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## **OPI 21 Issue 27/2/08**

### **PBS Tier 1 (General) Migrants: Partners and Children**

On 6 February 2008 changes to the Immigration Rules were laid before Parliament. These changes included the introduction of the Highly Skilled Worker (Tier 1 General Migrant) category of the PBS, referred to in the rest of this AECIP as Tier 1 (General), and the new dependant categories T1 (General) partner and Tier 1 (General) child.

Tier 1 (General), which will replace HSMP, will be implemented in three phases or "releases":

Release 100 (29 February 2008), which will roll out the new category for applicants in the UK only

Release 150 (April 2008), for applicants in India

Release 200 (summer 08), which will include applicants world-wide. Release 200 will also roll out the other three sub-categories of the Highly-Skilled tier (Tier 1) on a worldwide basis.

Overseas dependants of principal applicants who are already in the UK and who have been issued LTR as Tier 1 (General) Migrants, may apply for entry clearance to join them. Posts may therefore receive such applications from 29 February even though PBS Tier 1 has not been rolled out overseas at that date.

### **Rules and Guidance**

The relevant Rules and Guidance for Partners and Children of Tier 1 (General) Migrants will be published on the UKvisas external website ([www.ukvisas.gov.uk](http://www.ukvisas.gov.uk)), both in the Entry Clearance Guidance pages and as a new INF leaflet.

For R100 partners and children of Tier 1 (General) migrants should use VAF2 available on the UKvisas website and visa4uk to apply. Applicants who are unable to apply on line should download and complete VAF2. (When asked what permission their sponsor has to be in the UK, they should enter "PBS: Tier 1 (General)"). The on-line application form will be amended appropriately.

The assessment process will be similar to that for HSMP dependants and will not involve a points score, as dependants as a whole are not part of the PBS. ECOs should assess evidence of the principal migrant's status in the UK (e.g. copy of passport) and be satisfied that an applicant in this category is related as claimed to the principal in the normal way. They should also be satisfied that the applicant intends to live with the principal applicant throughout their stay and that he/she does not intend to stay in the UK beyond any period of leave granted to the principal.

The chief difference to HSMP dependants is the maintenance requirement, which simply specifies that a one off set sum of money must be available for each applicant. The amount required depends on if and how long the principal has been in the UK:

less than 12 months, £1,600

more than 12 months, £533

Other than ensuring the specified amount is available, ECOs are not required to make any further assessment regarding maintenance or accommodation provisions for dependants of Tier 1 (General) Migrants.

### **Fees**

From 29 February 08, the fee for EC as a partner or child of a Tier 1 (General) Migrant is planned to be Fee 18(1)(c)(viii) £200 "for any purpose...." Subject to legal advice. This fee will change when new fees come into force on 1 April 08 to £600, the same as for the principal applicant.

### **Endorsement**

New endorsements of **Tier 1 (General) Partner and Tier 1 (General) Child** will be created on Proviso shortly. Leave should be granted to expire on the same date as the principal migrant's leave.

### **Refusals**

Refused applications will attract a full Right of Appeal. In place of the refusal wordings for accommodation and maintenance (DSP Paragraphs 27.6 and 27.7) are replaced by:

Your partner/parent entered the UK on dd mmm yyyy and has therefore been present in the UK for xx months. Appendix E of HC 395 specifies a set level of funds that must be met in order for a visa to be issued. In your case this is either £1,600 (less than 12 months residency) or £533 (more than 12 months residency) delete as appropriate.

General grounds for refusal continue to apply to PBS Tier 1 (General) Partners and Children.

Last updated 27 February 2008

Last Updated: 27 February 2008

## **OPI 22 Issue 27/2/08**

### **HSMP/Tier 1 (General): Restriction on Employment as a Doctor in Training**

On 6 February 2008 changes to the Immigration Rules were laid before Parliament. These changes included a new restriction on highly-skilled migrants taking employment in the UK as doctors in training posts. The restriction comes into effect on 29 February 2008 and applies to the following EC categories:

HSMP  
HSMP Partner  
Tier 1 (General)  
Tier 1 (General) Partner

(The restriction does not apply to HSMP Child or Tier 1 (General) Child).

The restriction only applies to those whose initial application to BIA for an HSMP approval letter was made after 6 February 2008. Anyone who applied for a HSMP approval letter on or before that date is not affected by the restriction. The approval letter will state the date of application so that it is clear whom the restriction applies to.

If the application for a Tier 1 (General) application is supported valid HSMP approval letter that was issued on or before 6 February 2008, the restriction will not apply. For all other Tier 1 (General) applications, the restriction will apply.

For dependant partners of the above categories - ie HSMP Partners and Tier 1 (General) Partners - the restriction will apply to all those who are issued EC in either category after 29 February.

(broken link to 'Doctor table' removed ) shows when the new trainee doctor employment restriction applies.

#### **Endorsement**

Proviso will be updated with the new restriction "**No employment as a doctor in training**" shortly. There will be separate endorsements for HSMP and Tier 1 (General) which include the restriction, as well as those that do not. ECOs should take care to instruct visa writers exactly which endorsement to select when signing off applications in these categories.

Last updated 27 February 2008

Last Updated: 27 February 2008

## **OPI 61 Issue 2008**

### **AECIP 61: Performance bonuses for Home Office visa staff working overseas**

The Home Office Performance Development Review (PDR) scheme allows for up to 35% of Home Office staff in each grade to receive a performance bonus. At the same time it requires business areas to identify the 10% of staff in each grade who are least effective so that specific development plans can be agreed to allow them to close the gap between themselves and their colleagues.

Both these processes apply only to Home Office staff and exclude FCO staff or others on inward loan and locally engaged staff. The arrangements for bonuses apply only to former UKvisas staff. Staff in other parts of the International Group will be moderated as part of the business units there were previously in.

Individual Regional Directors are responsible for deciding the bonuses for Home Office grades up to and including EOs (and equivalents) in their Directorate and for any world wide floaters who were working in their directorate as of 31<sup>st</sup> March 2008. Line managers making a nomination for these grades must send the nomination along with the completed PDR to their Regional Director. Each region has its own process for dealing with these nominations, if line managers are not aware of when they need to send nominations, they should check with their Regional Director. If more than 35% of these grades in any Directorate are nominated for a bonus the nominations will need to be moderated.

Regional Directors need to send the final lists of those to be awarded bonuses to xxx in OLS along with copies of the PDR and bonus form by 4<sup>th</sup> July 2008.

Bonuses for HEOs and SEOs (and equivalents) will be decided by a panel of managers from the regions and headquarters, taking place in London on the 3rd & 4th July. Line Managers wanting to nominate staff in these grades need to send their nominations to their Regional Director. Regional Directors in turn need to submit all nominations from their region by COP on Tuesday 1st July 2008. The submission should include a spreadsheet with details of those recommended along with the PDR and bonus form and should be sent to xxx in London. Again managers should establish what the processes are in their region and ensure the papers are sent to their Regional Director in good time.

The 10% of Home Office jobholders in each grade who have the most room for improvement do not need to be identified at this point, as elsewhere in the Home Office. They should however be identified and made aware of their position at the mid term review in October 2008. The line manager and member of staff must work together to improve performance and have a development plan to this end. Progress will be reviewed at the end of the reporting year.

To note, this is a new system which will only apply for this round of bonuses, guidance for next year's process will follow later. Any queries about the process should be referred to xxx

Last Updated: 1 July 2008

**OPI 82: Issued 11/9/08**

**Targeted ECM Reviews of Entry Clearance Refusal Decisions**

1. The Independent Monitor recommended in her report on her visit to Lagos in March 2007 that we move from universal ECM Reviews of entry clearance refusal decisions to a targeted approach. The IM also recommended that we adopt a more comprehensive basket of quality assurance measures to improve decision quality.
2. We ran a pilot of targeted ECM reviews of entry clearance decisions in 10 posts for a period of one year. This has been evaluated and has shown itself to be successful. It resulted in fewer, but more thorough reviews leading to improvements in refusal quality including a greater improvement in dismissal rates at appeal.
3. We will now run a global pilot for one year from 1 October. The instructions for the pilot are posted in OSI, under the heading ECM Reviews of Entry Clearance Refusal Decisions
4. The instructions about targeting are reproduced below. Please note that ECG 26.10 and AECIP 112/05 are withdrawn from 1 October and replaced by this instruction.

