where she had family members, and whether she knew the unemployment rate in each country. The appellant's spouse was questioned about his intended occupation in New Zealand, his efforts to find employment and his understanding of the registration process for architects.

Potentially Prejudicial Information

[16] INZ wrote to the appellant on 18 November 2009 stating that, following the telephone interview, it had assessed her ability to successfully settle in and contribute to New Zealand. The policy at SM20.10 was cited and attached.

[17] Under the heading "Employment prospects", INZ noted that the appellant had advised she would like to be a Civil Engineer, Quantity Surveyor, Draughtswoman, Structural Engineer or Civil Engineering Technician in New Zealand. It stated that she had corresponded with recruitment agencies but had not received any positive comments. She was not aware of the unemployment rate in New Zealand and it appeared that she had incomplete information concerning the labour market here. INZ cited information from the Ministry of Social Development that there were at least 60 registered Civil Engineers, 23 Quantity Surveyors, 17 Civil Engineering Technicians and Civil Engineering Draughtspersons unemployed in Auckland alone. Further, there were 64 Civil

Construction Engineers and Structural Engineers seeking employment in the appellant's preferred area of work in Auckland alone and at least 24 registered General Engineers unemployed there. INZ concluded [verbatim]:

> "You do not have work experience in New Zealand or overseas work experience that corresponds to New Zealand's labour market. Given your employment and tight labour market in New Zealand we have concerns whether you could get a skilled job offer there."

[18] With regard to the appellant's familiarity with New Zealand and preparedness for settlement, INZ noted that the appellant and her spouse had never been to New Zealand and had limited information concerning Auckland. The spouse wished to be an Architect in New Zealand but had not applied for registration and had "limited ideas of registration application". The spouse had sent out 20 job applications more than six months ago but had not received any response from recruitment agencies or New Zealand employers.

[19] Commenting to the appellant's linkages and support in New Zealand, INZ noted that she had several contacts here and claimed that she had received some information or assistance from her friends.

[20] INZ concluded [verbatim]:

> "Balancing the above factors, we are not satisfied that you will be able to obtain skilled employment in New Zealand, you are not considerably familiar with New Zealand and you do not have very strong linkages or support. …"

[21] INZ also advised the appellant that she was not entitled to points for her work experience in the UAE because it was not gained in a labour market comparable to the New Zealand labour market, she did not have a skilled job offer in New Zealand, nor did her work experience meet the requirements for work experience in an area of absolute skill shortage.

[22] The appellant was invited to provide her comments with "official evidence" to support her application by 24 November 2009. The appellant's representative sought a copy of the audio file of the appellant's interview and an extension of time to reply until 2 December 2009. This timeframe was eventually extended due to difficulties providing the audio file of the interview and a new deadline of 15 January 2010 was given.

The Appellant's Response

[23] The appellant's representative responded by letter dated 3 January 2010. The representative addressed the question of whether the appellant was entitled

to bonus points in connection with the occupation of Civil Engineering Technician found on the Long Term Skill Shortage List (LTSSL) (Appendix 6) and entitled to points for her work experience in the UAE. Given that the appellant was entitled to 120 points regardless, these two issues were not determinative of the outcome of her application.

[24] The representative then went on to address the settlement and contribution requirements of policy. With regard to the appellant's employment prospects, the representative attached a list of 171 civil engineering-related jobs sourced through www.seek.co.nz and asserted that the skilled employment available to the appellant included positions such as: Project Manager, Estimator, CADD Operator, Civil Engineering Technician, Civil Lab Technician, etc. She observed that it was highly likely there would be additional job vacancies due to the upgrade of infrastructure in anticipation of the 2011 Rugby World Cup. The representative advised that the appellant had applied for registration with IPENZ. She also stressed the challenges met by the appellant in her employment in the UAE where, as a female worker in a male dominated environment, she required a high level of diplomacy, profound technical knowledge and strong mental resilience. The representative submitted that the appellant had proven her ability to work and to prevail in an overseas environment.

[25] The representative stressed that the appellant had explained at interview that she had not actively pursued job applications in New Zealand as recruiters and employers are only interested in applicants who are onshore or who hold an appropriate permit. Since INZ's letter (18 November 2009), the appellant had applied for roles as a Civil Engineering Technician, Quantity Surveyor, Estimator and CADD Operator. Proof of those applications had already been emailed to INZ (7 December 2009). Email correspondence in response to those applications included advice from a recruitment agency that it could not progress her application because she was not in New Zealand.

