IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND **[2023] NZIPT 206646**

RŌPŪ TAKE MANENE, TAKE WHAKAMARU AOTEAROA

Appellant:	**PJ (Permanent Residence)**
Before:	L Wakim
Counsel for the Appellant:	V Tse
Date of Decision:	11 September 2023

RESIDENCE DECISION

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[1] The appellant is a 49-year-old citizen of Hong Kong, whose application for a Permanent Resident Visa (PRV) was declined by Immigration New Zealand. The appellant is married, but her husband was not included in the PRV application.

THE ISSUE

[2] Immigration New Zealand declined the appellant's PRV application because she had not demonstrated a commitment to New Zealand through having spent the required amount of time in this country.

[3] The principal issues for the Tribunal are whether Immigration New Zealand correctly assessed the appellant's PRV application and, if so, whether the appellant has special circumstances such as to warrant consideration by the Minister of Immigration of an exception to residence instructions.

[4] The Tribunal finds that Immigration New Zealand's decision was correct because the appellant had not demonstrated a commitment to New Zealand by spending the required amount of time in this country. However, the Tribunal finds that the appellant does have special circumstances, due to the circumstances which led to her failure to meet instructions; her family nexus to, and her husband's settlement in, New Zealand; and her and her husband's potential

contribution, such as to warrant a recommendation that the Minister of Immigration consider an exception to residence instructions.

BACKGROUND

First Resident Visa

[5] In September 1993, the appellant's father lodged a residence application under the Business Investment category. Included as secondary applicants in his application were the appellant, her brother, and her mother.

[6] The application was successful, and in December 1993, all the family were granted resident permits (as visas were then known). It appears that the appellant arrived in New Zealand in mid-December 1993 and left again at the end of December, having been granted a Returning Resident's Visa (RRV) on 21 December 1993. She was granted a further RRV in January 1996, valid until 24 January 1998.

[7] The appellant visited New Zealand in January 1997 for 10 days as the holder of a resident visa. She did not travel again to New Zealand before her RRV expired in January 1998.

Visits to New Zealand

[8] The appellant travelled to New Zealand in April 1998 and February 1999 as the holder of visitor visas. While in New Zealand in March 1999, she made an application for a further RRV, but Immigration New Zealand refused to consider the application. Its electronic records note that she would not have qualified to have her resident visa reinstated because she had been out of New Zealand for the majority of the previous four years.

[9] The appellant's parents remained in New Zealand; her mother was granted citizenship in 2000 and her father in 2005 and they continue to live here. The appellant's brother returned to Hong Kong in 2001.

[10] For the next two decades, between June 2000 and November 2019, the appellant regularly visited New Zealand to see her parents. She held visitor visas, and generally stayed for periods of around three weeks, with one exception in

2015, when she stayed for four months after her mother underwent unexpected surgery.

Second Resident Visa

[11] On 25 November 2019, the appellant requested that the Minister intervene in her situation and grant her residence through a special direction.

[12] On 12 February 2020, the Minister granted the appellant and her husband ("the husband") resident visas by special direction, subject to health and character checks. Their resident visas were issued on 12 November 2020. The conditions on the visa indicated the appellant had 12 months to enter New Zealand, and a travel expiry date of 12 November 2022. This meant that the appellant had to enter New Zealand before 12 November 2021 to activate her residence status, after which time she could enter and depart New Zealand multiple times as a resident for the period that the travel conditions remained valid.

[13] The appellant and her husband arrived in New Zealand on 16 April 2021. She departed on 4 June 2021. She did not travel again to New Zealand before the expiry of her resident visa. She visited again in May 2023 for four weeks.

[14] The appellant's husband has remained in New Zealand since April 2021 but departed for six months between September 2021 and March 2022, and for a further four months between June and November 2022.

Application for a Permanent Resident Visa (PRV)

[15] On 11 November 2022, the appellant's newly-appointed counsel lodged an application for a PRV. Her husband was not included in her application.

