

**RŌPŪ TAKE MANENE, TAKE WHAKAMARU
AOTEAROA**

Appellant:	WR (Partnership)
Respondent:	The Chief Executive of the Ministry of Business, Innovation and Employment
Before:	N Small (Member)
Counsel for the Appellant:	A McClymont
Counsel for the Respondent:	No appearance
Date of Decision:	26 March 2026

RESIDENCE DECISION

[1] The appellant is a 36-year-old citizen of India whose application for residence under the Family (Partnership) category was declined by Immigration New Zealand.

THE ISSUE

[2] Immigration New Zealand declined the appellant's residence application because his supporting partner did not meet the character requirements to be an eligible sponsor of his application and a character waiver was not granted.

[3] The principal issues for the Tribunal are whether the character waiver was carried out in a proper manner acting on the principles of fairness.

[4] For the reasons that follow, the Tribunal finds that Immigration New Zealand failed to conduct the character waiver in a fair manner and that it failed to consider all of the surrounding circumstances of the application. In particular, Immigration New Zealand failed to consider the impact its decision would have on the

couple's ability to live together, and the significant impact it would have on their nine-year-old daughter.

BACKGROUND

[5] The appellant is a citizen of India. His parents, one sister and one brother live in India. Another sister lives in Canada.

[6] In September 2010, at age 20, the appellant first arrived in New Zealand as the holder of a student visa. Since then, he has held various temporary visas and has remained in New Zealand, except for a two-year period between 2021 and 2023 when he returned to India. His current work visa is valid until September 2026.

[7] In 2015, the appellant met his current partner, a New Zealand citizen, through work. In August 2015, they began living together. The partner has a son from a previous relationship, born in 2013, and the couple's daughter was born in November 2016. Both children are New Zealand citizens.

[8] In July 2017, following the expiration of an interim visa, the appellant became liable for deportation. Following a successful appeal, the Tribunal granted the appellant a 12-month work visa valid until December 2018. He was subsequently granted a further work visa.

Residence Application

[9] On 30 May 2019, the appellant lodged his application for residence under the Family (Partnership) category supported by his partner.

[10] On 28 February 2020, Immigration New Zealand wrote to the appellant setting out concerns it had regarding the length and genuineness of the partnership.

[11] In March 2020, following the expiration of a work visa, the appellant became liable for deportation. Given this, the processing of the appellant's residence application was placed on hold. A second appeal to the Tribunal was successful, and in September 2020, the Tribunal granted the appellant a 12-month work visa. Immigration New Zealand then re-commenced processing the appellant's residence application.

[12] In September 2021, just prior to the expiration of his work visa, the appellant left New Zealand for India.

Decision to Decline and Successful Appeal

[13] On 20 January 2022, Immigration New Zealand declined the appellant's residence application because it was not satisfied that there were genuine and compelling reasons for periods of separation during the partnership or that the couple's evidence that they remained in a committed relationship while living in separate towns due to family and work commitments was credible.

[14] The appellant successfully appealed to the Tribunal. In its decision dated 12 December 2022, the Tribunal found Immigration New Zealand's decision was not correct because it did not consider all known relevant information and/or did not properly consider whether there were genuine and compelling reasons for the periods of separation. It also found Immigration New Zealand incorrectly found the couple were not credible in their evidence. The decision was cancelled and the application returned to Immigration New Zealand for reassessment: *NY (Partnership) [2022] NZIPT 206460*.

[15] As at December 2022, the appellant remained in India.

The partner's offending and imprisonment

[16] In March 2023, the appellant's partner was sentenced to a total of two years and six months' imprisonment on the following three charges:

- (a) 1 x injuring with intent to injure (offence date: 9 June 2020–10 February 2021);
- (b) 1 x assault with intent to injure (offence date: 9 June 2020–10 February 2021); and
- (c) 1 x assault on a child (offence date: 11 August 2021).