**Targeted Reviews of Refusal Decisions**

All entry clearance posts to participate in a global pilot of Targeted Reviews of Refusal Decisions for the period 1 October 2008 to 30 September 2009. Reviews must be targeted as follows.

**ECO Level**

- New/inexperienced/Short Term ECOs and other ECOs who need help with reaching robust, defensible, reasonable decisions and writing Notices of Refusals: ECMs must complete 100% review of all refusal decisions;
- ECOs whose line manager/ECM is fully satisfied with their ability to make good decisions and write good quality Notices of Refusals are subject to risk and development based checks only. This will be a percentage (5%-100%) ECM Review of their refusals. ECM confidence in the ECO's ability to deal with specific categories of refusals will inform the ECM what percentage of an ECO's refusals they should review in a specific category.
- ECMs must select the refusals for review at random, in such a way that ECOs will not know which of their refusals will be reviewed.
- From time to time, but at least one day each quarter, ECMs must conduct unannounced 100% refusal checks on each of the ECOs they line-manage/are responsible for;
- When new processes are introduced, e.g.: Points Based System; or, new categories are created, e.g.: new visitor categories, ECMs should conduct a 100% review of each ECO's refusals in these areas until they are satisfied that the ECO is fully able to prepare a robust, defensible and reasonable refusal notice for refused applications in these categories. This period must be no less than 3 months.

**Post Level**

- ECMs/DDVSs should ensure that a minimum of 25% of all refusals (FRA and LRA) at post are reviewed. ECMs at posts with very low refusal volumes

- should review at least five refusals per week (or carry out 100% review of refusals if less than five in a particular week).
- ECMs should check all refusals in categories where there are indications that refusal quality is not good enough (e.g.: where there has been a spate of lost appeals in a particular category; or, posts refusals have received adverse comment from the Independent Monitor), either all the time, or on an ad hoc basis.
  - Checks of all refusals in less common categories may be of use to ensure quality where ECOs are less familiar on a day to day basis with such applications. These will vary from post to post.
  - Reviews should be carried out within 24 hours of the ECO making the decision and must be completed before the refusal notice is served on the applicant.
  - Any standard letters previously used in use which state that all decisions are reviewed by an Entry Clearance Manager, must be withdrawn/rewritten to reflect these arrangements before the pilot starts.
5. The decision quality section of the Business Assurance Quarterly Checklist provides the basket of assurance measures that will replace 100% ECM review. ECMs must ensure that the questions relating to decision quality are fully and accurately answered. Checklist returns are subject to spot checks at regional management level and are scrutinised by the Business Assurance team in London. See OSI at xxx
  6. Please send any enquiries about this OPI or the guidance about targeted ECM reviews of refusal decisions to: xxxx (on the GAL).

Last Updated: 11 September 2008

**OPI 91: Issued 18/11/08**

**Incorrect use of the Student Visitor endorsement**

1. It has come to light that in 2008, 1,295 Student Visitor visas have been issued with incorrect leave to enter. The most common mistake is where Student Visitors are being issued in line with the length of their course of study and not the standard 6 months that should be applied to them. ECOs are reminded that Student Visitors are not granted leave in line with the duration of their course. As set out in paragraph 56K they are essentially visitors, which is why six months should normally be granted.
2. The Student Visitor visa allows visitors who require entry for studies for less than 6 months at a time and do not want to work or extend, to combine their studies with sightseeing and other holiday activities. However, ECOs should also note that there is no provision to issue 1, 2, 5 or 10 year long-term multiple-entry visas in this category. This issue was brought to our attention by the Independent Monitor after she found that some Student Visitors had been incorrectly issued long-term visas. Entry Clearance Guidance (ECG 10.17) and the Visitor Information Leaflet (INF 2) have been updated to clarify this.
3. The correct fee for a Student Visitor (VAF 1) visa is £65. Those who apply as Students (VAF 3) and pay the £99 Student visa fee should not be issued a Student Visitor visa. They should either be issued a Student visa in line with the duration of their course of study which will allow them to work or extend, or refused under the student provisions, paragraph 57 of the Immigration Rules (ECG 12).
4. Our website also carries useful information (recently updated) for applicants in relation to both categories, including flowcharts showing the options available to those wishing to study in the UK.
5. If a Student Visitor visa has been issued incorrectly, mistakes should be rectified where possible. Where the Student or Student Visitor has already travelled to the UK and requests that their visa be changed, you should follow the guidance in ECC8 [[www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)] on correcting visas in-country.
6. Any enquiries about this OPI should be sent to xxxx

Last Updated: 18 November 2008



## OPI 96 2008

### New Fees and Account codes from 27 November 2008

#### SUMMARY

Sets out the new fees and account codes, including PBS tiers 2 and 5, that will come into force on 27 November

#### MAIN TEXT

The changes below will come into effect from 27 November 2008.

PBS Tiers 2 and 5 will be launched worldwide with the following fees and account codes:

PBS tier 2 - £205 except as below. Account code 412283.

PBS tier 2 (reduced rate only for nationals of Croatia, FYR Macedonia and Turkey and their dependents) - £185. Account code 412284.

PBS tier 5 - £99 except as below. Account code 412285.

PBS tier 5 (reduced rate only for nationals of Croatia, FYR Macedonia and Turkey and their dependents) - £90. Account code 412286.

For PBS tier 1 applications, the following reduced fees will apply for nationals of Croatia, FYR Macedonia and Turkey and their dependents. Nationals of all other countries will be required to pay the full fee:

For PBS Tier 1 General, Investor and Entrepreneur routes - £540. Account code 412282.

For PBS Tier 1 Transitional route for holders of an HSMP letter - £180. Account code 412275.

There will be no reduced rate for PBS tier 1 post study applications – account code 412281.

Applicants travelling to the UK with an approved partner agent in India will be able to apply for a one month single or double entry visit visa at the fee of £45. Account code 412271.

Separate guidance will be issued for updating cash tills.

**To enable the Commercial Partner websites to be updated, ECMs should liaise with local Management Officers and send the new fees in local currency for each of the endorsement categories above to the xxx mail box on the GAL by COP on Friday 21st November – for any questions on this please contact xxx**

Any other questions about this OPI should be directed to xxx

Last Updated: 19 November 2008

## **OPI 111 2009**

### **Visa Requirement Lifted for nationals of Taiwan**

1. Phil Woolas, Minister of State for Immigration, has announced today that nationals of Taiwan will no longer require visas to visit or transit the UK airside, with effect from 3 March 2009.

### **Visit visa applications submitted between 9 February and 3 March**

2. ECMs must ensure that commercial partners are made aware of this change immediately and that notices are displayed prominently in all Visa Application Centres.
3. Nationals of Taiwan who apply to visit or transit the UK on or after 3 March must be advised that a visa is not mandatory either by the Commercial partner at the time of submission or by the visa section prior to processing and issuing the visa. The communications team in King Charles Street will ensure that notifications are placed on the UKvisas and Commercial Partner websites as well as visa4uk.
4. ECMs should also inform UKTI/Commercial section and consider providing a mailshot update to any trusted partnership programmes.

### **Refund of Visa Fees**

5. Applicants who apply for visit or transit visas on or after 9 February, must be contacted by the visa section prior to assessment or issuing a visa to check travel dates and to ensure that they are aware of this change. If the applicant elects to proceed with the application the Proviso record must be minuted to reflect this and any future application for refund can be denied. Only those applicants who elect to withdraw their application will be entitled to a refund.
6. Those who already held visit or transit visas issued prior to 9 February (including those who have not travelled) will not be entitled to a refund

### **Updating Proviso**

7. Posts will need to update their Proviso database to reflect the lifting of the requirement. For details on how to update Proviso please follow these instructions:
  - Log onto Proviso as ECM or Administrator (when all users are logged out of the system)
  - Select Maintenance menu
  - Select maintain nationalities
  - Double-click Taiwan
  - Remove the tick against the visa national box (ensure unchecked)
  - click ok and log out of Proviso

### **Engagement with Airlines and other stakeholders**

8. A separate global communications strategy for airlines has been taken forward by colleagues from RALON and will be copied to all ECMs to use when answering queries.

