CLAIR CAIRD

CHALLENGING THE STORY OF AOTEAROA NEW ZEALAND AS AN INCLUSIVE NATION THROUGH CONSIDERING THE DIMENSIONS OF THE IDEAL MIGRANT

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I Introduction

This paper begins with a story about Aotearoa New Zealand. This beautiful, multicultural country in the Pacific Ocean prides itself on the international stage as being an inclusive nation. According to the New Zealand Story, a government website aimed at expanding and improving our international reputation, Aotearoa has "a reputation for doing the right thing, even when nobody is watching".[1] We are a nation who warmly welcomes others, and who builds relationships based on respect, care and reciprocity.[2] We are also a progressive nation, which "recognises the benefits of having a diverse and inclusive society".[3] This paper raises questions about the reality of this story, arguing that when these values are put to the test in our immigration system, a different story emerges.

Migration is a natural part of human existence. Since the introduction of states, governments have had to develop policies and laws to guide and control who is allowed to enter their nations. Through considering these policies and laws it is possible to determine patterns around who is allowed into countries, and who is not. Sometimes these patterns directly contradict the inclusive story that we tell ourselves about our nation. This paper will consider how the immigration laws and policies in Aotearoa, contrary to our narratives around inclusivity and diversity, cater towards an ideal migrant. When we interrogate our immigration laws and policies, and determine who they work to welcome, and who they work to exclude, it becomes apparent that the story we tell ourselves about Aotearoa is not the reality faced by many.

The nature of immigration laws which decide that some people may be let into a place means that others will be excluded. This paper considers the Immigration Act 2009 and Immigration New Zealand's Operational Manual and identifies patterns in

[1] New Zealand Story "Our Story" <www.nzstory.govt.nz>.

[2] At "Our Values".

[3] At "Proud to be a Rainbow Nation".

these exclusions.[4] These patterns demonstrate how the stories we tell ourselves about our inclusivity and acceptance of diversity are challenged under the current immigration system which privileges an ideal migrant, someone who is white, non-disabled, and who engages in heteronormative monogamy in nuclear family structures, and who will contribute to our economy in the manner we desire.

Contrary to our story of inclusivity and diversity, the immigration laws and policies show that this narrative is only true for a select few migrants with certain characteristics, the ideal migrant. This paper will analyse the dimensions of this ideal migrant. Each section considers a different dimension, but I will note at the outset that these categories are not discrete and overlaps exist. Disability, race, economic contributions, and relationships all intersect and provide opportunities and disadvantages for migrants.

In considering what the dimensions are of the ideal migrant in Aotearoa, this paper will also draw out the significance of the law constructing an ideal migrant. The creation of this ideal migrant demonstrates the values of our immigration system, and the people who we prefer to assist in entering this country. These values are directly contradictory to the image we hold of Aotearoa as a diverse, welcoming nation.

This paper will also draw your attention to the hypocrisy within our immigration laws and policies. This hypocrisy is demonstrated through the double standards that exist for migrants when compared to citizens. People who had the luck of being born here or an easy pathway to citizenship are not required to conform to the standards we demand of the ideal migrant in order to remain in this country.

I am writing this piece as a migrant to Aotearoa, but as one who has never been challenged for claiming to be a kiwi. Because I am white and non-disabled, I am

[4] Immigration Act 2009; and Immigration New Zealand *Operational Manual.* I will note that the Operational Manual undergoes frequent changes as the immigration policy space is constantly shifting.

accepted. I did not face barriers that others have when coming to here. I have experienced how the immigration laws and policies work to favour people like me, and how they disadvantage others.

A Introduction to Immigration in Aotearoa

Before proceeding with my analysis of the ideal migrant, I will briefly cover the history of immigration in Aotearoa and explore the tensions that exist within immigration systems between discrimination and immigration controls.

During the nineteenth century our immigration system changed to a system similar to what we have today, with a focus on states having complete control of their borders.[5] However, this power of the sovereign state to regulate immigration has not existed without constraints, and there have always been restrictions based on a range of considerations.[6] One significant example of this can be seen with the agreement to the Refugee Convention, which requires states to limit their sovereignty through the obligations against non-refoulement.[7]

Borders are soft for some migrants and hard for others.[8] The firmness of the border is determined by how helpful the migrant is perceived to be for the state's interests, be they economic or social.[9] Immigration laws and policies can say a lot about a nation, and indeed impact everyone who lives there, whether they be a migrant or not.[10] Aotearoa is a nation comprised of many migrants from many places all over the world, and this shapes our identity. The ideal migrant profile has changed to fit the societal and economic needs of Aotearoa over time. It is also true that the law expresses values, such as through determining what types of people are welcomed

[5] Daniel Ghezelbash "Legal Transfers of Restrictive Immigration Laws: A Historical Perspective" (2017) 66 ICLQ 235 at 236.
[6] At 237.
[7] At 238.
[8] David Hall "Introduction: On Borders and Fairness" in David Hall (ed) *Fair Borders? Migration Policy in the Twenty-First Century* (BWB Texts, Wellington, 2017) 1 at 7.
[9] At 7.
[10] At 10.

and what types are turned away. By considering the immigration system in Aotearoa, we are able to see what values being expressed by our immigration laws are, and how these values compare to the stories we tell ourselves and the world.

The first piece of immigration law in Aotearoa was te Tiriti o Waitangi in 1840.[11] The immigration law and policy which has arisen since is distinctly Pākehā. Colonisation is deeply intertwined with immigration, and the roots of colonisation are seen in our immigration policies today.[12] This Pākehā immigration system has undergone many changes over the past 160 years. Over most of the history of immigration in Aotearoa, immigration was viewed as a permanent process and not a temporary one. People who immigrated were expected to settle here and would usually be given legal status upon arrival and become citizens.[13] In recent years we have seen a move away from this idea, and instead a focus on temporary migration, which comes with significantly less rights.[14] The immigration system not only regulates the movement of people, it also determines people's ability to access rights and privileges in Aotearoa. Therefore the immigration system acts as both an instrument of border control and of internal control of migrant communities.[15]

The current framework which determines immigration decisions in Aotearoa is found in the Immigration Act 2009 and Immigration New Zealand's Operational Manual. Both of these are used by immigration officers in the performance of their duties. The purpose of the Immigration Act is to manage immigration to Aotearoa in a way which balances the national interest, as determined by the Crown, and the

[11] Tahu Kukutai and Arama Rata "From mainstream to manaaki Indigenising our approach to immigration" in David Hall (ed) *Fair Borders? Migration Policy in the Twenty-First Century* (BWB Texts, Wellington, 2017) 26 at 28.
[12] At 28.
[13] Francis Collins "Temporary migration Non-citizenship and a fair chance at the future" in David Hall (ed) *Fair Borders? Migration Policy in the Twenty-First Century* (BWB Texts, Wellington, 2017) 46 at 48.
[14] At 50-51.
[15] Harriet Mercer "Gender and the Myth of a White New Zealand, 1866-1928" (2018) 52(2) N Z J Hist 23 at 24.

rights of individuals.[16] When considering the Immigration Act, it is clear there are many opportunities for the exercise of discretionary powers.[17] Where there is discretion, there is the opportunity for discrimination, through both conscious and subconscious bias from the decision makers.