[16] It is useful to be reminded that under immigration instructions, an applicant for a PRV must demonstrate a "commitment to New Zealand". Instructions set out the various ways this can be done: of relevance to the appellant is the criteria that requires being in New Zealand for a "significant period of time" (a total of at least 184 days in each of the two 12-month portions of the 24 months immediately preceding the application for a PRV) (RV2.5.1). Alternative ways to demonstrate a commitment to New Zealand include establishing a business in New Zealand (RV2.5.15), acquiring tax residence status (RV2.5.5) or establishing a base in New Zealand.

[17] In the PRV application form, the appellant was asked to indicate how many ways she demonstrated a “commitment to New Zealand” and did not tick any options. She also ticked “no” when asked if she met the requirements for PRV, referencing a cover letter in which counsel conceded that the appellant did not meet any of the requirements necessary to demonstrate a commitment to New Zealand. However, counsel explained, this was due to unforeseen events, including the appellant remaining in Hong Kong to care for the husband’s ill father (the father-in-law), and incorrect legal advice from her former lawyer, upon which she had relied.

[18] Counsel also accepted that the appellant was not eligible for a second or subsequent resident visa (SSRV) or a variation of travel conditions (VoC). However, the appellant wished to submit the application so she had the opportunity to appeal to the Tribunal on the basis of her personal and special circumstances.

Immigration New Zealand’s concerns

[19] On 30 November 2022, Immigration New Zealand informed the appellant that it appeared she did not meet instructions. According to its records, she had spent just 50 days in one 12-month portion of the 24 months immediately preceding her application. This did not satisfy instructions, which required her to have been in New Zealand for 184 days or more in each of the two 12-month portions of the 24 months immediately preceding the application.

[20] The appellant was invited to respond.

The appellant’s response

[21] On 14 December 2022, counsel responded. She reiterated her concession that the appellant did not meet the requirements to be granted either a PRV or a SSRV but that the application was being lodged so the appellant could appeal to the Tribunal. The appellant and her husband wished to settle permanently in New Zealand so that the appellant could look after her New Zealand-citizen parents.

Immigration New Zealand’s Decision

[22] By letter dated 25 January 2023, Immigration New Zealand declined the appellant’s PRV application because she had not demonstrated her commitment

to New Zealand. She had spent just 50 days in New Zealand in one of the two 12-month portions of the 24 months immediately preceding the application, instead of the required 184 days in both 12-month periods. It had considered her response but was not satisfied that she met the requirements to be granted a PRV, an SSRV, or a VoC.

Events subsequent to the decision

[23] In late March 2023, counsel contacted Immigration New Zealand, concerned that it had made an error in the original travel conditions included on the appellant's resident visa. Counsel identified that, because the appellant was offshore when the resident visa was granted, the travel conditions allowing for two years of multiple entries should have been counted from when she first entered the country and her residence was activated (16 April 2021), not the date the visa was granted (12 November 2020). As a result, counsel understood the travel conditions on the appellant's resident visa remained valid until 16 April 2023.

[24] On 5 April 2023, Immigration New Zealand amended the appellant's resident visa to reflect the correct travel conditions, which were valid until 16 April 2023.

[25] The appellant was not able to travel to New Zealand before 16 April 2023 when the visa expired.

[26] On 3 May 2023, the appellant lodged a new application for a PRV with Immigration New Zealand.

STATUTORY GROUNDS

[27] The appellant's right of appeal arises from section 187(1) of the Immigration Act 2009 (the Act). Section 187(4) of the Act provides:

> (4) The grounds for an appeal under this section are that—
>
> > (a) the relevant decision was not correct in terms of the residence instructions applicable at the time the relevant application for the visa was made; or
> >
> > (b) the special circumstances of the appellant are such that consideration of an exception to those residence instructions should be recommended.