[17] In each of the three offences, the victim was the partner's son, aged seven to eight years old at the time of the offending. Both children were placed into the care of the partner's family members while she served her prison sentence.

[18] The appellant was granted his current work visa in August 2023 and returned to New Zealand on 1 September 2023, at which time the partner was serving her sentence of imprisonment. The appellant lived in W city as his work

visa was granted on the basis of his employment with an accredited employer based there. His daughter remained living with his partner's family members.

Immigration New Zealand's Concerns

[19] Following the Tribunal's decision in *NY (Partnership)*, Immigration New Zealand undertook a new assessment of the application.

[20] On 27 March 2024, Immigration New Zealand wrote to the appellant advising that it appeared that his partner did not meet character instructions (R5.95.a.i) given that she had been convicted in March 2023 of three offences involving family violence. She was therefore not eligible to support the appellant's application unless the character requirements were waived. The appellant was invited to respond with reasons why a character waiver should be granted for his partner.

[21] The partner was released from prison on 22 April 2024 and was directed to reside at a residence in Z town which provides mental health and addiction support.

[22] On 6 August 2024, the appellant responded to Immigration New Zealand's concerns, providing: affidavits from himself (undated) and his partner (6 August 2024) which indicated that they continued to be in a long-distance relationship, and that the partner had not resumed care of the children while she was completing her rehabilitation programme; the Parole Board's decision (4 April 2024) stating the partner was due to be released from prison on 22 April 2024; and a psychologist's report (22 March 2024) prepared for the Parole Board.

Immigration New Zealand's Decision

[23] On 7 April 2025, Immigration New Zealand conducted a character waiver assessment. It concluded that it was not satisfied that the circumstances were compelling enough to justify waiving the character requirement for the supporting partner.

[24] On 27 April 2025, Immigration New Zealand declined the application because the appellant's partner was not eligible to support the application as she did not meet character requirements under R5.95, and a character waiver had not been granted.

STATUTORY GROUNDS

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

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

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

THE APPELLANT'S CASE

[27] On 30 May 2025, the appellant lodged this appeal on both grounds in section 187(4). Counsel submits Immigration New Zealand's decision was not correct because it failed to appropriately weight the daughter's best interests, did not properly balance mitigating and positive factors in the character waiver assessment, and failed to give proper regard to the objective of instruction R5.95 to protect migrants from potential family violence.

[28] As to special circumstances, counsel submits that these arise from the appellant's current visa status being dependent on his employer, the partner's care arrangements for their daughter and her son, and that the appellant is of good character.

[29] In support of the appeal, counsel provided the following documents:

- (a) a letter from the partner's probation officer (27 May 2025) stating the partner had been approved to have full-time care of the daughter five nights per week and the daughter would be in the partner's sister's care for the remaining two nights, and that her son was in his grandmother's full-time care, but the appellant had visits with him from 10am–6pm on Saturdays;

- (b) a letter from the daughter (24 June 2025) stating she was in Year 4 at school in 2025 and enjoys time with her mother and misses her father with whom she has daily phone and video calls and occasional visits in person;
- (c) a letter from the appellant (25 June 2025) describing his relationship with his partner as genuine and long-term and setting out their future plans to live together once her parole ends;
- (d) a letter from the partner (23 June 2025) describing her relationship with the appellant as resilient and committed and stating she is on parole until September 2025 and must remain living in Z town until that date and the appellant lives in W city for work;
- (e) call records and messaging between the appellant and partner (25 April to 1 June 2025); and
- (f) bank statements for the appellant's bank account and his joint bank account with his partner (as at 25 May 2025 and 13 June 2025).

[30] On 24 February 2026, following two requests from the Tribunal for an update on the appellant's circumstances, counsel filed further submissions and provided a letter from the Department of Corrections (30 August 2025) stating the partner's parole conditions ended on 29 September 2025 (the Tribunal notes the letter appears to have been incorrectly dated).

