

## Establishing the overseas national

To qualify for a Business and Commercial work permit:

- 1) the worker should have the skills, qualifications and experience to do the job on offer; and
- 2) the skills, qualifications and experience of the person must be in line with the following criteria:

**EITHER** – the individual must possess the following **qualifications**:

(a) a UK equivalent degree level qualification; or

(b) a Higher National Diploma (HND) level qualification which is relevant to the post on offer; or

(c) a HND level qualification, which is not relevant to the post on offer plus one year of relevant full time work experience at National/Scottish Vocational Qualification (N/SVQ) level 3 or above;

**OR** the individual must possess the following **skills**:

(d) 3 years full time experience of using specialist skills acquired through doing the type of job for which the permit is sought. This should be at N/SVQ level 3 or above.

The following should also be checked to establish skills, qualification and experience:

- Job Advertisement
- References
- Illegal Work
- Working Holiday Makers

### **What to do if**

- The Risk Assessment grid is ticked
- The references do not provide enough information to assess the level of work experience obtained by the overseas national
- Doubt has arisen regarding the validity of the references provided with the application
- The overseas national has gained relevant experience under current TWES permit and wants to switch to a B&C work permit
- The references show experience but not at NVQ Level 3
- The references show experience at NVQ Level 3 but not 3 years
- The evidence provided meets the requirements of the work permit criteria

### **Job Advertisement**

The job advertisement will detail the experience required for the post, which should meet the minimum criteria for the work permit arrangements. The overseas national should have the desired amount of experience at the level stated.

## **References**

Where the post on offer requires a specific period and level of work experience, caseworkers should check that this requirement is for at least three years of doing the job for which the permit is being sought and at a standard equivalent to least NVQ level 3. Caseworkers should then use references from previous employer to ensure the overseas national has the amount of experience required in the advertisement and experience at the relevant level and at least NVQ 3 level in order to qualify for the post and meet the work permit criteria. If an occupation sheet has been issued for the particular occupation, the details should be checked to ensure that the person has the industry qualifications usually deemed necessary for the job on offer. However, job titles may be used loosely by the employer and this is not necessarily ground for refusal unless the job title is protected.

Copies of references should be on business letter-headed paper and must show the dates the employment started and ended, along with the job title and a detailed description of the duties and responsibilities held. Statements of good character are not acceptable. Where an English translation is needed the employer should normally provide a certified translation. Caseworkers may request an original reference and in exceptional circumstances liaise with the relevant Embassy or High Commission to ask them to validate the document(s). This should only be done in agreement with the Higher Executive Officer (HEO). Caseworkers should wait for confirmation that the references are valid before approving a case. If the references are found to be false, the case should be refused.

Where an overseas national's previous experience has been gained while self-employed, caseworkers should verify the level of their experience. References from customers explaining the type of work the individual has undertaken may give an indication of the level of experience and how long the person has performed at that level. Also, details of the accounts or ownership documents can provide evidence regarding the individual's status as self-employed and the dates between which the self-employment took place. Testimonies from other members of staff employed by the individual which detail the duties and responsibilities may also be used. Any independent source such as local officials who are capable of independently detailing the duties and responsibilities of the individual may also help build a case.

## **Illegal Work**

Illegal work experience gained whilst the overseas national was in the UK should not be taken into account. Work experience gained by an overseas

national who had permission to enter the UK as a student, work permit holder, sole representative, self-employment or under HSMP may be classed as legally gained. Any experience gained in these circumstances may be taken into consideration as part of the application.

### **Working Holiday Makers**

Changes were made to the Immigration Rules governing Working Holiday Makers (WHM) on 20<sup>th</sup> June 2003 and 8<sup>th</sup> February 2005. Therefore, the Rules were applied differently depending on when a person entered the UK as a WHM. Overseas nationals admitted to the UK as a WHM prior to 20<sup>th</sup> June 2003 should not have been filling a genuine vacancy or pursuing a career, but employment incidental to their holiday was allowed. Restrictions on employment were removed for WHMs already in the UK from 20<sup>th</sup> June 2003 and for WHMs who entered the UK from 25<sup>th</sup> August 2003. The WHM rules then changed again on the 8<sup>th</sup> February 2005.

In assessing whether a period as a WHM can be taken into account as relevant experience the following applies:

- The Overseas National (OSN) entered UK as a WHM before 20 June 2003 - experience as a WHM before 20<sup>th</sup> June 2003 may not be taken into account
- OSNs already in UK at 20 June 2003 and those who entered as a WHM between 25 August 2003 and 7 February 2005 - experience gained may be taken into account.
- OSN entered UK as a WHM on or after 8 February 2005 - only 12 months work experience can be taken into account.

### **What to do if?**

**The Risk Assessment grid is ticked** – If the ‘experience not adequate’ box is ticked by the Executive Officer (EO) who pre-sifted the case, there is doubt regarding the level or duration of the experience gained by the overseas national. Caseworkers should ensure that all the above relevant checks are carried out fully. If the EO has made comments, any instructions should be carried out.

**The references do not provide enough information to assess the level of work experience obtained by the overseas national**- Caseworkers should contact the employer/representative requesting a more detailed reference and B/F the case. Caseworkers should be careful not to provide the employer/representative with the kind of details which will get an application approved. If no further information is forthcoming, the application should be refused using the appropriate letter and an adaptation of paragraph P81E included.

**Doubt has arisen regarding the validity of the references provided with the application** – Where doubt has arisen regarding the validity of the reference, caseworkers may request a reference check from the overseas post provided they have obtained prior approval from their HEO. If it is clear that a reference has been forged or fraudulently obtained, the case should be refused on skill of the worker. Paragraph P81E should be adapted for use in the refusal letter.

**The overseas national has gained relevant experience under a current TWES permit and wants to switch to a B&C work permit** – B&C applications for TWES switches should be refused. Paragraph P85F should be included in the refusal letter. Caseworkers should include all refusal reasons in a refusal letter, for example, P83K if the advertising is deemed not to be a genuine attempt to recruit, and all letters should be tailored to the individual application. (Also see Previous TWES permit holders).

**The references show experience but not at NVQ Level 3** – If the experience gained is below NVQ 3 the case should be refused. Paragraph P81A/B/C/E should be used in the refusal letter as appropriate.

**The references show experience at NVQ Level 3 but not 3 years** – If the references do not show three years relevant experience the case should be refused. Paragraph P81A/B/C/E should be included in the refusal letter as appropriate.

**The evidence provided meets the requirements of the work permit criteria** – Continue the case working process.