

AN OVERVIEW OF THE WORK PERMIT ARRANGEMENTS

- Introduction
- Business and Commercial
- Training and Work Experience
- Sports and Entertainment
- Student Internships
- General Agreement on Trade in Services
- Sectors Based Scheme
- Type of Application
- Length of Permits
- Two Tier Application Procedure
- Consideration of Tier 1 cases
- Consideration of Tier 2 cases
- Recognised Degree Level or Equivalent Qualifications
- Self Employment
- Part time Employment
- Supplementary Employment

Introduction

The work permit scheme allows UK employers to recruit or transfer people from outside the European Economic Area (EEA) while safeguarding the interests of resident workers in the UK. The EEA countries are Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, France, Finland, Germany, Greece, Hungary, Latvia, Lithuania, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. Switzerland is not a member of the EEA, but since June 2002, Swiss nationals and their families benefit from similar rights to EEA nationals on freedom of movement and work.

A work permit is a document that, when used together with other relevant papers such as a passport or visa, allows a person from overseas to enter the UK to work. If a work permit is granted when the applicant is out of the UK, it takes the form of a permit document, on secure paper. If the applicant is already in the UK it takes the form of a letter of permission.

Certain nationalities, known as visa nationals, need to obtain a visa before travelling to the UK. In addition, all work permit holders who wish to come to the UK for more than 6 months must obtain entry clearance (this includes non-visa nationals). If clearance is granted it will be for the full period of their stay as stated on the work permit.

If coming in from overseas, the individual presents the work permit to an Immigration Officer at the port of entry. If the Immigration Officer is satisfied that the work permit holder meets the Leave to Enter requirements of the Immigration Rules, they will grant leave to enter the UK in order to work. A stamp or endorsement will be placed

in the person's passport or travel document which will determine the person's conditions of stay in the UK.

If the individual is already in the UK, and if the work permit application from the employer is approved, they will be required to make a separate application for Further Leave to Remain (FLR). This stage of the application process should usually only be undertaken after work permit permission has been approved. The immigration consideration is a separate decision from the work permit application consideration and is undertaken by the In-Country Teams within Work Permits (UK).

There are several application types within the work permit arrangements:

Business and Commercial

The Business and Commercial arrangements allow employers in this country to recruit people from outside the European Economic Area (EEA) where the post cannot be filled by a "resident worker".

Training and Work Experience Scheme

The Training and Work Experience Scheme arrangements enable employers to take on people from outside the EEA to undertake work-based training for a professional or specialist qualification, or a period of work experience in posts that are additional to the employer's normal staffing requirements.

Sports and Entertainments

The Sports and Entertainments arrangements allow employers in this country to employ established sportspeople, entertainers, cultural artists and some technical/support people from outside the EEA.

Student Internships

The Student Internship arrangements allow students from outside the EEA studying first or higher degree courses overseas to undertake an internship with an employer in this country.

General Agreement on Trade in Services

These arrangements allow employees of companies that are based outside the EEA to work in the UK on a service contract awarded to their employer by a UK-based organisation. This is a special arrangement within the normal work permit rules made under the General Agreement on Trade in Services (GATS).

Sectors Based Scheme

The Sectors Based Scheme (SBS) allows workers from outside of the EEA to enter the UK to take short-term or casual jobs. The work is low skilled and only available in

two sectors: the hospitality industry (hotel and catering work); and the food manufacturing industries (meat and fish processing and mushroom processing only).

TYPE OF APPLICATION

There are five main types of work permit application:

Work Permit: Issued when the individual for whom the work permit is sought is outside the UK.

Multiple Entry Work Permits (Business & Commercial and Sports and Entertainments): This category of permit allows employees who are based overseas to enter the UK on a regular basis within the period of the permit to work for the same employer. There is a minimum of 6 months and a maximum of 24 months on this type of permit. Applicants must be outside of the UK when making this type of application and applicants cannot switch into other parts of the Work Permit arrangements.