[31] Counsel also provided an undated letter from the partner stating she lives in Z town and has had full-time care of her daughter since 28 September 2025. She states her son attends a boarding school in X city and (outside of attending school) has been in her care since 28 December 2025. The partner states she remains in a partnership with the appellant and is searching for housing in W city and intends to relocate there. An undated letter was also provided from the appellant who also states he remains in a relationship with the partner. He states his visa conditions require him to work for his current employer in W city, but his work occasionally takes him to X city, which allows him to visit his partner and daughter in Z town.

Further information provided on appeal

[32] When considering the correctness of Immigration New Zealand's decision, the starting point is that the Tribunal cannot consider further information provided

by an appellant that was not before Immigration New Zealand at the time that it made its decision to decline the application (section 189(1) of the Act).

[33] There is an exception to section 189(1) at section 189(3)(a) of the Act. However, the Tribunal finds that that exception does not apply because the further information provided by the appellant on appeal (listed above at [29]–[31]) did not exist at the time Immigration New Zealand made its decision (section 189(3)(a)(i)).

ASSESSMENT

[34] The Tribunal has considered the submissions and documents provided on appeal and the files provided by Immigration New Zealand in relation to the appellant's residence application, and Immigration New Zealand's two assessments relating to his liability for deportation. The Tribunal has also considered Immigration New Zealand's relevant electronic records for the appellant.

[35] An assessment as to whether the Immigration New Zealand decision to decline the appellant's application was correct in terms of the applicable residence instructions is set out below.

Whether the Decision is Correct

[36] The application was made on 30 May 2019 and the relevant criteria are those in the residence instructions as at that time. Immigration New Zealand declined the application because the appellant's supporting partner was not eligible to support the application because she did not meet character requirements and a character waiver was not granted.

[37] Immigration New Zealand must act on the principles of fairness and natural justice when deciding an application. Instruction A1.5 (effective 29 November 2010) states that whether a decision is fair or not depends on several factors, including whether all known relevant information is considered.

[38] The Family (Partnership) category sets out the character requirements for supporting partners. Instruction R5.95.a (effective 28 August 2017) states that any supporting partner who has been convicted either within New Zealand or any other country of any offence involving family violence will not meet the character

requirement for partners supporting Family (Partnership) category applications unless granted a character waiver.

R5.95 Character requirement for partners supporting Partnership Category applications

- a. Any supporting partner who has been convicted either within New Zealand or any other country of:
 - i. any offence involving domestic violence; or
 - ii. any offence of a sexual nature

will not meet the character requirement for partners supporting Partnership Category applications, unless granted a character waiver (see R5.95.5 below).
- b. If the supporting partner does not meet the character requirement for partners supporting partnership application, the application may be declined.

Note: For the purpose of these instructions, 'domestic violence' has the meaning set out in s.3 of the Domestic Violence Act 1995.

...

[39] However, Immigration officers must not automatically decline partnership applications on the basis that the supporting partner does not meet the character requirement. Instruction R5.95.5 requires an officer to consider the surrounding circumstances of the application to decide whether or not they are compelling enough to justify waiving the character requirement:

R5.95.5 Action

- a. Immigration officers must not automatically decline partnership applications on the basis that the supporting partner does not meet the character requirement for partners supporting partnership applications.
- b. Officers must consider the surrounding circumstances of the application to decide whether or not they are compelling enough to justify waiving the character requirement. The circumstances include but are not limited to the following factors as appropriate:
 - i. if applicable, the seriousness of the offence (generally indicated by the term of imprisonment or size of the fine); and/or
 - ii. whether there is more than one offence; and/or
 - iii. how long ago the relevant event occurred.
- c. Officers must make a decision only after they have considered all relevant factors, including (if applicable):
 - i. any advice from the National Office of INZ; and
 - ii. compliance with fairness and natural justice requirements (see A1).
- d. Officers must record:

- i. their consideration of the surrounding circumstances, (see paragraph (b) above), noting all factors taken into account; and
 - ii. the reasons for their decision to waive or decline to waive the character requirement.
- e. Any decision to waive the character requirement for partners must be made by an officer with Schedule 1-3 delegations.

