

Review
of the practices of
the Business Migration Branch
of the New Zealand Immigration Service
during 2002

For the Deputy Secretary – Legal
Department of Labour

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Introduction

1. I was asked by the Deputy Secretary – Legal of the Department of Labour to manage an investigation into a specific aspect of a wide-ranging complaint by the Honourable Tuariki Delamere against the New Zealand Immigration Service (“NZIS”).
2. In his letter of 4 December 2005 (the letter of complaint), Mr Delamere states, amongst other things:

“5. I also believe an investigation and/or enquiry should be held into what seems to be the cover up by the former General Manager of the NZIS of possible corrupt practices in the Business Migration Branch during 2001 and 2002.”

3. Attached to the letter of complaint is a document prepared by Mr Delamere dated 27 November 2005 and entitled “*A Report Documenting the Unlawful Activities of the New Zealand Immigration Service*”. At pages 8 and 9 of this document (“The possible cover-up of possible bribery at BMB”), Mr Delamere alleges that:

- in 2002, 91 “*business*” applications were assessed and approved in less than one week (from the date the application arrived at the NZIS to when the decision was made), and at least one application had been assessed and approved on the same day;
- the NZIS had stated that the applications had been dealt with in that timeframe because they were “*just so outstanding*” and therefore needed to be approved immediately. (In a previous letter of complaint, dated 8 February 2003, Mr Delamere said that NZIS employees had stated that the reason for some applications being processed within one week (when other applications were not allegedly allocated to a business immigration specialist for eight months) was that some applications “*just stand out for their quality and ease of processing and verification*”. Presumably, this is where Mr Delamere’s reference to “*just so outstanding*” came from);
- in 2002, there was a backlog of 3000 cases, and applicants had been told it would take eight months before their application could be assigned to a case officer for initial assessment;
- it was impossible for a business immigration specialist to assess and verify the accuracy and validity of a “*business investor*” application in one week, much less in one day;
- in 2001 and 2002, it was well known in the immigration industry that some applicants from China and South Korea would pay more than \$50,000 for an immediate approval of their “*residency*” application (no further details of this allegation were provided by Mr Delamere);
- the only way these 91 applications could have been processed in the timeframe that they were was if somebody had specifically intervened and given them priority. Without such intervention, the 91 applications could not have been identified as “*outstanding*” from the 3000 applications waiting to be assessed.

4. I was asked to investigate the handling of the 91 applications to which Mr Delamere had referred. My instructions were to assess whether the applications were handled according to normal

standards, whether there was any evidence that officials were influenced by external forces, and whether officials involved with processing the cases had behaved appropriately.

5. In essence, Mr Delamere highlighted various contextual issues ie the backlog and processing times; stated his opinion that the accuracy and validity of an application could not be assessed in a week; observed that it was well known that applicants were paying large sums of money for quick processing and then concluded that there must have been intervention by staff within the Business Migration Branch, that being the only way a new application could be processed so quickly. Specifically, as I understand him, Mr Delamere has suggested that some staff may have been paid (“bribery”), to either process these applications, or to ensure that they were put in the system for processing.
6. It is my role to see whether there is evidence to support the contention that there may have been “bribery”.

Background

7. The Business Migration Branch, on which this investigation focussed, was established in early 1999. Originally, it had only two staff members, and was referred to as the Business Migration Unit. Its purpose was to process two new types of immigration applications: Long Term Business Visas/Permits (“LTBV”) and Investor (“Investor”) (both in force from 26 July 1999).
8. At the outset, there were very few applications under these policies, but by the end of 1999 and through into early 2000, the number of applications for both LTBV and Investor status increased dramatically, in turn creating a significant workload for the Business Migration Unit.
9. In 2000, the Business Migration Unit took on new staff, and following a review, became the Business Migration Branch (“BMB”). Between 2000 and the beginning of 2002, the workload of the BMB continued to grow, and more staff were employed.
10. In late 2001, Catherine Parton and Peter Hendrikx were appointed as Service Leaders, and they each managed a team of Business Immigration Specialists (“case officers”) who were responsible for processing applications. The Service Leaders reported to a Service Manager, Lucky Ma Chee, who in turn reported to the Regional Manager NZ & Pacific, Lorraine Tomlinson. Ms Tomlinson reported to Andrew Lockhart, the Chief Operating Officer, and Mr Lockhart reported to Chris Hampton, the General Manager. (Mr Lockhart became the General Manager in January 2003).
11. By late 2001/early 2002, as Mr Delamere suggests, a large backlog of applications had built up (approximately 3,000 to 4,000), and each week up to a further 200 applications were lodged. This situation remained relatively constant throughout 2002. Applicants were predominantly from Asia.
12. Each Service Leader committed each member of his or her team to processing a certain number of applications per month. As will become clear later in this report, throughout 2002 at least, applications were not dealt with strictly in chronological order (i.e. in the order of their filing).
13. The work environment in the BMB during 2002 was pressured and busy, and, for many of the staff, stressful. There was pressure on the BMB to reduce the backlog of applications as quickly as possible.
14. On or about 20 November 2002, the LTBV and Investor policies were changed. The most significant change to the LTBV policy was a new requirement that the principal applicant demonstrate a certain level of fluency in English. Stricter English language requirements were also introduced into the Investor policy. These changes led to an immediate reduction in the number of LTBV and Investor applications being lodged.
15. On 21 January 2003, Michael Carley was appointed Service Manager, replacing Lucky Ma Chee who had resigned. Mr Carley merged the two teams in the BMB into one, and required all applications to be processed on a chronological basis only.

