

BUSINESS MIGRATION BRANCH QUARTERLY

ISSUE ONE | SEPTEMBER 2012

FROM THE BRANCH MANAGER



Welcome to the first edition of the Business Migration Branch (BMB) newsletter.

This is expected to be a quarterly publication principally for licenced immigration advisers and lawyers who use the services

of BMB. It is intended to provide useful information and insights relating to current issues, trends, application volumes and policy amendments. We are happy to receive feedback regarding any particular topics that are of interest.

The feedback BMB receives through our general feedback email address is largely very positive and the branch enjoys constructive relationships with our customers and stakeholders overall. Some feedback has

suggested that we could communicate more proactively and this newsletter is a means of doing just that.

At BMB we would like to build on the positive, constructive relationships that we already have in place with licenced advisers, lawyers and other groups. We look forward to more actively engaging with all of you in order that we continue the vital work of contributing to New Zealand's economic growth and prosperity.

We hope that you find this newsletter useful. As the first one, this issue is quite full. We welcome your thoughts and ideas on content or suggestions for the next edition of this newsletter. If you would like to, please submit any feedback to us at BusinessMigrantFeedback@dol.govt.nz

Gareth Grigg
Branch Manager

BRANCH PROFILE

The Business Migration Branch is a specialist unit which sits within Immigration New Zealand's Southern Region. BMB administers business related visa applications – Long Term Business Visas, Entrepreneur, Parent & Temporary Retirement and Investor applications from within New Zealand and around the world.

The branch also handles Accredited Employer applications and Residence from Work applications from employees of businesses that are accredited.

The branch has two sub-teams. Jonathan Maitland manages the Support Team where we have three Administration & Support Officers, and the Investor Team which also deals with the Retirement Categories.

Philip Griffith's team – the Business/ Accreditation Team – primarily deals with LTBV, Entrepreneur, Accreditation and Residence from Work applications.

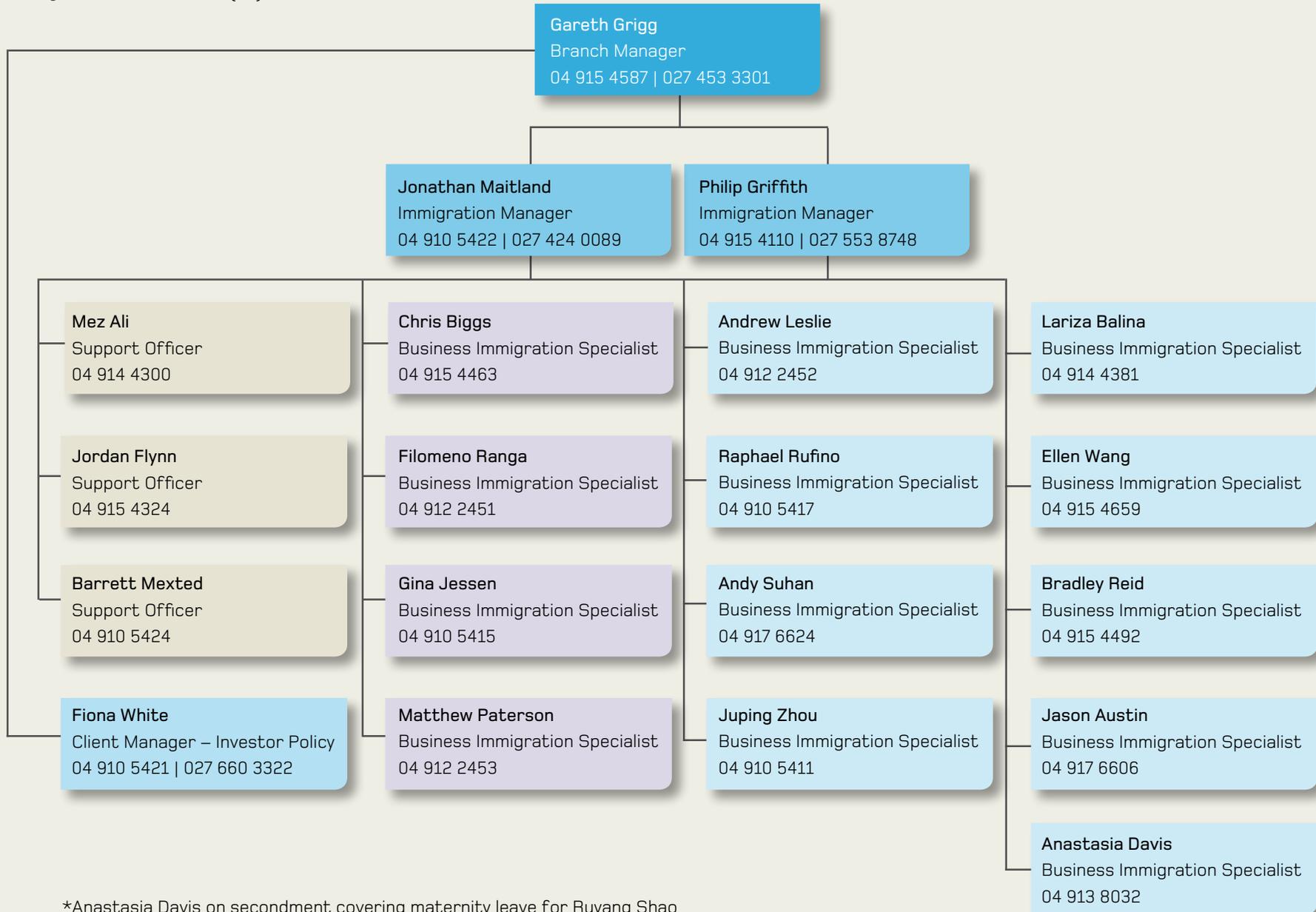
Fiona White is the Client Manager for the Migrant Investment Category. Fiona's position is profiled later in the newsletter.