Effective 28/08/2017

[40] The definition of domestic violence is set out at sections 3 and 4 of the Domestic Violence Act 1995 (as it was at 25 September 2013):

3 Meaning of domestic violence

(1) In this Act, domestic violence, in relation to any person, means violence against that person by any other person with whom that person is, or has been, in a domestic relationship.

(2) In this section, violence means—

(a) physical abuse;

...

4 Meaning of domestic relationship

(1) For the purposes of this Act, a person is in a domestic relationship with another person if the person—

...

(b) is a family member of the other person; or

...

Supporting partner's convictions

[41] On 29 March 2023, the appellant's partner was convicted and sentenced in New Zealand to a total of two years and six months' imprisonment on the following three charges committed against her son:

(a) 1 x injuring with intent to injure (offence date: 9 June 2020–10 February 2021);

(b) 1 x assault with intent to injure (offence date: 9 June 2020–10 February 2021); and

(c) 1 x assault on a child (offence date: 11 August 2021).

[42] The Tribunal is satisfied that, at the time Immigration New Zealand determined the application, the supporting partner had been convicted in

New Zealand of three offences involving domestic violence, and therefore did not meet the character requirement for partners supporting partnership-based visa applications.

[43] Given that, Immigration New Zealand was required (instruction R5.95.5.b) to consider the surrounding circumstances of the application to decide whether or not they were compelling enough to justify waiving the character requirement.

Immigration New Zealand's decision not to waive the character requirement

[44] Immigration New Zealand's character waiver assessment and written decision declining to waive the character requirement for the appellant's supporting partner is dated 7 April 2025.

(a) *Mandatory considerations*

[45] Instruction R5.95.5.b provides for three mandatory considerations in a character waiver assessment involving a supporting partner's offending. These are the seriousness of the offence(s), whether there is more than one offence, and how long ago the offending occurred. Immigration New Zealand addressed these mandatory considerations as follows.

[46] At the outset, Immigration New Zealand noted the evidence of convictions (dated 23 February 2024), and the appellant's comments and explanation provided on 19 May 2024, including an affidavit from the partner, interviews with the partner and appellant, the partner's prison safety plan, the decision of the Parole Board (4 April 2024) noting her release on parole on 22 April 2024 and the Department of Corrections psychologist's report (22 March 2024).

[47] Immigration New Zealand recorded that although the partner stated the offending occurred when she was struggling to parent the children alone while the appellant was in India, two charges related to offending which commenced in June 2020 and the appellant did not depart New Zealand until 26 April 2021.

[48] Immigration New Zealand also noted that the appellant stated he never witnessed the partner hit the children and did not believe she would. He stated he was not around when the partner committed the offences because he was in V town at the relevant time. However, it was noted that the appellant did not start working in V town until October 2020 and was therefore living with the appellant when the offending commenced in June 2020.

[49] In turning to the first of the mandatory considerations: seriousness of the offence, Immigration New Zealand stated that a sentence of 2 years and 6 months indicated very serious offending, given the maximum penalties available (a 5-year maximum on the most serious charge), and given the victim was a young and vulnerable child. Significant negative weight was placed on the age and vulnerability of the victim.

[50] In relation to the second mandatory consideration (whether there was more than one offence) and third mandatory consideration (how long ago the offending had occurred), Immigration New Zealand noted there were a total of three offences, which occurred between 9 June 2020 and 11 August 2021. Three years and seven months had passed since the last offence and the partner had been released from prison but it was noted she was still on parole and was subject to release conditions. Immigration New Zealand considered the offending recent and placed negative weight on that factor.

(b) Other surrounding circumstances

[51] Having considered the mandatory factors in R5.95.5.b, Immigration New Zealand identified the surrounding circumstances as: the partner's risk of reoffending; the risk she posed to the appellant; the impact the offending had on family relationships; the impact on the children; and the couple's financial hardship.