[26] The representative emphasised that the appellant had demonstrated at interview that she was aware of the effects of the worldwide economic recession on New Zealand, including job losses. However, she remained confident of her ability to obtain employment and believed that her occupation was in demand in New Zealand.

[27] Addressing the need for the appellant's spouse to obtain registration in order to work as an Architect in New Zealand, the representative stressed that he

would be entitled to an open work permit enabling him to undertake employment until he obtained registration at which time he could continue his career as an Architect. The representative noted that the spouse's skills and experience enabled him to obtain skilled employment which did not require registration as an Architect. His knowledge of the registration requirements for architects in New Zealand was limited because the couple's plan was for the appellant to obtain skilled employment first.

[28] The representative questioned the relevance of INZ's statement that the appellant and her spouse had not been to New Zealand and had limited information about Auckland. With regard to the appellant's linkages and support in New Zealand, she set out the settlement services provided to her clients and noted the ongoing support from the appellant's friends and contacts in New Zealand. Letters of support were provided from two of the appellant's friends in New Zealand (23 December 2009 and 1 December 2009). Both writers stressed the appellant's professional abilities and capacity to adapt to New Zealand and offered her settlement assistance.

INZ's Assessment of the Application

[29] The INZ case officer completed an assessment of the appellant's application on 5 March 2010. The appellant met the health, character and English language requirements of policy. She was awarded 120 points. The assessment of her ability to successfully settle in and contribute to New Zealand restates the matters raised in INZ's letter of 18 November 2009 and then notes and responds to the additional information provided by the appellant's representative.

[30] In particular, additional Ministry of Social Development information was recorded in relation to the additional occupations of Estimator and Project Manager which the representative had suggested were available to the appellant. The INZ officer stated that the "job competition in New Zealand could be ferocious from the information we have". The 171 vacancies noted by the appellant were dismissed with the observation that there is no evidence that the appellant could qualify for all of them. The appellant's graduate membership of IPENZ was characterised as non-competence membership that "could not demonstrate that she could get a skilled job offer as an Engineer in New Zealand given that the labour market is very tight".

[31] The officer noted that one or two recruitment agencies rejected the appellant's application because she was not in New Zealand, however [verbatim]"

> "… in our opinion the client can always apply for a temporary visa or take other steps to be in NZ to apply for a job. Unfortunately the client has not made significant efforts to facilitate that."

Similarly, in response to the representative's assertion that not having a work permit is a barrier to the appellant being shortlisted by a New Zealand employer, the officer disagreed as "… candidates having outstanding skill will impress the recruitment agencies enough to move forward to a phone interview".

INZ Decision

[32] In a letter dated 19 March 2010, INZ declined the appellant's application. In summary, INZ concluded that the appellant did not have good employment prospects and was not well prepared and familiar about settling in New Zealand. As a result, she had not demonstrated that she had the ability or could realise her potential to successfully settle in and contribute to New Zealand. INZ's reasons for declining the application essentially repeat those matters raised in its letter of 18 November 2009 and its assessment (5 March 2010). They are discussed in greater detail in the *Assessment* section below.

GROUNDS OF APPEAL

[33] Section 18C(1) of the Immigration Act 1987 ("the Act") provides:

> "Where a visa officer or immigration officer has refused to grant any application for a residence visa or a residence permit, being an application lodged on or after the date of commencement of the Immigration Amendment Act 1991, the applicant may appeal against that refusal to the Residence Review Board on the grounds that –
>
> (a) The refusal was not correct in terms of the Government residence policy applicable at the time the application for the visa or permit was made; or
>
> (b) The special circumstances of the appellant are such that an exception to that Government residence policy should be considered."

[34] The appellant appeals on the ground that the decision of INZ was not correct in terms of the applicable Government residence policy and on the further ground that, if correct, her special circumstances are such that an exception to that policy should be considered.

[35] The appellant continues to be represented by the same immigration consultancy company for the purpose of her appeal, but by a different named licensed advisor. Both licensed advisors are referred to as "the representative" throughout this decision.

