



Employing migrants

Inside



- UK immigration categories permitting employment
- Work permits
- The Points Based System Tier 2
- The Highly Skilled Migrant Programme/Tier 1 (General) Migrants

Introduction

Non EEA nationals need permission to work in the UK. Various immigration routes permitting employment are available.

This inbrief lists the immigration categories permitting employment. It summarises the two most common ways of obtaining permission to work in the UK, namely Work Permits and the Highly Skilled Migrant Programme/Tier 1 (General) Migrant category. It also outlines the effects of the new Points Based System.

UK Immigration categories permitting employment

The following immigration categories permit work in the UK:

- > Work Permit
- > Highly Skilled Migrant Programme/Tier 1 (General) Migrants
- > Training and Work Experience Scheme Permit (may work as per programme of training/work experience defined in detail in application)
- > Student (may work 20 hours per week during term time, and full-time during holidays)
- > Working Holidaymaker
- > UK Ancestry
- > International Graduates Scheme/Science and Engineering Graduates Scheme

Dependants of individuals in the above categories, such as spouse or de facto partner, may also be given permission to work.

Work permits

A work permit allows an employer to employ a foreign national for a specific job, the terms and conditions of which are detailed in the application. An employer can apply for a work permit of up to 5 years' validity.

Several kinds of work permit are available, including business and commercial, training and work experience, sportspeople and entertainers, student internships, trade in services (GATS), and sectors-based scheme. Of these, business and commercial work permits are the most common, and we will focus on them here.

To obtain a work permit, the employer must apply to the Home Office. Submission of a completed application form and supporting documentation is required. Supporting documents and

information will depend on the type of work permit application and also on the particular circumstances of the application. However, in general an employer may need to provide:

- > Evidence of its trading presence in the UK
- > Evidence that it has undertaken a suitable recruitment search amongst 'resident workers'
- > Evidence of the individual's qualifications and experience
- > A detailed job description

The Home Office can process a work permit application within two weeks. Once the work permit is issued, the employee must either return to his or her country of residence and apply for a visa, or apply from within the UK for further leave to remain in line with the work permit. This could take a further 1 to 6 weeks. An individual who is already in the UK under one of the following immigration categories may apply for further leave to remain in the UK without having to return to his or her country of residence: Work Permit, UK-graduated Student, Working Holidaymaker (only if the work permit is for a 'shortage occupation') and Science and Engineering Graduate/International Graduate Scheme.

The employee applies for permission to enter the UK at a British High Commission or General Consulate in his/her country of residence. If the employee is applying for permission to remain in the UK, the application is made to the Border and Immigration Agency from within the UK. Supporting documents and information will vary depending on where the application is made and the applicant's circumstances. However, examples of required documentation include the following:

- > A completed visa application form, or
- > A FLR(IED) application form if applying for further leave to remain in the UK.

- > The work permit document issued by the Home Office.
- > Evidence that the individual has sufficient funds to support him/herself and dependants. This will normally be bank statements and wage slips covering at least the 3 months preceding the application.

Visa applicants must also attend a Visa Application Centre to submit biometric data consisting of fingerscans and a digital photograph.

Employers will be able to apply for work permits until the end of 2008. However, the work permit application process will then be fully replaced by Tier 2 of the new Points Based System.

Tier 2 of the Points Based System

The Home Office is implementing Tier 2 of the Points Based System ('PBS') throughout 2008. Tier 2 is designed for skilled workers with a job offer. The PBS Tier 2 category will effectively replace work permits. Under the PBS, instead of applying for work permits, an employer must apply for a license to sponsor migrant workers, and then issue a certificate of sponsorship for each migrant worker.

Employers may now apply for a license by completing an online form and then posting hardcopies of supporting documents to the Border & Immigration Agency. Supporting documents vary depending on the nature of the entity applying. Examples of documentation that a Private Limited Company might supply are the latest annual audited accounts, a current financial report and proof of lease of business premises.

Employers with a number of different branches are able to apply as a single entity or as different branches. If you plan to employ people from an overseas branch of your organization, you must apply specifically for the Intra Company Transfer subcategory of license. You will also have to submit evidence of your company's corporate link with the overseas branch. You must indicate in your application for a license how many certificates of

sponsorship you plan to issue, generally and under each subcategory, per year.

