CITIZENSHIP IN NEW ZEALAND: TOUGHER CRITERIA FOR A NEW CENTURY

ABSTRACT

In April 2005, New Zealand's *Citizenship Act 1977* was amended significantly. The major changes that were brought to the Act were in the number of years and in the applicant's presence in New Zealand required to qualify for citizenship, as well as in a departure from the principle that birth in a particular country automatically confers citizenship. These changes are outlined and reviewed in light of a growing national discourse on the meaning of citizenship in a country that grants permanent residents most of the freedoms and opportunities of citizens, and in light of the fact that a very substantial number of its citizens are living overseas.

RICHARD BEDFORD

Professor Richard Bedford of the University of Waikato is a specialist in migration research and, since the mid-1960s, has been researching processes of population movement in the Asia-Pacific region. He served as academic adviser to the Ministerial Advisory Group on Immigration and is a member of the Ministerial Advisory Committee on Official Statistics (ACOS). He is a Companion of the Queen's Service Order and a Fellow of the Royal Society of New Zealand.

In April 2005, the New Zealand Government's *Citizenship Amendment Act* came into force. This represented the first substantial amendment to the *Citizenship Act 1977*, and only the third major change to citizenship provisions since a separate New Zealand citizenship was established in 1948. The *Citizenship Act 1977* put an end to the distinction between British subjects (including New Zealand citizens) and "aliens" that had been retained in New Zealand's foundation *Citizenship Act* of 1948. It also eliminated the distinction between Commonwealth and foreign citizens. From 1977 onwards the only distinctions in law were between New Zealand citizens and others. The *Citizenship Amendment Act 2005* has tightened up a number of criteria relating to entitlement to citizenship with a view to ensuring "that New Zealand citizenship, and the benefits that come with it, are available only to people who have a genuine and ongoing link to New Zealand" (Department of Internal Affairs).

McKinnon (1996), McMillan (2004, 2005) and Pearson (2001, 2004), among others, have prepared excellent reviews of citizenship in New Zealand. There is much literature on issues of indigeneity, identity, inclusion and civic practice in New Zealand, and many collections of essays edited by Macpherson et al. (2001), Ip (2003), Spoonley et al. (2004) and Liu et al. (2005) contain papers by many of the most prominent writers in this area. This literature is not reviewed here – it is readily accessible, and a forthcoming book by Trlin et al. (2008) contains an exhaustive bibliography detailing much of the writing on this subject since 2000.

This article focuses on two particular aspects of the 2005 *Citizenship Amendment Act*. The first is the extension of time required to qualify for citizenship, which was raised from two years (if married to a New Zealand citizen) or three years (for all others) to five years for every applicant (section 8 of the Act). It also focuses on some associated changes in what qualifies as "presence in New Zealand" for the purposes of accumulating the five years of residence that are required. The second is the departure from the principle that birth in New Zealand automatically confers citizenship (section 6(1) of the Act), which came into effect on January 1, 2006. Both of these changes marked a significant shift in access to New Zealand citizenship in response to several challenges related to the radical changes in international migration to and from New Zealand since the early 1970s that are associated with globalization (Bedford et al. 2002, Spoonley 2008).

Earlier approach to citizenship

Since 1977, New Zealand has had what might be termed a reasonably relaxed approach to citizenship in the sense that there has been no real pressure on immigrants to become New Zealand citizens once they have been approved for residence. Since the establishment of a separate New Zealand citizenship, it has been possible for people approved for residence to retain other passports. New Zealand has always allowed for dual or multiple citizenship amongst its citizens. Another indication of the relatively relaxed approach to obtaining citizenship relates to the amount of time immigrants must reside in New Zealand for the purposes of meeting the required years of residence. The period dubbed "ordinarily resident" includes time in the country on temporary permits for study or for work as well as absences from New Zealand for a total of one of the three years, as long as no single absence is greater than six months.

Permanent residents in New Zealand have always had most of the rights that citizens possess, including the right to vote in national and local government elections (McMillan 2004). One of the major distinctions between citizens and permanent residents has been the right to travel and reside in Australia without applying for a visa. People travelling on New Zealand passports effectively benefit from visa-free entry to Australia, subject to some health and good character provisions. Permanent residents do not have difficulty getting short-term visitor visas for Australia, but they must qualify for entry under Australia's immigration program if they wish to reside in that country. Because it took less time in residence to qualify for citizenship in New Zealand than in Australia, and because the provisions relating to the accumulation of time in residence were quite generous, gaining New Zealand citizenship was seen by some immigrants as an easier way of qualifying for residence in Australia than direct entry via Australia's immigration program. Concern in Australia over the "backdoor" migration of recent immigrants to New Zealand led to changes to Australia's social security legislation in 2000, which had the effect of removing some welfare entitlements from New Zealanders who decided to settle in Australia after March 2001 (Birrell and Rapson 2001, Bedford et al. 2003).