[28] The residence instructions referred to in section 187(4) are the Government residence instructions contained in Immigration New Zealand's Operational Manual (see www.immigration.govt.nz).

THE APPELLANT'S CASE

[29] On 22 February 2023, the appellant lodged this appeal on the ground that her circumstances are special such that an exception to the residence instructions should be considered.

Application for PRV

[30] On 11 May 2023, counsel informed the Tribunal about the updated travel conditions (which had expired on 16 April 2023), and the new PRV application. Counsel explained the new PRV application was predicated on the ground that the appellant had demonstrated a commitment to New Zealand through establishing a business in New Zealand (RV2.5.15.a) by purchasing a shareholding of 25 per cent or more in an established New Zealand business (RV2.5.15.b.ii).

[31] This application is still being processed by Immigration New Zealand.

Submissions

[32] On 3 August 2023, counsel confirmed that the appellant would like her appeal to proceed and submissions and supporting evidence were provided on 11 August 2023. Counsel's submissions can be summarised as follows:

(a) Immigration New Zealand erred when it failed to realise that the appellant's travel conditions ran from 16 April 2021 (when she arrived in New Zealand) and not from 20 November 2020 (when the visa was granted). This meant the appellant had only 19 months to demonstrate her commitment to New Zealand. The error indicates that Immigration New Zealand failed to act in accordance with the principles of fairness and natural justice and renders its decision incorrect.

(b) In the alternative, counsel submits that there were unusual circumstances outside of the appellant's control as to why she could

not satisfy the criteria of a PRV, and her circumstances should be considered special. The couple have a nexus through the appellant's parents, and have demonstrated a commitment to New Zealand, largely through the husband's business and settlement in New Zealand.

(c) The couple had a genuine intention to move permanently to New Zealand and had engaged a lawyer and tax specialist to assist with the process soon after being granted residence. By January 2021, they had organised for a shipping company to transport their belongings to New Zealand. However, when the father-in-law became ill in early 2021, the couple reassessed their travel plans so they could ensure one of them would remain in Hong Kong to care for him. In doing so, they relied on incorrect legal advice that they could apply for PRVs at separate times, and that the appellant could apply for an SSRV after her travel conditions expired. The appellant remained in Hong Kong and did not receive correct advice until August 2022, by which time it was not possible for her to travel to New Zealand before November 2022. Had she received correct legal advice in 2021, there were multiple ways the appellant could have satisfied the requirement to demonstrate a commitment to New Zealand.

[33] In support of the appeal, counsel provides a bundle of supporting documents, including: correspondence between the appellant and her previous lawyer and tax advisor and invoices from the lawyer; evidence of the husband's business and companies in New Zealand, including financial accounts; receipts and photos related to the shipment of the couple's personal goods to New Zealand; Inland Revenue Department (IRD) records of the husband's income; evidence of the husband's settlement in New Zealand; bank statements of the couple's financial assets in New Zealand; evidence of the father-in-law's medical issues in Hong Kong; and letters from the father-in-law and a friend of the couple in support of their appeal.

ASSESSMENT

[34] The Tribunal has considered the submissions and documents provided on appeal and the file provided by Immigration New Zealand in relation to the

appellant's residence application, and its relevant electronic records for the appellant and her husband.

[35] Although the appellant appeals only on the ground of having special circumstances, submissions from counsel indicate that correctness is an issue to consider. In any event, the Tribunal's jurisdiction requires that it first assess whether Immigration New Zealand's decision to decline the application was correct in terms of the applicable residence instructions. This is set out below and is followed by an assessment of whether the appellant has special circumstances which warrant consideration of an exception by the Minister of Immigration.

Whether the Decision is Correct

[36] The application was made on 11 November 2022 and the relevant criteria are those in residence instructions as at that time. Immigration New Zealand declined the application because it was not satisfied that the appellant had demonstrated a "commitment to New Zealand", as was required by instructions. The relevant instructions in this case are set out below.