BMB is co-located with the Wellington Branch at Kordia House.

BUSINESS MIGRATION BRANCH

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*Anastasia Davis on secondment covering maternity leave for Ruyang Shao

INVESTOR TEAM UPDATE – Jonathan Maitland

Over the past 12 months the Migrant Investment Category (MIC) has continued to grow in numbers of applicants and investment in New Zealand. Over the coming 12 months we will be seeing the first MIC applicants completing the policy cycle and being eligible to have the conditions of their residence visas removed.

The team is changing composition with the emphasis going forward to most efficiently manage processing of the different stages of the application life-cycle in order to provide the most timely service to our customers. This will mean that some team members will concentrate on processing applications up to Approval in Principle (AIP) stage and others will deal with post AIP stages such as assessing transfer and investment of funds, two-year checks and conditions removals. Applicants and advisers will of course continue to be provided with their Business Immigration Specialist contact details.

Over time there have been various issues raised which have needed to be considered. We have prepared some guidelines based on recent queries to assist.

Currency restrictions

There are a number of countries which operate foreign exchange controls. In our ITA letters, we ask all applicants to fully consider their ability to transfer funds in a way that meets the immigration instructions requirements (as per BJ7 of the Operational Manual) before proceeding with an application. We do not wish to encourage prospective applicants who are unable to meet the requirements of the immigration instructions. Extensions to the timeframe for transferring funds will always be considered however, those who use currency restrictions

as a reason for not being able to transfer their funds are unlikely to be approved.

Transfer of funds extensions

Under the Investor category, applicants have 12 months from being approved in principle to transfer their nominated funds to New Zealand through the banking system. Should the need for an extension occur, Investor Plus applicants are eligible for a further 12 months and Investor applicants 6 months. In order to apply for an extension, applicants need to provide evidence of reasonable attempts to transfer their funds to New Zealand. If there has been no attempt and, for example, an applicant is waiting for a share price to increase before liquidating their nominated investment funds or they are waiting for exchange rates to move, then these would not be considered reasons for an extension to be granted. If your client wishes to be considered for an extension, please contact us at least a month before the end of the 12 month transfer period.

Investing in development of residential property

We receive numerous queries on what we would require as evidence of this investment. We have developed some guidelines (not exhaustive) around what we would find acceptable to demonstrate investment in this area:

- Funds do need to be in NZ
- A contract with builders is in place
- Evidence that all consents have been obtained
- Evidence of funds having been invested and/ or committed to be paid over in stages over period of time to have residence approved
- If the applicant decides to sell the partially completed house, then they need to put

the profit and original funds into another acceptable investment

Investing in Commercial property

Investing in commercial property is considered an acceptable investment. This can be a new build which is then leased out or purchasing an existing building and leasing it out. The key requirement is it needs to be capable of making a commercial return. If the investment is going to be in developing a new building, then we would need to see how and when the funds are committed.

An important note on Investor category queries – help us to help you to help your clients!