One of the normal avenues for protecting against discrimination in Aotearoa is the Human Rights Act 1993. However, this Act is not much use for hopeful migrants. Section 392 of the Immigration Act details the relationship between the Act and the Human Rights Act 1993. At subsection two, this section sets out that no complaint may be made under the Human Rights Act in respect of the content or application of the Immigration Act, or any regulations made under this Act, or the content or application of any immigration instructions made in accordance with the Act.[18] The rationale for this is found in section 392(3). As immigration matters inherently involve treating people differently on the basis of their personal characteristics, this means that discrimination is inherent. Despite this, it is still important that we consider what biases are found within the immigration laws and policies, and discover what characteristics are being included or excluded. Whilst the discrimination may not be prohibited by law, it can still be challenged due to its unjustness and the way it works against certain groups of people.

The following sections will explore what dimensions the immigration laws and policies of Aotearoa require of the ideal migrant. It is important that we consider these dimensions and who they discriminate against and compare this to the inclusive picture that Aotearoa presents to the world. The sections will consider both historical immigration laws relevant to the topic in question, and contemporary examples from our current Immigration Act and Operational Manual to demonstrate how the laws, both old and new, work to create an ideal migrant. When we consider who is being accepted as an ideal migrant, and who is being

[16] Section 3(1).
[17] Section 45.
[18] Section 392(2)(a).

excluded, it is apparent that the present system is unjust, and indeed hypocritical when compared to the standards expected of migrants compared to the standards expected of those accepted as "New Zealanders". What constitutes the ideal migrant naturally shows who is not considered the ideal migrant, and these exclusions inform us of the true values that lay at the heart of Aotearoa's immigration policies, contrary to the story of inclusivity we tell ourselves and the world.

II Dimensions of the Ideal Migrant

I will now establish that according to the Immigration Act and Operational Manual, the ideal migrant to Aotearoa is white, non-disabled, conforms with certain relationship requirements, and is a tool for our economy. This formation of the ideal migrant demonstrates how the law acts to exclude those who do not fit within this narrow category. This indicates the values at play behind our immigration system, and raises questions about the regard we truly hold for diversity and inclusiveness.

A White

The first characteristic which I argue the immigration system in Aotearoa favours is whiteness. Immigration laws and policies are constructed in a way which rewards white, European applicants, and disincentivises people of colour. This characteristic arises from our colonial history, and the initial purpose of our immigration system to strengthen the settler colony of New Zealand. Many historical laws explored below explicitly mention race as a factor when determining the applications of migrants. However, whiteness is not only a preferred characteristic of the ideal migrant in the past. Current immigration laws and policies still indicate a preference for whiteness, now through less explicit means. This section will cover these historical and current laws and policies, and consider how this preference for whiteness hints at the disconnect between our view of Aotearoa and the reality faced by many.

The history of our immigration system demonstrates a commitment to aiding settler colonialism through keeping migrants white.[19] Non-white individuals were welcomed in when they were needed to fill labour shortages, but when they were no longer needed harsh laws and policies were put in place to target these individuals, such as the dawn raids.[20] Throughout most of Aotearoa's immigration history, the settler colonial influence has meant that immigration laws and policy have attempted to form a Britain of the South Pacific, which involves excluding any who do not fit this vision, as well as a denial of Māori tino rangatiratanga.[21]

Over the nineteenth and early twentieth centuries immigration policies in Aotearoa were expressly racist. People were excluded based on their nationality, the languages they were fluent in and their supposed failure to meet with European ideals.[22] Specific examples of laws in the late 1800s to early 1900s include the Asiatic Restriction Act 1896, which sets out in the preamble that its purpose is to "safeguard the race-purity of the people of New Zealand by preventing the colony of persons of alien race".[23] Then, in 1899 the Immigration Restriction Act came into force and prohibited anyone coming from places outside of Britain if they could not fill out the forms, which were written in English.[24] A later law was the Chinese Immigrants Amendment Act 1907 which prevented Chinese people from landing in New Zealand if they were unable to read a printed passage of over one hundred words in English.[25] In total, Aotearoa has passed 33 acts which sought to restrict the arrival of migrants from certain locations, especially China.[26] This pattern of preferring migrants from certain countries continued through into the late 20th century.[27]

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[19] Kukutai and Rata, above n 11, at 33.

[20] At 33.

[21] Collins, above n 13, at 49.

[22] At 50.

[23] Asiatic Restriction Act 1896, preamble.

[24] Immigration Restriction Act 1899, s 3.

[25] Chinese Immigrants Amendment Act 1907, s 3.

[26] Paul Spoonley *The New New Zealand: Facing Demographic Disruption* (Massey University Press, Auckland, 2020) at 79.

[27] At 68.

Some notable racist aspects of immigration law and policy in the latter half of the 20th century included what was known as the Dawn Raids. During the 1970s, the government began a racist scheme of deportations, targeting those perceived as Polynesian, including some Māori. The aim of this policy was supposedly to target overstayers, but white overstayers were not targeted. This was despite the fact that one third of those who had become undocumented after overstaying on temporary visas were from Britain or the United States of America, the same amount as those who were overstayers from the Pacific.[28] Five per cent of prosecutions for overstaying came from those from Britain and the States, but 86 per cent came from those from the Pacific.[29] This policy exemplifies the preference for white migrants within our immigration system.

Nationality restrictions were in place in Aotearoa until the Immigration Act 1987.[30] At this time a points based system was put in place instead. This points system is similar to the one we still have today. Despite this switch, which theoretically would mean there was no longer any discrimination by race, the new points based system includes English language criteria which disadvantages those wishing to enter from non-Western countries. It is significant to point out that points are not allocated for fluency in other national languages of Aotearoa, such as te reo Māori or New Zealand Sign Language.[31] This requires us to ask questions about why out of our national languages, English is the only one that must be spoken to demonstrate a commitment to this nation and is seen as a valuable quality for a migrant. I argue this is further evidence of a preference for white migrants.

The points system in Canada, similar to ours in Aotearoa, with its focus on education, has been challenged as the focus on education of a migrant often acts as a proxy for discrimination based on race or national origin.[32] Any immigration system which bases

[28] Collins, above n 13, at 53.
[29] At 54.
[30] At 54.
[31] Kukutai and Rata, above n 11, at 34.
[32] Stuart Tannock "Points of Prejudice: Education-Based Discrimination in Canada's Immigration System" (2011) 43(4) Antipode at 1332.

visas on skill and education will automatically discriminate against populations from the global south, and those individuals from racial and ethnic minority groups who lack equal access to both education and skilled employment.[33]

In 1993, the establishment of the European Union resulted in a shortage of skilled migration to places such as Australia, Canada and Aotearoa, as migrants were free to move inside the union. This required changes to the immigration policy to include migrant workers from non-European, therefore non-white, nations.[34]

One change made in response to this was the increased focus in recent years on temporary work visas over residence visas. Temporary work visas are now an indispensable part of our labour market in Aotearoa.[35] The vast majority of those on these temporary visas are from Samoa, the Solomon Islands, Tonga, and Vanuatu.[36] They work in sectors which are incredibly important for our society to function, especially hospitality, agriculture, and health. Despite the important work they do, and the important cultural contributions they make, these individuals are given less access to infrastructure and rights compared to those on other visas. People on temporary visas do not have permanent rights of residence, cannot vote and are not able to access certain important social resources. They are also in a position that is particularly vulnerable to exploitation and abuse due to the limited rights they have access to.[37] Compare this situation with that of permanent resident visa holders, who are able to travel to Aotearoa at any time, are granted entry permission, can stay here indefinitely, and are able to work and study.[38]

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[33] At 1337.

[34] Satrio Nindyo Istiko, Jo Durham and Lana Elliott "(Not That) Essential: A Scoping Review of Migrant Workers' Access to Health Services and Social Protection during the COVID-19 Pandemic in Australia, Canada, and New Zealand" (2022) 19 IJERPH 1 at 2.