[36] The representative provides submissions, dated 4 May 2010. In addition to material already held on the INZ file, a document prepared by the representative and entitled “Interview Analysis Matrix” is produced. This document compares the appellant and her spouse’s answers at interview with the interviewing officer’s handwritten notes and interview report.

ASSESSMENT

[37] The Board has been provided with the INZ file in relation to the appellant and has also considered the submissions and documents provided on appeal. An assessment as to whether the INZ decision to decline the appellant’s application was correct in terms of the applicable Government residence policy is set out below.

[38] The application was made on 18 August 2008 and the relevant policy criteria are those in Government residence policy as at that time.

Skilled Migrant Policy

[39] The Skilled Migrant category of Government residence policy provides a two-tiered process of assessment. In the first tier, an applicant's health, character and English language ability are assessed, followed by his/her qualifications, work experience and skilled employment in New Zealand, and any criteria set from time to time by the Minister of Immigration that were the basis for selection from the pool (see SM2.m.i-iii inclusive, in effect 10 April 2007).

[40] This is followed by a second-tier assessment of an applicant against the settlement and contribution requirements of policy.

Settlement and Contribution Requirements

[41] The policy at SM4.20 sets out the framework and order of assessment of settlement and contribution requirements as follows:

> “**SM4.20 Settlement and contribution requirements (SM20)**
>
> a. Principal applicants are assessed to determine whether they have a demonstrated ability or have the ability to realise their potential, to successfully settle in and contribute to New Zealand.
>
> b. Principal applicants who:
>
> i. qualify for 50 points for an offer of skilled employment or current skilled employment in New Zealand for less than 12 months; or

ii. qualify for 60 points for current skilled employment in New Zealand for twelve months or more; or

iii. have undertaken full time study for at least two years in New Zealand that has resulted in:

- the award of a Doctorate or Masters degree; or
- a qualification in an area of identified future growth or relevant to an occupation in absolute shortage;

have demonstrated the ability to successfully settle in and contribute to New Zealand.

c. Principal applicants who do not have points for any of these factors will be further assessed.

d. Where, following a further assessment, a principal applicant, despite not meeting the requirements of (b) above, is assessed as having a high potential to readily obtain skilled employment in New Zealand, they will be assessed as having demonstrated the ability to successfully settle in and contribute to New Zealand. Their application for residence may be approved subject to meeting any other relevant requirements.

e. If, as a result of the further assessment, a principal applicant is assessed as having demonstrated an ability to successfully settle in and contribute to New Zealand (see (b) above), their application will be approved subject to meeting any other relevant requirements.

f. If, as a result of the further assessment, a principal applicant is assessed as having demonstrated they can realise their potential to successfully settle in and contribute to New Zealand, a decision on residence will be deferred and the principal applicant will be eligible for the issue and/or grant of a work visa or permit for the purpose of obtaining an offer of skilled employment in New Zealand that is ongoing. Principal applicants who obtain an offer of skilled employment during the deferral period will have their application for residence approved.

g. If, as a result of the further assessment, a principal applicant has not demonstrated they can realise their potential to successfully settle in and contribute to New Zealand, their application for residence will be declined.

Effective 10/04/2007"

[42] As the Board, variously constituted, has previously stated, there are four stages within the settlement and contribution requirements policy (see *Residence Appeal No 14869* (28 June 2006)).

[43] The first stage of eligibility is set out at SM4.20.b. The appellant did not have an offer of, or current, skilled employment in New Zealand, nor had she undertaken at least two years' study in New Zealand leading to a Master's degree or Doctorate. Therefore, INZ had to assess her application further pursuant to the policy at SM4.20.c.

[44] The three further stages of eligibility, in descending order, require an assessment of:

SM4.20.d – whether an applicant has a high potential to readily obtain skilled employment in New Zealand;

SM4.20.e – whether an applicant has demonstrated an ability to successfully settle in and contribute to New Zealand;

SM4.20.f – whether an applicant has demonstrated they can realise their potential to successfully settle in and contribute to New Zealand.