We appreciate your assistance in helping us process applications based on well prepared, complete documentation.

Whilst the team is always happy to answer your queries on applications, it would be appreciated if this could be limited to circumstances only where it is considered really necessary and once full consideration has been given to the question at hand by the engaged immigration advisor.

It may appear an obvious point to make however it is necessary to make it - please always firstly consider the immigration instructions before contacting us with a question. We would appreciate it if any queries could be kept as succinct and as to the point as possible. The number of queries has grown with the success of the policy and case officers need to balance providing information regarding applications with the core assessment of applications/ information which has been provided to us in support of applications.

You will appreciate that we cannot always provide definitive answers to particular questions in advance of receiving an application or any particular documents. We expect that commonly raised queries can be most effectively addressed through channels such as this newsletter.

If your query is not application related but more general in nature, please use Investors@dol.govt.nz. This email address is monitored daily by Jonathan Maitland, Immigration Manager and Fiona White, Client Manager – Investor Policy. You can expect a reply within 48 hours.

Migrant Investment Category Application Status as at 17 August 2012

INVESTOR TYPE	Being Processed – EOI/ ITA/ Application		AIP Granted to transfer & invest funds		Application completed (funds invested)*		Totals	
	#	Value (NZ\$ million)	#	Value (NZ\$ million)	#	Value (NZ\$ million)	Total Number	Total Value (NZ\$ million)
Investor Plus	12	120	18	180	13	130	43	430
Investor	114	169.25	146	233.75	99	167.50	359	570.50
Transitional**			6	9.5	16	42.25	22	51.75
TOTALS	126	289.25	170	423.25	128	339.75	424	1052.25

*Declined applications are not included/ ** Transitioned from the 2007 Active Investment Policy

Top 3 nationalities approved by \$ and volume	Investor		Investor Plus		Totals	
	COUNTRY	#	Value (NZ\$ million)	#	Value (NZ\$ million)	#
USA	20	39	5	50	25	89
Great Britain	26	47.5	2	20	28	67.5
China	25	38	2	20	27	58

LTBV TEAM UPDATE – Phil Griffith

It's been a busy and interesting first year with Business Migration Branch. Key focus areas set within the team were customer/ advisor engagement, transparency and consistency in policy application and being agile to business needs (especially around sale and purchase agreements). As a team we have seen good improvements in these areas whilst dealing with increasing volumes of applications.

LTBV interims saw strong growth of tendered and accepted (for processing) up 36% to 685 from the previous financial year (year ending 30th June). Year to date the LTBV growth trend continues up a further 37% on previous financial year. Chinese and Korean applications continue to be our two biggest markets.

LTBV Interim application processing year to date is 76.6% within three months; this includes applications that need complex medical referrals.

I have had the pleasure to meet or speak with many of you over the last twelve months, and the feedback you have provided regarding our team has generally been really positive. This year I look forward to further enhancing our team's engagement with advisers and working together as trusted partners to achieve positive and tangible economic development for New Zealand.

The following items relating to LTBV/ Entrepreneur applications are tips or clarifications to help you to achieve a better outcome for your client.

Effective market research, do it once do it right!

It's imperative that comprehensive market research is completed before lodging an LTBV application to demonstrate knowledge about the proposed business and the New Zealand business environment. Effective market research is critical for the principal applicant to have the best possible success with their application and their business venture.

Lack of comprehensive documented market research is a problematic area for a number of business plans. The absence of genuine or sufficient market research is also leading to an increase in requests for changes of plan.

Important factors for a potential applicant to consider during market research before lodging an LTBV interim application:

- Decide if you are establishing a new business or purchasing an existing business (if existing you must specify the specific business and not the business type)
- Consider market demand for your business or market saturation
- Potential customers / customer demographics

- Competitors and what your point of difference will be
- The way trade is usually carried out in your industry (the 'how' your business works)
- Who the suppliers or key stakeholders are within your business
- Staff, support and technology you require
- Trends and emerging technology (Pay particular attention to trends and emerging developments or technologies, e.g. there is little point in entering a declining or saturated market. You need to detail how you will take advantage of emerging opportunities).

Applicants who have not completed adequate or genuine market research often change their mind and request a change of plan after being issued with an LTBV interim visa to establish the proposed business. BMB will deal with such requests in the following way.

A change of plan request must be considered in accordance with the change of plan instructions (BC10).