[35] Collins, above n 13, at 46.

[36] Immigration New Zealand "Statistics for Recognised Seasonal Employers (RSE) Arrivals" (2022) <www.immigration.govt.nz>.

[37] Collins, above n 13, at 47.

[38] Immigration New Zealand, above n 4, at RA1.5.

Temporary migrant workers were especially impacted by the COVID-19 pandemic, and were largely excluded from health services and social protection.[39] Because of their vulnerable position with less rights in comparison to those on resident visas, workers on these temporary visas are fearful that if they speak up about poor working conditions, or being underpaid they would not be allowed back into Aotearoa, and so they keep quiet.[40] This results in situations where these migrants experience immense mistreatment.

In 2022, some migrant horticulture workers in Blenheim are paying $150 a week to stay in accommodations with six people to a room, with illness causing freezing and damp conditions. When they inevitably fall ill, some employers expect them to work unless they need the hospital. This housing arrangement is provided under the Recognised Seasonal Employers scheme. An investigation by Karanina Sumeo of the Equal Employment Opportunities Commission found that this scheme allows for debt bondage, with salary deductions being used as a form of financial control over the workers. Sumeo's investigation uncovered multiple human rights violations, such as limitations on freedom of movement, freedom of association, and the right to culture.[41]

In response to this investigation, calls for a review and overhaul of the Recognised Seasonal Employers scheme have been made by the Green Party and the Council of Trade Unions.[42] Green Party MP Ricardo Menéndez March stated that "Pacific migrant workers deserve equitable pathways to residency and schemes that afford them the same rights as other migrants".[43]

Another aspect of our immigration system which helps demonstrate some of the biases within the law can be found with regards to the laws regulating mass arrivals. Section

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[39] Istiko, Durham and Elliott, above n 34, at 9.

[40] Kirsty Johnson "Blatant exploitation': Migrant workers packed in freezing, damp rooms for $150 a week" *Stuff* (online ed, New Zealand 8 August 2022) <www.stuff.co.nz >.

[41] Kirsty Johnson, above n 40.

[42] Ella Morgan "Human rights abuses of RSE workers 'completely unacceptable'" *Stuff* (online ed, New Zealand 9 August 2022) <www.stuff.co.nz>.

[43] Teanau Tuiono and Ricardo Menéndez March "Abuse revelations leave no choice but to overhaul RSE scheme" (8 August 2022) <www.greens.org.nz>.

317A of the Immigration Act sets out the process for an application for a mass arrival warrant. This section allows an immigration officer to apply to a District Court Judge for a warrant authorising detention for up to six months for members of a mass arrival group.[44] A mass arrival group is defined in s 9A of the Act, and refers to a group of 30 or more people who arrive on board the same craft or group of crafts without a visa or entry permission.[45] These protections against mass arrival groups arose from the fear of groups of people seeking asylum coming to Aotearoa by boat. The Minister for Immigration at the time, Michael Woodhouse was clear that this law change was aimed at preventing people seeking asylum from coming here in this way.[46] This fear of a large group arriving by boat is regarded as an unnecessary one, as a mass arrival to Aotearoa is viewed as highly unlikely.[47] This section of the Immigration Act contradicts the wishes of the United Nations High Commissioner for Refugees, who has stated that detention of people seeking asylum in this manner is inherently undesirable.[48] Many prominent human rights and legal organisations spoke out against the Bill which proposed these changes in 2012.[49] Despite the fact that the sections in the Immigration Act pertaining to mass arrival warrants are breaches of natural justice, the rule of law, and our international obligations to people seeking asylum, these sections are still in place.[50] It is not difficult to see that the rhetoric which influences both law and policy makers to fear asylum seekers is a racist one. As of June 2022, the main countries of origin for people seeking asylum were Afghanistan, Syria, Venezuela, Colombia, and Pakistan, with the remaining predominantly coming from other non-western countries.[51] When our immigration laws consist of sections such as these, this indicates what is valued in terms of those that come here. In this instance, the mass migration of those seeking asylum is unwelcomed due to the non-white nature of most asylum seekers.

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[44] Section 317A(1).

[45] Section 115.

[46] Beehive "Progress of mass arrivals bill welcomed" (17 April 2013) <www.beehive.govt.nz>.

[47] Christopher Foulkes "The Shafts of Strife And War: a Critical Analysis of the Immigration (Mass Arrivals) Amendment Bill" (2012) 43 VUWLR 547 at 548.

[48] *United Nations High Commissioner for Refugees Executive Committee Conclusion No 44: Detention of Refugees and Asylum-Seekers* UN Doc A/41/12/Add.1 (13 October 1986) at [e].

[49] Foulkes, above n 47, at 555.

[50] At 577.

[51] European Union Agency for Asylum "Latest Asylum Trends" (June 2022) <euaa.europa.eu>.

The historical explicit racism and the current immigration policies surrounding the mass detention of people seeking asylum, the treatment of temporary migrant workers, and the fundamental structure of our immigration requirements through the points system and English language requirements privileges white applicants and punishes people of colour. White migrants may find that their vision of Aotearoa as an inclusive nation which welcomes diversity rings true. Non-white migrants may find the opposite. This preference for whiteness arises directly from this nation's history as a settler colony and seeks to further the idea of whiteness as the norm. This directly harms tangata whenua, and other non-white people who call this country home. When white migrants are able to immigrate here on work visas which allow easier pathways to residency, and migrants of colour must go on visas with limited rights, which place them at risk of exploitation, our supposed values of fairness, inclusiveness and diversity come into question. For those who are non-white and non-disabled, they will face further challenges in their attempts to come to Aotearoa, as explored in the following section.

B Non-Disabled

This section will demonstrate how the immigration laws and policies of Aotearoa demonstrate a preference for non-disabled migrants. By considering the history of ableism in the immigration laws of Aotearoa, we can contemplate how past structures are echoed in current requirements under the Act and Instructions. In recent times more and more attention is being drawn to the preference for non-disabled migrants, with many around Aotearoa calling for changes to aspects of the system such as the acceptable health requirements determined by Immigration New Zealand. This section will detail exactly how these requirements demonstrate that the ideal migrant is non-disabled, and how this preference raises doubts about the truth of Aotearoa's inclusive nature.

One of the earlier historical laws which demonstrates that the ideal migrant to Aotearoa is expected to be non-disabled is the Imbecile Passengers Act of 1882. This Act required a bond of one hundred pounds to be paid by the master of a ship for every passenger who was "lunatic, idiotic, deaf, dumb, blind or infirm".[52] This focus on punishing those who brought disabled people to Aotearoa continued, and in 1899 the Immigration Restriction

[52] Imbecile Passengers Act 1882, s 3.

Act was passed, which at section three prohibited any "idiot or insane person" from landing here. These historical examples are incredibly explicit in their preference for non-disabled migrants. The explicit preference for non-disabled migrants may appear to be absent from within the current Immigration Act, but I argue that requirements under the Act and relevant immigration instructions show that an important dimension of the current portrait of the ideal migrant is still someone who is non-disabled.

The current Immigration Act sets out at section 22(6)(a)(ii) that any rules or criteria relating to eligibility for a visa or entry permission may include matters relating to health. The Operational Manual then clarifies at A4.5b what an acceptable standard of health is. It describes this as being someone who is unlikely to be a danger to public health and unlikely to impose significant costs or demands on New Zealand's health services. It also requires that someone is able to undertake the work or study that their visa is for.[53]

There are different requirements for applicants depending on what visa they are applying for. Applicants who wish to come to Aotearoa for more than six months, and who have certain risk factors for tuberculosis are required to provide a chest x-ray certificate.[54] Applicants for residence class visas and for temporary entry class visas for over 12 months are required to provide both a chest x-ray certificate and a medical certificate.[55] Even for those who do not fall within these categories, immigration officers can request chest x-rays or medical certificates at their own discretion.[56] All of these tests are paid for by the applicant. Depending on where they are living it can be immensely difficult to access the appropriate service to provide these tests.

