



MEMO

DATE	29 September 2022
TO	Dan Smidt, National Manager Risk and Verification (Acting), V&C Jeannie Melville, Head of AEWV, OTI
FROM	Privacy of natural persons Risk and Verification Manager (Acting), V&C
THROUGH	Privacy of natural persons Manager Risk and Verification Onshore, V&C
SUBJECT	RISK MONITORING AND REVIEW ACTIVITY - ACCREDITED EMPLOYER WORK VISA

PURPOSE

This memo provides the outcomes of targeted Risk Monitoring and Review (RMR) activity for Accredited Employer Work Visa (AEWV) applications to support the general instruction issued by the Deputy Secretary to streamline visa processing. The RMR activity identifies if applications are being assessed in line with the general instruction, and if any immigration risk is being missed as a result. This memo has findings for the period 23 August to 3 September 2022.

RECOMMENDATIONS

It is recommended that you:

- a. **Note** the findings of the RMR activity for AEWV applications, and that there are some concerns with risk rules and alerts/warnings not being treated appropriately, noting this may be a result of an adjustment to a new policy and general instruction, or the general instruction being applied to occupations that are not within scope

Noted

- b. **Note** there were examples of employment agreements not meeting minimum standards, which may require a referral to the Labour Inspectorate

Noted

- c. **Note** there were examples of employment agreements not being submitted with the work visa application, noting that employment agreements do not have to be checked unless they are required as per the general instruction

Noted



- d. **Note** that further RMR activity will be undertaken by Risk and Verification for applications decided until the end of September 2022

Noted

Dan Smidt

National Manager Risk and Verification
Verification and Compliance
..... September 2022

Jeannie Melville

Head of AEWV
Operational Tasking and Improvement
..... September 2022

BACKGROUND

1. On 22 August, the Deputy Secretary issued a general instruction¹ under section 26(4) of the Immigration Act 2009 to temporarily adjust the manner in which immigration officers assess applications for AEWV. This followed a general instruction² issued on 25 July 2022 for a temporary adjustment to the manner in which immigration officers assess applications against immigration instructions for Job Check applications.
2. Under this general instruction, applications were required to undergo a job check validation to ensure that:
 - a. the location and job title of the role are the same as what was approved in the job check
 - b. the job description matches the job title of the role
 - c. the rate of pay is within the range declared by the employer in the job check
 - d. the hours of work are the same as declared by the employer in the job check.
3. Further verification should only have been undertaken if there were other risks evident because of the job check. This applied to employees:

¹ Memo – General Instruction on the Manner of Processing Accredited Employer Work Visa, dated 23/08/2022

² Memo – Operational Levers to Clear Current Job Check Queue, dated 25/07/2022



-
- a. of triangular employers including labour hire companies
 - b. of franchise business models
 - c. whose remuneration includes a piece rate component
 - d. whose applications trigger an alert or warning or for whom Immigration New Zealand (INZ) holds adverse information.
4. The following applications were to be treated as low risk despite their triage level:
- a. health and education roles
 - b. all roles that require registration
 - c. all tier 1 Green List roles
 - d. all migrants paid at 200 per cent of the median wage.
5. Applications outside of the above criteria that triaged as low risk or medium by default were to be treated as normal and could be treated at face value if no concerns were identified. Medium by rule has specific concerns, so while these may be treated at face value, they may also require verification. High risk applications (unless part of the exception above) should begin with quick verification and only proceed to intermediate verification after consultation with a technical advisor.

RISK MONITORING AND REVIEW SCOPE

6. Decided applications during the period of the general instruction were selected based on a 95 per cent confidence interval and 5 per cent margin of error³, within each population group of interest.
7. RMR activity by Risk and Verification undertook a targeted review of:
- a. a job check validation for applications associated with employers holding standard accreditation or high volume, by comparing the job check letter with the declaration
 - b. a job check validation for applications associated with employers holding franchise or triangular accreditation, those applicants with piece rate remuneration, or those applicants with relevant alert/warning, by comparing the job check letter with job agreement, and only verifying if concerns identified
 - c. worker eligibility verification and compliance with Standard Operating Procedure (SOP) guidance for the relevant triage rating
 - d. roles treated as low risk despite higher triage level for:
 - i. health and education roles
 - ii. all roles that require registration

³ A confidence interval displays the probability that a parameter will fall between a pair of values around the mean. Confidence intervals measure the degree of uncertainty or certainty in a sampling method.