Where a Business Immigration Specialist makes the determination that there are no genuine reasons to abandon the client's original business proposal, the principal applicant must then be offered the option of continuing with their original business proposal (BC10.1c). If the principal applicant chooses to abandon their proposal they must remain lawful by applying for another visa or new LTBV or may face deportation.

Important to note - where BC8 was exercised in the original LTBV interim due to a significant or high level benefit, BC8 does not necessarily translate to the new LTBV (Change of Plan) application if the new plan has a lesser benefit. The decision could be different from the earlier approval as a Business Immigration Specialist may not consider it appropriate to now apply BC8 to their new business proposal, if the applicant fails to meet LTBV instructions.

If BC8 was not used in the earlier application and the new business proposal meets LTBV requirements then it is likely we will be able to process this application quickly.

Be specific: "The where? and what? of an LTBV"

BMB requires LTBV applicants to identify a specific business and not only a business type for the purchase of an existing business. A specific existing business is required along with supporting documentation required to assess/verify the economic benefit of the specific business, which is essentially the intent of the policy.

BC4.1 Definition of a business plan
A business plan is a plan to establish a specific business in New Zealand, which contains information as set out in the business plan form, and is supported by appropriate documentation

A non-specific business proposal or the concept of one does not exist anywhere in policy.

Visa categories other than LTBV can cater for business applicants who wish investigate, scope or 'shop' for a business in New Zealand (see V3 for example).

LTBV is a 'work to residence' product and we want to maximise the likelihood of success under a subsequent Entrepreneur category application. We do not want to set applicants up to fail and adopt a 'give it a go' approach at any cost to New Zealand. BMB wants to ensure business migrants to NZ have the best possible opportunity to be successful during their LTBV.

At LTBV stage applicants need to demonstrate to the satisfaction of a Business Immigration Specialist what benefit their business will deliver to New Zealand, rather than simply demonstrate how their proposed business may be a vehicle under

which they and any accompanying family members may simply 'survive' in New Zealand. At Entrepreneur stage applicants also need to demonstrate the benefit they have made to New Zealand, usually as stipulated at LTBV application stage.

Creating employment in an LTBV proposal is a frequently claimed benefit. Where applicants propose to purchase an existing business they should provide appropriate documentation about that business (e.g. employee monthly schedules/ previous business financials if the benefit is creating employment) so that they can clearly articulate the benefit and position themselves for success in the business and in their subsequent Entrepreneur residence application.

Problems with a 'non-specific' proposal can be significant, and include applicants who do not have genuine bona fides using this visa type. LTBV should not be the policy of last resort for migrants who are unable to meet the requirements of other categories.

Also problematic with a non-specific approach can be the delay of up to 36 months before Immigration New Zealand finally gets to assess the benefit of the proposed LTBV. Frequently at Entrepreneur residence application stage BMB is informed that a business cannot obtain the financials or employee monthly schedules of the business they initially purchased and applicants cannot demonstrate the benefit to New Zealand. BMB is then required to make a decision without all relevant information. This can result in a higher decline rate, similar to that of direct entry Entrepreneur applications where applications have not been pre-assessed to evaluate the benefit proposition.

The non-specific approach also limits the amount of specific due diligence and market research an applicant should reasonably

complete before the LTBV interim is lodged. This shortens the period of time an applicant has to effectively get their business established and operational.

The Balance

Recently we have seen a growing number of advisers sending in balance applications early or prematurely within the nine month LTBV interim period, requesting the balance of the 36 month period. It is important that balance applications demonstrate that the business is established and operating to the satisfaction of the Business Immigration Specialist.

Compliance with Immigration and Employment Law

Recent media coverage has highlighted concerns around migrant workers being paid less than the minimum wage.

LTBV applicants should be able to demonstrate knowledge of the following in business plans:

1. The applicant is aware of key aspects of New Zealand Employment Law including minimum wage, PAYE requirements.
2. Appropriate wages relative to position of the business employees, e.g. it is not appropriate to pay a Chef \$13.50 per hour.
3. All workers are on appropriate valid working visas.
4. When claiming employment as a benefit of LTBV, the employee(s) must be New Zealand Citizens or Residents at the time their employment commences.
5. Employee minimum rights under the Employment Act.

Further information on employer obligations is available on BMB pages on the INZ website. See Useful Links – Information on your obligations in running your business.

Fast Track of LTBV applications (being agile to business needs)

An exciting new processing initiative is being trialled in BMB - *Fast Track processing (4-6 weeks)*.