If any person within an application fails to meet these necessary health requirements, this means that there are grounds for the application to be declined.[57] However, if people fail these acceptable standard of health requirements, a medical waiver may be granted.[58] When considering whether a medical waiver should be granted, immigration officers

[53] Immigration New Zealand, above n 4, at 4.5b(iii).
[54] At A4.5e(i).
[55] At A4.5e(ii).
[56] At A4.5f.
[57] At A4.5i.
[58] At A4.5h.

must look to the circumstances of the applicant in deciding whether there are compelling reasons to justify their entry into Aotearoa.[59] Relevant factors include the objectives of the health instructions, the costs the applicant could impose on health or education services, whether the applicant has immediate family in Aotearoa, the applicants potential contribution to society, and the length of their stay.[60] If no medical waiver is granted, an application for a residence class visa must be declined.[61]

On the face of it, these health requirements may appear to be perfectly reasonable. To many non-disabled individuals, it will be easy to pass these criteria with no issues, and they will be able to proceed with their application. However, for those who fail these assessments, they are forced to seek a medical waiver, and if not granted, their journey to Aotearoa must end.

Certain conditions automatically mean that some individuals will automatically not be assessed as having an acceptable standard of health.[62] These include being Hepatitis B or C positive, having skin malignancies such as melanomas, having the need for an organ transplant, having severe chronic or progressive renal or hepatic disorders, having musculoskeletal diseases or disorders that may require surgery, having severe chronic or progressive neurological disorders, including dementia and cerebral palsy, having cardiac diseases, chronic respiratory diseases, having severe hearing loss where significant support is required, having a severe vision impairment where significant support is required, having severe developmental disorders where significant support is required, including physical and intellectual disabilities and autistic spectrum disorders, and having major psychiatric illness including for any condition which has required someone be hospitalised. Consider how many people you know in your life with any of these conditions. This list is not exhaustive.[63] This list clearly discriminates against many individuals and may place migrants in a position where they avoid medical treatment so as to avoid becoming ineligible. Some migrants on student visas have avoided seeking

[59] At A4.70b.
[60] At A4.70c.
[61] At A4.10a.
[62] At A4.10c.
[63] At A4.10.1.

medical help for serious illnesses or counselling for mental health issues due to fears this would impact their eligibility for visas under these requirements.[64]

Aside from the above conditions which result in an automatic failure to meet the required standard of health, there are also conditions that mean no medical waiver may be granted. These conditions include someone requiring dialysis within five years of the medical assessment, having severe haemophilia, having a physical, intellectual, cognitive or sensory incapacity which would require them to have full time care, and having tuberculosis and not getting treatment.[65] Even those recognised as having refugee status will not be granted a medical waiver if they have one of the above conditions.[66] A total of 46 individuals under both the refugee quota programme and refugee quota family reunification program had their residence visa applications declined on the basis of not meeting health requirements since the introduction of the requirements in 2014 and 2020.[67] For people who are in desperate need of a safe place to live, declining residency on medical grounds seems inexcusably cruel. This total inflexibility for certain conditions is ableist, as it presumes that individuals with those conditions have nothing to contribute to Aotearoa and should not be allowed to migrate here.

It is especially concerning that no medical waiver may be granted for those with tuberculosis who are not receiving treatment. This presents an example of how policy in Aotearoa is out of step with best practice standards. Under A4.55a of the Operational Manual, applicants for residence class visas who currently have tuberculosis must be deferred until they undergo treatment.[68] A paper exploring an ethical evaluation of immigration screen policy for latent tuberculosis infections has agreed with current policy that testing for tuberculosis is appropriate in some situations, provided it can be

[64] Elliot Weir "The Immigration Recalibration: What's changed (and what hasn't) for international tauira" *Critic Te Arohi* (online ed, Dunedin, 5 August 2022) <www.critic.co.nz>.
[65] Immigration New Zealand, above n 4, at A4.60 a.
[66] At A4.60 c.
[67] (18 May 2022) Written Parliamentary Question Response 15552 by Kris Faafoi.
[68] Immigration New Zealand, above n 4, at A4.55 a(i).

justified.[69] Importantly however, the paper suggests that unlike what occurs at present, treatment should not be required prior to travel to Aotearoa, and instead should be managed after arrival. The risks from infectious individuals are realistically minimal, and so the paper argues that any exclusion or deferment of potential migrants based on their tuberculosis status would be disproportionate and unjustified. Treatment should be optional, and not tied to immigration status or decisions.[70] This provides an example of how immigration laws and policies are not based on the best medical information, but are instead based in values which seek to prevent entry for those viewed as sick and disabled.

Another factor which impacts whether someone meets the acceptable standard of health is whether in the opinion of an Immigration New Zealand medical assessor, the application's medical condition has a high probability of requiring health services costing in excess of $41,000.[71] When making this determination, it is not seen as relevant whether that applicant has their own means to pay for the health services privately, without turning to the state.[72] I find it interesting that this is not permissible as a factor to consider. By not considering the ability of individuals to pay for their treatment privately, this appears to go against the rationale of not allowing people in because of these conditions due to the cost it would have to our health system in Aotearoa. If our system is ignoring the fact that some migrants could commit to paying for private treatment, then this reasoning for excluding people with excessive health costs seems questionable. Potentially ableism is at play, with the expectation that someone with one of the above listed conditions would not be viewed as capable of contributing to Aotearoa. This narrow economic expectation of migrants will be discussed as a dimension in its own right later in this paper.

Th approach throughout the Act and instructions that disabled applicants are likely to be a burden on Aotearoa, as opposed to taking a strengths based approach and considering the advantages they could bring is harmful. A strengths based approach focuses on the idea

[69] Justin Denholm, Emma McBryde and Graham Brown "Ethical evaluation of immigration screening policy for latent tuberculosis infection" (2012) 36(4) ANZJPH 325 at 327.
[70] At 328.
[71] Immigration New Zealand, above n 4, at A4.10.2a.
[72] At A4.10.2d and 4.10.10b.

that "disability is something that happens when people with impairments face barriers in society; it is society that disables us, not our impairments".[73] Using a strengths based approach, our immigration system could focus on what disabled people can bring to Aotearoa, not the costs they may incur.

Up until October 2021 there was a blanket ban on applicants with HIV status, as they were expected to impose high costs and demands on health services in Aotearoa. HIV testing does remain a requirement for visa applications as part of the health requirements, and individual health circumstances of those living with HIV will still be assessed.[74] Despite this, some migrants in Aotearoa who are on work visas are instead considering applying for refugee status, as they are now HIV positive and fear that this will ruin their chances at remaining here.[75] The fact that individuals have to turn to such extreme measures as seeking asylum due to fears of their visas being declined due to a condition which despite all the fearmongering, is treatable and similar to any other chronic conditions is concerning.[76] This illustrates how the strict health standards impact even those already living in Aotearoa, by making them seem undesirable as migrants and unwelcome here.

Another aspect of the health criteria that has come under criticism in 2022 is the use of BMI to determine health. Individuals such as Eder Rivera have been informed that due to their high BMI they are likely to fail medical requirements, despite Mr Rivera having a doctor's report attesting to his good health.[77]

In 2021 and 2022 there have been further high profile cases which highlight the non-disabled bias of the immigration system. One situation involved a four year old girl who was born in Aotearoa. The rest of her family was able to get residency, but she was not,

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[73] Office for Disability Issues *New Zealand Disability Strategy 2016–2026* (November 2016) at 12.