The investigation

16. The investigation has involved:
 - Meeting with the Deputy Secretary-Legal to be briefed and to obtain Mr Delamere’s complaint and the documentation setting out the background to that complaint;

- Liaising from time to time with Jonathan Maitland (who is currently the Acting Immigration Manager of the BMB, but who was not employed in the BMB during 2002). Mr Maitland undertook various enquiries and provided various statistics regarding the applications in question, and assisted with numerous requests for additional documentation;
 - Reviewing relevant documentation, which included pre and post 20 November 2002 LTBV and Investor policies, correspondence between the NZIS and Mr Delamere prior to him making the 4 December 2005 complaint, and a report on the governance arrangements in the BMB in 2002 prepared by Andrew Lockhart;
 - Analysis of the information and documentation provided;
 - Interviews with Andrew Lockhart, the Chief Operating Officer of the BMB at the time, with both the Service Leaders at the time (Catherine Parton and Peter Hendriks), who distributed applications to case officers, with Michael Carley, the Service Manager who took over the BMB in early 2003, and with a number of members of the two teams of case officers operating within the BMB at the relevant times.
17. The events in question occurred 5 years ago in 2002. Quite understandably, that has required considerable effort by the Department to locate all relevant documentation, and considerable effort on the part of those people I interviewed to recall the specific and day to day aspects of their roles within the BMB that I was interested in.
18. While it was common knowledge that various agents were charging considerable sums for assisting clients with their applications, I did not receive any documentation or comments to support an allegation of bribery or corruption. That in itself is not surprising. I, therefore, concentrated my efforts on analysing when, how and by whom the applications in question were processed, and on the then prevailing practices, on the basis that such an analysis might expose irregularities or activities which may be instructive in themselves or lead to other lines of inquiry.

The LTBV policy: a summary

19. The original LTBV policy (“the LTBV policy”) came into effect on 26 July 1999, and remained in force until 19 November 2002. The policy catered for business people interested in:
 - applying for residence under a different policy, the Entrepreneur policy (which they could do after operating a business in New Zealand for two years on a LTBV); and
 - establishing a business in New Zealand, without living permanently in New Zealand.
20. The LTBV policy required each principal applicant to:
 - have a satisfactory business plan;
 - have sufficient funds for maintenance and accommodation for himself or herself and any spouse, partner or dependent child included in the application;
 - meet health and character requirements; and
 - satisfy a case officer that he or she was genuinely interested in establishing a business in New Zealand.
 - The case officer also had to be satisfied that the principal applicant would abide by the conditions of the LTBV.
21. Before assessing an applicant’s business plan, the case officer first had to be satisfied that the applicant:
 - had access to sufficient capital to finance the proposed business;
 - had provided realistic financial forecasts;
 - had relevant business experience;
 - had not been involved in bankruptcy or business failure within the last five years;
 - had not been involved in business fraud or financial impropriety;
 - had obtained professional or occupational registration in New Zealand if registration were required for operating the proposed business; and
 - had provided sufficient supporting documentation.
22. The case officer had to assess the business plan by applying the NZIS Proposal Assessment Tool (NZIS PAT) as a guide. The NZIS PAT set out four sections or criteria under which the business plan could be assessed, and assigned weightings to those criteria (ie. Business Outline: 30%; Financial Information: 25%; Business Experience: 25%; and New Zealand Market Knowledge: 20%). The overall assessment of business plan was based on the weighted average of the four criteria.

23. The case officer could submit a business plan to an independent person for vetting, and would take the independent person's opinion into account in making a decision. For instance, some business plans were sent to KPMG for vetting.
24. The LTBV policy further provided that the case officer had to be satisfied that the documents provided in support of the business plan were genuine and accurate, and that the case officer could take any steps he or she considered necessary to verify those documents.
25. There was an element of discretion built in to the LTBV policy. If an application failed to meet the policy requirements, the case officer was required to *"weigh up all the circumstances of the case to see whether an exception to policy is justified"*.
26. A successful principal applicant under the LTBV policy was issued with a multiple entry, three-year work visa/permit (LTBV). Each LTBV was subject to two conditions: that the holder would be self-employed in his or her own business, or in a business in which the holder had made a substantial investment, and that the holder undertook not to draw on the New Zealand welfare system. The LTBV could be renewed once (provided certain conditions were met) for a further three year term.
27. The LTBV policy did not require applicants to demonstrate any level of fluency in English.

