APPENDIX C: EXCERPTS FROM RELEVANT LEGISLATION AND POLICY

CITIZENSHIP ACT 1977

7 Citizenship by descent

(1) Every person born outside New Zealand on or after 1 January 1978 is a New Zealand citizen by descent if, at the time of the person's birth,—

(a) his or her mother or father was a New Zealand citizen otherwise than by—

(i) descent; or

(ii) grant under section 7A of the Citizenship (Western Samoa) Act 1982; or

(b) his or her mother or father was a New Zealand citizen by descent, and the person would otherwise be stateless.

(2) A person who is a New Zealand citizen by virtue of subsection (1) may apply for his or her citizenship status to be registered in accordance with regulations made under this Act.

(3) For the purposes of this section, the Secretary may issue a certificate stating a person's status under this section and, in the absence of evidence to the contrary, a certificate to such effect shall be sufficient evidence of the matters stated in the certificate.

(4) The citizenship of any New Zealand citizen by descent that has lapsed before the commencement of the Citizenship Amendment Act 2000 is reinstated with effect from the time it lapsed.

8 Citizenship by grant

(1) The Minister may authorise the grant of New Zealand citizenship to any person, including a person who may be a New Zealand citizen by descent, who—

(a) has attained the age of 16 years; and

(b) is of full capacity; and

(c) applies for citizenship in the prescribed manner; and

(d) satisfies the Minister that he or she meets each of the requirements specified in subsection (2).

(2) The requirements referred to in subsection (1)(d) are as follows:

(a) that the applicant is entitled in terms of the Immigration Act 2009 to be in New Zealand indefinitely:

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(b) that the applicant was present in New Zealand—

(i) for a minimum of 1 350 days during the 5 years immediately preceding the date of the application; and

(ii) for at least 240 days in each of those 5 years,—

being days during which the applicant was entitled in terms of the Immigration Act 2009 to be in New Zealand indefinitely:

(c) that the applicant is of good character:

(d) that the applicant has sufficient knowledge of the responsibilities and privileges attaching to New Zealand citizenship:

(e) that the applicant has sufficient knowledge of the English language:

(f) that the applicant intends, if granted New Zealand citizenship, either—

(i) to continue to reside in New Zealand; or

(ii) to enter into or continue in Crown service under the New Zealand Government, or service under an international organisation of which the New Zealand Government is a member, or service in the employment of a person, company, society, or other body of persons resident or established in New Zealand.

(3) For the purposes of subsection (2)(a), a person will not be treated as entitled to be in New Zealand indefinitely if—

(a) conditions have been imposed under the Immigration Act 2009 on the person's entitlement to reside in New Zealand indefinitely; and

(b) those conditions have not been met in full or cancelled at the time of the person's application for citizenship.

(4) The Minister may, after consultation with the Minister of Immigration,—

(a) waive the requirement in subsection (2)(a) if satisfied that an applicant is entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau:

(b) waive the requirement in subsection (2)(b) if satisfied that an applicant was present in the Cook Islands, Niue, or Tokelau—

(i) for a minimum of 1 350 days during the 5 years immediately preceding the date of the application; and

(ii) for at least 240 days in each of those 5 years,—

being days during which the applicant was entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau.

(5) For the purposes of subsection (2)(b), the Minister may treat the applicant as having been in New Zealand for any period within the period of 5 years immediately preceding the date of application for citizenship during which—

(a) the applicant was in Crown service under the New Zealand Government; or

(b) the applicant was outside New Zealand because the applicant was accompanying his or her spouse or civil union or de facto partner who was a New Zealand citizen in Crown service under the New Zealand Government.

(6) For the purposes of subsection (4)(b), the Minister may treat the applicant as having been present in the Cook Islands, Niue, or Tokelau for any period within the period of 5 years immediately preceding the date of the application for citizenship during which—

(a) the applicant served in the public service of the Government of the Cook Islands, Niue, or Tokelau; or

(b) the applicant was outside New Zealand because the applicant was accompanying his or her spouse or civil union or de facto partner who was a New Zealand citizen serving in the public service of the Cook Islands, Niue, or Tokelau.