[74] Burnett Foundation Aotearoa "Life with HIV" <www.burnettfoundation.org.nz>.

[75] Jake McKee "Immigrants with HIV applying for refugee status due to fear government will kick them out" *Radio New Zealand* (online ed, New Zealand 6 May 2022) <www.rnz.co.nz>.

[76] See Burnett Foundation Aotearoa "Treatments" <www.burnettfoundation.org.nz> for information on the treatable nature of HIV.

[77] Amanda Gillies "Mexican man claims he was rejected for New Zealand residency because he's too fat" *Newshub* (online ed, New Zealand 2 April 2022) <www.newshub.co.nz>.

as she has a disability which has high medical costs. As her application has been declined, her family must leave Aotearoa as she is not able to obtain a valid visa.[78]

Because of the prevalence of situations similar to this, in 2021 Juliana Carvalho presented a petition to the government calling for an end to the discrimination on disability grounds within the immigration system.[79] The petition was signed by around 35,000 people and called upon the government to meet its obligations under the Convention on the Rights of Persons with Disabilities by altering immigration policy A4.[80] Aotearoa signed the United Nations Convention on the Rights of Persons with Disabilities on the 30th of March 2007, and ratified it on the 26th of September 2008.[81] This convention sets out at Article 18(1)(b) that States will recognise the rights of people with disabilities on an equal basis as those without disabilities to liberty of movement, freedom to choose their residence and their nationality. Under this Article, people are not to be deprived of their ability to utilise relevant processes such as immigration proceedings.

The Office for Disability Issues submitted on this petition and suggested that the government consider how to better align the current policy regarding the acceptable standard of health with the United Nations Convention on the Rights of Persons with Disability, the Human Rights Act 1993, the United Nations Convention on the Rights of Children, and the transformation of the disability support system in Aotearoa. The office identified that all of the above agreements support a strengths based approach to disabled people and their whānau.[82]

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[78] Amanda Gillies "Christchurch family being 'inhumanely' forced out of country because 4yo disabled daughter can't get residency" *Newshub* (online ed, New Zealand 27 February 2022) <www.newshub.co.nz>.

[79] Olivia Shivas "Government won't review 'discriminatory' immigration policy towards disabled people" *Stuff* (online ed, New Zealand March 18 2022) <www.stuff.co.nz>.

[80] New Zealand Government "Government Response to Referral of petition from Juliana Carvalho to "End discrimination on disability grounds in the immigration system" <www.parliament.nz > at 2.

[81] Office for Disability Issues "History of disability in New Zealand" <www.odi.govt.nz>.

[82] Brian Coffey *Submission on Petition of Juliana Carvalho: End discrimination on disability grounds in the immigration system* (Office for Disability Issues, 17 September 2021).

The Human Rights Act 1993 intends to provide better protection of human rights in Aotearoa in line with our international agreements.[83] Section 21(1) of the Act sets out the prohibited grounds of discrimination and includes disability.[84] The Act has exceptions to the prohibited grounds of discrimination, but there is no section mentioning exceptions in relation to immigration.

In the government's response to Carvalho's petition, they did not recommend reviewing the acceptable standard of health immigration settings. It was stated that the current settings are not discriminatory towards disabled people due to their focus on assessing the public health impact of individuals.[85] As identified earlier in the discussion around private treatment, I would question the validity of this statement.

However, due to the recent controversies, the government is in fact reviewing aspects of the immigration health screening process. Specifically, the health cost threshold of $41,000 is currently under review. Although it is worth noting that no significant changes are contemplated.[86]

Significant changes are being called for. A group has formed calling for the acceptable standard of health requirements to be scrapped. This group, Migrants Against the Acceptable Standard of Health Aotearoa argues that these rules show that "the Government see us as burdens, instead of contributing members of our communities, workplaces and schools".[87] This group calls for the recognition of the discrimination of the impacts of the acceptable standard of health requirements on disabled migrants and their families, and draws particular attention to the injustice of the health or disability limitations for asylum seekers and refugees, including during residency and family reunification applications.[88] It is argued that the discrimination under the immigration

[83] Human Rights Act 1993.
[84] Section 21(1)(h).
[85] New Zealand Government, above n 80, at 2.
[86] At 3.
[87] Migrants Against the Acceptable Standard of Health Aotearoa Facebook Page (March 29 2022).
[88] Áine Kelly-Costello *Migrants Against the Acceptable Standard of Health UNCRPD Shadow Report* (21 July 2022).

requirements "sends a message that autistic people and disabled people are a burden on society".[89]

Aotearoa is out of step with comparable nations around the world. In March 2022, the Government of Canada has made changes to improve its immigration system and better support diversity and inclusion. The government has changed its medical inadmissibility policy under the Immigration and Refugee Protection Act, through tripling the cost threshold for determining medical inadmissibility, and changing the definition of social services under the policy by removing special education, social and vocational rehabilitation services, as well as personal support services. In Canada, no heath condition automatically results in inadmissibility, as cases are assessed on an individual basis.[90] In Canada, the 2022 cost threshold is $146,000 NZD over 5 years,[91] compared to Aotearoa where the limit is $41,000 NZD over five years.[92]

This deficit approach of the acceptable health requirements is not in alignment with the New Zealand Disability Strategy.[93] The approach in Aotearoa must move beyond ideas of disability as a deficit, and towards recognising disabled people as equal rights holders.[94] In the third report of the Independent Monitoring Mechanism (IMM) of the Convention on the Rights of Persons with Disabilities, the IMM recommended that the government review immigration legislation and policy to ensure that disabled individuals did not experience additional barriers compared to others when applying for entry into Aotearoa.[95] Specific recommendations included ensuring that immigration officers have regard to the Disability Convention when making decisions under the Immigration Act, and repealing section 392 of the Act, which would enable the Human Rights Commission

[89] At Appendix 3: Testimony from Alfonzo family.

[90] Government of Canada "Changes to the medical inadmissibility policy of the Immigration and Refugee Protection Act take effect" (March 16 2022) <www.canada.ca>.

[91] Government of Canada "Medical inadmissibility" (January 4 2022) <www.canada.ca>.

[92] Immigration New Zealand, above n 4, at A4.10.2a.

[93] Brian Coffey, above n 82.

[94] Ombudsman *Making Disability Rights Real Whakatūturu Ngā Tika Hauātanga Third report of the independent monitoring mechanism of the convention on the rights of persons with disabilities Aotearoa 2014-2019* (30 June 2020) at 6.

[95] At 23.

to receive complaints about immigration matters. The report also recommended that the government work with disabled people in order to meet obligations under both the Disability Convention and the New Zealand Disability Strategy.[96]

The rationale behind having an acceptable standard of health was articulated in 2022 by MP Kris Faafoi, Minister for Immigration, saying "the immigration system needs to ensure it manages the demands it puts on our health system, and this is why we have had a threshold for some time."[97] The Minister justified these decisions as not being based upon disability, and therefore not being discriminatory, as they are based on the "costs that an individual might impose".[98] I argue that policies such as blanket refusals based on certain conditions, and a weakness based approach to disabled people is not the correct process for our immigration policy. A focus on strengths and what disabled people can bring to Aotearoa is preferable.