The requirement to "demonstrate a commitment to New Zealand"

[37] In order to be granted a permanent resident visa, the appellant had to meet the requirements at RV2.5 (effective 21 November 2016), including the requirement at RV2.5.c that she "demonstrate a commitment to New Zealand by meeting the requirements set out in any one of the five subsections [at] (RV2.5.1 to RV2.5.20)".

[38] The first of the five subsections, RV2.5.1 (effective 21 November 2016), and the most relevant to the appellant's current appeal, states:

> **RV2.5.1 Significant period of time spent in New Zealand**
>
> A principal applicant has demonstrated a commitment to New Zealand if they have been in New Zealand as a resident for a total of 184 days or more in each of the two 12-month portions of the 24 months immediately preceding the date their application for a permanent resident visa was made (ie, in each of the two 12-month portions, a period or periods that amount to 184 days or more)

[39] The Tribunal confirms that the appellant did not satisfy RV2.5.1 because, for the first 12-month portion of the 24 months immediately preceding the date her application for a permanent resident visa was made, she spent just 50 days in New Zealand. For the second 12-month portion, she spent no time in the country.

[40] At that time, counsel did not make submissions or produce evidence in support of the appellant having demonstrated a commitment to New Zealand by meeting the requirements set out in any of the four other subsections contained within RV2.5 (all effective 21 November 2016), namely:

(a) applicants with tax residence status in New Zealand (RV2.5.5);

(b) applicants who have invested in New Zealand (RV2.5.10);

(c) applicants who have established a business in New Zealand (RV2.5.15); and

(d) applicants who have established a base in New Zealand (RV2.5.20).

[41] On appeal, counsel submits that Immigration New Zealand's failure to inform the appellant of her correct travel conditions, namely that she could travel for two years from the date she entered New Zealand (April 2021) not the date the visa was granted (November 2020) meant the appellant had a truncated period of just 19 months to demonstrate her commitment to New Zealand. Counsel submits this meant Immigration New Zealand failed to provide the appellant with reasonable time to fulfil the requirements, which was contrary to its obligation to act in accordance with fairness and natural justice.

[42] The Tribunal finds that it is regrettable that the validity of the travel conditions was not made clear to the appellant at an early stage, nor did her counsel identify the problem until late March 2023, some months after both counsel and the appellant had presumed the visa had expired.

[43] However, the Tribunal considers that this error did not cause the appellant significant prejudice. Even if the error had been discovered in August 2022 (when the previous lawyer's advice was identified as incorrect) and the appellant had travelled to New Zealand and remained for 184 days prior to April 2023, she would still not have satisfied instructions. This is because, in the first 12-month period after the activation of her residence visa (April 2021 to April 2022), she had spent just 50 days in New Zealand.

[44] The Tribunal also acknowledges counsel's submission that the incorrect legal advice from the appellant's previous lawyer likely led to the couple making decisions about their living arrangements which contributed to their current predicament. However, as the Tribunal (differently constituted) noted recently in *CE (Permanent Residence)* [2023] NZIPT 206604 at [38], Immigration

New Zealand must make its decision in terms of the applicable residence instructions (see section 72(1) of the Act). The instructions provide no discretion to alter the time period set out in RV2.5.1 or to set aside the broader requirement at RV2.5.c that a principal applicant demonstrate a commitment to New Zealand. Immigration New Zealand had no allowance to consider the appellant's wider circumstances before making its determination.

[45] As such, Immigration New Zealand correctly considered whether the appellant had spent the requisite time in New Zealand to demonstrate a commitment to New Zealand. As she had not, it declined the application.

Conclusion on correctness

[46] The Tribunal finds that Immigration New Zealand was correct to find that the appellant had not demonstrated a commitment to New Zealand (RV2.5.c).