[45] Applicants who are assessed as meeting SM4.20.d or SM4.20.e may be granted residence subject to meeting other relevant requirements. Applicants who are assessed as meeting SM4.20.f may have their residence application deferred and be granted a work visa or permit for the purposes of obtaining skilled employment in New Zealand. The process by which INZ assesses settlement and contribution requirements is set out at SM20.10:

> "**SM20.10 Assessment of whether a principal applicant can realise their potential to successfully settle and contribute**
>
> a. Assessment of whether a principal applicant can otherwise demonstrate an ability or can realise their potential to settle in and contribute to New Zealand will be based on:
>
> i. information obtained during a structured interview with the principal applicant and if required, other family members included in the application; and
>
> ii. all other information contained in the application for residence; and
>
> iii. any further verification of the application (including information provided at interview).
>
> b. That assessment will include consideration of the following factors:
>
> i. employment prospects;
>
> ii. familiarity with New Zealand and preparedness for settlement of the principal applicant and, where relevant, the partner and dependent children included in the application; and
>
> iii. linkages and support in New Zealand, through networks and family.
>
> c. If a visa or immigration officer assesses that a principal applicant has not demonstrated the ability to successfully settle and contribute but can realise their potential to successfully settle in and contribute to New Zealand the principal applicant will be eligible for the issue and/or grant of a work visa and/or permit (subject to the requirements of WR6 being met)

> to enable them to realise their potential by obtaining an offer of skilled employment (see SM7) in New Zealand.
>
> d. Principal applicants who are in New Zealand and are granted permits under this policy will have the decision on their SMC application deferred for a period of nine months.
>
> e. Principal applicants who are not in New Zealand and are issued visas under this policy will have the decision on their SMC application deferred for a period of 12 months to enable travel to New Zealand and a stay in New Zealand of nine months (refer to WR6.5).
>
> f. Where, following a further assessment, a principal applicant, despite not meeting the requirements of SM20.5(a), is assessed as having a high potential to readily obtain skilled employment in New Zealand, they will be assessed as having demonstrated the ability to successfully settle in and contribute to New Zealand. Where this occurs, subject to meeting other relevant requirements, the principal applicant and their family members included in the application, may be issued and/or granted residence visas and/or permits.
>
> g. If a visa or immigration officer determines, as a result of the further assessment, that a principal applicant has not demonstrated they can realise their potential to settle in and contribute to New Zealand, their application for residence in New Zealand under the Skilled Migrant Category will be declined.
>
> h. If (c) above applies, but a work visa and/or permit is not issued and/or granted, the application for residence will be declined.
>
> *Effective 10/04/2007"*

[46] As the Board, differently constituted, stated in *Residence Appeal No 16492* (21 April 2010), the policy at SM20.10 does not set out the assessment process in the same descending order of eligibility as the policy at SM4.20.

[47] Assessment of an applicant's ability to settle and contribute is based on the factors set out in SM20.10.a and b. The list of factors for consideration set out in SM20.10.b is not exhaustive or closed; other matters may be taken into account.

The Level of Eligibility Being Assessed

[48] To be eligible for a Work to Residence visa, the appellant need only satisfy the lowest level of eligibility for settlement and contribution (SM4.20.f). As the Board has stated in other appeals, this level of eligibility requires the *realising of potential* only. In *Residence Appeal No 16492* (21 April 2010) the Board, differently constituted, explained [verbatim]:

> "[74] The Board considers that 'realising the potential to settle and contribute in New Zealand' may be achieved when, among other things, an applicant provides credible evidence of having: thought about how to obtain employment in a field or fields related to their work experience and qualifications; attempted to obtain employment; a realistic appreciation of the opportunities and barriers to employment in their particular field; understood occupational licensing

> requirements (if applicable); a basic understanding about New Zealand and its way of life either through first hand experience or by obtaining information in relation to a range of matters directly related to settlement such as housing, transport, education, the climate, medical facilities and the like."

[49] The appellant's answers in her completed questionnaire and subsequent telephone interview demonstrated that she had thought about how to obtain employment in the civil engineering field in New Zealand, had been monitoring job vacancies, was aware of the appropriate professional association for engineers, had an understanding of the salary range for her preferred occupation and had applied for a number of roles in New Zealand. She also had experience living and working in a foreign country; as did her spouse. The appellant demonstrated that she had an appreciation of the advantages of living in New Zealand for her children and the likely cost of living. In short, the appellant satisfied the matters highlighted in paragraph [74] of *Residence Appeal No 16492,* set out above.