- Has your client found a great business opportunity
- Does your client have a purchase and sale agreement
- Does your client clearly meet best fit to LTBV policy (no BC8 required)
- Do all applicants have clear medicals and PC's

- Do you have all supporting documentation available at the time of lodgement that is required for processing
- Is the application succinct and clear in how the applicant meets each part of LTBV policy, free from superfluous information

If you have a high quality LTBV application that you feel may meet the requirements listed above please email Philip.griffith@dol.govt.nz and request a checklist to submit with your application for Fast Track processing.

ADMINISTRATION SUPPORT TEAM UPDATE

The Support team is often the first contact advisors and applicants have with the branch and we aim to make lodgement of applications a stress free process. Our support staff do a great job in helping keep our work in flow. To enable the most efficient lodgement of applications, we provide the following tips and guidance:

Complete applications

Please ensure that you provide complete applications for lodgement including all medicals and police certificates for each applicant as applicable. The branch will not accept applications without these documents. A confirmation letter stating these documents have been applied for is not acceptable. The reason for this is to not disadvantage those applicants who have provided complete information and so that we may provide the most timely service to our customers.

Payment of fees

Please check the Immigration website for the correct fee required. If payment is to be made by credit card, please make sure there are sufficient funds on the credit card or the limit has not been reached. This will save us

(and you) considerable time in not having to chase up payments.

File order

To assist Support Officer's lodgement of applications, please do not send applications in folders. Either place a rubber band around them or clip them together. It would also be appreciated if all applications in general were organised (with identification tabs for each section) in the following order:

- Advisor's submission/cover letter (on top)
- Application form

Evidence of

- business type, business experience, funds earned etc
- English ability/ IELTS
- relationship with partner
- dependency of children

- Passports
- Birth/Marriage certificates
- Medicals
- Police certificates (at the bottom)

It is not a requirement to provide a complete copy of the application. Some advisers do

provide a copy of the application which does assist with the lodgement process and is much appreciated – thank you!

Providing supporting documents

Please note that all documents provided in support of applications must be, either the original documents, certified copies or notarised copies. Certified copies must be made only by a person who is authorised by law to make such copies. Notarised copies must only be made by a Notary Public.

For Korean applicants, please provide the Family register document for the partner along with the personal and basic certificate documents as well as marriage certificates. For Chinese applicants, we also require the local Chinese Police certificate and its translation along with the notarised Police certificate.

Guidance on the effective submission of English language translations

Any document that is not in English must be accompanied by an English translation that

has been prepared by a recognised translator or translation business. This can include an embassy or high commission, provided the translation is endorsed with the appropriate embassy or high commission seal.

All translations should comply with the following:

- The translator must, on the translation, certify the translation as a correct and accurate translation
- The translation must bear the stamp or signature and details of the translator or translation business

- The original foreign language document (or a certified/notarised copy) must be attached securely (e.g. stapled, punched and tied) to the translation by the translator and a stamp or seal must be placed over both documents in order to clearly show that they relate to each other

Please note that poorly presented translation documents will not be considered.

NEWS, VIEWS & INTERVIEWS

Developing issue - 'Working capital'

At the NZAMI seminar which the branch presented at in July BMB undertook to provide some clarification on how it interprets 'working capital' in terms of investment criteria under the Entrepreneur Plus Category. This category requires an investment of a minimum \$0.5 million into a business, which needs to be retained for a period of at least two years.

The objective of the Entrepreneur Plus Category is to attract migrants who can demonstrate they have been actively participating in business and contributing to New Zealand's economic development.

'Working capital' is not a term which is used in the immigration instructions. In assessing an investment under this category a Business Immigration Specialist will consider the investment to be money actually expended on the business, such as by way of a sale and purchase agreement or fixed assets; where cash/ liquid funds are claimed to form part of the investment in the business the assessing Business Immigration Specialist will need to be satisfied that those funds are actively

committed to the business, rather than passively held.

We understand that two cases are currently with the Immigration and Protection Tribunal which may involve issues over cash/ liquid capital assets. We await the outcome of these cases and will provide an update on this when we receive the IPT decisions.

In the meantime should you have a case which you consider may be eligible under the Entrepreneur Plus Category where the investment may be considered to be marginal, you may contact us to discuss this in advance of submitting an application. Whilst this category is appropriate for some applications, others have in our experience attempted to overstate 'investment' and job creation criteria and would be better served by the standard Entrepreneur Category route to residence.