Within New Zealand there are no legal impediments facing permanent residents in the labour market, or in access to social services, including education and health care, and welfare support. However, as Spoonley and his colleagues (1984, 1991, 1996, 2004) have stressed in several collections of essays, this apparent *legal* equality between citizens and permanent residents is in practice severely tempered by institutional racism and racial discrimination against people whose ethnic origins are different from the predominant "White" European Pakeha majority. The problems that "immigrants of colour" face in making a new life in New Zealand are not discussed further in theses pages, but they are as much a part of the reality of residence and citizenship in this country as they are in several other former British "settler" societies (Fleras and Spoonley 1999, Pearson 2001).

Residence requirements for citizenship

The shift to a five-year residence period in New Zealand for all immigrants, including spouses of New Zealand citizens, as well as a significant change in what qualifies as residence for the purposes of citizenship, quelled one of Australia's major concerns about backdoor migration to Australia via New Zealand. Under the 2005 *Citizenship Amendment Act* an applicant must now be a resident in New Zealand for at least 1,350 days of the five years immediately preceding application (approximately 75% of the period), including a minimum of 240 days (approximately 8 months) in each of those five years. Time spent in New Zealand on temporary study or work permits no longer counts as a period of residence for citizenship acquisition, although transitions to residence from study or work in New Zealand is an increasingly common route to permanent residence in the country (Department of Labour 2006: 11-16).

A New Zealand passport was a valuable asset for travellers – especially as it could be obtained without having to surrender other passports. A deepening appreciation of these values of New Zealand citizenship, coupled with a growing concern about what citizenship meant to immigrants who subsequently chose to spend much of their time off-shore…contributed to calls to toughen the requirements for becoming a New Zealand citizen.

The major push for increasing the qualifying time of residence for citizenship did not stem, however, from the concerns in Australia about backdoor migration. Rather, it arose from the increasing concern about national security following the events of September 11, 2001. The "ordinary residence" requirement under the 1977 Act was no longer considered sufficient for assessing an applicant's suitability for citizenship, especially their "genuine and ongoing link to New Zealand" (Department of Internal Affairs). The minimal requirements for residence also did not allow sufficient time for residence fraud to be discovered before an applicant received citizenship, which created major problems in terms of subsequent prosecution and deportation (McDowell 2005).

A New Zealand passport was also attractive because of the access it gave to countries other than Australia. Following the introduction of New Zealand citizenship in 1948, successive governments negotiated visa-waiver treaties to facilitate short-term movement of nationals for business and holiday purposes, initially with governments in European countries and, in 1971, with Japan, and then with an increasing number of countries in Asia, the Middle East, North and South America from the mid-1980s onwards (Bedford and Lidgard 1998). Because of the reputation New Zealand's government and businesses have secured internationally for transparency and lack of corruption, a New Zealand passport was a valuable asset for travellers – especially as it could be obtained without having to surrender other passports. A deepening appreciation of these values of New Zealand citizenship, coupled with a growing concern about what citizenship meant to immigrants who subsequently chose to spend much of

their time off-shore, as many of the Taiwanese and Hong Kong new citizens of the 1990s did, contributed to calls to toughen the requirements for becoming a New Zealand citizen.

The much more diverse immigration flows that stemmed from the abandonment of a deliberate source-country preference in immigration policy in the mid-1980s posed significant challenges to New Zealand's indigenous Maori population, as well as to the quite under-developed concept of a distinctive "New Zealand" identity. Spoonley (2008) and McMillan (2005) contain useful reviews of the critical issues here, while Fleras and Spoonley (1999) provide a comprehensive assessment of indigenous politics and ethnic relations in New Zealand. During the early years of the 21st century the Labour-led government has prioritized strengthening national identity as one of its three key priorities (along with economic transformation and family well-being). While New Zealand has never had an explicit multiculturalism policy similar to those of Australia and Canada – largely because of the bicultural heritage initiated by the Treaty of Waitangi between Maori and the British Crown in 1840 – the citizenship discourse in the 21st century is strongly influenced by concerns about accommodating diversity, respecting difference and ensuring social inclusion. There are no "citizenship tests" along the lines of those introduced in the United Kingdom and Australia, but permanent residents are expected to "recognize the value and benefit of the citizenship process" (Department of Internal Affairs) as they seek to obtain a New Zealand passport. The five-year residence requirement, with much stricter provisions regarding the applicants' "presence in New Zealand" to qualify for residence, is seen to be a better test of the desired "genuine and on going link to New Zealand."