(7) If the Minister is satisfied in a particular case that there are exceptional circumstances particular to the applicant that would justify such a course, the Minister may accept the presence by the applicant for a lesser number of days as being sufficient compliance with—

(a) the requirements of subsection (2)(b), so long as the applicant—

(i) was physically present in New Zealand for not less than 450 days during the 20-month period immediately preceding the date of the application for citizenship; and

(ii) was entitled in terms of the Immigration Act 2009 to be in New Zealand indefinitely during each of those 450 days:

(b) the requirements of subsection (4)(b), so long as the applicant—

(i) was physically present in the Cook Islands, Niue, or Tokelau for not less than 450 days during the 20-month

period immediately preceding the date of the application for citizenship; and

(ii) was entitled to be in the Cook Islands, Niue, or Tokelau indefinitely during each of those 450 days.

(8) The Minister may waive the requirement in subsection (2)(e) if satisfied in a particular case that, because of the applicant's age or standard of education, or for any other reason personal to the applicant, the applicant would suffer undue hardship if compliance with the requirement of that provision were insisted upon.

(9) For the purposes of subsection (2)(f),—

(a) the intention referred to in subsection (2)(f)(i) must be a continuing intention throughout the period from the date of application for citizenship until the date that the applicant becomes a citizen under section 12:

(b) the Minister may treat an applicant as intending to continue to reside in New Zealand if the applicant intends to accompany his or her New Zealand citizen spouse or civil union or de facto partner on Crown service for the New Zealand Government or public service for the Government of the Cook Islands, Niue, or Tokelau.

9 Grant of citizenship in special cases

(1) Without limiting anything in section 8, the Minister may, upon application in the prescribed manner, authorise the grant of New Zealand citizenship to any person, including a person who may be a New Zealand citizen by descent,—

(a) who has not yet attained the age of 16 years; or

(b) whose father or mother was, at the time of that person's birth, a New Zealand citizen by descent; or

(c) if the Minister is satisfied that granting a certificate of New Zealand citizenship to the applicant would be in the public interest because of exceptional circumstances of a humanitarian or other nature relating to the applicant; or

(d) if the person would otherwise be stateless.

(2) In considering whether to authorise the grant of New Zealand citizenship to any person under subsection (1), the Minister—

(a) may have regard to such of the requirements of section 8(2) (as subject to section 8(3) to (9)) as the Minister thinks fit; and

(b) must have regard to the requirements of section 9A(1) (but subject to the Minister's discretion under section 9A(2) and (3)).

DEPARTMENT OF INTERNAL AFFAIRS – CITIZENSHIP GUIDANCE DOCUMENT JUNE 2024

Grant of citizenship under section 9: Special cases

1. APPLICANTS AGED 15 AND UNDER

Legislation
Section 9(1)(a)

Summary
Under section 9(1)(a), the Minister may grant citizenship to applicants who are under the age of 16. In making a decision about whether to grant citizenship to a person under 16, the Minister may have regard to any of the section 8(2) requirements for the grant of citizenship.

Policy

The policy for applicants aged 15 and under is set out on page 8 and 9 of this document.

Applicants who do not clearly meet the requirements

Applicants who do not meet 1 or more of the requirements are presented to the Minister in a submission. The Minister can waive any of the requirements as they see fit.

2. APPLICANTS WHO ARE CHILDREN OF CITIZENS BY DESCENT

Legislation
Section 9(1)(b)

Summary
The Minister may grant citizenship to applicants born after 1 January 1949 to a parent who was a New Zealand citizen by descent at the time of their birth.

In making a decision about whether to grant citizenship to a child of a citizen by descent, the Minister may have regard to any of the section 8(2) requirements for the grant of citizenship.

Policy

All applications of this type must be presented to the Minister to consider.

The Minister considers the applicant's ability to fulfil the standard requirements for citizenship by grant and why the applicant is unable to fulfil a particular requirement.

The Minister may take into account such things as:

- whether the applicant can demonstrate a link to New Zealand
- whether the applicant has longstanding familial/whakapapa ties to New Zealand
- whether the applicant has family members living in New Zealand who are New Zealand citizens
    - the circumstances of the parent(s) being citizens by descent
- why the applicant wants New Zealand citizenship
- any other factors the applicant wishes the Minister to consider.