Post 20 November 2002 LTBV policy

28. From 20 November 2002, a new LTBV policy came into force ("the new LTBV policy"). One of the main differences introduced by the new LTBV policy was that the principal applicant had to meet a minimum standard of English. Mr Carley, who joined the BMB just after the policy change, suggested that it was the requirement of a minimum standard of English that led to the dramatic decline in the number of LTBV applications, particularly those from Asia, once the new policy came into effect.

The Investor policy: a summary

29. The original Investor policy came into effect on the same date as the LTBV policy: 26 July 1999. The policy remained in force until 13 June 2005, but was modified on a number of occasions, including from 20 November 2002 (discussed below).
30. Under the Investor policy, principal applicants were assessed according to a points system. There were three main criteria: age (principal applicants aged 85 years or older could not be approved), business experience and investment funds. If a principal applicant achieved a certain number of points, he or she was eligible for residence.
31. Unlike the pre-20 November 2002 LTBV policy, a principal applicant under the Investor policy had to meet a minimum standard of English, as did his or her partner, and any dependent children aged 16 years or over.
32. As well as having to provide evidence of age (such as a passport or an identity document), a principal applicant also had to provide evidence of business experience (which could include, for example, proof of ownership of a business, company accounts or tax returns, and a description of the applicant's responsibilities in the business).
33. The case officer assessing the application could require any other information about the applicant's business experience considered necessary to make a decision on the application, and had to be satisfied that the documents provided as evidence of business experience were genuine and accurate.
34. Also, to demonstrate that the principal applicant met the investment funds criteria, the applicant had to provide evidence of net funds and assets equivalent to his or her proposed investment funds, and evidence that those funds and assets were earned or acquired lawfully. The business immigration specialist could request further information if he or she considered that any of the evidence provided was unreliable, or doubted that the funds were earned or acquired legally.
35. Once a principal applicant's application was approved in principle, he or she had to, amongst other things, provide acceptable evidence of having transferred and invested his or her nominated funds in accordance with the Investor policy. The principal applicant, and any accompanying partner and dependent children, could then be issued with residence visas and permits, subject to requirements under section 18A of the Immigration Act 1987.
36. The main requirement that the Investor policy imposed under section 18A was that the principal applicant retain the investment funds in New Zealand, in an acceptable investment, for a minimum of two years. After the expiry of the two-year investment period, the principal applicant could apply for the requirements to be cancelled (i.e. apply for his or her residence permit, and those of any accompanying partner and dependent children, to be made unconditional).
37. From 20 November 2002, stricter English language requirements came into force under the Investor policy. This led to a significant reduction in the number of applications being lodged under the Investor policy.

Factual findings

Number and type of applications

38. Mr Delamere has raised concerns about 91 applications. He had earlier requested that the NZIS inform him how many applications had been decided under the Business Investor, LTBV and Employee of Relocating Business (“ERB”) policies in 2002 within seven days, 14 days, and one month from the lodgement of the application to the date of the decision.
39. In a letter dated 25 March 2003 from Mr Lockhart to Mr Delamere, Mr Lockhart disclosed that 31 Investor and 60 LTBV applications were processed in less than 7 days (no ERB applications had been processed within that timeframe). These are the 91 applications referred to in Mr Delamere’s letter of complaint.
40. After further review, the NZIS has advised that the total number of applications decided in 2002 within seven days from the lodgement of the application to the date of the decision was 89, not 91. The NZIS advised me that since 2003, the decisions made on two of the applications originally included in the data provided to Mr Delamere may have been reversed. This would mean that the decision date on these two applications would have been modified and would now fall outside the time frame of my investigation (January 2002 to December 2002). I have no reason to doubt this explanation, and in any event the change in numbers of applications is insignificant.
41. Of the 89 applications now recorded as having been decided within the seven day timeframe, 30 were Investor applications and 59 were LTBV applications.

Processing time for applications

42. I was advised that, at the time that the 89 applications were lodged and decided, the official position was that an Investor application and a LTBV application would take approximately three months to be processed. However, I was also advised, and I accept, that there was no average processing time for either type of application, and that the time it took to process an application would depend on a variety of factors. These included:
 - the quality of the documentation provided in support of the application;
 - the speed with which an applicant (or his or her agent) responded to requests for further information;
 - the amount of further verification that the case officer considered necessary.