Those Posts who do not have an ALO will need to confirm with regional colleagues that local airline representatives have been informed.

9. The contact for this OPI is xxx please send completed forms to xxx

**OPI 125: Issued 10/3/09**

**Code of Practice on Forced Marriage**

**Summary**

New Code of Practice on handling spouse visa applications involving forced marriage.

**Main Text**

The Government's response to the Marriage Consultation: Marriage Visas: The Way Forward published on 23 July 2008 set out the various steps that UKBA intended to take to combat the problem of forced marriage. The first of these, a Rules change raising the age from 18-21 for spouses and partners coming to settle in the UK, was introduced on 27 November 2008. The next step is the introduction with effect from 6 March 2009 of a Code of Practice setting out how spouse cases (both overseas and in-country) involving persons vulnerable to forced marriage will be handled. A public version of the Code has been published on the main UKBA website. A restricted version that includes guidance for ECOs on handling entry clearance applications where forced marriage may be a factor can be found on FCONet xxx Staff must follow this guidance with immediate effect. This is the most comprehensive staff guidance that UKBA has produced on forced marriage.

The Code follows extensive consultation across UKBA and with the Forced Marriage Unit of the FCO. It is primarily guidance aimed at staff, both ECOs overseas and in-country case workers, as it sets out how an application should be handled if someone is identified as vulnerable to forced marriage. It is also designed to offer greater assurance to victims of forced marriage that UKBA has an effective system in place to deal with forced marriage, ensure cases are dealt with compassionately and consistently and that the appropriate support is available to victims. An unclassified version will therefore be available to the general public via the main UKBA website.

Queries on this OPI should be addressed to the xxxx

Last Updated: 10 March 2009

**OPI 127: Issued 10/3/09**

## **Overseas Media Representatives Concession**

### **Summary**

Temporary re-introduction of skilled worker category for overseas media representatives who do not qualify under PBS because they have no UK sponsor.

### **Main Text**

Posts will be aware that the skilled worker category for representatives of overseas newspapers, news agencies and broadcasting organisations (Rules Paragraphs 136-141) closed on 27/11/08 with the introduction of Tier 2 (intra-company transferees) of the Points Based System. However, applicants seeking to work in the UK as overseas media representatives where their employer does not have a UK branch will not be able to obtain certificates of sponsorship. Therefore, a concession has been announced on 19 February (which takes immediate effect) to make provision for such applicants who will not qualify under the PBS.

The concession effectively allows ECOs to consider applications from Overseas media representatives who do not have UK sponsors under the provisions of deleted paragraph 136 of the Immigration Rules., i.e. a return to the position pre-27 November 2008. Full guidance (including guidance on dependants) can be found in Chapter 18 of ECG. The concession allows for applicants to choose whether they make their application under PBS or the concession itself. However, ECOs should note that both routes operate in parallel and applying under one category does not exclude the applicant from consideration in the other. So, for example, if the applicant applies under PBS tier 2 but does not meet the requirements, e.g. they don't have a CoS, the ECO must consider whether they qualify under the concession. If so, this should be noted in the events field on Proviso and entry clearance granted. Applicants should not be required to make a fresh application. Applications should only be refused where the applicant fails to meet the requirements of either paragraph.

Those applying under the concession should complete VAF 2. Those applying under PBS should continue to complete VAF 9. The fee in either category is £205.

The contact for this OPI is xxx

Last Updated: 10 March 2009

## **OPI 132: Issued 2009**

### **Change to Immigration Rules for children of students and prospective students**

#### **Summary**

Change to Rules paragraph 79 with the introduction of new paragraph 79A to include provisions to require that the child is travelling with both parents, the sole surviving parent or the parent with sole responsibility for the child's upbringing.

#### **Main Text**

1) In order to bring the requirements for the children of students issued under paragraphs 57-75 and prospective students issued under paragraphs 82-82F (paragraph 79) in line with other child dependants (including those of PBS Tier 4 Migrants) under the Immigration Rules, the following new sub-paragraph will be introduced on 31 March:

79A. Both of the applicant's parents must either be lawfully present in the UK, or being granted entry clearance or leave to remain at the same time as the applicant, unless:

- (i) The student or prospective student is the applicant's sole surviving parent, or
- (ii) The student or prospective student parent has and has had sole responsibility for the applicant's upbringing, or
- (iii) there are serious or compelling family or other considerations which would make it desirable not to refuse the application and suitable arrangements have been made in the UK for the applicant's care.

2. There are no transitional arrangements for this Rules change. Therefore, any decision made on or after 31 March 2009 should be made according to these new Rules even if the applicant applied before this date. INF 5 has been updated to inform applicants in advantage of this Rules change.

3. Guidance on considering applications against the 'sole responsibility' and 'serious or compelling family or other considerations' above can be found in ECG 14.5 and ECG 14.6.

4. The contact for this OPI is xxx

Last Updated: 25 March 2009

**OPI 138: Issued 31/3/09**

**Changes to the Points Based System Tiers 1 and 2, and Administrative Review**

**Summary**

Following the Home Secretary's Controlling Migration announcement on 22 February, changes have been made to the points scoring criteria for Tier 1 (General) and (Post-Study Work). Under Tier 2 (Skilled Worker) changes will also be made to the Resident Labour Market Test (RLMT).

**Main Text**

On 22 February the Home Secretary's announced that changes would be made to the Points Based System Tier 1 (General). The revised Tier 1 policy guidance and the revised Sponsorship guidance explaining the new Resident Labour Market Test requirements are now published on the UK Border Agency website.

*The T1 (General) and T1 (Post Study Work) policy changes will come into effect for all applications submitted on or after 31 March 2009.*

These changes will apply to applicants seeking their first period of leave from outside the UK or who are seeking to switch into Tier 1 (General). The earnings multiplier for overseas earnings will still apply for initial applications only.

The changes are:

Under Tier 1 (General) no points will be given for a bachelors degree or previous earnings of less than £20,000. The overall points scoring requirement for the attributes will remain as 75 points. The first educational qualification for which points may be claimed is a Masters degree for which 35 points will be scored. Applicants will be able to claim 15 points for previous earnings of £20,000.

Under the Tier 1 (Post Study Work) applicants will not be awarded points for Postgraduate Diplomas or Postgraduate Certificates other than Postgraduate Certificates in Education.

Any Tier 1 (General) or (Post-Study Work) applications received prior to 31 March should be dealt with under the points scoring criteria that were in place up to and including 30 March 2009.

Please see the full guidance for further information:

[Tier 1 - General Guidance](#)

[Tier 1 - Post-study Work Guidance](#)

The points based calculator will be amended to reflect the revised points scoring criteria.

The self assessment appendices 1 and 4 have been amended to reflect the changes in points scoring and will be available for application made on or after 31 March 2009.

**Tier 2 - Resident Labour Market Test (RLMT)**

All jobs under Tier 2 (General) that are subject to the RLMT and advertised on or after 31 March 2009 must be advertised to settled workers in Jobcentre Plus to pass the RLMT. In

addition, the vacancy must also be advertised using one other method permitted by the relevant code of practice.

Full details are provided in the revised Sponsorship guidance

There are no implications for entry clearance applicants as UK sponsor compliance for this activity will be monitored by the Sponsor Management Unit.

***Additional information to remember when dealing with PBS applications***

**Certificate of Sponsorship (CoS)**

When an application is received under Tiers 2 or 5, entry clearance staff must remember to change the status of the CoS to "USED" as soon as the possible and not wait until the application has been decided. There have been a number of high profile cases where the CoS has not been designated as "USED", and this has resulted in complaints being sent to the Sponsor Management Team in Sheffield. If we do not carry out our action on the CoS, the UK sponsor is unable to fulfil their responsibility to report the arrival or otherwise of their sponsored migrant and any failure to do so on sponsor's part have implications on their status etc.

**Passports valid beyond 10 years**

The Sponsorship Management System (SMS) accepts passport expiry dates of up to 10 years. A limited number of passports, primarily those of Indian nationals, are valid for longer which means that the SMS cannot be filled out correctly. In this case, sponsors have been advised to do the following:

- Complete the passport expiry details on the SMS to the 10 year maximum.
- If the sponsor is "A" rated and supporting the migrant's maintenance funds, they must include the correct passport details in their letter confirming their support of the migrant's maintenance.
- If the sponsor is not supporting the migrant's maintenance then they will need to provide a letter which only confirms the correct passport details.