-
- iii. all tier 1 Green List roles
 - iv. all migrants paid at 200 percent of the median wage
 - e. for high risk applications, starting with a quick check and seeking approval from a technical advisor for intermediate verification
 - f. risks identified that were not treated due to streamlining guidance
 8. Other aspects of AEWV policy, such as identity, health, and character were out of scope for the purpose of RMR activity.
 9. RMR activity will be completed for decided applications for the period of the general instruction, currently until the end of September 2022.
 10. When data was obtained for RMR activity, the data did not break down triage by medium by default and medium by rule. As this data has been combined and referred to as 'medium' risk, it will impact on some of the findings.

KEY FINDINGS FROM RMR ACTIVITY

Findings from week one – 23 August 2022 to 28 August 2022

11. For this period 1467 AEWV applications were decided, and 121 applications underwent RMR activity. The triage levels of the 121 applications were broken down by 53 (44%) high risk applications, 39 (32%) medium risk applications and 29 (24%) low risk applications.

Untreated risk – met occupation criteria for applications to be treated as low risk

12. There were 27 applications treated as low risk despite their triage level as they met the occupation criteria. This consisted of 14 high risk applications and 13 medium risk applications. There was one application that did not have the risk treated when it triaged as medium by rule.
13. There were no alerts or warnings that triggered for any of the 27 applications.
14. For the job check validation, there were two applications that triaged as medium risk where it was noted that the job check and the employment agreement had different pay rates (one was a difference of \$1.75 per hour and the other \$5.00 per hour). One employment agreement also did not appear to contain all the required clauses.
15. There was one application where there was no employment agreement provided, therefore RMR activity has not been able to address if the application was treated appropriately.



-
16. Overall, there was low rate of immigration risk identified within this group with four applications out of 27 not having the risk treated correctly or concerns were raised about the employment agreement. Further, there was one application in the sample where there was insufficient evidence provided to make a determination as to whether immigration risk had been adequately treated.

Untreated risk – applications assessed as per risk level

17. There were 69 applications that required an assessment as per their risk level, consisting of 39 high risk applications, 26 medium risk applications and four low risk applications.
18. There were six high risk applications where verification or a consult should have been undertaken but the immigration officer accepted the risk at face value. There were an additional six applications that had a form of verification undertaken, however the treatment was not appropriate for the risk identified. For example, a risk rule triggered about possible fraudulent work experience, however verification focused on the onshore employer and how their compliance may support the applicant's bona fides.
19. There were 21 applications that required further checks due to an adverse alert or warning.
20. Concerns were noted in three applications about the employment agreement, including the rate of pay being inconsistent to the job check, and break times not meeting requirements under the Employment Relations Act 2000. One employment agreement was incomplete and did not record the hours to be worked and the hourly pay rate was inconsistent with the job check.
21. There was a lack of assessment notes in two applications to determine if any risk was present.

Over verification or incorrect validation despite the general instruction

22. There were 10 applications that underwent verification or despite the applications being able to be treated as low risk as they met the occupation criteria.
23. There were 10 applications that did not have the correct job check validation completed, indicating that some applications were over assessed or the potential for risks to be missed.

Findings from week two – 29 August 2022 to 3 September 2022

24. For this period 2128 AEVW applications were decided, and 163 applications underwent RMR activity. The triage levels of the 163 applications were broken down by 78 (48%) high risk applications, 59 (36%) medium risk applications and 26 (16%) low risk applications.