Employment Prospects

[50] Reviewing the reasons given by INZ for declining the appellant's residence application, the Board finds that INZ failed to test the appellant against the lowest level in the eligibility hierarchy (SM4.20.f). INZ was entitled to consider the appellant's efforts to obtain employment. However, she did not need to demonstrate that she had received "positive comments" from recruitment agencies, had successfully obtained a job offer, or had been "pursued by recruitment agencies".

[51] The Board finds, based on the appellant's interview, INZ's letter (18 November 2009) and assessment (5 March 2010) and the reasons given for its decline decision, that the failure to obtain employment was construed against the appellant. Such an approach is clearly wrong when the purpose of the policy at SM20.10.c is to assess those people who *do not have* an offer of skilled employment. The appellant's questionnaire, responses at interview and submissions and evidence provided by her representative emphasised that New Zealand recruitment agencies and employers required her to be present in New Zealand and lawfully entitled to work. In its decision, INZ stated [verbatim]:

> "On the contrary, we are aware that there are a number of overseas clients without work visas who have successfully obtained a job offer or were pursued by recruitment agencies."

This assertion, along with suggestions in INZ's assessment (5 March 2010) that the appellant could always apply for a temporary visa to be in New Zealand in

order to apply for a job, demonstrate a fundamental lack of understanding of the purpose of the policy at SM20.10.c.

[52] INZ made extensive reference to information from the Ministry of Social Development concerning persons seeking employment in the civil engineering field. The Board has previously commented on the relevance of this kind of labour market information. In *Residence Appeal No 16492* (21 April 2010) at [81], the Board, differently constituted, observed that while INZ is entitled to have regard to general labour market conditions in New Zealand and to factors which influence employment opportunities and employability in particular occupations, such information cannot be determinative of whether an applicant will obtain skilled employment. Further, with regard to information from the Work and Income website, like that relied upon by INZ in the appellant's case, the Board stated at [82]:

> "… without knowing the characteristics of those who are unemployed as to their skills, qualifications and work experience, it is hard to see how a valid comparison can be made between the raw information provided and the appellant's circumstances."

Those observations apply equally to this appellant.

[53] In its decision, INZ responded to information that there were 171 vacancies related to civil engineering on the www.seek.co.nz website by asserting that there was no evidence to show that the appellant could qualify for any of the roles in question. An example was given of a managerial role. It is illogical and unfair for INZ to effectively assert that every unemployed individual who identifies as available for a role in the civil engineering field is competing with the appellant for positions regardless of his or her qualifications, skills and experience, and then require that the appellant demonstrate that she is qualified for each specific vacancy in the civil engineering field before those vacancies may be taken into account.

[54] With regard to the appellant's knowledge of the labour market, the interviewing officer's limited focus on whether the appellant knew the actual unemployment rate was not appropriate. The additional questions regarding the difference between the unemployment rates in New Zealand and Australia served little purpose. The impression given by the questioning of the appellant as to her understanding of the labour market in New Zealand was that the officer was solely intent on obtaining an admission from the appellant that she did not know the unemployment rate. In fact, the appellant clearly demonstrated that she was

aware of the impact of the recession on employment in New Zealand. Further, she understood from the Department of Labour's own information her expertise remained sought after in New Zealand.

[55] The interview was INZ's opportunity to explore in detail with the appellant any issues that had arisen from her responses given in the questionnaire or from her application. While it is for the appellant to demonstrate that she can realise her potential to settle in and contribute to New Zealand, policy required that INZ conduct a structured interview with her in order to obtain information. In exploring the appellant's employment prospects, it was not sufficient for INZ to focus simply on how many applications for employment the appellant had made and what responses she had received. Once again, the impression left by the questioning of the appellant concerning her efforts to obtain employment was that the officer's focus was on obtaining an admission from the appellant that she had not received "positive comments" from recruitment agencies.

[56] In exploring the appellant's employment prospects, INZ could have focused its questions on how readily the appellant thought her qualifications and experience would transfer to the engineering and/or construction sector in New Zealand. What was the appellant's understanding of the industries in which she was likely to seek employment? Would her experience as a structural detailer or junior structural designer be relevant? Why did the appellant believe she was qualified to take on a role as a Civil Engineering Technician, an occupation on the LTSSL? How relevant was her experience in the UAE to civil engineering work in New Zealand? The Board stresses that these examples of questions are neither exhaustive nor determinative of the appellant's employment prospects in New Zealand.

