

# **HANDLING APPLICATIONS FROM ASYLUM APPLICANTS AND ACTIVE REVIEW APPLICANTS FOR PERMISSION TO TAKE EMPLOYMENT**

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## Introduction

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This instruction provides guidance on handling requests from asylum and active review applicants for permission to take employment.

## Permission to Take Employment - Paragraph 360 of the Immigration Rules

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As part of the implementation of an EC Directive for reception of asylum applicants, [paragraph 360 of the Immigration Rules](#) was amended to reflect that from 5 February 2005 asylum applicants who have been waiting for a year for an initial decision may apply for permission to work.

An application for permission to work will only be considered if the delay in reaching an initial decision cannot be attributed to the asylum applicant. If some or all of the delay has been caused by the asylum applicant, the application should generally be refused. If permission to work is given, it will only last until such time as their asylum claim is finally determined. Where asylum is refused and there is an in country right of appeal, 'finally determined' is when the claimant's appeal rights are exhausted. Where there is no in country right of appeal, 'finally determined' is when the asylum decision was made and served (see [paragraph 360A of the Immigration Rules](#)). It should be noted that the permission to work precludes self-employment, business or professional activity. Further advice should be sought via a Senior Caseworker on a case by case basis from the Asylum Resources Directorate (ARD), Support Policy, Secretariat and Communications (SPSC).

Applications for permission to work will be refused if the asylum claim has been outstanding for less than a year unless there are exceptional circumstances. Any proposal to grant permission to work under these circumstances must be referred, via a Senior Caseworker, to ARD.

### Who decides the application for permission to work?

Requests for permission to work from New Asylum Model (NAM) applicants should be dealt with by Case Owners at any stage of the process. If the request is made at a Reporting Centre, staff at the Reporting Centre should advise the applicant to contact his/her Case Owner.

Requests for permission to work from non New Asylum Model applicants are to be dealt with by Asylum Casework Directorate caseworkers. If the request is made at a Reporting Centre, staff at the Reporting Centre should advise the applicant to apply in writing directly to the Asylum Casework Directorate.

### Post decision asylum applicants

Case Owners will deal with requests for permission to work from New Asylum Model applicants at any stage.

In any other case, if a decision has been taken on the asylum claim and an application for permission to work is received at appeal stage, the application should be forwarded to Appeals Directorate. If the applicant's appeal rights are exhausted and no further asylum-related representations raised, any request for permission to work should be forwarded to Enforcement & Removals Directorate. If the applicant's appeal rights are exhausted and a request for permission to work is submitted together with further asylum-related representations, the request is to be dealt by Asylum Casework Directorate officers.

## **Dependants**

Dependants of asylum applicants should not be granted permission to work unless there are truly exceptional circumstances as paragraph 360 of the Immigration Rules does not extend to dependants of asylum applicants. Any proposal to grant permission to work under these circumstances must be referred, via a Senior Caseworker, to ARD.

## **Unpaid Employment**

Asylum applicants who wish to undertake vocational training or to undertake voluntary work may need to have the conditions of their temporary admission amended and should be advised accordingly.

## **Dealing with Enquiries from Employers**

Asylum officers must be aware that under no circumstances must they reply directly to enquiries by employers on a particular case without first seeking the permission of the asylum or active review applicant.

## Fresh Asylum Claims

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An applicant, whose appeal rights are exhausted and makes a fresh claim which is accepted as such, can apply for permission to work if the criteria in paragraph 360 of the Immigration Rules is met, i.e. if an initial decision on the fresh asylum claim is not made within a year of it being accepted as a fresh claim.

## Article 3 Claims

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Applications for permission to work from applicants who have outstanding applications under Article 3 of the European Convention on Human Rights (but not asylum claims) should normally be refused as paragraph 360 of the Immigration Rules does not extend to Article 3 cases. Any proposal to grant permission to work under exceptional circumstances must be referred, via a Senior Caseworker, to ARD. Further advice should be sought on a case by case basis from the SPSC team, via a Senior Caseworker.

## Granting Permission to Work

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Asylum officers should use stock letter ASL.2675 and choose Option 1 when granting permission to work to asylum applicants. This informs the applicant of the conditions of permission to work, and advises them to contact the Central Events Booking Unit (CEBU) in order to have their Application Registration Card (ARC) amended to reflect their permission to work.

Asylum officers should note that ASL.2675 Option1 informs the asylum applicant to have their ARC amended and provide employment details when available in order that a review of their eligibility and level of asylum support (if any) can be conducted as failure to do so would result in the discontinuation of their support. Case Owners should ensure a review of support is conducted when employment details are received. For further guidance see Eligibility and Assessment of Asylum Support.

## Refusing Permission to Work

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If refusing the applicant permission to work (e.g. because the asylum claim has been outstanding for less than a year) asylum officers should use ASL.2675 and select Option 2.

Staff should note that the fact that permission to work has been refused in this instance, does not preclude permission to work being granted in the future (e.g. if the asylum claim has been outstanding for over a year).

## Applications for Extensions of Permission to Work

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Applicants who have been granted limited leave which does not prohibit work may enquire whether they can still work beyond the date on which their leave expires. This will depend on whether they applied for further leave to remain before their leave expired.

If an application for further leave was made in time, and the type of leave granted did not prohibit work, the applicant is eligible to work under continuing 3C leave. Section 3C of the Immigration Act 1971 (as amended) automatically extends the leave of a person who has made an application for further leave to remain during a period of extant leave, provided the applicant has existing leave to enter or remain at the time when the application is made. The applicant should be informed of this.

If, however, an application for further leave is made out-of-time then there is no continuing 3C leave and thus all conditions attached to that leave, including permission to work, cease from when leave expires. If the applicant has not lodged an application for active review, or if the application was lodged after the leave expired, asylum officers should refuse permission to work unless paragraph 360 of the Immigration Rules applies.

If granting permission to work following an application for active review, asylum officers should use ASL.2675 and select Option 3. When refusing permission to work, asylum officers should select Option 4.

## Forwarding the File Following Completion of Action

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### NAM Asylum Teams

Once permission to work has been granted/refused, the Case Owner should continue to process the asylum claim or active review application. If permission to work is refused and the applicant's appeal rights are exhausted, the Case Owner should initiate removal action.

### Asylum Casework Directorate

Once permission to work has been granted/refused, the case file should be forwarded to the appropriate unit for the asylum claim or application for active review to be processed. If permission to work is refused and the applicant has no further rights of appeal, the case file should be forwarded to the London Workflow Team for removal action.

## Glossary

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<b>Term</b>	<b>Meaning</b>
ASL.2675	Employment Concession Asylum
ARD	Asylum Resources Directorate
SPSC	Support Policy, Secretariat and Communications

# Document Control

## Change Record

Version	Authors	Date	Change Reference
1.0	R B	21/02/2007	New web style implemented