**Removal of transitional maintenance requirements**

With effect from 27 March 2009 the transitional maintenance requirements will cease and relevant paragraphs will be removed from the revised Tier 2 and 5 policy guidance that is due to be published on 31 March 2009.

**Administrative Review**

We have agreed a change to the policy on Administrative Review, which will be reflected in guidance for all PBS tiers by 31 March 2009. The guidance will state that the Administrative Reviewer should focus on the area which the applicant has asked to be reviewed.

This marks a change from original policy which stated that the Administrative Review should be of the whole entry clearance decision.

The decision to make this change is a result of a recommendation made by the PBS team, following a series of visits to the Regions, to help improve time and efficiency in PBS decision-making. By focusing the Review on the area challenged by the applicant, this will help speed up the time it takes Entry Clearance Managers (ECM) to perform the



Admin Review. However, the ECM is not restricted to reviewing this area only, and can note and act upon other errors found in the rest of the decision.

**Collection of PBS management information**

Posts are reminded that they must use the e-base MI tool to record all their points scoring and administrative review decisions for Tiers 1, 2 and 5. The PBS team in conjunction with PMAF will shortly be carrying out an exercise to match data from CRS against that entered into the e-base MI tool and ensure that we are providing accurate MI to the centre. Where we find differences in the information Posts will be instructed to resolve them.

Last Updated: 31 March 2009

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**OPI 149: Issued 25/06/09**

**Revised policy guidance for PBS Tier 4 and for PBS dependants**

**Summary**

The UK Border Agency has published revised policy guidance for tier 4 of the points-based system for (general and child) students and their dependants.

The new guidance relates to applications submitted on, or after 1 June 2009 and is available on the main UK Border Agency website

**Full Text**

The key changes that are included in the revised guidance are highlighted below:

Issue	Changes from 1 June
Proof of availability of finances - transitional arrangements	<p>There are transitional arrangements in place that allow applicants to show they have the money needed to meet the maintenance requirements of tier 4, on the day that they apply, rather than for a period of 28 days prior to their application.</p> <p>These transitional arrangements have been extended and will remain available to applicants until 30 September 2009.</p>
Proof of availability of finances - loan documentation	<p>The policy guidance allows applicants to provide a letter from an appropriately regulated financial institution confirming availability of funds in the form of a loan.</p> <p>Slight revisions have been made to the required content of these loan letters, to allow for the fact that they will not always include an applicant's account number.</p>
Official financial sponsorship	<p>Prior to 1 June 2009, there was no provision for a tier 4 migrant's official financial sponsor to extend their financial sponsorship to the family members of the tier 4 migrant.</p> <p>From 1 June 2009 a tier 4 migrant's official financial sponsor will be permitted to extend their financial sponsorship to cover the tier 4 migrant's dependants.</p>
Electronic signatures on visa letters	<p>Visa letters must be signed and dated by an authorised official (original or electronic signature).</p> <p>The policy guidance has been revised to clarify that either a digital signature or a scanned</p>

	signature will be accepted as an 'electronic signature' for these purposes.
Maintenance requirements - inner and outer London	<p>Applicants who will be studying in inner London are required to show a higher level of funds to cover their living costs than those who will be studying outside London.</p> <p>The definition of who the higher maintenance requirements apply to has not changed. The guidance has however been altered to clarify the fact that the higher maintenance requirements apply only to those who will be studying in inner London and that applicants who will be studying in outer London or elsewhere in the United Kingdom, will be assessed against the lower requirements.</p>
Date of application	<p>The date of your application will be taken to be the following:</p> <p><b>For applications made in the United Kingdom:</b></p> <p>where the application form is sent by post, the date of posting; or  where the application form is sent by courier, the date on which it is delivered to the UK Border Agency of the Home Office;</p> <p><b>For applications made outside the United Kingdom:</b></p> <p>the date that the fee associated with the application is paid. This means the date shown on your payment receipt, which depends on how you paid for your visa application, for example, at a British Diplomatic Post, visa application centre or online.</p>

## Operational issues

### *Conditional /Unconditional visa letters*

Please note a revision to the guidelines on accepting unconditional and conditional visa letters.

Posts have been operating a concession for a small section of students who are applying for a visa to study "A" levels in the UK and who are awaiting their GCSE results. The purpose of this concession is to help alleviate the time pressure for these applicants by allowing Posts to accept a Tier 4 application on the basis of a conditional visa letter, and

begin consideration of the application. This concession will still only apply to applicants waiting for GCSE results, but it has now been extended to those who are going on to study A Level courses **AND** equivalent courses, such as higher diplomas or Scottish national qualifications. As now, the visa **MUST NOT** be issued until the applicant has submitted the final Unconditional visa letter and details of the Unconditional visa letter satisfy the requirements of the Tier 4 Rules and Guidance. Entry Clearance/Visa **MAY ONLY** be issued on the basis of an Unconditional visa letter.

**Information regarding incorrect application of Tier 4 policy.**

Since the implementation of Tier 4 on 31 March we have received information regarding the possible incorrect application of Tier 4 policy in the consideration of student applications. Please find below a list of some of the most common areas that we have received feedback about.

**Passport Numbers**

The inclusion of the passport number on the visa letter is *optional*. This is not a mandatory requirement and should not be a reason for refusal.

**Maintenance**

The requirement for migrants to demonstrate that they have held the required funds in their account for 28 days does not apply until 1 October 2009. This is because applicants have not had to show money before and may not be able to demonstrate this from the start of Tier 4. In a recent case, a Tier 4 applicant was advised that they must demonstrate 3 months' history of funds. This is incorrect. At present, students need only demonstrate that they have the required funds in their account on the day that they apply. From 1 October 2009, Tier 4 migrants must be able to show that they have held the required funds for a 28 day period (ending no more than one month before the date of their application). (See para. 137, Tier 4 Migrant Policy Guidance).

**Letter-headed Paper**

The sponsor visa letter must be on dated, letter-headed paper. This can either be pre-printed letter-headed paper that the sponsor feeds into a printer; OR the letterhead can be printed by the sponsor themselves in their own printer. It is acceptable for letterhead to be in black and white print or in colour print.

**Electronic signatures**

We can accept an electronic signature of an authorised official of the sponsor, as well as an original signature (see section 267, page 51 of the sponsor guidance).

**English Language Qualifications**

English Language qualifications are **not** mandatory unless the student is applying to undertake an English Language Course in the UK and needs to prove to the sponsor that they are able to study at Level A2 of the Common European Framework of Reference for Languages; OR where the visa letter from the sponsor has cited an English Language qualification as the main document for assessing the migrant's suitability for a course. There is **no** general overarching English Language Requirement for Tier 4.

**Documents used to obtain a Visa offer**

Child students under 16 years old only have to provide the visa letter and do not have to provide any other documents to show how they have been assessed by their education provider. For example if a child (under 16 years old) has been offered a place on a course on the basis of a school's own entrance exam, they do NOT have to provide these documents when they submit their application. For details of documents that must be submitted for other categories see section 146 – 162 of the Tier 4 Migrant Policy Guidance.

### **Visa Letters**

Since the implementation of Tier 4 on 31<sup>st</sup> March, a significant number of visa letters have been submitted which contain errors or which are incomplete. This has contributed to a high refusal rate of Tier 4 applications to date, both in and out of the UK. UKBA has published some example visa letters and a visa letter checklist on their website as a reminder to sponsors and prospective students that the Visa Letter must contain all of the correct information as required by the Tier 4 guidance. Visa staff can access the example letters on the PBS pages of FCO.net.

All staff are reminded that they do not have discretion in the application of the guidance. However, the guidance should not prevent you from contacting an applicant or a sponsor to clarify a point of detail if you feel it is practicable to do so. In the interests of efficiency we encourage decisions to be taken on the basis of the papers submitted in this initial period when the new system is bedding down you should make direct contact where appropriate.

### **Refusals**

All Tier 4 refusals should be reviewed by an ECM until we instruct otherwise.