Whether there are Special Circumstances

[47] The Tribunal has power pursuant to section 188(1)(f) of the Act to find, where it agrees with the decision of Immigration New Zealand, that there are special circumstances of an appellant that warrant consideration by the Minister of Immigration of an exception to the residence instructions.

[48] Whether an appellant has special circumstances will depend on the particular facts of each case. The Tribunal balances all relevant factors in each case to determine whether the appellant's circumstances, when considered cumulatively, are special.

[49] Special circumstances are "circumstances that are uncommon, not commonplace, out of the ordinary, abnormal"; *Rajan v Minister of Immigration* [2004] NZAR 615 (CA) at [24] per Glazebrook J.

Family circumstances and immigration history

[50] The appellant is a 49-year-old citizen of Hong Kong. She was granted residence 30 years ago when her family immigrated to New Zealand. However, the appellant never lived here, returning to Hong Kong to complete her tertiary studies, and then embarking on a career as a social worker. Her first resident visa then expired as she did not spend sufficient time in New Zealand. Nevertheless, the appellant continued to visit New Zealand on an almost yearly basis to see her

parents, who became New Zealand citizens in 2000 and 2005. She has made 19 visits over a 25-year period, the most recent of which was for one month in May 2023, when she also brought her father-in-law.

[51] The appellant's brother moved back to Hong Kong in 2001. He has a family there now and no intention to leave.

[52] The appellant's husband is a citizen of Hong Kong. His only brother lives in China. He visited New Zealand (with the appellant) in 2015, 2017 and 2019. According to a letter from the husband's father ("the father-in-law"), the husband has known the appellant since childhood, and after they began a relationship, the appellant moved in with the husband and his parents in 2016.

[53] The couple married in 2019 and started the process of securing residence, making a successful request for Ministerial intervention in November 2019. In February 2020, the Minister informed the appellant she would be granted a resident visa, subject to meeting health and character requirements. As instructed by the Minister, the appellant lodged a residence application and included the husband as a secondary applicant.

[54] The husband's mother died in June 2020.

[55] In November 2020, the appellant and her husband were granted resident visas.

[56] In early 2021, the father-in-law became unwell. He was hospitalised on four occasions between January and April 2021. On 16 April 2021, the appellant and her husband arrived in New Zealand, but the appellant returned after seven weeks to take care of her father-in-law, who had no other family support in Hong Kong.

[57] In November 2022, the appellant lodged an application for a PRV and did not include her husband. That application was declined in January 2023.

[58] The appellant lodged a second PRV application in May 2023, which included her husband. That application is yet to be determined by Immigration New Zealand.

Settlement and contribution to New Zealand

[59] The appellant has a strong family nexus to New Zealand where her parents are citizens but retains a nexus to Hong Kong where her brother lives. The

appellant has never lived in New Zealand but has visited regularly over a 25-year period. She has wanted to relocate to New Zealand so she could be closer to her parents and help care for them, as they have no children living in New Zealand.

[60] The appellant is a qualified and registered social worker in Hong Kong who has worked in that field for over 20 years. The Tribunal notes that the occupation of social worker (albeit with New Zealand registration) is currently on Tier 1 (Straight to Residence) of Immigration New Zealand's Green List.

[61] The appellant's husband was granted residence by Ministerial special direction as a secondary applicant in the appellant's residence application. He moved to New Zealand in April 2021 and established a music production business. He has lived here since, aside from a six-month period between September 2021 and March 2022 and a four-month period between June to November 2022.

[62] The appellant's husband is a music producer whose work involves creating bespoke music and music production for films, television and advertising. His website biography outlines his musical studies in Europe as a child and young man, and the awards he has gained for his performances. It also explains his recent work projects and the large-scale movie and television projects in which he has been involved.

[63] Documents from the Companies Office show that the husband's business was registered in New Zealand in May 2021 and photographs of his music studio are supplied on appeal. Also provided are records from the IRD demonstrating the husband is a tax resident in New Zealand; and audited accounts for the company (for the year ending 31 March 2022) showing that it earned an income of $152,533 and posted a loss of $50,970, after paying the husband a director's salary of $150,000.