Beginning in the third quarter of 2008, a licensed employer will be able to issue a certificate of sponsorship for each migrant worker it employs. A certificate of sponsorship is a virtual document. An employer issues a certificate of sponsorship by completing an online application form. A certificate of sponsorship represents the employer's assurance that the migrant is sufficiently qualified for the relevant work and will be paid the appropriate salary, and that the job is one that requires a certain skill level. Jobs with salaries of less than £40,000 will also be subject to a resident market labour test, which will include a requirement that the job be advertised for at least 2 weeks.

A sponsorship license involves recordkeeping and reporting duties. For each sponsored migrant, a licensed sponsor must keep on file contact details and a copy of his or her passport or immigration status document. Reporting duties include reporting if a sponsored employee does not show up for the first day of work, or does not attend work for 10 days without permission.

The Highly Skilled Migrant Programme/Tier 1 (General) Migrants

The Highly Skilled Migrant Programme ('HSMP') is gradually being replaced by the Tier 1 (General) Migrant category under the PBS. The HSMP and PBS Tier 1 (General) Migrant category are designed to allow people with exceptional skills to live and work in the UK. They offer a worker independence and flexibility; the worker does not need approval to switch jobs. An HSMP worker/Tier 1 (General) Migrant may come to the UK without an offer of employment and may seek either employment or self-employment.

Currently, people applying from overseas should apply under the HSMP, and people applying from within the UK should apply under the PBS Tier 1 (General) Migrant category. From 1 April 2008, people applying

from India should also apply under the Tier 1 (General) Migrant category. It is likely that by the end of 2008, all applications will have to be made under the Tier 1 (General) Migrant category, and that the HSMP will be completely phased out.

Applying from Overseas

The HSMP is a points-based programme, and an applicant needs a minimum of 75 points to qualify. The main criteria for HSMP approval are academic qualifications, and previous earnings over a 12 month period in the 15 months before application. Points are allocated under each of these 'scoring areas.' An applicant earns 50 points for a PhD, 35 points for a Master's degree, and 30 points for an undergraduate degree. An applicant may claim points for only one degree. Previous earnings are judged according to the country in which they were earned as well as according to amount earned. Up to 45 points are available for previous earnings. Five additional points may be allocated for previous UK experience. Up to 20 points may be allocated for being younger than 32 years old.

Do you have a Master's degree in Business Administration ('MBA')? If so, you might be able to earn all 75 required points by virtue of your MBA degree alone. Fifty business school programmes around the world are eligible for the HSMP MBA provision. Please contact us to see if your school qualifies.

Original documentation is required to prove eligibility in each 'scoring area.' An applicant must submit an original degree certificate to prove academic qualifications, and income tax returns and original wage slips to prove previous earnings. Narrow allowances for alternative documentation exist for applicants who are unable to provide these original documents.

Finally, all HSMP applicants must provide evidence of their knowledge of the English language. Acceptable evidence includes an original bachelor's degree certificate with a signed letter from the awarding institution confirming that the bachelor's degree course was taught

in English, or an International English Language Testing System (IELTS) Test

Report Form at Band 6 or above.

Once approved under HSMP, an individual must apply for a visa from within his or her own country. HSMP workers are initially granted leave to stay for 2 years, at the end of which they can apply for leave to remain under the Tier 1 (General) Migrant category for an additional 3 years.

Applying from within the UK

An individual who is already in the UK under one of the following immigration categories may apply for further leave to remain in the UK as a Tier 1 (General) Migrant without having to return to his or her own country: HSMP, Tier 1 (General) Migrant, Work Permit, Student, and Science and Engineering Graduate Scheme/ International Graduate Scheme.

Points are awarded for qualifications, previous earnings, UK work/study experience, and age much the same way as they are under the HSMP. The ability to speak English remains a requirement as well. However, applicants also have to demonstrate that they have £800 of funds available to support themselves in the UK. Applicants cannot gain all 75 qualifying points through an MBA as they can under the HSMP.

For further information on working in the UK, please contact one of the following members of the immigration team:

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