3. APPLICANTS WITH EXCEPTIONAL CIRCUMSTANCES IN THE PUBLIC INTEREST

Legislation
Section 9(1)(c)

Summary
The Minister may grant citizenship to applicants who do not meet 1 or more of the standard requirements for citizenship if satisfied that granting citizenship would be in the public interest because of exceptional circumstances of a humanitarian or other nature relating to the applicant.

Policy

The Minister has discretion to consider an applicant's overall situation to determine whether their circumstances are exceptional, and whether it would be in the public interest to grant citizenship as a result of these circumstances.

Assessment of Exceptional Circumstances

All applications considered under this section must be presented to the Minister as a submission.

This requirement is very difficult to meet. Decisions are made on a case-by-case basis, taking into account the applicant's situation. To meet this requirement, the applicant's exceptional circumstances need to be of a humanitarian or other nature.

Although an applicant's circumstances may be unusual or cause some degree of hardship, this does not necessarily mean that they meet the 'exceptional circumstances' threshold of section 9(1)(c). Exceptional circumstances should be relatively rare and uncommon.

Assessment of Public Interest

'Public interest' means that a grant of citizenship would provide some advantage or positive benefit to New Zealand. The benefit must be for New Zealand, rather than a private benefit. This must arise directly from the applicant's exceptional circumstances.

In some cases, it may be in the public interest to grant citizenship if doing so would:

- remedy unjust circumstances
- remedy an existing situation, and doing so would be in the public interest
- avoid negative consequences for New Zealand, or negative impact on the public interest.
- enable New Zealand to honour its international commitments and international conventions.

IMMIGRATION ACT 2009

61 Grant of visa in special case

(1) The Minister may at any time, of the Minister's own volition, grant a visa of any type to a person who—

(a) is unlawfully in New Zealand; and

(b) is not a person in respect of whom a deportation order is in force; and

(c) is not a person in respect of whom a removal order is in force.

(2) A decision to grant a visa under subsection (1) is in the Minister's absolute discretion.

EDUCATION AND TRAINING ACT 2020

519 Enrolment of international students

(9) Despite anything in this section or section 521, an international student may, with the consent of the principal or person responsible for teaching and learning in a charter school and during a period of not more than 28 consecutive days (or any longer period the Secretary approves for any particular student), receive tuition at or from a State school or charter school—

(a) without the consent of the school's board or the sponsor; and

(b) without paying the amount required by section 521.

NEW ZEALAND GAZETTE

Education (Domestic Students) Notice 2023

Pursuant to section 10(1) paragraph (c) of the definition of the term "domestic student" of the Education and Training Act 2020, the Minister of Education, by and through Iona Holsted, Te Tumu Whakarae mō te Mātauranga, Secretary for Education, Ministry of Education, gives the following notice.

Notice

1. Title and Commencement

(1) This notice may be cited as the Education (Domestic Students) Notice 2023.

(2) This notice shall come into force on the day after the date of its publication in the New Zealand Gazette.

2. Domestic Students

Persons of the following class or description are required to be treated as if they are not international students:

a. A person who holds a student visa and who is the dependent child of any person who is in New Zealand to study under an exchange programme approved by the New Zealand Government.

b. A person who holds a student visa or a visitor visa and who is in New Zealand to study under an approved New Zealand student exchange scheme offered by a Code signatory school or offered by an approved exchange programme organisation.

c. A person who holds a student visa and who has entered New Zealand for the purposes of adoption and:

> i. whose adoption application before the New Zealand Family Court (where the Final Order will entitle that person to education as a domestic student) is supported by Oranga Tamariki – Ministry for Children and who has a letter from the Ministry confirming that support; or
>
> ii. who is the subject of an Interim Order of Adoption granted by the New Zealand Family Court under section 5 of the Adoption Act 1955 (where the Final Order will entitle that person to education as a domestic student).

d. A person who holds a student visa and who is the dependent child of an international student who is enrolled in a Doctor of Philosophy programme at a New Zealand university.

e. A person who is in the custody of the Chief Executive of the Ministry of Social Development pursuant to any of the following orders:

i. An order, pursuant to sections 78, 101 or 238(1)(d) of the Oranga Tamariki Act 1989, in favour of the Chief Executive of the Ministry of Social Development.

ii. An order, pursuant to section 110 of the Oranga Tamariki Act 1989, appointing the Chief Executive of the Ministry of Social Development as sole guardian.