Approved and declined applications

43. Of the 89 applications, 82 were approved (56 LTBV and 26 Investor) and 7 were declined (3 LTBV and 4 Investor). Given the nature of Mr Delamere’s allegations, it is difficult to see how there can be any concerns about the applications that were declined. Therefore, I will focus only on the 82 applications that were approved.

Replacement applications

44. Of the 56 LTBV applications and the 26 Investor applications recorded as having been approved within seven days from the lodgement of the application to the date of the decision, 19 of the LTBV applications and 5 of the Investor applications were "*replacement applications*".
45. I have ascertained that a case officer could enter an application into the Advanced Management System ("the AMS") (the NZIS database in which all applications and decisions made on those applications are recorded) where a mistake was made with the original application, or where a visa or permit label needed to be transferred into a new passport. This was known as a "replacement application". In 2002 the AMS did not distinguish a "replacement application" from a fresh application. I understand that there is now a separate function in the AMS which allows a case officer to identify a replacement application as such.
46. Therefore, even though at first sight these 24 replacement applications (19 LTBV and 5 Investor) appear as new applications, they in fact relate to applications on which a substantive decision had already been made.
47. I was advised and accept that it was not unusual for a replacement application to be raised and decided in AMS on the same day on the basis that the assessment of the application had occurred on an earlier date and a favourable decision made.

Spouse applications

48. A further 6 of the 56 LTBV applications were "*spouse applications*".
49. With Investor applications, a principal applicant and his or her spouse were recorded on the same AMS application. However, with LTBV applications, two different applications were raised in AMS, one for the principal applicant and one for his or her spouse. This was to enable different conditions to be placed on the principal applicant's and the spouse's visa or permit labels.
50. Therefore, even though at first sight these 6 spouse applications may appear as new LTBV applications, they are in fact applications secondary to LTBV applications which had already been decided.
51. I was advised and accept that after a decision is made on a principal applicant's application, a "*spouse application*" can be processed relatively quickly, assuming that good quality documentation has been provided with the application.

Section 18A application

52. One of the 26 Investor applications was a "*section 18A application*" (ie section 18A of the Immigration Act 1987). As set out above, section 18A provides that requirements may be imposed on residence permits after they are granted, in accordance with the applicable policy. The holder of a residence permit may apply for those requirements to be cancelled.
53. As discussed, the main requirement that the Investor policy stipulated was that every permit granted to a principal applicant under the policy had to include a requirement that the principal applicant invest his or her nominated funds in New Zealand for two years. Within three months of the end of the two year time frame, the holder of a permit under the Investor policy could apply to

have the section 18A requirements lifted. Such an application would be raised in the AMS as "Permit, Residence, Removal of section 18A conditions".

54. I was advised and accept that an application to remove section 18A requirements was not a complex matter and could be decided relatively quickly.

General work visa application

55. One of the 56 LTBV applications was in fact an application for a general work visa, and should not have been raised in the AMS as an LTBV application. A French applicant made the application, unassisted by an agent, and it was tendered and decided in the NZIS branch in Paris (ie. by a case officer outside the BMB).
56. I was advised that an application for a general work visa could, depending on the quality of documentation provided, be decided relatively quickly. In this specific case, the decision to approve the application was made in two days (from the date the application was tendered to the date of the decision). I was advised and accept that this was not an unusually quick decision for such an application.

Summary of numbers of applications

57. In summary, I am satisfied that, of the 82 applications that remain of interest to me, the 24 replacement applications, the 6 spouse applications, the section 18A application, and the general work visa application (32 applications in total) were not complex or time consuming and could legitimately have been processed quickly. I can add that I have not seen or heard anything which causes me concern about these 32 applications.
58. On that basis, I have focussed on the remaining 50 applications, being 30 LTBV and 20 Investor applications, ie:

- 91 applications complained about (paragraph 3)
- Less 2 applications where the original decision entered on the AMS may have been subsequently reversed (paragraph 40).

Total 89 applications

- Less 7 applications (3 LTBV and 4 Investor) that were declined (paragraph 43)

Total 82 applications (56 LTBV and 26 Investor)

- Less 24 replacement applications (19 LTBV and 5 Investor) (paragraphs 44 to 47);
- Less 6 spouse applications (all lodged as LTBVs) (paragraphs 48 to 51); and
- Less 1 section 18A application (Investor) (paragraphs 52 to 54);
- Less 1 general work visa application (lodged as a LTBV) (paragraphs 55 to 56);

TOTAL 50 applications (30 LTBV and 20 Investor)

Nationality of applicants

59. Set out below is a table which identifies the nationality of the applicants who made the 50 applications in question:

China	22
South Korea	16
Great Britain	3
USA	3
Pakistan	1
Japan	1
Tonga	1
Thailand	1
Fiji	1
Hong Kong	1

60. Applicants from South Korea and China (38 applications) made 76% of the applications in question. I have noted the percentage of applicants from South Korea and China on the basis of Mr Delamere's comments that it was well known in the immigration industry that some applicants from these countries paid large sums of money to have their applications processed quickly. I note that at this time a large percentage of all applicants were from China or South Korea. I also note that, of these 38 applications, 20 of the Chinese applicants were assisted by agents, and all 16 of the South Korean applicants were assisted by agents.