Familiarity, Preparedness, Linkages and Support

[57] The assessment of the appellant and her spouse's familiarity with New Zealand, preparedness for settlement, linkages and support is dealt with in a perfunctory manner in INZ's decision. Policy does not require that an appellant have visited New Zealand in order to be familiar with it and have made preparations for settlement. While the appellant's responses at interview to questions such as "what do you know about Waitakere?" and "what do you know about Auckland?" may not have been fulsome, she had a clear impression of New Zealand and of the environment it offered for her family, gained from friends and family members here.

[58] INZ's questions at interview concerning the appellant's spouse's familiarity with New Zealand and preparedness for settlement were limited to his employment prospects.

[59] No reasons were given by INZ for discounting the support offered to the appellant by her friends in New Zealand and her agent. No mention was made of the fact that the appellant had secured initial accommodation with an extended family member who had resided in New Zealand for almost 20 years.

Conclusion on Correctness

[60] The Board finds that INZ did not properly apply the settlement and contribution policy to the appellant's application. She was not assessed against the lowest level in the eligibility hierarchy. The telephone interview was inadequate. The conclusions drawn about the appellant's employment prospects, her familiarity and preparedness for settlement, and her linkages and support, were reached after a process which did not properly explore those matters and were not supported by the evidence and information available to INZ.

STATUTORY DETERMINATION

[61] This appeal is determined pursuant to section 18D(1)(e) of the Immigration Act 1987. The Board considers the decision to refuse the visa was made on the basis of an incorrect assessment in terms of the applicable Government residence policy. However, the Board is not satisfied the appellant would, but for that incorrect assessment, have been entitled in terms of that policy to the immediate issue of a visa.

[62] The Board therefore cancels the decision of INZ. The appellant's application is referred back to the Secretary of Labour for a correct assessment in terms of the applicable Government residence policy, in accordance with the directions set out below.

Directions

[63] It should be noted that while these directions must be followed by INZ, they are not intended to be exhaustive and there may be investigations of other aspects of the application which remain to be completed or which require updating.

1. This application is to be reassessed by a different INZ officer in accordance with policy in existence at the date the application was made and without payment of a further lodgement fee.

2. On the basis that the appellant has the requisite points for employability and capacity building factors and therefore meets the first-tier requirements in policy at SM2.m.i, ii and iii (in effect 10 April 2007), INZ is to consider if she meets the settlement and contribution requirements in SM2.m.iv.

3. The application is then to be correctly assessed in terms of whether the appellant meets the settlement and contribution requirements. If the appellant is to be "further assessed" under SM4.20.c, the eligibility hierarchy in SM4.20.d to f (in effect 10 April 2007) must be followed.

4. INZ's reassessment shall include consideration of information submitted by the appellant on appeal. The appellant is also to be given an opportunity to provide further information to demonstrate she meets the settlement and contribution requirements of policy. This may include, but is not limited to, updated evidence of vacancies relevant to the appellant's qualifications, skills and experience and/or evidence of any further efforts the appellant has made to obtain employment in New Zealand.

5. If it deems necessary, INZ shall arrange for a different interviewing officer to re-interview the appellant.

6. The Board emphasises that INZ is to ensure that it has taken into account all relevant information and that it is correctly considered in terms of SM4.20.d to SM4.20.f inclusive.

7. If INZ raises any issues of concern with the appellant, including issues as to her potential employability in New Zealand, they are to be correctly related to the stages of eligibility in SM4.20.d to SM4.20.f inclusive. The concerns themselves must be set out clearly with reasons. Any response by the appellant is to be considered and assessed against SM4.20.d to SM4.20.f.

8. INZ will conduct a final assessment as to the appellant's ability to realise her potential to successfully settle in or contribute to New Zealand.

9. Any other matters outstanding at the point the application was previously declined may also be determined at this time.

[64] The appeal is allowed in the above terms. The appellant is to understand that the reassessment of the application does not guarantee a successful outcome.

……..……..

J Donald

Member
Residence Review Board