[52] As to the risk of reoffending, Immigration New Zealand noted the partner had completed rehabilitative programmes and was continuing to do so. However, it was concluded that, as the partner was still on parole, it was too soon to establish that she was at low risk of reoffending.

[53] Immigration New Zealand considered whether the partner posed a risk to the appellant noting that, while there was a pattern of family violence, there was no indication that the appellant was directly at risk of family violence from the partner. A New Zealand police family harm record indicated that, while the partner had a history of police callouts as both the aggressor and victim, there were no police family harm incidents involving the appellant. It was concluded the partner was not a risk to the appellant, and that they remained in a long-distance relationship.

[54] In relation to the couple's partnership, Immigration New Zealand focussed on the impact the offending had had on their relationship. It was observed that the appellant and partner would not be able to live together until the partner's release

conditions ended in September 2025 (as her release conditions required that she live in Z town, and the appellant's accredited employer under his work visa was based in W city). Immigration New Zealand noted that, as the two children were not currently in the partner's full-time care, the couple may not be able to live together even after September 2025. It went on to state that the objective of the Family (Partnership) category is to allow partners of New Zealanders to apply for residence in order to live with their partner in New Zealand and concluded that objective was not met as there was no definitive date when the couple would be able to live together.

[55] The Tribunal notes Immigration New Zealand did not consider what impact *its decision* (whether or not to waive the character requirement for the supporting partner) would have on the partnership, and in particular, on the couple's ability to live together. If the character requirement were waived, and the appellant was granted a residence class visa, he would no longer be tied to his current work for his accredited employer in W city. He would have the ability to look for work in Z town, or any other place of the couple's choosing. There is no evidence Immigration New Zealand considered this impact or weighed it in its decision. Instruction R5.95.5.b requires that Immigration New Zealand, "consider the surrounding circumstances *of the application* to decide whether or not that are compelling enough to justify waiving the character requirement." Immigration New Zealand's consideration of surrounding circumstances should have included the impact that its decision would have had on the appellant, and his family members. In this case, Immigration New Zealand did not consider that the objective of the Family (Partnership) category (to allow partners of New Zealanders to apply for residence in order to live with their partner) could potentially be met if the character waiver was granted.

[56] Immigration New Zealand then moved on to consider the impact (of the offending) on the children. It was noted that, because of the offending, the partner did not have either child in her full-time care. It was also noted that the appellant had not had the daughter or the partner's son in his custody since arriving back in New Zealand over 18 months prior (on 1 September 2023). However, Immigration New Zealand acknowledged he had virtual contact with them while they remained in the care of other family members. The assessor stated, "the outcome of this visa will not have any effect on the care arrangements in place."

[57] The Tribunal finds Immigration New Zealand limited its consideration to the impact *the offending* had on the children, and did not consider the impact

Immigration New Zealand's decision would have on the children. In this way, Immigration New Zealand failed to consider the surrounding circumstances of the application. The impact of declining to grant the supporting partner a character waiver would be significant for the children, particularly the daughter, as it would result in the appellant (her father) being unable to remain in New Zealand on a permanent basis. If the character waiver was declined, and the appellant was unable to remain in New Zealand, there was no evidence to suggest that the partner and daughter could relocate to India with him (and the partner would likely have difficulties doing so, given her history of convictions). Given this, if the character waiver was declined for the supporting partner, it would likely result in the daughter being permanently separated from her father, despite the fact that the appellant was not the person with convictions, or that he had done anything contrary to instructions. The potential impact on the daughter was significant, yet this consequence was not acknowledged or weighed in the consideration of "the surrounding circumstances of the application" (R5.95.b).

[58] Immigration New Zealand's failure to consider these relevant circumstances means the Tribunal cannot be confident that its final outcome on the character waiver was correct.

Conclusion on correctness

[59] The Tribunal finds Immigration New Zealand was correct to determine that the partner's convictions for offences against her son meant she was ineligible to support the appellant's application for residence unless a character waiver was granted (R5.95.a).