Agents involved in the applications

61. Set out below is a table which identifies the names of the agents involved in the applications in question. Agents represented applicants on 40 of the 50 applications in question.

Agent Company	Applications	Individual agent
Davenports/Davenports City Law	9	Marcus Beveridge (9)
Malcolm Pacific	5	Edward Ho (2), Stephen Haigh (1), Deidre Calvert (1) Seala Misa (1)
Liew & Associates	4	William Liew (4)
ABACI Tax Accounting Co	4	Moon Chang Suh (4)
Kundig Associates	2	Paulo Kundig (1), Mark Williams (1)
Bell Gully	2	Huny Hwangbo (1), other agent unknown (1)
World One Group	2	Kimberly Rhee (2)
New Zealand Business & Immigration Consultancy Ltd	1	Agent unknown
Great Wall Information & Services Ltd	1	Simon Yang
Bryan Hu	1	Bryan Hu
Alex Lee Associates	1	Gerry O'Neill
Legend Consultancy	1	Jason Kim Joong Kwon
Anderson Lloyd Caudwell	1	Darryl Gunn
Peters & Co	1	Christina Sohn
Longda (NZ) Trade & Investment	1	Roy Xue
MK Immigration Consultants	1	Mark Fleming
Union Immigration Consultants	1	Stephen Chan
Shanghai Well Trend Investment & Consulting	1	Jonathan Law

Thompson Qualtis	1	Bob Thompson
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62. This table demonstrates that of the 40 applications on which agents acted, 22 different agents (plus two agents who cannot be identified) were involved from 19 different agencies. No one agent stands out as having been involved in any significant proportion of the 40 applications, or, with one exception, as having been involved in the 40 applications to any significantly greater extent than any other agent. Davenports, an Auckland law firm who have worked in this field for many years, worked on 9 of the 40 applications (Marcus Beveridge being responsible for all 9 applications). These numbers are higher than numbers for the other agencies, or for any one agent, but in themselves are unremarkable. Nor have I seen or heard anything to cause me any concern about the slightly heightened number of applications where Davenports acted. Indeed, the view of those I interviewed was that Davenports generally produced good quality applications.

Division of the applications

63. As indicated in the introduction to this report, in late 2001 and throughout 2002, the BMB operated two teams of case officers, with each team being led by a Service Manager. Peter Hendriks and Catherine Parton were the two Service Managers. Internally, Mr Hendriks's team was known informally to some as the "fast track" team. It is not clear how this came about, but the figures show that this team processed more of the applications that are the focus of this report (ie those applications that were processed quickly). It must, however, also be noted that just over 20% of the applications in question were processed by Ms Parton's team.

64. An analysis of the relevant information produces the following statistics about the remaining 50 approved applications:

Applications assessed by Mr Hendriks's team

- Case officer one: 25 applications (plus 4 replacement applications, and 2 spouse applications)
- Case officer two: 5 applications (plus 3 replacement applications, and 1 section 18A application)
- Case officer three: 1 application (plus 3 spouse applications)
- Case officer four: 2 applications
- Case officer five: 4 applications (plus 1 replacement application)
- Case officer six: 1 application
- Case officer seven: 1 application
- Support team officer: 0 applications, (but 1 replacement application)
- Total: 39 applications (plus 9 replacement, 5 spouse and 1 section 18A application)

Applications assessed by Ms Parton's team

- Case officer one: 3 applications
- Case officer two: 0 applications (but 1 replacement application, and 1 spouse application)

Case officer three: 1 application (plus 1 replacement application)

Case officer four: 1 application

Case officer five: 2 applications

Case officer six: 0 applications (but 1 replacement application)

Case officer seven: 1 application

Case officer eight: 1 application

Case officer nine: 2 applications

Total: 11 applications (plus 3 replacement applications and one spouse application)

Applications assessed by case officers outside the Business Migration Branch

I note also that of the original 82 applications, 13 were processed by 10 other case officers who were not part of the BMB, but who were employed in other NZIS branches ie Auckland, Manakau, Auckland Central, Paris, Beijing, Shanghai, New Delhi and Bangkok.

Of these 13 applications, 12 were replacement applications, and 1 was the general work visa raised as an LTBV application (referred to above). For the reasons set out above, I have chosen not to explore replacement applications or the general work visa application further. In any event, I note that these 12 replacement applications (and the 1 application that was filed incorrectly) came from 10 different case officers in 7 different branches.