### **Tier 4 Management Information**

Tier 4 is currently coming under some very close scrutiny and we are constantly being asked for MI that we cannot extract from CRS. Posts are reminded that it is absolutely vital that they complete and return the Tier 4 MI returns to PMAF.

PMAF will be issuing a reminder to those Posts who have not submitted their returns for April. Tier 4 MI returns for May are now due.

Last Updated: 25 June 2009

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## **OPI 177 Issued 2009**

### **Clarification to guidance on applying paragraph 320 7 (a) and (b) of immigration rules- the question of 'innocent mistakes'.**

#### **Summary:**

Changes to guidance on handling 320 7 (a) and (b) cases to reflect Liam Brynes' letter to ILPA that stated that 320 7 (a) and (b) "are not intended to catch people who make innocent mistakes on their applications"

#### **Main Text of the OPI:**

Paragraphs 320 (7A) and 320 (7B): when is an "innocent mistake" an "innocent mistake" when related to previous refusals / Leave to Remain applications?

Paragraph 320 (7A) makes it a mandatory refusal if false representations are made in an application. Paragraph 320 (7B) makes it a mandatory refusal if there has been a previous immigration breach or (7A) refusal. However, there will be cases where this is not so clear cut. The ECO needs to be satisfied that deception has been employed and/or the applicant intended to deceive the ECO. The majority of cases where this requires the ECOs judgement will relate to how an applicant has completed the VAF, most usually in relation to the questions about previous visa refusals or the grant or refusal of Leave to Remain (LTR). A prime example of this is when an applicant ticks the wrong box on the VAF in answer to the question 'have you previously been refused a visa' – e.g. an applicant has ticked that they have not previously been refused a UK visa, but has presented a passport containing a refusal stamp and/or a previous refusal notice. This should not be considered to be deception - therefore paragraph 320 7 (a) should not apply. Read the full guidance.

Cases of "innocent mistake" must be referred to the ECM where the ECO intends to issue. The ECO should update PROVISIO to indicate why this was considered a case of "innocent mistake", rather than one of deception.

320 (7A) and (7B), although mandatory grounds for refusal, are not intended to catch those who make innocent mistakes in their application. If you decide that an innocent mistake has been made and that a visa will be issued, you should consider advising the applicant that in any future application they must include details of any previous refusals or other adverse decisions / details of LTR applications. Otherwise, they may continue to make the same omission.

Last Updated: 27 November 2009

## OPI 180: Issued 2009

### Changes to child visitor rules and student exchange concession

#### Summary

Changes to the Child Visitor rules under paragraph 46A of HC395 will come into force on January 1st 2010. The student exchange concession, which came into force in August 2009, will cease on 31/12/09.

#### Main text

In August 2009 a temporary concession was announced for students under 18 who wished to participate in exchange visit programmes with a UKstate-maintained school. OPI 165 refers.

On 01/01/10 this concession will be replaced and superseded by a change in the Immigration Rules.

From 01/01/10 students under 18 who wish to participate in exchange visit programmes or educational visits with a school in the maintained sector, a non-maintained school, an independent non-fee paying or an independent fee paying school will need to meet paragraph 46A of the Immigration Rules and in particular paragraph 46A (viii).

*46A (viii) if the applicant is undertaking an exchange or educational visit only, this is to be provided by a school in the maintained sector, a non-maintained special school, an independent non-fee paying or an independent fee paying school, as described in guidance published by the UK Border Agency*

Paragraph 46A (viii) does not substitute paragraph 46A(vii), which makes provision for a child visitor to undertake a course of study during their visit. An exchange visit is different to a course of study – Entry Clearance Guidance Chapter 3 refers. Child visitors coming to the UK for a course of study will need to be enrolled with a provider who holds a Tier 4 licence, UKBA accreditation or is inspected by a recognised body\*. \*from 01/01/10.

Paragraph 46A(viii) makes provision for short term visitor exchanges that allow for intercultural and educational enrichment. Full guidance on how to assess child visitors under paragraph 46A(viii), including information on schools in England, Wales, Scotland and Northern Ireland, how to check a school's status and how to assess whether adequate care and reception arrangements are in place for the child, can be found in Entry Clearance Guidance chapter VAT 3.

The key points for this category of visit application:

#### VAF 1A

Leave up to 6 months can be granted

Entry Clearance mandatory for visa nationals

The child will visit the UK as part of a school exchange programme rather than a formal course of study

A letter of consent from parent (s) or legal guardian is seen

The child's reception and care arrangements in the UK are adequately met

The school is a bona fide institution offering the required standard of education

Endorsement: C: VISIT CHILD UNACCOMPANIED: 6 MONTHS, CODE 3

Limited right of appeal

Other important changes to paragraph 46A that take effect with the above-mentioned rule changes on 01/01/10:

1. Paragraph 46A (iv) now makes it clear that foster care arrangements must meet the requirements laid down in UKBA's published guidance (ECG VAT 3 refers).
2. Paragraph 46A (v) now states that a parent or guardian must confirm that they consent to the arrangements for the child's travel, reception and care in the UK.
3. Paragraph 46A (vii) states that a course of study for child visitors is to be provided by an institution that is outside the maintained sector and holds a Tier 4 licence OR UKBA accreditation OR is inspected by a body set out in UKBA guidance – see Entry Clearance Guidance VAT 3 for information.

Last Updated: 8 January 2010

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**OPI 186**

**New procedures for handling single bundle copy appeals**

In order to reduce waste and costs UKBA IG and the AIT commenced a six-month pilot to reduce the number of bundles supplied for paper appeals from 3 to 1. This pilot has been evaluated and it is now UKBA IG's intention to roll this initiative out globally from 15th February 2010.

From FCO UKBA  
Precedence LEAD  
eGram No. 1822/10  
Despatched 15/02/2010 10:54:00 GMT

Background: In 2007, UKBA International Group (UKBA IG) outsourced the copying of the additional two copies of each respondent's bundle to FCO Services: Reprographics (FCOS:R). Under current arrangements, Visa Sections provide the first copy only of each respondent's bundle. FCOS:R then produce the two additional copies of each bundle and send them to the Asylum & Immigration Tribunal (AIT) to distribute as appropriate.

FCOS:R make two copies of respondents' bundles for every hearing, even those where the appeal will be considered on papers and where only one copy is needed. The AIT then pay to have the surplus bundles destroyed and disposed of. It is estimated that this is necessary in more than 40% of all appeals.

In order to reduce waste and costs UKBA IG and the AIT commenced a six-month pilot where the number of bundles supplied for paper appeals was reduced from 3 to 1. The posts involved in the pilot were Abu Dhabi, New Delhi, Manila, Dhaka and the UK Visa Section.

This pilot was evaluated by both UKBA IG and the AIT and was deemed a success. It is now UKBA IG's intention to roll this initiative out globally from 15th February 2010. Please note on 15th February 2010 the AIT will transfer to the new Immigration & Asylum First Tier Chamber (IAFT) (OPI 187 refers) and new IAFT-2 appeal forms also replace the existing AIT-2 appeal form (OPI 188 refers).

**Instructions for all appeal processing Posts**

\* The Single Copy Bundle (SCB) process only applies to new appeals where the appellant has submitted an IAFT-2 appeal form. All appeals lodged on an AIT-2 appeal form must be processed in the usual way.

\* When preparing bundles, the officer dealing must refer to the completed IAFT-2 form to establish if the appellant has requested an oral or paper hearing. There is a flowchart to establish this and is attached to this OPI.

\* If the appellant has requested an oral hearing, has not answered the question or has listed a UK representative Post should treat the bundle as new and the appeal bundle should be sent to the IAFT via xxx This bundle will be copied as usual by xxx

However, if the appellant has elected to have the appeal considered on papers alone the Single Copy Bundle should be sent to the UK in xxx annotated with 'Entry Clearance Appeal - Respondents' Bundles for Paper Cases ONLY'. When the bundles arrive in the UK these will be sent directly to the IAFI by xxx

Should Posts require more stickers please email xxx indicating the number of stickers required. Please note that it could take up to four weeks for these stickers to be received at Post.