Reminders for Expiry of Invitations to Apply and Transfer of Funds Expiry

We have in the past, as a courtesy contacted advisers as well as unrepresented applicants to provide reminders of critical upcoming dates in the Investor category application process. From September 2012 we will no longer send these types of reminders to advisers/ lawyers as important dates will

already have been communicated and we trust that advisers will have systems in place to meet important deadlines. We will continue to send two year reminders regarding section 49(1) conditions, and reminders prior to the end of the three or four year investment period.

Accredited Employers

As part of our commitment to provide high quality, timely service to accredited employers we have recently automated email contact to existing accredited businesses. The email message reminds accredited employers of their obligations, with information to assist in their renewal application. This in turn assists branch staff better enable a timely decision for the customer and seamless continuity of accreditation status.

Accredited employers who would like an advisor or lawyer to also receive these communications may request that, or advisers may send us a form of authority to this effect and we will add the advisor to our database as a contact.

Business Migration Branch Website Pages

There are branch pages on the INZ website which you may find useful. This is where we publish the results of fortnightly Investor EOI selections. There is also information on

processing times under the main categories we deal with which is updated on a monthly basis. These pages include some information on common reason for delays in applications.

There's also a Useful Links section here, which includes information on Business Opportunities in New Zealand, Help in Running a Business, and Information on Obligations in running a business in New Zealand.

Application Checklists

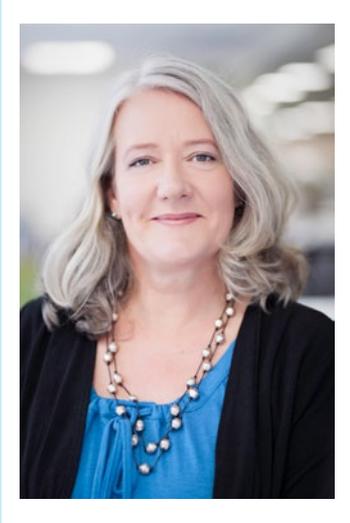
The branch has developed application checklists for the main categories we deal with – LTBV, Entrepreneur, the Migrant Investment Categories, Talent Residence from Work and Accreditation policies. These are available on the branch pages.

The aim of the checklists is to improve the level of customer application information, which advisers and applicants may use as supplement information to ensure they meet application requirements, or to better understand what will be required in advance of an application being submitted. This is so that better quality, more complete applications are received. The checklists include examples where we think that may be helpful. The checklists are not meant to be exhaustive and are not intended to replace or repeat the instructions.

<http://www.immigration.govt.nz/branch/bmb/checklists/>

TEAM MEMBER PROFILE

Fiona White, Client Manager – Investor Policy



I am taking this opportunity to briefly introduce you to the work that I do at BMB.

Very broadly I provide a premium customer service to people applying, or considering applying, for residence under the Migrant Investment Categories. In particular I personally assist Investor Plus clients with questions about the policy and process, and how to find the connections and information they need in New Zealand.

Our migrant investor policies are attracting some world class applicants and it is essential that these people have the best experience of Immigration New Zealand, and indeed New Zealand in general, right from the very beginning. Investor and potential investor clients are always welcome to visit the Business Migration Branch if they are travelling to New Zealand. This is a great aspect of my job and I have met some fantastic high quality, people involved in some very innovative businesses.

As the Client Manager I am based within the Business Migration Branch and I also work with the Migrant Attraction Unit of the Settlement, Protection and Attraction Division. There is a very important link between investor attraction and operational delivery and we work together to ensure these two streams are aligned.

Our wider Investor migrant goal is to increase capital flows to grow New Zealand's economy by identifying, introducing and integrating smart people and capital to New Zealand. This strategy is centred on a strong NZ Inc connectivity where we have shared goals and work together across government agencies, particularly New Zealand Trade & Enterprise (NZTE), to achieve those goals.

Last but by no means least are important private sector stakeholders, including licenced immigration advisers and lawyers.

As well as working with these groups we have worked with and provided assistance to major banks, private bankers, accountants, private business, fund managers, angels and the VC & PE markets. As an example, if an individual or agency is interested I can explain the opportunities our investor policies provide and the intricacies of successfully administering and interpreting those policies and how that would work for the interested party.

You are welcome to contact me should you have any questions. My email address is fiona.white@dol.govt.nz. Please otherwise feel free to call me for a chat about opportunities for your investor/ business clients, or any other matters on (04) 910-5421.