[64] The Tribunal notes that when the company was established, the husband was the director and sole shareholder. However, in April 2023, the appellant became a 50 per cent shareholder of the company, the ownership of which has formed the basis for her second PRV application (yet to be determined by Immigration New Zealand).

[65] While living in New Zealand, the husband has become involved in his local community. He is a volunteer driver for the Cancer Society; a volunteer member of Wandersearch, which provides support to people in the community at risk of

going missing due to dementia; and has an ongoing commitment as a volunteer judge for a regional secondary school's musical production competition.

[66] The appellant also provided evidence that the couple arranged for the transport of their household assets to New Zealand in April 2021. Since then, they have also transferred their financial assets (amounting to over $1.6 million) to New Zealand bank accounts.

[67] Although the husband currently retains a resident visa by which he remains in New Zealand lawfully, it no longer has valid travel conditions which limit his ability to leave New Zealand.

Reasons for ineligibility

[68] In 2019, the appellant and her husband made the decision to immigrate permanently to New Zealand so they could be closer to the appellant's parents. The couple secured resident visas by grant of special direction from the Minister of Immigration in November 2020.

[69] Shortly afterwards, in December 2020, the couple engaged a New Zealand-based lawyer (not the appellant's current counsel), agreeing to pay him NZ$19,000 to assist them to apply for permanent residence. They were aware that it would be a process of at least two years. In addition to the lawyer, they also received advice from an accountant regarding the husband relocating his business to New Zealand. They also discussed their longer term goal of bringing the father-in-law to New Zealand, given that with their permanent immigration, he would have no close family members remaining in Hong Kong.

[70] Copies of correspondence between the couple and the lawyer provided on appeal make it clear their goals were understood. It also shows that as the father-in-law's health became an issue and the couple decided one of them should remain in Hong Kong to care for him, the lawyer advised that the couple could apply for separate PRVs and, if the appellant remained in Hong Kong, she could apply for an SSRV closer to the time her resident visa expired. The couple made their plans based on that legal advice, with the husband relocating to New Zealand and the appellant remaining in Hong Kong to care for the father-in-law.

[71] This advice was not correct. As a secondary applicant to the appellant's residence application, the husband could not make an application for a PRV on his own account (absent divorcing the appellant or other circumstances which are not

relevant to their situation). Further, any application for an SSRV for the appellant still required her to demonstrate a commitment to New Zealand, which required her to spend the requisite time in New Zealand (or satisfy the alternative criteria).

[72] As counsel on appeal identifies, had the couple received correct legal advice in late 2020 and early 2021, there were multiple avenues for them to have demonstrated a commitment to New Zealand. They may have made different decisions about who would remain in Hong Kong to take care of the father-in-law. They could have used their funds to buy a family home (something they always intended to do, hence the transfer of funds here) and the appellant could have met the (lesser) residency requirements in order to demonstrate they had established a base in New Zealand. She could have become an original investor in the business her husband established.

[73] Despite the previous lawyer's legal qualifications and experience in immigration matters (and substantial fee) it appears none of these options were sufficiently canvassed at the relevant time. Instead, relying on incorrect advice, the couple travelled down a pathway which ultimately meant they had little chance of succeeding in a PRV application, and have suffered significant prejudice.

[74] As it stands, the appellant is currently outside New Zealand with an expired resident visa and the husband, while in New Zealand lawfully as the holder of a resident visa, is limited in his ability to leave the country because his travel conditions have expired.