iii. An order, pursuant to section 33 of the Care of Children Act 2004, whereby a child or young person is placed under the guardianship of the Family Court or the High Court and the Chief Executive of the Ministry of Social Development is appointed as agent of the Court with power and discretion to place the child.

f. A person who holds a student visa and who is the dependent child of an international student who is supported by a scholarship funded by the New Zealand Aid Programme administered by the Ministry of Foreign Affairs and Trade.

g. A person who has a letter from the Protocol Division of the Ministry of Foreign Affairs and Trade confirming that he or she is, for the time being, entitled to any immunity from jurisdiction by or under the Diplomatic Privileges and Immunities Act 1968 or the Consular Privileges and Immunities Act 1971 for the current school year, until the end of the year in which that status expires.

h. A person who holds a student visa and who is the dependent child of the holder of a valid military visa.

i. A person who has, or who is the dependent child of any person who has, made a claim to be recognised as a refugee or a protected person in accordance with Part 5 of the Immigration Act 2009, and who is the holder of a valid temporary visa.

j. A person who has, or who is the dependent child of any person who has, been recognised as a refugee or a protected person in accordance with Part 5 of the Immigration Act 2009, and whose application for residence is being processed.

k. A person who holds a student visa and who is the dependent child of any person who is a New Zealand citizen or the holder of a residence permit under the Immigration Act 1987 or of a residence class visa under the Immigration Act 2009 and:

i. whose own application for a residence class visa under the Immigration Act 2009 has been received and is being considered for approval by Immigration New Zealand at the time the student enrols; or

ii. whose own application for citizenship is being considered for approval by the Department for Internal Affairs, until the end of the year in which the student visa expires.

l. A person who holds a student visa and who is the dependent child of a person who is the holder of a work visa until the end of the year in which the work visa expires.

m. A child who has been certified by the New Zealand police as a victim of people trafficking and who holds an unexpired temporary visa granted under the Immigration New Zealand "Child Victims of People Trafficking "policy.

n. A child who is unlawfully in New Zealand and who holds an unexpired approval from the Ministry of Education confirming that he or she meets all of the following criteria:

> i. At the date of application, the child and the parent or the child and an extended family member have been ordinarily resident and living together in New Zealand continuously for over six months.
>
> ii. Either the child has not been previously enrolled at a New Zealand registered school or other provider within the meaning of section 10(1) paragraph (c) of the definition of the term "provider" of the Education and Training Act 2020, or the child's most recent enrolment was as a domestic student.

o. For the 2022 school year only, a person who arrived in New Zealand on or after 17 August 2021 after being evacuated from Afghanistan.

p. A person who holds a 2022 Special Ukraine Visa.

q. A person who holds a Critical Purpose Visitor Visa and is either:

> i. the dependent child of a person who holds a Critical Purpose Visitor Visa, or;
>
> ii. the dependent child of a New Zealand citizen or the dependent child of a holder of a residence permit under the Immigration Act 1987 or of a residence class visa under the Immigration Act 2009, or;
>
> iii. the dependent child of a person who is the holder of a work visa until the end of the year in which the work visa expires:
>
> and who is residing in New Zealand at the time of enrolment.

r. A person who resides in Tokelau and who is the dependent child of any person who is a Tokelauan or New Zealand citizen.

s. Until the end of the 2024 school year, a person who resides in Tokelau and is the dependent child of a person in Tokelau who holds a valid special permit approved by an authorised Administrator of the Tokelau Immigration Regulations 1991.

3. Interpretation and Transitional Provisions

(1) For the purposes of paragraph (b) of clause 2 of this notice, an approved New Zealand student exchange scheme or an approved exchange programme organisation means a scheme or organisation holding an unexpired approval from the Ministry of Education.

(2) The references to a student visa, a military visa, or a work visa in clause 2 of this notice include an interim visa letter from Immigration New Zealand which continues the visa type and conditions of that student, military, or work visa, until the end of the period stated in the interim letter.

4. Revocation

This notice revokes the following notice:

(1) The Education (Domestic Students) 2022 (New Zealand Gazette, 11 October 2022, Notice No. 2022-go4300).

Dated at Wellington this 13th day of February 2023.

IONA HOLSTED, Te Tumu Whakarae mō te Mātauranga, Secretary for Education.