First Permission: Issued whilst the person is inside the UK without any current leave as a work permit holder, i.e. they are here under another immigration category, e.g. student.

Extension: Issued whilst the person is inside the UK and the employer wishes to extend their existing work permit, to continue doing the same job, training or work experience for the same employer. Applications should be received at least one month but no more than three months before the person's permission to stay in this country runs out.

Change of Employment (CoE): Issued whilst the person is inside the UK and they are required to take a job with a different employer, or to change jobs within the same company.

LENGTH OF PERMITS

Business & Commercial

The maximum period approval can be given for a Business & Commercial work permit is 60 months (i.e. 5 years).

The employer must state the period for which they require the overseas national. Where the employer seeks a permit for less than five years caseworkers should recommend approval for the period sought unless there are other reasons to restrict the permit. Where caseworkers restrict permits, they must tell the employer in the approval letter why they are restricting the period of the permit.

Where an application requests a time range, for example 2 - 3 years, then caseworkers should telephone the employer or representative and determine an exact period.

Training

TWES permits can be approved for the average time we would expect someone to complete the particular training up to a maximum period of five years.

Work Experience

In general, most work experience programmes should not to exceed 12 months. Work Permits (UK) can only approve an extension to a work experience permit where there are exceptional circumstances. A period up to an overall maximum of 24 months can be approved if justified.

Student Internships

The person must be a student at a college or university overseas and approval will be given for a maximum of three months.

Sectors Based Scheme

Individuals may be given permission to work in the UK in Sectors Based Scheme employment for a maximum period of twelve months.

TWO-TIER APPLICATION PROCEDURE

A two-tier procedure is used for making Business and Commercial work permit applications - Tier 1 and Tier 2. The system aims to reduce the supporting documentation that employers must provide in straightforward cases that would normally merit approval.

Tier 1 applications involve a simplified procedure, which includes an exemption from the need to receive evidence of a recruitment search from the employer and evidence of qualifications.

Tier 2 applications require more evidence to be submitted. Caseworkers should assess evidence of experience and/or qualifications of the overseas national and evidence of a recruitment search.

The WP1 application form has two distinct sections that relate to each tier. Employers need only complete the Tier 1 part of the form if their application fits into one or more of the Tier 1 categories, or the Tier 2 part in all other cases. In all cases the general details should be completed. The two-part form applies only to B&C applications. It does not apply to cases handled by the Sports and Entertainment section (ENTS), or to cases under the Training and Work Experience Scheme (TWES).

The UK employer must sign the application form in all cases. If the employer uses an external representative, the representative must sign the representative declaration. The work permit applicant must not sign the employer's declaration. If the employer or representative fail to sign the form, the application should be returned to them for a signature.

If an organization has no employee in the UK with authority to sign and the person does not qualify for sole representative status under the Immigration Rules, the employer declaration may be signed by a UK registered Solicitor, but not by any other agent. Caseworkers will require a letter of authorization from the employer stating the solicitor has permission to sign on their behalf.

CONSIDERATION OF TIER 1 CASES

When completing Tier 1 of the application form WP1, employers are asked to select the relevant Tier 1 category that applies to their application according to their view of the post on offer.

There will be occasions where the employer has selected a Tier 1 category that, on closer examination, does not apply. They may also have claimed more than one Tier 1 category. In such cases, caseworkers should consider whether the case falls into any of the other Tier 1 categories, or which is the most appropriate Tier 1 category for that particular application.

If the application clearly does not fall into any Tier 1 category, caseworkers should contact the employer and ask them to complete the Tier 2 part of the application form so that the case can be considered under Tier 2. Letter L601 should be used to request this information.

For Tier 1 applications, there is no need for the employer to attach supporting documentation to confirm that the overseas national holds qualifications and/or experience to undertake the job on offer. However, caseworkers should check that all relevant questions have been completed and the replies are acceptable to meet the Work Permits (UK) criteria. Furthermore, the employer does not need to advertise the post on offer, since it is accepted that advertising would be either inappropriate or unproductive.