Contact for this OPI is xxx

Action Immediate  
ePL ALL ENTRY CLEARANCE POSTS

OPI 187 2010

### **Transfer of Entry Clearance Appeals Into The New Unified Tribunal Structure**

**From 15th February 2010 the work of the current Asylum and Immigration Tribunal (AIT) will transfer into the two-tier tribunal structure that was created under the Tribunals, Courts and Enforcement Act 2007. Appeals will be sent to a dedicated chamber in the First-tier Tribunal, with onward appeal rights to the Upper Tribunal instead of the High Court. The AIT will be renamed the Immigration and Asylum chamber of the First-tier Tribunal (IAFT). The tribunal will remain independent.**

From FCO UKBA  
Precedence LEAD  
eGram No. 1769/10  
Despatched 12/02/2010 14:15:00 GMT

Background: The Asylum and Immigration Tribunal (AIT) was established in 2005. It deals with appeals against all decisions made by the Home Office relating to asylum, immigration and nationality. The AIT is currently a one-tier appeal system. If a party wishes to challenge a decision made by the AIT, they must apply to the tribunal for it to reconsider its decision. If the tribunal decides not to reconsider its decision, the party may then go to the High Court (or Court of Session in Scotland or High Court in Northern Ireland) to ask that the court orders the tribunal to carry out a reconsideration. Where reconsideration is ordered, the tribunal may re-hear the appeal, and any onward appeal from the reconsidered decision is to the Court of Appeal, or Court of Session in Scotland, with permission.

From 15th February 2010 the work of the current Asylum and Immigration Tribunal (AIT) will transfer into the two-tier tribunal structure that was created under the Tribunals, Courts and Enforcement Act 2007. Appeals will be sent to a dedicated chamber in the First-tier Tribunal, with onward appeal rights to the Upper Tribunal instead of the High Court.

The new tribunal will be part of the Unified Tribunals system, with a First-tier Tribunal replacing the existing AIT. The Upper Tribunal will hear onward appeals, replacing the review and reconsideration work done by the AIT and the higher courts.

Initial appeals will be dealt with in the First-tier Tribunal and the reconsideration process will be replaced by onward appeals to the Upper Tribunal. Those wishing to appeal to the Upper Tribunal will need to seek permission to appeal from the First-tier Tribunal.

Where the First-tier Tribunal refuses to grant permission, the party may then apply for permission directly to the Upper Tribunal. This is a key change to the current arrangements and will ease the immigration workload of the higher courts. Onward appeals from the Upper Tribunal will be to the Court of Appeal, or Court of Session in Scotland, with permission.

More details on the changes are included in the "Immigration Appeals, Fair decisions; faster justice" consultation paper published by UKBA in 2008, and the Government's response paper, available at:  
<http://www.tribunals.gov.uk/Tribunals/Documents/Releases/Immigrationappealsconsultationresponsev11.pdf>.

For appellants there will be no change to their initial appeal rights, except that their appeal will now be lodged with the Immigration and Asylum chamber of the First-tier Tribunal (IAFT), rather than to the AIT.

Where there will be a change is with the new onward appeals process which will replace the current system for challenging decisions of the AIT. Appellants will no longer have to apply to the High Court or Court of Session to request the tribunal to reconsider its decision. They will instead be able to apply to the Upper Tribunal if the First-tier Tribunal has not granted permission for an onward appeal. Posts should be aware the party appealing to the Upper Tribunal will be referred to as the "Appellant". If the Upper Tribunal decides the appeal in the Appellants favour this will be an allowed appeal. For example, if SAT appeal they will be called the Appellant and if the appeal is allowed SAT will have been successful.

From 15th February all hardcopies of the AIT-2 forms and guidance must be destroyed and must be replaced with the new IAFT-2 appeal form and accompanying guidance. Please refer to OPI 188.

Contact for this OPI is xxx

Addressing

Action immediate

ePL ALL ENTRY POSTS

INFO ROUTINE

**OPI 188 2010**

**Implementation of new entry clearance appeal forms and guidance**

**New appeal forms (IAFT-2) and accompanying guidance have been introduced as a part of the Asylum and Immigration Tribunals (AIT) transfer into a two-tier tribunal structure. All existing electronic and hardcopy versions of the AIT-2 appeal form must be replaced by 15th February 2010.**

From FCO UKBA  
Precedence LEAD  
eGram No. 1771/10  
Despatched 12/02/2010 14:21:00 GMT

From 15th February 2010 the work of the current Asylum and Immigration Tribunal (AIT) will transfer into the two-tier tribunal structure. The AIT will be renamed to Immigration and Asylum chamber of the First-tier Tribunal (IAFT). From this date all existing electronic and hardcopy versions of the AIT-2 appeal form and guidance must be replaced with a new IAFT-2 appeal form and accompanying guidance.

ECMs must ensure that their Post Systems Administrator (SA) has attached the new IAFT-2 appeal form and guidance to the existing version of the GV51 (FRA) refusal notice held on Proviso. Some minor changes are also needed to Form GV51 (FRA) and SA's should follow the instructions attached. The revised master copy of Form GV51 (FRA) can be found on Entry Clearance Guidance (ECGs) by following this link:  
<http://www.ukvisas.gov.uk/en/ecg/ecgdocuments>

ECMs must also ensure that all hardcopy versions of the AIT-2 appeal forms and guidance notes held locally or by our commercial partners are destroyed and replaced with the attached. Please note that appeal forms should only be served with the Notice of Decision and should not be made available via Commercial Partner or Posts websites

From 00:00 GMT, 15th February 2010 all GV51 (FRA) refusal notices must be served with the new IAFT-2 appeal form and the accompanying guidance notes.

New appeals submitted after this date on an AIT-2 appeal form can continue to be accepted and processed in the usual way until such a time that these are out of circulation. Posts must not reject any appeals submitted on older versions of the appeal form.

Action Immediate  
ePL ALL ENTRY CLEARANCE POSTS

**OPI 195 2010**

**LIMITED CONCESSION OUTSIDE THE RULES FOR CREW EMPLOYED ON FISHING VESSELS OPERATING IN UK TERRITORIAL WATERS**

**Limited concession will come into force on 1st March 2010 and will cease on 1st September 2011. Applications however, will only be accepted for three months i.e. until 31st May 2010**

From FCO UKBA  
Precedence LEAD  
eGram No. 2384/10  
Despatched 26/02/2010 15:45:00 GMT

**Background:**

Employment in UK territorial waters (within the 12-mile limit) is subject to immigration control. Non-EEA crew wishing to work on fishing vessels operating to any extent in such waters must have appropriately authorised permission from the UK Border Agency. The crewing policy of EEA flagged, or wholly EEA owned, fishing vessels is a matter for the Member State. Non-EEA crews of such vessels do not require UKBA authorisation for employment, but they do remain subject to immigration control in all other respects.

**The Terms of the Concession :**

The concession outside the Immigration Rules will commence on 1st March 2010. Applications will be accepted for only three months from that date and will be subject to a maximum quota of 1500 issues. It will permit employment, subject to the terms of the individual's contract for a period not exceeding 1st September 2011 when the concession will end and applicants will be required to leave the UK.

Any application for the concession will fall to be refused where there is reasonable evidence that the applicant, his employer, or the vessel he/she is to join has failed to comply with the terms of the concession at any time during the period of the concession.

The qualifying criteria for visa applications are:

\* The concession applies only to employment on fishing vessels operating in UK waters, not to any other kind of vessel and not to fishing vessels which operate wholly in international waters outside the 12 mile limit. A crew member who works on a vessel that works in both domestic and international waters but spends more than 30% of their time in UK territorial waters must apply for the concessionary Entry Clearance.

\* The applicant must currently be employed, or have been employed, during a period 12 months prior to this application, on a fishing vessel operating in the UK.

\* The applicant must provide the following:

- a) a valid passport satisfactorily establishing his/her nationality and identity and  
a valid seafarer's book satisfactorily establishing his/her profession as a seafarer.
- b) written confirmation from the owner of the vessel, details of the vessel's name, registration number, port of registration, port of operation, length and other relevant vessel description, including evidence that the vessel is licensed by the relevant fishing administration and that the vessel will be operating wholly or mainly in UK territorial waters.
- c) original documentary evidence of a contract of employment with a UK resident employer. The concession is not open to self-employed or share fishermen.
- d) documentary evidence to confirm that the contract of employment affords an income compliant with UK minimum wage regulations, and relevant tax and

National Insurance regulations.