The equivalent of 18% of New Zealand's usually resident population of 3.8 million people in 2001 was estimated to be living overseas. The majority of these individuals live in Australia, many now as second or third generation residents.

Acquisition of citizenship by birth

The changes to provisions relating to citizenship acquisition by birth brings New Zealand's citizenship law in line with those adopted by most Western countries, with th exception of the United States and Canada. Since January 1, 2006, a child born in New Zealand is a New Zealand citizen only if at least one of the parents is a New Zealand citizen or is entitled, under the *Immigration Act* of 1987, to be in New Zealand indefinitely as a permanent resident (including citizens and permanent residents of Australia, Cook Islands, Niue and Tokelau). This changed the situation that existed after January 1, 1949 when most people born in New Zealand automatically became New Zealand citizens by birth, irrespective of the citizenship and residence status of their parents. Since January 1, 2006, a New Zealand-born child, whose mother and father are not New Zealand citizens or permanent residents, is deemed to have at birth the same immigration status as the mother or the father, whichever is most favourable for the child. No child will be rendered stateless as a result of this change – section 6(3) of the Act ensures that every child born in New Zealand is a citizen if he or she would otherwise be stateless, or if his or her parentage cannot be established.

The elimination of automatic entitlement to citizenship to children born in New Zealand, irrespective of the immigration status of their parents, was justified by a growth in the number of short-term residents (visitors, students and temporary workers) having children while in New Zealand. Gaining access to a passport via a child was seen as a way of securing future residence options for other family members through the process of family sponsorship. This route to residence was curtailed by the removal of automatic entitlement to citizenship on the basis of birthplace. The simple fact of birth in New Zealand is not considered evidence of "a genuine and on-going link to New Zealand."

Citizenship and New Zealand's diaspora

While changes to the Act relating to citizenship by birth eliminated some anomalies around immigration to New Zealand, there remain some complex and challenging issues surrounding the entitlement to citizenship in New Zealand of people born to New Zealand citizens overseas. One of the most interesting issues for the future is the entitlement that members of New Zealand's very extensive diaspora have to residence in New Zealand. The equivalent of 18% of New Zealand's usually resident population of 3.8 million people in 2001 was estimated to be living overseas (Bedford 2001). The majority of these individuals live in Australia, many now as second or third generation residents. Under current legislation, Australian citizens and permanent residents are entitled to come and reside in New Zealand under the Trans-Tasman Travel Arrangement, so descendants of New Zealand-born migrants to Australia should have no problem obtaining New Zealand citizenship if they decide to live in New Zealand. The same cannot be said for the descendants of New Zealand citizens or permanent residents who have been living overseas in Europe, North America, Asia or other parts of the world. Their rights to residence in New Zealand will be more difficult to negotiate, especially if they are the children of New Zealanders who had themselves been born overseas.

A particularly interesting case in this regard will be the children of overseas-born Maori. All Maori can trace their ancestry (whakapapa) to specific tribes (iwi) and sub-tribes (hapu) in New Zealand and, through this whakapapa, to a "standing place" on the marae (meeting place) of their hapu or iwi. Birthplace and citizenship of

parents are not the defining criteria of whakapapa; it is the ancestral links through the mother and father to the indigenous people of New Zealand. It is difficult to see how a government in New Zealand could deny third generation Maori, born overseas to overseas-born parents and who wish to return to the land of their ancestors, the rights to permanent residence and citizenship. With significant economic resources being returned to iwi through the settlement of long-standing grievances during the period of colonial rule, the attractions of "home" may increase for some second and third generation Maori citizens of countries other than Australia, Cook Islands, Niue and Tokelau. Their entitlement to a New Zealand passport, without a parent or grandparent who was born in New Zealand or was a New Zealand citizen, will presumably require some form of discretionary grant on the grounds of descent under the *Citizenship Amendment Act.*

References

Bedford, R. D. "2001: Reflections on the Spatial Odysseys of New Zealanders." *New Zealand Geographer* 57, 1, p. 49-54.