Summary of applications assessed by the Business Migration Branch

65. Across both Mr Hendrikx's and Ms Parton's teams, 14 staff members were involved in the processing of the 50 applications in question. Of those 14 staff members (7 in Mr Hendrikx's team and 7 in Ms Parton's team), 13 of them were responsible for processing 1 to 5 applications each. One of those 14 staff members (a member of Mr Hendrikx's team) processed 25 applications – about half of the applications that I am interested in. Before I comment further on these statistics I will address in more detail how the two teams operated and, in particular, how applications were allocated. I was particularly interested in allocations of applications other than in chronological order, ie oldest first.

Operation of the BMB during 2002

General observations

66. As outlined at the commencement of this report, the environment in the BMB during 2002 was pressured and busy, and, for many of the staff, stressful. There was pressure on those staff, in many forms, to reduce the backlog of applications as quickly as possible.
67. As indicated above, each week, up to a further 200 applications were lodged and, at any given point throughout 2002, the backlog stood at somewhere between 3,000 and 4,000 applications. The sheer volume of documentation was significant and, on occasions, when a large quantity of applications were received, case officers had to assist the support team with the lodgement process.
68. It is common ground amongst members of both teams that:
- their working space was tight and less than ideal;
 - there was a constant flow of enquiries and complaints from both agents and applicants about their applications and, in particular, processing time;
 - there was pressure from Service Leaders to get through the applications that had been allocated to them;
 - there was pressure on the Service Leaders to perform and to reduce the backlog;
 - the role of Mr Hendrikx's team was to speed up the reduction of the backlog.
69. It is not clear to me precisely why, how, or by whom Mr Hendrikx's team was selected or what entirely its role was. In this regard, I have received various comments from a number of people, not all of which were consistent. (I note here also that it was suggested to me that there was some tension between the two teams.) Members of Mr Hendrikx's team considered they had more business experience and therefore were in a better position to work through applications quickly and efficiently. I am not in a position to make any assessment of the accuracy or appropriateness of this view, and nor is it necessary that I do so.
70. I asked all staff members that I spoke with whether they were aware that some applicants were apparently paying large sums of money to agents for the agents' services in preparing and progressing their applications. Most said that they were aware of the stories and referred to various figures. However, some were not sure about when they had heard these stories. I do not think the fact of large payments, or BMB staff members' knowledge of such payments, advances my inquiry in any conclusive way in relation to Mr Delamere's serious allegations.

Receipt and allocation of applications

71. From my interviews with members of both teams, I have concluded that applications were, generally speaking, processed in the following way:

Initial receipt

- Application received in the BMB;

- A support team officer (as opposed to a case officer) made a file for the application, date stamped the application, recorded the receipt of the application on the AMS, and sent a letter confirming receipt of the application to the applicant or his or her agent;
- The support team officer filed the application in chronological order.

Allocation for processing

72. Each Service Leader chose which applications to allocate to his or her team members. This choice was made according to a variety of factors, which are set out in detail below.
73. It is difficult to identify any document or particular decision that led to allocations being dealt with other than chronologically. However, based on all I have seen and heard, it is clear to me that the sheer numbers of the applications put pressure on all concerned, from the case officers to their managers and their managers, and that the prevailing view was that it was necessary to process allocations quickly, thereby reducing the backlog and the constant flow of enquiries and complaints that went with that backlog. I understand that more staff were employed throughout 2002 and that even nightshifts were considered.
74. I have set out below various methods by which, and the reasons why, applications were allocated, all of which involve allocation on a non-chronological basis.

Allocation based on identity of the agent

75. Various applications were allocated to team members, predominantly members of Mr Hendrikx's team, based on the identity of the agent pursuing the application, and the BMB's view of the quality of the applications produced by those agents in the past. Based on the BMB's desire to reduce the backlog, such an allocation model would, subject to appropriate assessment of each application, appear to be reasonable.
76. Mr Hendrikx says that this approach was consistent with practice already present within NZIS. He refers to the Christchurch branch granting certain immigration consultants preferential treatment based on a proven track record with the NZIS and the production of good quality applications in the past. I have not pursued that line of inquiry further but, as outlined above, the approach itself is unremarkable.
77. Further, and consistent with this approach, it appears that members of Mr Hendrikx's team were being allocated and were processing a higher number of applications than Ms Parton's team.

Monthly and yearly targets

78. I was advised that, as a result of monthly and yearly processing targets, it was not uncommon for Service Leaders to prioritise the allocation of applications they perceived as being of better quality, and therefore more likely to succeed. While this was clearly not best practice, in the circumstances BMB were facing, it is not surprising.

Improving morale/Experience of team members

79. Ms Parton advised that she would, at times, search for applications that she thought were higher in quality, or which were, for other reasons, more likely to be approved or be easier to process. This was to improve the morale of the team.
80. In addition, it seems that on occasions Service Leaders allocated better quality applications to less experienced members of their teams as a means of giving them experience and lifting their confidence.