[60] However, the Tribunal is not satisfied Immigration New Zealand carried out the character waiver in a fair manner in that it failed to consider all relevant information (A1.5). Immigration New Zealand failed to consider all of the surrounding circumstances of the application (R5.95.5.b), including the impact its decision would have on the couple's ability to live together, and the significant impact it would have on the daughter's relationship with the appellant.

[61] The Tribunal is not satisfied that Immigration New Zealand properly considered whether to grant the appellant's partner a character waiver. However, it is not satisfied that the appellant would, but for that incorrect assessment, have been entitled in terms of those instructions to the immediate grant of a visa. That is because the Tribunal has received an updated history of the supporting partner's convictions (3 March 2026) which records that on 5 August 2025, the

supporting partner was convicted of two further offences (breach alcohol level over 400 mcgs/litre of breath, and breach standard release or special conditions). The conviction history does not record the date those offences occurred nor when the partner was charged with the offences, and the Tribunal has not received any evidence from the appellant setting out the circumstances of that offending.

[62] In such circumstances, the only appropriate course is for the Tribunal to cancel the decision of Immigration New Zealand and refer it back for a correct assessment. Doing so will provide the appellant with the opportunity to provide any response or further evidence in relation to the supporting partner's recent convictions.

DETERMINATION

[63] This appeal is determined pursuant to section 188(1)(e) of the Immigration Act 2009. The Tribunal considers the decision to refuse the visa was made on the basis of an incorrect assessment in terms of the applicable residence instructions. However, the Tribunal is not satisfied the appellant would, but for that incorrect assessment, have been entitled in terms of those instructions to the immediate grant of a visa.

[64] The Tribunal therefore cancels the decision of Immigration New Zealand. The appellant's application is referred back to the chief executive of the Ministry of Business, Innovation and Employment for a correct assessment by Immigration New Zealand in terms of the applicable residence instructions, in accordance with the directions set out below.

[65] The Tribunal notes this application was lodged nearly seven years, and this is the second time the Tribunal has referred the matter back to Immigration New Zealand following an incorrect assessment. Immigration New Zealand should prioritise its reassessment of this application to give certainty to the appellant and to his family.

Directions

[66] It should be noted that while these directions must be followed by Immigration New Zealand, they are not intended to be exhaustive and there may be other aspects of the application which require further investigation, remain to be completed or require updating.

1. The application should be given priority for reassessment by an Immigration New Zealand officer not previously associated with the application in accordance with the instructions in existence at the date the residence application was made. No further lodgement fee is payable.
2. Immigration New Zealand is to invite the appellant to update his application within a reasonable timeframe, if he sees fit.
3. Immigration New Zealand is to invite the appellant to provide a response from the supporting partner or further evidence (such as sentencing notes) in relation to her convictions entered on 5 August 2025, if he sees fit.
4. When conducting its character waiver assessment, Immigration New Zealand must consider all new submissions and evidence produced by the appellant in this appeal, along with all evidence previously produced in respect of the first character waiver assessment and must consider all relevant surrounding circumstances, including those set out by the Tribunal at [55] and [57]. The impact of the decision on the appellant's daughter should be a central consideration for Immigration New Zealand.
5. If, at any stage, Immigration New Zealand finds potentially prejudicial matters which must be put to the appellant, it is to do so in clear and concise terms with reasons. The appellant is to be given a reasonable opportunity to respond.
6. The application is then to be assessed against the remaining relevant instructions.

[67] The appellant is to understand that the success of this appeal does not guarantee that his application will be successful, only that it will be subject to reassessment by Immigration New Zealand.

[68] The appeal is successful in the above terms.

Order as to Depersonalised Research Copy

[69] Pursuant to clause 19 of Schedule 2 of the Act, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by

removal of the appellant's name and any particulars likely to lead to the identification of the appellant or his family members.

"N Small"
N Small
Member

Certified to be the Research
Copy released for publication.

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