Historical immigration policy which explicitly excluded migrants with disabilities, alongside the present acceptable standard of health requirements represent an immigration system which views the ideal migrant as being non-disabled. This betrays one of the values which persists in the immigration system, the value of ableism. This reinforces the bias towards non-disabled people which is the status quo of Aotearoa. This value is exemplified by the Government's response to COVID-19 in 2022, with a loosening of restrictions limiting the freedoms of disabled people in favour of some privileges for the non-disabled.[99] This preference for non-disabled migrants once more illustrates how the story of Aotearoa as an inclusive nation which welcomes diversity is challenged by the realities of our immigration system. For those disabled people with diverse family or relationship structures, further barriers may arise, as explored in the following section.

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[96] At 23-24.

[97] (9 June 2022) 760 NZPD (Address in reply, Kris Faafoi).

[98] (23 Jun 2021) Written Parliamentary Question Response 26322 by Kris Faafoi.

[99] Chris Ford "Disabled people excluded by government's Covid-19 response" *Radio New Zealand* (online ed, New Zealand April 4 2022) <www.rnz.co.nz>.

C Compliant with Specific Relationship and Family Ideals

The way that our immigration laws and policies are constructed indicates that the ideal migrant conforms to certain relationship requirements, ones that many relationships in Aotearoa would fail to meet. In immigration policies, families that are perceived as challenging the conjugal, monogamous nuclear family norms are excluded.[100] Many aspects of our present immigration system demonstrate how applicants who engage in traditional, exclusive monogamous relationships are preferred over those with diverse relationships. Family relationships are also scrutinised, with families needing to conform with western nuclear family ideals in order to be recognised by Immigration New Zealand. The importance of western family ideals ties this section with the first dimension discussed of whiteness, with it being predominantly non-white families who are impacted by restrictive Pākehā views of family. This preference for migrants who conform to certain behaviours in their relationships, and who only wish to bring selected family members, once more demonstrates how the story we tell of Aotearoa as a welcoming nation is flawed.

The way that our immigration system prefers certain types of relationships is especially demonstrative of the double standards for migrants when compared to those already with the right to live in Aotearoa. The government does not determine whether marriages of citizens are valid depending on exclusivity, or on whether individuals live together. Somehow, our system is comfortable in enforcing these double standards informed by Eurocentric morality on those attempting to migrate here, but not on those who are citizens.

Relationships are scrutinised very closely by the immigration system. The goal of these stringent definitions of relationship is likely to prevent so-called "marriage fraud", with migrants taking advantage of citizens and residents of Aotearoa and tricking them into relationships so they may obtain residency.[101] Under the Operational Manual, a relationship is required to be a genuine and stable partnership. This is defined as being a

[100] Sarah Pringle "The Threat of Marriage Fraud"(2020) 33 Can J Fam Law 1 at 31.
[101] At 9-10.

partnership where the immigration officer is satisfied that it is genuine due to it having been entered into with the intention of being maintained on a long-term and exclusive basis, and stable, because it is likely to endure.[102] A relationship must be found to be genuine and stable in order for an applicant to apply for a Partnership visa.

At a glance, this may seem like a perfectly reasonable method of determining a relationships validity, but when we test this idea of a genuine relationship against other relationship structures, its reasonableness is questionable. The assessment of relationships is determined by immigration officers who rely on certain assumptions about what relationships should be.[103] Queer relationships are especially punished under an immigration model like ours, as queer relationships are required to conform to a narrow racial, class and gender relationship form in order to be viewed as genuine.[104]

The partnership visa requirements also require couples to be living together for their relationship to be valid.[105] For some religions such as Christianity, some followers believe this constitutes living in sin.[106] The immigration instructions dictate what an acceptable relationship is according to their standards, without regard to other cultural and religious norms.

For residence class visa applications, the applicant and their partner must be living together, and have been living together for 12 months or more.[107] Immigration officers are to consider whether the couple were living together in an "interdependent partnership akin to a marriage".[108] The state determining how relationships should appear and what is marriage like seems absurd given the incredibly broad possibilities for what a marriage could look like.

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[102] Immigration New Zealand, above n 4, at F2.10.1.
[103] Pringle, above n 100, at 31.
[104] At 34.
[105] Immigration New Zealand, above n 4, at F2.20.
[106] Roman Catholic Diocese of Charleston "The Truth About Cohabitation" <charlestondiocese.org>.
[107] Immigration New Zealand, above n 4, at R2.1.15 a i and ii.
[108] At R2.1.15 b.

Evidence of living together in a partnership that is genuine and stable is supposed to be in the form of joint ownership of their home, joint tenancy agreements, letters addressed to both people, evidence of financial dependence or interdependence, the performance of common household duties, and the reputation and public aspects of the relationship.[109] Whilst the presence or absence of these things is not determinative, it is easy to see how determining whether a relationship is real or not can be easily influenced by very specific ideas of what a relationship should consist of. Scholars in Canada have identified that ideas such as this which underpin immigration systems help foster the "insidious naturalization of the neo-liberal, hetero-patriachal, and white settler-colonial values that animate the exclusionary nature of family class migration".[110]

An example of these biases present in our immigration system can be seen with those making decisions about relationships in the context of sexual minority asylum seeker's claims. In order for sexual minority identity based claims to be accepted, claimants are forced into satisfying what members of Immigration New Zealand's immigration and protection tribunal perceive as the standard for a valid sexual minority identity, ignoring their personal religious, cultural and linguistic contexts.[111] This illustrates that the ideal migrant to Aotearoa is one who conforms with the relationship and family values expected by immigration officers.

A further aspect of the relationship criteria which is questionable when compared with the reality of relationships is that people are unable to sponsor under the partnership category if they have already sponsored more than one previous successful partnership application, or if they have sponsored a different partner in a successful application within the last five years.[112] This seems unfair, and there is no such requirement on citizens of Aotearoa that they must not enter into a new relationship because they have been in two previously.

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[109] At F2.20 b and F2.20.15 a.

[110] Pringle, above n 100, at 12.

[111] Olivia Kiel "'The Tribunal does not accept the appellant's claim that he is gay': Queer Refugee Appellants in New Zealand" (LLB (Hons) Dissertation, Victoria University of Wellington, 2021) at 4.

[112] Immigration New Zealand, above n 4, at F2.10.10 a i and ii.

Another situation where relationships which do not fit within the typical model are excluded is with polyamorous relationships. Under our immigration framework, multiple partners are not recognised. In other cultures around the world marriages are accepted between multiple people.[113] In light of this, for those in polygamous marriages and relationships, there is an exception to the exclusivity requirement, but the applicants may only include one of their partners in their applications for residence class visas.[114] This reflects a western understanding of what marriage should look like, and an exclusion of polygamy disproportionately impacts non-white applicants.[115] This illustrates once more the overlap between these dimensions, with certain migrants existing across multiple categories.

In April of 2022 a couple in Aotearoa were denied a partnership visa due to their relationship not being exclusive. This was despite the couple being together for several years in a polyamorous relationship.[116] The courts within Aotearoa have been forced to grapple with new ideas around relationships in recent years, with one such example being the case of *Mead v Paul*.[117] This case concerned the division of property under the Property (Relationships) Act 1976 between individuals within a polyamorous relationship.[118] Polyamory is clearly present in Aotearoa and should be accepted. It is unnecessary and discriminatory for immigration policy to deem polyamorous relationships as unacceptable. Additionally, many people across Aotearoa engage in open relationships, and many participants in relations will at some point cheat on their partners. This does not mean that these relationships are automatically invalid and false. Outside of the realm of immigration this is not something the state has a say in. This hypocrisy makes the way relationships are determined by Immigration New Zealand seem especially unjust.

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[113] Pringle, above n 100, at 37.

[114] Immigration New Zealand, above n 4, R2.1.25.