Untreated risk – met occupation criteria for applications to be treated as low risk

25. There were 31 applications treated as low risk despite their triage level as they met the occupation criteria. This consisted of 13 high risk applications and 18 medium risk applications.
26. There were two applications that required further checks due to an adverse alert or warning. Both alerts were assessed by the immigration officer however RMR activity has identified one of these cases may not have had the correct treatment due to concerns for migrant exploitation and may require a referral to the Labour Inspectorate.
27. For the job check validation, there was one application that triaged as medium risk where it was noted that the job check and the employment agreement had different pay rates.
28. One application had a pay rate that was the exact amount required for a green list occupation. However, the IEA stated the employee may be required to work excess hours without compensation, which may result in their hourly rate falling below the minimum rate required for a green list occupation.
29. There was one application where there was no employment agreement provided, one application where the application form itself was not present in the document section (possibly due to a system issue rather than the applicant not submitting the form), and two applications where the immigration officer has not entered an assessment or there was insufficient rationale. As a result, the RMR activity has not been able to address if these applications were treated appropriately.
30. Overall, there was a rate of immigration risk identified within this group with three applications out of 31 not having the risk treated correctly or where concerns were raised about the employment agreement. There were a further three applications in the sample where there was insufficient evidence provided to make a determination as to whether immigration risk had been adequately treated.

Untreated risk – applications assessed as per risk level

31. There were 117 applications that required an assessment as per their risk level, consisting of 65 high risk applications, 41 medium risk applications and 11 low risk applications.
32. There were three applications that triggered as high risk where the risk was not treated. There were an additional five high risk applications where the verification type was insufficient for the risk identified. In most cases the immigration officer had undertaken



open-source checks on the business, however the risk identified was to do with the applicant's prior work experience.

33. There were 22 applications that required further checks due to an adverse alert or warning. There were at least four warnings where the risk was not appropriately assessed, including warnings where concerns were raised that employers were not meeting minimum employment standards and employees breaching visa conditions.
34. Concerns were noted that five applications did not have employment agreements which appear to meet minimum standards. **Maintenance of the law**

[Redacted text block]

35. There were two applications where there was no employment agreement provided, and five applications where the immigration officer has not entered an assessment or there was insufficient rationale. As a result, the RMR activity has not been able to address if these applications were treated appropriately.

Over verification or incorrect validation despite the general instruction

36. There were five applications that underwent verification despite the applications being able to be treated as low risk as they met the occupation criteria.
37. There were 17 applications that did not have the correct job check validation completed, indicating that some applications were over assessed or the potential for risks to be missed.

SUMMARY OF RISKS


38. The RMR activity has shown that some risks are not being addressed appropriately due to some checks or assessments not being completed as they should. This may be a result of the policy being new, as well as immigration officers having to respond to the general instruction which may have led to some confusion about what information or assessment is required, or the general instruction being applied to occupations that are not within scope.
39. There was a consistent theme of risk rules and alerts/warnings not being appropriately addressed; either by not having the risk treated at all or the verification type being



insufficient for the risk identified. (e.g. employers may not be meeting minimum employment standards or employees may breach their visa conditions, or offshore work experience was not being assessed).

40. For the most part, the employment agreements met minimum standards however there were cases where agreements did not have all the required clauses, there were concerns with the leave provisions, or around guaranteed hours. The RMR activity showed there were some cases which may warrant a referral to the Labour Inspectorate.
41. Over the two-week period, there were four cases in the sample group where work visa applications were decided and no employment agreements were provided with the application. There is a reputational risk that work visas are being decided without an employment agreement being submitted with the application, and this may present an issue in future if it is subsequently discovered migrant employees were exploited or had breaches of minimum employment standards.

NEXT STEPS

42. Risk and Verification will provide a report on the outcome of this RMR activity for the cohort decided to the end of September on Wednesday 5th October.
43. Consideration of an extension of the General Instructions is currently underway. Risk and Verification recommends the following actions are undertaken if the duration is to be extended:
 - a) **Maintenance of the law** 
 - b) R&V to establish centralised, formal referral channels to LI for employment agreements of concern identified in RMR including developing criteria for referrals in conjunction with LI.
 - c) SOPs to be updated or guidance provided to IOs to ensure an employment agreement is submitted with the application even where they do not need to check this and reiterate the requirement to treat risk in line with SOPS for cohorts not covered by the GI.