Bedford, R. D., and J. M. Lidgard. 1998. "Visa-waiver and the Transformation of Migration Flows between New Zealand and Countries in the Asia-Pacific Region, 1981-1996." In *Vanishing Borders: The New International Order of the 21st Century*. Edited by L. B. Thong and T. S. Bahrin. Aldershot (UK): Ashgate, p. 91-110.

Bedford, R. D., E. S. Ho, and J. M. Lidgard. 2002. "International Migration in New Zealand: Context, Components and Policy Issues." In *Populations of New Zealand and Australia at the Millennium*. Joint special issue of the *Journal of Population Research* and the *New Zealand Population Review*. Edited by G. A. Carmichael and A. Dharmalingam. Canberra: Australian Population Association, p. 39-65.

Bedford, R. D., E. S. Ho, and G. Hugo. 2003. "Trans-Tasman Migration in Context: Recent Flows of New Zealanders Revisited." *People and Place* 11, 1, p. 53-62.

Birrell, B., and V. Rapson. 2001. "New Zealanders in Australia: The End of an Era?" *People and Place* 9, 1, p. 61-74.

Department of Internal Affairs. Retrieved from <www.dia.govt.nz>.

Department of Labour. 2006. *Migration Trends 2005/06*. Wellington: Department of Labour. Retrieved from <www.immigration.govt.nz/research>.

Fleras, A., and P. Spoonley. 1999. *Recalling Aotearoa: Indigenous Politics and Ethnic Relations in New Zealand*. Auckland: Oxford University Press.

Ip, M. (Ed.). 2003. *Unfolding History, Evolving Identity: The Chinese in New Zealand*. Auckland: Auckland University Press.

Liu, J. H., et al. (Eds). 2005. *New Zealand Identities. Departures and Destinations*. Wellington: Victoria University Press.

Macpherson, C., P. Spoonley, and M. Anae (Eds). 2001. *Tangata o te Moana Nui: The Evbolving Identities of Pacific Peoples in Aotearoa/New Zealand*. Palmerston North: Dunmore Press.

McDowell, J. 2005. "Law Reform and Regulation of the Immigration Consultancy Industry." Paper presented at the LexisNexis Immigration Law Conference, Auckland, (June).

McKinnon, M. 1996. *Immigrants and Citizens: New Zealanders and Asian Immigration in Historical Context*. Wellington: Institute of Policy Studies.

McMillan, K. 2004. "Developing Citizens. Subjects, Aliens and Citizens in New Zealand since 1840." In *Tangata Tangata. The Changing Ethnic Contours of New Zealand*. Edited by P. Spoonley, C. Macpherson and D. Pearson. Victoria Australia: Thomson, p. 267-289.

McMillan, K. 2005. "Immigration, Nationalism and Citizenship Debates in the 1990s." In *New Zealand and International Migration. A Digest and Bibliography Number 4*. Edited by A. D. Trlin, P. Spoonley, and N. Watts. Palmerston North: Department of Sociology, Social Policy and Social Work, p. 70-85.

Pearson, D. 2004. "Rethinking Citizenship in Aotearoa/New Zealand." In *Tangata Tangata. The Changing Ethnic Contours of New Zealand*. Edited by P. Spoonley, C. Macpherson, and D. Pearson.Victoria, Australia: Thomson, p. 292-314.

Pearson, D. 2001. *The Politics of Ethnicity in Settler Societies: States of Unease*. Basignstoke, Hampshire: Palgrave.

Spoonley, P. 2008. "Managing Immigration in Aotearoa/New Zealand." In *Migration and Globalization. Comparing Immigration Policy in Developed Countries*. Edited by A. Kondo. Tokyo: Akashi Shoten, p. 185-205.

Spoonley, P., et al. (Eds). 1984. *Tauiwi. Racism and Ethncity in New Zealand*. Palmerston North: Dunmore Press.

Spoonley, P., C. Macpherson, and D. Pearson (Eds). 2004. *Tangata Tangata. The Changing Ethnic Contours of New Zealand*. Victoria Australia: Thomson.

Spoonley, P., D. Pearson, and C. Macpherson (Eds). 1991. *Nga Take. Ethnic Relations and Racism in Aotearoa/New Zealand*. Palmerston North: Dunmore Press.

Spoonley, P., D. Pearson, and C. Macpherson (Eds). 1996. *Nga Patai. Ethnic Relations in Aotearoa/New Zealand*. Palmerston North: Dunmore Press.

Trlin, A., P. Spoonley, and R. D. Bedford (Eds). 2008. *New Zealand and International Migration. A Digest and Bibliography, Number 5*. Palmerston North: Department of Sociology, Social Policy and Social Work.