[115] Pringle, above n 100, at 37.

[116] Georgia O'Connor-Harding "Polyamorous couple denied partnership residency visa" *New Zealand Herald* (online ed, New Zealand April 21 2022) <www.nzherald.co.nz>.

[117] *Mead v Paul* [2022] NZSC 25 [2022].

[118] *Paul v Mead* [2021] NZCA 649 [2021] at headnote.

The people who may be included in a residence application demonstrate what the immigration laws and policies view as a proper relationship or family. Only the partners of principal applicants and their dependent children may be included.[119] Applicants are not able to bring their children over 24, siblings, parents, or wider relatives.[120] Dependent children are defined as either being aged 21 to 24, single with no children, and substantially reliant on their parents for support, or between 18 and 20, single with no children, or 17 or younger and single.[121] Children between 21 and 24 may be deemed independent if they are in paid employment.[122] This ignores the reality that many children will work to support their parents, and this does not lessen their dependence on and relationship with their family. This policy demonstrates the narrowness of what Immigration New Zealand views as family.

Some family structures that may have initially been viewed as legitimate become illegitimate through developments such as a family member who is now disabled meaning they are no longer accepted. This example was explored in the non-disabled section of this paper, with a young girl's disability meaning her family who otherwise would have been able to remain in Aotearoa had to leave.[123] This represents the intersectionality required when considering these issues, where through ableist strict health requirements a family which would have been accepted now no longer fits within the non-disabled perfect family structure.

The ways that our immigration laws and policies dictate what relationships are valid, and who is considered a family represent a very strict form of connections which do not represent the real diversity of families and relationships. Only migrants who conform to these strict ideas will be welcomed as the ideal migrant. As established in this section, this is incredibly unjust. Many relationships and families across the world and already

[119] Immigration New Zealand, above n 4, at R2.1 a.
[120] At R2.5 a.
[121] At R2.1.30 a, b and c.
[122] At R2.1.30 e.
[123] Gillies, above n 78.

within Aotearoa would not meet the standards set by our immigration laws and policies. This focus on certain types of relationships and families being valid illustrates the values underpinning our immigration system, which are heteronormative and western centric. Again, the true reality of our immigration system clashes with the stories we tell about Aotearoa being an inclusive nation. For those in heteronormative monogamous relationships with a nuclear family they may very well be welcomed. For other migrants, the story rings false.

D Supportive of the Economy in the Proper Manner

The final dimension of the ideal migrant explored by this paper is the idea that the ideal migrant is supportive of the economy in the proper manner. This means that migrants are preferred largely based on whether they make enough money and will work productively for the economy of Aotearoa. From the perspective of those who make immigration law and policies, migrants are viewed as a resource which Aotearoa can utilise to provide human capital which will make contributions towards our market economy.[124] Individuals in the system are treated as labour units, and often little to no regard is given to people's individual circumstances and possible contributions to society if they were to be given the same support and rights as residents in Aotearoa have.[125] This privileging of a migrant's economic potential over other considerations can be seen throughout our immigration laws. The economic focus of our immigration system can be seen through the types of considerations which are important, the ability of applicants to invest, or their ability to fill labour shortages.[126] Overall, the ideal migrant is one who will not pose a financial risk to the state.[127]

The Operational Manual sets out at R1 the objective of residence visas in Aotearoa, and states that they are for contributing to "economic growth through enhancing the overall level of human capability in New Zealand, encouraging enterprise and innovation, and

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[124] Kukutai and Rata, above n 11, at 33.

[125] Collins, above n 13, at 62.

[126] Rachel Simon-Kumar "Neoliberalism and the New Race Politics of Migration Policy: Changing Profiles of the Desirable Migrant in New Zealand" (2015) 41(7) J Ethn Migr Stud 1172 at 1172.

[127] Pringle, above n 100, at 30.

fostering international links, while maintaining a high level of social cohesion".[128] This initial focus on economic growth indicates the true focus of our immigration system, to bring in tools for our economy.

Evidence for this economic focus is seen with the introduction in 2017 of a salary based measure of skill level based off of the national median income, with those not making above this amount needing to leave Aotearoa after three years. This came at the same time as rhetoric rose saying that changes like this are to ensure that those on temporary work visas do not become well settled in Aotearoa.[129] This sort of work is not valued by the immigration system, despite its importance to our nation.

This view of migrants as a tool for our economy has resulted in situations where those who do not live or work in Aotearoa are able to reap the rewards of citizenship or residency. Migrant categories were introduced into Aotearoa in 2009 which would allow certain investors residency in Aotearoa, despite not actually living or working here.[130] One famous example of this situation can be seen with billionaire Peter Thiel. In 2011 Peter Thiel's citizenship was approved by the Internal Affairs Minister at the time, despite Mr Thiel not living in Aotearoa, nor having a pathway to citizenship. The exceptional circumstances that seemed to warrant the granting of Mr Theil's citizenship were that he was a billionaire.[131] From this it appears that those with wealth can be welcomed as the ideal migrant, despite not meeting the criteria many of those without wealth must.

Whilst migrants are viewed as economic tools for Aotearoa, only certain jobs appear to be desirable. The Immigration Act allows the immigration instructions to determine what is defined as work.[132] Something that is not qualified as work under our immigration

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[128] Immigration New Zealand, above n 4, at R1 a.

[129] Collins, above n 13, at 58.

[130] Kukutai and Rata, above n 11, at 34.

[131] Matt Nippert "Revealed: How Peter Theil got New Zealand citizenship" *New Zealand Herald* (online ed, New Zealand February 1 2017) <www.nzherald.co.nz>.

[132] Section 4.

laws can be found within the Prostitution Reform Act 2003.[133] Section 19 of that Act sets out that no visa may be granted under the Immigration Act to someone on the basis that they intend to provide commercial sexual services.[134] This section also sets out as a condition for every temporary entry class visa that those holding such visas may not provide commercial sexual services.[135] In fact, if the Minister of Immigration or an immigration officer has reasonable grounds to suspect that someone is providing commercial sexual services, then this means that the person can be deported.[136] It is possible that the intention behind this section is to prohibit sexual trafficking and exploitation of sex-workers, but I would argue that this could be done in a manner which does not criminalise the choice of work of sex-workers who genuinely wish to engage in commercial sexual services. Sex industry advocates have expressed criticisms over this policy, as it places migrant sex workers in a position where they are vulnerable to abuse as they cannot turn to authorities for help due to their fear of being deported.[137] It is interesting that under our immigration regime this is not seen as legitimate work. Only migrants whose economic potential fits within certain categories will be welcomed here.

Recent changes to our immigration system include the introduction of a Green List of highly skilled jobs which facilitate fast-tracked pathways for residence. Within this Green List however there are two categories, one for veterinarians, doctors, engineers and ICT workers, who were able to apply for work visas from the fourth of July, and could apply for residence visas from September. The other category includes professions such as nursing, midwifery and teaching, where migrants are only permitted to apply for residency after two years.[138] This has led to some backlash, with nurses and midwives calling these changes sexist, due to the preference for male dominated professions. The president of the New Zealand Nurses Organisation Anne Daniels pointed out the flawed

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[133] Prostitution Reform Act 2003.

[134] Section 19(1)(a).

[135] Section 19(2)(a).

[136] Section 19(3).

[137] *Stuff* "Couple deported from NZ after husband caught running illegal sex ring" (online ed, New Zealand August 10 2022) <www.stuff.co.nz>.