Tier 1 categories, explained in more detail below, are as follows:

- ICTs – i.e. transfers within international companies (Intra-Company Transfers);
- Board Level – i.e. senior board level posts or equivalent;
- Inward Investment – i.e. cases involving an overseas company making a substantial investment in the UK company;
- Shortage Occupations – i.e. cases where the occupation is recognised by us as being in acute short supply in the UK and the EEA;
- Sponsored Researchers.

Applications can only be treated under a Tier 1 category when the post and worker meet the occupational skills criteria of the work permit arrangements. In some cases, higher levels of qualifications and/or experience than the minimum skills criteria may be required.

CONSIDERATION OF TIER 2 CASES

For Tier 2 applications, employers must provide supporting evidence to demonstrate that the application meets the Work Permits (UK) criteria. In order to establish that a genuine vacancy exists, employers are normally required to undertake a recruitment search from the resident labour market. Caseworkers should ensure the advertisement meets the work permit criteria and copies of qualifications possessed by the worker should be submitted. Experience gained whilst on a TWES permit can be included in the assessment of the case.

Please note - Work Permits (UK) never waive the criteria relevant to the level of the post.

RECOGNISED DEGREE LEVEL OR EQUIVALENT QUALIFICATIONS

In order to meet the occupational skills criteria the job must require the individual to have either:

- A UK equivalent degree level qualification; or
- An Higher National Level (HND) level occupational qualification that is relevant to the post on offer; or
- An HND level qualification which is not relevant to the post on offer, plus 12 months of relevant full-time work experience; or
- At least 3 years relevant experience at NVQ level 3 or above.

If caseworkers are in doubt about the level of a particular qualification they can check with UK National Academic Recognition Information Center (NARIC). Instructions on how to access NARIC are available on the infozone at (not sure where yet but will amend when information becomes available).

The Qualifications and Curriculum Authority may also provide further information if needed. They can be contacted on www.qca.org.uk

Work experience gained by an overseas national who entered the UK illegally, or who entered the UK under a provision of the Immigration Rules that prevented them from working cannot be taken into consideration.

SELF-EMPLOYMENT

Work permits are not issued for self-employment. Those seeking to establish a new business or to work for a business that they already own or in which they already own shares should apply under the provisions of the Immigration Rules relating to self-employment

PART TIME EMPLOYMENT

Work permits are normally issued for full time employment. However, permits can be issued for part time employment as long as the job and worker meet the criteria of the work permit arrangements and the caseworker is satisfied a genuine vacancy

exists. Cases should not be refused on recourse to public funds, as this is part of the Immigration Rules NOT part of the work permit criteria. The National Minimum Wage (NMW) needs to be met and we will also need to ensure the individual is receiving the going rate for the job pro rata.

SUPPLEMENTARY EMPLOYMENT

This applies to an overseas national who already has a work permit and wishes to take work additional to that for which the permit was issued. The work permit holder may do so without further permission from this department provided the work:

- is outside of their normal working hours; and
- is no more than 20 hours per week; and
- is in the same profession and at the same professional level for which the holder's work permit was issued; and
- is not employed by a recruitment agency, employment agency or similar business to provide personnel to a client.

The work permit holder is not allowed to enter self-employment, set up a business or join another business as a director or partner. If a work permit holder wishes to be self employed or set up a business he/she will need to apply to colleagues elsewhere in the Home Office for leave to remain for this purpose.

When providing supplementary employment, employers must ensure that the National Minimum Wage and Working Time Regulations are met. More information on the European Working Time Directive can be found on the Department for Trade & Industry (DTI) website on www.dti.gov.uk/er

Where an application is received and the Director, who has established the business, is found to be holding a work permit for another employer, the case should be refused. In such an instance the Director of the company is working in breach of his conditions of stay and paragraph P874 should be used. This should not be mistaken for applications where the Director of the company has not established the business and has a valid work permit as a Director of the company in question. Such individuals will be employees with valid permission and part of their job may entail the recruitment of staff.