- e) original documentary evidence of safe and satisfactory accommodation while the vessel is at sea (e.g. relevant risk assessment and safe system of work) and while the vessel is in port. Where the vessel is under 24 metres in length evidence of satisfactory shore based accommodation is mandatory. Where the vessel is over 24 metres and it is proposed to accommodate crew on the vessel while in port, MCA verification of satisfactory vessel accommodation must be provided.
- f) written confirmation from his/her employer that before commencing any employment at sea, the applicant has received, or will receive within one month of the grant of any authorised stay, safety training in accordance with The Fishing Vessels (Safety Training) Regulations 1989 as amended by SI2169/2004 Fishing Vessels Safety Amendment Regulations 2004 outlined in Merchant Shipping Notice Number M1367 and MGN 404
- g) an owner/agent's written letter of guarantee regarding the costs and travel arrangements for his/her repatriation on completion of contract. The applicant must satisfy the issuing officer that he/she can be maintained and accommodated during the proposed stay without recourse to public funds and will leave the UK on completion of stay in accordance with the owner/agent's arrangements for his/her repatriation.

Additional notes for ECOs:

This Ministerial concession outside the Immigration Rules is of a strictly limited nature and duration. It is available only to Non-EEA crew who fully meet ALL of the above criteria. There is no discretion to waive or reduce the criteria. Since the application is being considered exceptionally outside the Rules, and is for employment which normally requires authorisation, refusal will attract a limited right of appeal.

Prior Entry Clearance is mandatory for applications made abroad under this concession. Holders of ILO Convention 108 or 185 Seafarer Identity Documents may not rely on the provisions of these Conventions in these specific circumstances and must obtain prior UK Entry Clearance. Failure to do so will result in refusal of entry at the port of arrival. Applications should be made using VAF2 form. The application will be considered exceptionally outside the Immigration Rules in accordance with the above criteria. Ministers have agreed that authority to grant entry clearance for Leave Outside the Rules (LOTR) for this concession may be exercised by Entry Clearance Officers. The attached checklist should be e-mailed to Home Office Referrals with "Fishermen Checklist LOTR Granted" in the subject line. This information will be collated by ECO Support in order to maintain a record of the number of issues.

Where the applicant meets ALL of the specified criteria Entry Clearance may be issued valid for the period of confirmed contractual employment, but not beyond the expiry date of the concession on 1st September 2011.

A police registration requirement will apply to relevant foreign nationals in accordance with paragraph 326 of the Immigration Rules.

Refusal wording:

You have applied for Entry Clearance to take employment in the UK as a member of the crew of the fishing vessel, XXXXXXXX, operating in UK territorial waters. This is employment for which a work permit or authorisation under the Points Based System is required and you do not have such a work permit or authorisation. You have applied for consideration under a Ministerial concession outside the Immigration Rules but you have failed to satisfy the following mandatory criteria.....

The non-refundable fee [category "other"] for each application is £215 (rising to £230 on 6 April 2010). Applications for Leave outside the Rules do not attract a full right of appeal. They retain a right of appeal on residual grounds (i.e. the Human Rights Act and Race Relations Act)

The overall quota count is being co-ordinated by xxxx. Should it become apparent that the quota will be filled before the closure date for applications on 31st May 2010, posts abroad will be notified and will be asked to defer decisions pending official notice that the concession has ended.

A routine 'joining ship' category visa endorsement should NOT be used as it is not applicable for this exceptional category.

This concession does not apply in respect of crew seeking to join vessels which operate wholly or mainly in international waters, outside the 12 mile limit, who will continue to qualify for leave to enter as contract seamen as at present. xxxxxx

#### Summary:

The key points for this concession are:

- \* Entry clearance mandatory.
- \* Applies to crew employed on fishing vessels operating within the 12-mile limit
- \* Applications can only be submitted 1st March to 31st May 2010.
- \* VAF 2
- \* Checklist should be e-mailed to xxxx in order to monitor quota
- \* ECOs may grant LOTR until 1st September 2011 or until the end of the contract, whichever is shorter.
- \* Limited right of appeal.
- \* Police registration in accordance with paragraph 326 of the Immigration Rules.
- \* Fee is "Other"
- \* Endorsement: D: Contract Seaman working in UK waters: until 1st September 2011 or length of contract if shorter: CODE 4. Add name of fishing vessel and "in accordance with repatriation arrangements."

xxxxxxxxxx

#### Addressing

Action Immediate

ePL ALL ENTRY CLEARANCE POSTS

Info Routine

eP FCO

FCO Distribution

eD UKBA (Lead)



**OPI 264: issued 2011**

**Admin Reviews – Action required to improve the recording of performance against the 28 day processing target**

All posts must conduct a review of the Post Dashboard to ensure that the information relating to Admin Reviews is accurate. Changes in the way that Admin Reviews can be processed have been made which Posts should adopt if they will assist in quicker processing times.

UK Border Agency was asked to determine by the Independent Chief Inspector whether the 28 day processing time for Admin Reviews was realistic and what action was required to ensure that the target was routinely met.

A report produced by UKBAIG Business Assurance determined that the target was realistic and that current performance was meeting or exceeding the target of processing 90% of ARs within 28 days. The report can be found by clicking [here](#) and selecting admin reviews under thematic reports.

Recent months has shown a significant improvement in performance as a result of greater use of the Post Dashboard and improved accuracy of the data it contains. However, not all posts are using the Dashboard and some need to update the data it holds in order to demonstrate that the target is being met.

Some changes to the way ARs are conducted have also been identified with the aim of speeding up the review process; the guidance has been updated to explain these changes.

**Action required.**

1. All posts should conduct an audit of the Post Dashboard to ensure that only those cases that have not yet been reviewed are showing as having missed the 28 day deadline.
2. On a daily basis the ECM responsible for Operations should review the Post Dashboard to ensure that no new AR's are likely to miss the 28 day deadline unless there are mitigating reasons i.e. delays in verification or college suspensions.
3. The Admin Review Resolved button must be used every time an AR is completed. Failure to use the button will result in the AR being shown as unresolved on the Post Dashboard.
4. All ECMs should familiarise themselves with the above guidance which sets out how the requirement to use the Post Dashboard to monitor ARs so that the 28 day processing deadline is not missed. The guidance also makes small changes to the way ARs can be handled so that the process is more streamlined.

Contact for this egram is xxx

Last Updated: 5 May 2011

## **OPI 270 2011**

### **Appeal Bundles: S.108 evidence & Police Certificates**

#### **Summary**

Section 108 of the Nationality, Immigration & Asylum Act 2002 allows the respondent to give evidence about false documents in private to the Tribunal or the Immigration Judge, where disclosure of information relating to the forgery detection in a public court would be contrary to the public interest. Evidence relating to false documents should be provided in a Document Examination Report (DER). Document Verification reports (DVRs) and Police Certificates for Entry Clearance Purposes (following IDENT1 hits) should not be handled under s 108 procedures.

#### **Main Text**

##### **Background**

Staff have been using the s 108 procedures for submission of documents in private to the Tribunal where the documents, including Document Verification Reports (DVRs) and Police Certificates for Entry Clearance Purposes, should be shared with all parties to the appeal.

##### **Procedures for Post**

If an applicant appeals against the ECO decision which relies on an allegation of forgery, the DER and copies of the forged document should be sent to the IAC in a sealed envelope. The envelope should be securely attached to the appeal bundle and should detail the following:

FOR THE ATTENTION OF THE IMMIGRATION JUDGE ONLY  
SECTION 108 – DO NOT COPY  
POST REFERENCE: XXX/12345

##### **IDENT1 Hits/Police Certificates**

Police Certificates for Entry Clearance Purposes should not be sent to the IAC under s 108 procedures. If an ECO refuses an application wholly or in part because of an IDENT1 hit, the Police Certificate must form part of the main appeal bundle. If the Police Certificate includes any "wanted" or "missing" markers, post must request a sanitised version from the Association of Chief Police Officers (ACPO) Criminal Records Office xxxxxxxx for inclusion in the appeal bundle

##### **Contact for this OPI xxxxx**

Entry Clearance Appeals Team

Last Updated: 21 June 2011

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## OPI 282 2011

### Points Based System Tier 1 Exceptional Talent

The exceptional talent category under Tier 1 of PBS is a new sub-category for exceptional people in fields of science, humanities, arts and engineering. It is for those who are already internationally recognised at the highest level in their field or those who have already demonstrated exceptional promise in becoming world leaders in their particular field.