[138] Anna Rawhiti-Connell "The Immigration Reset" *The Spinoff* (online ed, New Zealand, May 12 2022) <thespinoff.co.nz>.

logic of the separate categories, saying "doctors can't work without nurses."[139] Our immigration system views doctors and engineers as the ideal migrant, as they will contribute more to our economy.

A range of different visa categories illustrate the focus on the economic potential of migrants. The first of these can be seen with the recent changes to the Investor Migrant categories which include the creation of the new Active Investor Plus visa category, which requires a minimum five million dollar direct investment into Aotearoa. This visa category opened on the 19th of September. Investor migrants need only spend 117 days in Aotearoa over their four year investment period.[140] The super wealthy are more easily able to enter Aotearoa and access residency here than those with perhaps stronger ties to Aotearoa who may only enter on temporary migrant work visas.

Another visa category is the Parent Retirement Category visa, which requires an application to undertaken to invest at least one million dollars into Aotearoa for a period of four years.[141] This visa allows parents of adult children who are citizens or residents of Aotearoa to live here, provided they are investing enough money.[142] Whilst allowing older family members to come to Aotearoa is a positive, the focus on the wealth of those individuals betrays the monetary focus of our immigration system.

A final visa category which illustrates this point is the Parent Category visa. The Operational Manual states that the objective of the Parent Category visa is to support family connections, in order to progress the government's economic objectives, and attract and retain skilled and productive migrants.[143] This category allows a citizen or resident of Aotearoa to sponsor their parents to come here, provided they earn enough

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[139] Cate Macintosh "Midwives and Nurses flabbergasted over sexist immigration changes" *Stuff* (online ed, New Zealand, May 11 2022) <www.stuff.co.nz>.

[140] Immigration New Zealand "Changes to investor migrant settings" (21 July 2022) <www.immigration.govt.nz>.

[141] Immigration New Zealand, above n 4, at F3.5 a i.

[142] Immigration New Zealand "Information about Parent Retirement Resident Visa" <www.immigration.govt.nz>.

[143] Immigration New Zealand, above n 4, F4.1.1 a and b.

money.[144] For sponsoring one parent, the child must be earning around $100,000, for two parents, $160,000.[145] Once more this exemplifies that our immigration system seeks out migrants who are tools for our economy, and only those who are productive economic tools may have the luxury of living in the same country as their parents.

In Canada, it has been argued that the fact that applicants for residency must disclose any dependants in their initial application allows immigration official to assess the risk of future financial liability when deciding whether to grant residency to the initial applicant.[146] Aotearoa has similar requirements, with applicants strongly encouraged to list all dependants in their initial application, or they risk being unable to gain medical waivers for those family members in later applications.[147]

Even in the processing of residence applications, first priority is given to the so called "skilled" residence class visa applications, particularly those with salaries equivalent to or higher than twice the median wage, which in 2022 means an annual salary of around $110,000.[148] Once more this demonstrates the preference for those who contribute to the economy, with those who are seen as less productive needing to wait longer to find out visa application outcomes.

This section has established that the final major aspect of the ideal migrant is that they are supportive of the economy in the proper manner. They are expected to act as a cog in a machine, contributing wealth to this nation. Only those migrants who earn a sufficient amount of money are offered the privilege of having their family immigrate to Aotearoa and join them here. In the words of Green Party MP Ricardo Menéndez March "migrants aren't just economic units to support employers make a profit. It's grossly unfair to continue to rely on the fruits of migrant workers' labour, and at the same time deny them

[144] Immigration New Zealand "Parent Resident Visa" <www.immigration.govt.nz>.
[145] Immigration New Zealand, above n 4, at F4.50.5 c i.
[146] Pringle, above n 100, at 28.
[147] Immigration New Zealand, above n 4, at A4.60 b ii.
[148] At A16.1 b (i).

the opportunity to put down roots in their community."[149] How does this compare to the notion that we are a nation who warmly welcomes others, and who supports diversity. This focus on economic benefit at the expense of other factors and other ways in which people can contribute to Aotearoa indicates that perhaps other values lie at the heart of our immigration system.

III Conclusion

This paper began with a story which many of us who call Aotearoa home believe. This was a story of a nation which prides itself on its diversity and its inclusive and welcoming nature. This story is one which is believed by many around the world. Throughout this paper, I have outlined a different story. This other story arises from considering our immigration system, by outlining the dimensions of the ideal migrant in Aotearoa.

In this other story, we have seen how our immigration laws and policies allow for the mass detention of people seeking asylum, facilitate the mistreatment of temporary migrant workers, and create a system which assists white applicants whilst creating barriers for people of colour. We have also seen the system's inflexible and strict approach to the acceptable standard of health criteria, often uninformed by medical best practice, and the system's weakness based approached to disabilities which is out of line with national and international standards. This story has also outlined how migrants with family and relationship structures which challenges heteronormative, monogamous and Western norms face challenges in bringing their families here. Finally, this story has illustrated how only those migrants who work in specific jobs and earn certain amounts of money may enter, and that those with more wealth will have their entry facilitated and their parents allowed to come as well.

By examining the immigration laws and policies of this nation, we can see patterns of exclusion which show the values behind our immigration system. Consistently, the laws

[149] Ricardo Menéndez March (@RMarchNZ) "Migrants aren't just economic units to support employers make a profit" <https://twitter.com/RMarchNZ/status/1524211938573840384?s=20&t=l76G8p4cERDOQcmut7Ai3A>.

and policies of immigration in Aotearoa show a preference for white, non-disabled migrants, who conform to certain relationship types and are a perfect tool for our economy. This story of the law and policy ultimately undermines the commonly understood narrative that we are a nation which welcomes others and embraces diversity. This speaks volumes about Aotearoa's relationship with immigration. When our immigration laws and policies construct the ideal migrant, this limits the people who are able to come to Aotearoa and live here. The current system means that we are missing out on many individuals with much to contribute. We are missing out as a country and society when we say these people do not get to move freely around the world. Having a more diverse society can help create a better nation for everyone. By deliberately making it harder, if not impossible, for certain people to live here, we are revealing that the values behind our immigration contradict the story of Aotearoa as a welcoming and supportive nation.

The immigration system works as a tool to bring in migrants who will work in service of our society, in the manner we desire. They are permitted entry in order to serve existing long term migrants and citizens of Aotearoa. Disabilities, deviations from heteronormativity, and people of colour will be accepted if migrants can prove they can do enough to fit within the norms of Aotearoa and contribute to our successes.

The ideal migrant created by our immigration laws and policies also represents a failure of our immigration system to meet its obligations under Te Tiriti o Waitangi. As a result of colonisation, we now live in a nation whose political, economic and social system reflects not Māori values, but Pākehā ones.[150] This means that our immigration system is not one grounded in te ao Māori, but one grounded in western values. Under Te Tiriti, Māori should be a decision making partner with the Crown when determining who can come here, what rights those people receive when they are here, and how the culture and national identity of this nation should be formed.[151] It is a failure of our immigration system that Te Tiriti o Waitangi is not taken into account.

[150] Kukutai and Rata, above n 11, at 30.

[151] Spoonley, above n 26, at 67.

The evidence in this paper undoubtedly undermines the story of Aotearoa as a nation which embraces diversity and inclusiveness. However, there is nothing to say that we cannot aspire to create an immigration system which lives up the story we tell ourselves. We can have a system which celebrates and embraces diversity and welcomes those from around the world to contribute to our nation, including those who are non-white, disabled, those with diverse family and relationship structures, and those who are not perfect economic tools. If we want to become this society, we must confront the reality that our current immigration laws and policies mean that we are not living up to the story we believe.

Word count

The text of this paper (excluding table of contents, footnotes, and bibliography) comprises approximately 10,171 words.

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