Agent/applicant enquiries

81. I was advised by a number of case officers within both teams that enquiries from applicants and agents were time-consuming and sometimes difficult, and, in the environment in which they were working, sometimes the easiest way forward for the applications subject to such enquiries was to assess the application and, where appropriate, process it. I received conflicting views about how such enquiries were dealt with, with some team members saying only Service Leaders dealt with phone calls and others saying that they dealt with phone calls themselves. I do not think anything turns on this.

Perceived benefit to New Zealand

82. I was also advised that applications were sometimes prioritised if the business proposed appeared to be of potentially high value to New Zealand or if the applicant appeared to be an impressive candidate. There was a perception amongst some members of the BMB that these "high-value" applications should not be left waiting, and therefore could be processed ahead of applications that had been lodged earlier in time. I saw nothing to suggest that this happened very often.

Self-allocation

83. It appears that, in most cases, case officers did not allocate applications to themselves. However, I was advised by some case officers that there was nothing stopping them from choosing applications themselves, and from time to time they did so to improve their personal statistics. Again, while not ideal, this is not particularly surprising in the prevailing circumstances, and I saw nothing to suggest that it occurred very often.

Ringfencing

84. At some point in 2002, a decision was made to ringfence certain applications. This meant, at that point, all applications before that date were considered to be part of the backlog. For a period, Ms Parton's team worked on the backlog only, and Mr Hendrikx's team worked on new applications only.

Summary

85. Through these various means, and no doubt other one-off situations, it appears to have been routine during 2002 for applications to be allocated and assessed on a non-chronological basis. As indicated above, given the circumstances that existed within the BMB, the various approaches taken are not surprising. Nor is it my role to make detailed assessments or judgements about those approaches, unless they were, for instance, obviously reckless or unlawful.

86. However, based on the nature of the complaint received from Mr Delamere, it is my role to assess whether there was anything untoward about those applications which were processed within a very short timeframe (ie within one week). The fact that applications were processed on a non-chronological basis at least raises a question about the motives behind that approach and whether it was appropriate or, as is alleged, for unlawful purposes – specifically, that the person making the allocation, or the person processing the application, was being paid to ensure an application went through quickly.
87. As I have indicated on a number of occasions, I have not seen or heard anything that supports that contention and, in assessing it, I have had to rely, in large part, on a statistical analysis to see if any patterns emerge which in turn lead to further enquiries, or enable me to draw conclusions.
88. By way of overview, it is important to note that, throughout 2002, the BMB processed in excess of 3500 LTBV and Investor applications (3085 LTBV and 417 Investor) and, for present purposes, we are looking at 50 applications or about 1.4% of all applications processed in 2002. Put another way, only about 1.4% of the applications processed were processed within a week.
89. Secondly, the 50 applications in question came from 22 different agents (plus 2 agents who could not be identified) within 19 different agencies, with, in my view, no one agent having such a large number of applications to cause any concern or require further enquiry.
90. Thirdly, within the BMB the 50 applications were processed by 14 individuals across 2 teams and, other than one individual, no one staff member processed more than 5 of the applications in question. On average, these staff members each processed 2 applications.
91. Only one staff member, a member of Mr Hendrikx's team, has statistics which are worthy of note. This staff member processed 25 of the 50 applications. These figures need to be put into context. This case officer processed probably somewhere between 300 and 400 applications during 2002. Working from an average of 350, the 25 applications in question would make up about 7% of the applications processed by this case officer.
92. As part of this investigation, this case officer was spoken to and provided detailed information on request. The case officer appeared nothing other than straightforward, and was very helpful. Subsequently, and when these statistics became apparent, I re-interviewed this case officer. Based on the views held by others within NZIS about this case officer and the officer's background, previous roles and roles within the community, and my assessment of the case officer and the officer's responses to me, I am comfortable concluding that the case officer is nothing other than honest and trustworthy, and was not involved in any unlawful activity as described by Mr Delamere.
93. Further, other than the statistics, which in themselves do not appear remarkable, I have very little to rely upon to even begin to develop the view that this case officer, or indeed any other case officer, was involved in something untoward or dishonest in relation to the processing of these applications.