[75] The Tribunal notes, that although the appellant did not meet the criteria of instructions, the husband currently meets not just one, but several of the criteria necessary to demonstrate a commitment to New Zealand. He has been here for a significant period of time (184 days in two 12-month periods); he has established a business; and he is a tax resident. However, as a secondary applicant in the appellant's residence application, he is not eligible to apply for a PRV (unless the couple divorce, or other circumstances not relevant to their situation). As a result, the husband's settlement in New Zealand is of no relevance to the appellant's claim to a PRV and does not allow him to apply for a PRV on his own account.

[76] The Tribunal also notes that the appellant's position was not assisted by Immigration New Zealand's error, such that it was, in failing to clearly inform her that the 24-month period of her travel conditions ran from the time she entered New Zealand, not the date on which the visa was granted.

[77] The Tribunal recognises that the appellant does have an outstanding PRV application under consideration by Immigration New Zealand based on her recent acquisition of a 50 per cent shareholding in her husband's New Zealand business. However, there is no certainty as to the outcome of that application.

Discussion on special circumstances

[78] The appellant has held New Zealand residency twice and has lost it on both occasions because she has not spent sufficient time in New Zealand. However, she has regularly visited over the last 25 years, and has a strong family nexus through her New-Zealand citizen parents. Her husband has also spent the majority of the last 2.5 years in New Zealand, established a business and pays tax in this country, and is involved in several volunteer and community endeavours. The appellant also has the potential to contribute to New Zealand through employment, given her experience as a social worker, and through the ongoing care and support she would provide to her parents.

[79] The appellant and her husband were successful in being granted resident visas by Ministerial discretion in 2020. They then undertook a deliberate and intentional process to move to New Zealand, transporting their goods, transferring their financial assets, and obtaining legal advice as to how they could secure permanent residence, some two years in advance of when any application could be made. Unfortunately, the poor health of the father-in-law meant they changed their plans so that one of them could remain and care for him, and the incorrect advice received from their previous lawyer as to how to deal with that situation has now left the appellant without a resident visa, and the husband with a resident visa with expired travel conditions.

[80] The Tribunal considers it relevant that, as a couple, the appellant and her husband have met several criteria used to demonstrate a commitment to New Zealand. However, these could not be considered by Immigration New Zealand as relevant because none could be attributed solely to the appellant, who was the principal applicant in the residence application. The Tribunal also notes that while the appellant has a further PRV application under consideration, there is no certainty as to its outcome.

[81] Failing to meet instructions is not, on its own, sufficient to demonstrate special circumstances. Neither is reliance on poor legal advice, for which there may be remedies through a complaints process with the New Zealand Law Society. However, when considering the appellant's circumstances as a whole,

including the husband's settlement, her potential to contribute, her family nexus to New Zealand, and the circumstances under which she has found herself without a resident visa, the Tribunal is satisfied that the appellant's circumstances are special such as to warrant a recommendation that the Minister of Immigration consider making an exception to residence instructions in this case.

DETERMINATION

[82] Pursuant to section 188(1)(f) of the Immigration Act 2009, the Tribunal confirms the decision of Immigration New Zealand to be correct in terms of the applicable residence instructions but considers that the special circumstances of the appellant are such as to warrant consideration by the Minister of Immigration as an exception to those instructions.

[83] Pursuant to section 190(5) of the Act, the Minister of Immigration:

(a) is requested to consider whether a residence class visa should be granted, as an exception to residence instructions, to the appellant and her husband; and

(b) may, if granting a resident visa, impose conditions on the visa in accordance with section 50 of the Act.

[84] Pursuant to section 190(6) of the Act, the Minister of Immigration is not obliged to give reasons in relation to any decision made as a result of a consideration of the Tribunal's recommendation.

Order as to Depersonalised Research Copy

[85] Pursuant to clause 19 of Schedule 2 of the Act, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellant's name and any particulars likely to lead to the identification of the appellant or her husband.

"L Wakim"
L Wakim
Member

[On 12 October 2023, the Minister determined to grant residence to the appellant and her husband as an exception to instructions.]

Certified to be the Research Copy released for publication.

L Wakim
Member