#### Designated Competent Bodies

The competent bodies have sole responsibility for assessing whether the applicant meets their "exceptionally talented" criteria and will decide whether to provide endorsement.

The Designated Competent Bodies are:

The Arts Council England - for arts and culture applications  
The British Academy - for humanities and social science applications  
The Royal Society - for natural sciences and medical science research applications  
The Royal Academy of Engineering - for engineering applications

The criteria for each competent body is [published here](#) -

#### Limit

There is a limit of 1,000 Tier 1 (Exceptional Talent) places under the limit that can be endorsed and granted entry clearance between 9 August 2011 and 5 April 2012.

The endorsements will be assigned to the Designated Competent Bodies in two phases. 500 will be available from 9 August to 30 November, and the second 500 from 1 December to 5 April 2012. The total limit will be divided between the Designated Competent Bodies as follows:

No of places up to 30 November 2011	No of places from 1 December 2011 to 5 April 2012
The Royal Society 150	150
The Arts Council 150	150
The British Academy 100	100
The Royal Academy of Engineering 100	100

These endorsements may be traded between the Designated Competent Bodies according to demand, as agreed between the Secretary of State and those Designated Competent Bodies.

The Employment Route Operation support (EROS) team based in Sheffield will manage the limit using a Unique reference number system.

#### Points scoring

In order to obtain entry clearance within Tier 1 (Exceptional Talent) an applicant must score 75 points for attributes (Appendix A of the Immigration Rules).

The applicant must also have a valid Unique Reference number, have consent from a government or international sponsorship agency if have or last granted leave as a student and are being sponsored by a government or international sponsorship agency and must not fall for refusal under General Grounds

### **Application Process**

Applicant submits an expression of interest to UKBA. This will be dealt with by EROS team in Sheffield.

EROS team will provide the applicant with a unique reference number if there are places available within the limit for the selected competent body.

Applicant then makes an entry clearance application using the standard VAF 9 form. With the VAF 9, the applicant must send:

A copy of the Unique Reference number (print out of email applicant has received from EROS)

the additional application form (for The British Academy, The Royal Academy of Engineering and The Royal Society); and

supporting documents that are set out in the Competent Body criteria.

The British Academy, The Royal Academy of Engineering and The Royal Society have their own joint application form (which will be published on UKBA website alongside the Competent Body criteria and on the Visa Services website alongside the other VAF appendices). This application form must be submitted in addition to VAF 9 and supporting documentation.

Once an application is received, Entry Clearance Post must check the URN is still valid. The URN is only valid for 10 working days. Should the application fall outside of the URN validity, the application can be refused under the Rules. In these circumstances, Post should email EROS team to say a refusal has been and quote the URN number. However, documents will not need to be sent to the EROS team.

### **Date of application and validity of URN**

A URN is valid if the entry clearance application is submitted within 10 working days. Visa staff must check CRS to see when the EC application was submitted. It is important to note that for this route only, given the short 10 day timeframe, Posts should accept the date of application to be the date when the application is submitted, even if this is online and no payment has been made.

CRS will show when an applicant has first applied online or attended a VAC. As long as this is within the 10 validity of the URN, then the application should be considered valid. Applicants will be encouraged to submit biometrics and supporting documentation as soon as possible afterwards.

If the URN is valid, Post must email the xxx

The applicants name,

The Unique Reference number; and

The date of EC application [this is the date the application was submitted as stated on CRS, not the payment date ]

And must attach to this email the supporting documentation to be assessed by the relevant competent body. All documentation, except the VAF 9 form must be scanned and emailed to EROS

Post must send all supporting documents received. However, if the applicant has supplied supporting documents that cannot be scanned - e.g. a thesis or documents on a memory stick/CD, then post will have to xxx

The EROS team Email address is xxx

The EROS team will send the relevant documentation to the applicant's chosen Designated Competent Body who will advise the UK Border Agency whether the applicant meets their criteria. If the criteria are met, the Designated Competent Body will issue the applicant an endorsement via UKBA in Sheffield.

Sheffield will inform the relevant EC Post using a standard proforma whether or not the applicant has been endorsed by the Competent Body and the EC application should be processed.

If the Competent Body has refused the endorsement, the ECO must copy the reasons for refusal from the proforma into the refusal notice under the section "endorsed by competent body - 75 points".

If the Designated Competent Body has refused the endorsement the ECO must refuse on this basis, but the entire application must be considered against the Rules.

#### **Customer Service standards**

The processing times for Tier 1 Exceptional Talent applications will be outside our normal customer service standards. The process from start to finish will be a minimum of 6 weeks. Applications are to be held by posts pending the decision from the designated competent body

#### **Administrative review**

If the applicant believes that the decision made by the Entry Clearance Officer was incorrect they can apply for an Administrative Review of their case. If the refusal was because the endorsement was refused by the designated competent body, the administrative review request must be resent to Sheffield for review by the competent body (please use the e-mail address above).

#### **Dependants**

Applicant's husband, wife, civil partner or eligible partner and children under 18 can join the applicant as in the UK if:

have a visa for this purpose and  
applicant can support them without any help from public funds. Showing £1,600 for each dependant joining you within 12 months of your arrival in the UK and £533 thereafter.

Dependents will need to satisfy the conditions set out in Paragraph 319A to 319K and Appendix E of the Immigration Rules.

#### **Endorsements**

If visa is issued, ECOs must select the Tier 1 (Exceptional Talent) endorsement on proviso. The visa will be issued for 3 years and 4 months

Refusal wordings are available on the PBS pages of FCO.net.

Last Updated: 23 August 2011

## OPI 287 2011

### Pankina Overseas Remedy

Following the judicial decision known as Pankina, UKBA have been working through a number of refusals made in the UK that fail to be granted under the judgement.

From FCO UKBA  
Precedence LEAD  
eGram No. 15991/11  
Despatched 26/08/2011 13:08:00 GMT  
Background:

Following the judicial decision known as Pankina, UKBA have been working through a number of refusals made in the UK that fail to be granted under the judgement. The complexity is that the applicant left the UK and now wishes to resume leave.

Below is the list of applicants/nationalities to date that are seeking remedy:

Nigeria -13 applicants

India-12 applicants

Pakistan ,Jamaica, Gambia, Ghana and Ivory Coast Columbia, Sri Lanka, Tanzania, Uganda, Kenya, Mauritius, Mexico, Brazil, Ecuador & Bangladesh (inserted >10 applicants each.)

#### Process:

We have agreed with Sheffield that the process for these applicants to resume their leave is to apply for a Replacement BRP and then are granted a Single Entry Visa (normally used for facilitating entry of migrants who have lost or had stolen their BRP). The Single Entry Visa is only valid for a month and grants the holder a single entry to the UK after which the applicant must acquire a Biometric Residence Permit. In the entry clearance process, the applicant will have to supply biometrics so that we can make the mandatory checks.

Given this is a legal remedy we should complete the process free of charge. Because of our online systems we are aware that we cannot bypass the fee payment system. However, applicants are entitled to and may ask for refunds. These should be processed and refunds issued asap.

The list of candidates eligible for the remedy will be sent separately to all Entry Clearance Managers. Applications must be processed as gratis where possible, otherwise a refund provided.

Applicants must submit the letter from Sheffield colleagues confirming that they are eligible for the remedy as part of their supporting documentation.

Once we receive a full application:

Step 1: email colleagues in Sheffield at xxx to check that the applicant is eligible for a remedy under Pankina. Please email Name, DOB and Home Office reference number. Colleagues in Sheffield will confirm that the applicant has been offered the remedy under Pankina.

Step 2: undertake mandatory checks

If the applicant meets the above requirements, then proceed to issue.

If the applicant does not meet the requirement under Step 1, i.e. is not eligible for remedy under Pankina, then posts must refuse.

Contact for this eGram xxx

**Addressing**

Action Immediate

ePL ALL ENTRY CLEARANCE POSTS

Info Routine

eP FCO

FCO Distribution

eD UKBA (Lead)