Quality of the applications processed

94. In the course of my investigation, each of the 89 applications in question were reviewed to identify matters such as the type of application, the case officer and agent involved, and the time frame within which the application was decided. That review produced the statistics which have formed the basis for this report. I did not, however, speak to the applicants who made the 50 applications that my investigation has focused on, nor did I analyse or investigate each verification process by, for instance, contacting third parties who were referred to in each application. That would have been a significant, time-consuming and expensive task, and in my view, unnecessary to complete my investigation adequately. However, on the basis of the information that the review of the applications produced, and the interviews and other tasks I undertook, I am able to make a number of observations about quality.
95. Given the number of applications, the pressure on staff to process applications quickly, and the actual processing times that were achieved, there will, in my view, be quality issues with at least some of these applications. I note that some of the files were not in the best state, which I believe supports this observation about quality.
96. However, I accept that it might be difficult, and even unfair, to assess these applications against today's standards. Mr Carley advised me that the verification standards and processes now employed by the NZIS are far more sophisticated and reliable than they were in 2002. (I note also that changes have been made to the relevant policies).
97. I observe that the NZIS, in part at least, had already made similar observations about quality during 2002 and recommended various changes. In approximately November 2002, Andrew Lockhart, the Chief Operating Officer at the time, completed a report entitled "*Governance Arrangements in Business Migration Branch*". Mr Lockhart advised me that he was asked by the then General Manager, Chris Hampton to prepare this report. In the report, Mr Lockhart stated that the report's purpose was to:
- "[Look] at the overall governance with in [sic] the Branch to provide assurance the leadership and systems support the quality of decision required in line with policy objectives and the outcomes framework. The review covers all the work undertaken by the Branch including the work of the Employer Accreditation Unit."*
98. In the report, Mr Lockhart states that his findings were based on interviews with the Service Manager, and the two Service Leaders, and the documentation that they provided in those interviews.
99. The main findings that Mr Lockhart made were:
- The BMB leadership (the Service Manager and Service Leaders) was principally focused on productivity and the reduction of the backlog over the shortest period;
 - Although there were systems in place to maintain "*quality*" (Mr Lockhart does not define this term), there was a risk that the BMB leadership was not doing enough to reinforce the need for "*quality*";

- There was no benchmark, or general standard, against which the quality of applications could be assessed. Although there was a template which case officers used, which identified the factors taken into account and the reasons for a particular decision, and also a “*second person check*” for applications leading to residency, Mr Lockhart considered that “*these systems do not however provide a benchmark or overall standard against which the key elements of policy can be balanced*”;
- Although the BMB did have relationships with consultants, banks, and professional groups such as accountants and solicitors, Mr Lockhart's view was that the BMB did not have an external reference group that assisted in reinforcing quality decision-making in the BMB. The relationships that did exist presented a risk, because consultants could attempt to make policy (or presumably the application of policy) less stringent;
- At the time of the report, there was a “*considerable*” backlog in the BMB, and the BMB had reached maximum capacity despite the recruitment of additional staff.

100. Mr Lockhart's recommendations were:

- Greater leadership by the BMB managers to reinforce quality standards and systems;
- Development and implementation of a benchmark or quality standard against which LTBV applications could be assessed;
- Review of a previous decision to carry out all business case assessments within the BMB, rather than using KPMG;
- Immediate reintroduction of the “*quality assurance programme*” for LTBVs;
- completion of performance management documents for 2002 and 2003, as well as the inclusion in those documents of objectives to reinforce quality decision-making.

101. It seems to me that if not expressly, then at least impliedly (see in particular the recommendations reproduced in the preceding paragraph), the report represents acceptance by the NZIS that, at that time, quality may have been suffering in order to increase productivity, or at least, that processes were suffering which in turn did or could have affected quality.

102. On 21 January 2003, Mr Carley took over as Service Manager. In January 2003, he merged the two teams and moved to chronological processing of applications only. He advised me that he saw nothing inherently wrong with non-chronological processing, particularly in the conditions that prevailed in 2002, but he did comment that processing other than chronologically does leave the NZIS open to allegations of favouritism. He also noted that, on his arrival, and because of policy changes, the number of incoming applications had dropped off dramatically and, as a result, the entire operation became easier to manage.

103. I note also that since 2002 the NZIS has established the Central Verification Unit. Undoubtedly, the level of verification now in play is more thorough and sophisticated than it was in 2002, when verification was primarily the responsibility of each case officer.

Conclusions

104. I have made a number of observations and drawn a number of conclusions throughout this report and I do not intend to repeat all of those here, for instance my comments in the preceding paragraphs on the quality of the applications. The focus of my investigation has been on Mr Delamere's very serious allegation that members of the BMB may have been paid to process applications quickly. In large part, I have been confined to a statistical analysis of the applications, but I believe that has been relatively instructive. It has disclosed that only a very small percentage (1.4%) of the applications in 2002 were processed within a week, and, with one exception, these applications involved a number of agents and a number of case officers. In the absence of hearing or seeing anything to support the contention that there has been untoward or unlawful behaviour (ie "bribery"), I consider that these factors are consistent with there being no untoward or unlawful behaviour in play.
105. In relation to the one exception, ie the case officer who processed 25 of the 50 applications, I am satisfied that this person is honest and straightforward and therefore was not involved in anything untoward or unlawful. I have certainly not seen anything to suggest otherwise.

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Peter Chemis

Partner

29 June 2007