



Home Office

**UK Border
Agency**

TIER 5
(TEMPORARY WORKER)

Tier 5 (Temporary Worker) of the Points Based System – Policy Guidance

This guidance
is to be used
for applications
made on or after
14 December
2010

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Introduction

1. This document provides policy guidance on Tier 5 (Temporary Worker) of the points based system. Please note that it reflects policy at the time of publication and is subject to change. For the purpose of these guidance notes, the terms 'we', 'us' and 'our' refer to the UK Border Agency. It should be read in conjunction with the relevant paragraphs of the Immigration Rules. Separate guidance on Tier 5 (Youth Mobility Scheme) can be found at: <http://www.ukba.homeoffice.gov.uk/workingintheuk/tier5/youthmobilityscheme/>.

2. An applicant making an application from outside the United Kingdom for entry clearance should go to the International Group website (formerly known as UK Visas) at www.ukvisas.gov.uk/en/howtoapply/vafs, where he/she can find the forms and more information on how to fill them in.

3. An applicant making an application from inside the United Kingdom for an extension of his/her existing leave or a change of employment in Tier 5 (Temporary Worker), should use the Tier 5 (Temporary Worker) application form available on our website: <http://www.ukba.homeoffice.gov.uk/workingintheuk/tier5/>.

4. Under Tier 5 (Temporary Worker) an applicant must have both a sponsor and a valid certificate of sponsorship before applying.

5. Tier 5 (Temporary Worker) has five sub-categories:

- Creative and sporting - for people coming to the United Kingdom to work or perform as sports people, entertainers or creative artists for up to 12 months.
- Charity workers – for people coming to the United Kingdom to do voluntary work and not paid work for a charity.
- Religious workers – for people coming to the United Kingdom to work as religious workers. Duties may include preaching, pastoral and non pastoral work.
- Government authorised exchange – for people coming to the United Kingdom through approved schemes that aim to share knowledge, experience and best practice.
- International agreement – for people coming to the United Kingdom under contract to

provide a service that is covered under international law.

6. Applicants in all the points based system categories will be subject to General Grounds for Refusal. This means that even if the applicant qualifies under the specific category of the Rules under which he/she is applying to come here, there may be other reasons (such as his/her previous immigration history), that may lead to the application being refused. Further information on General Grounds for Refusal is available on our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDs/idischapter9/>.

7. We will return your passport(s) and other documents by recorded delivery. If you would like them to be returned by Special Delivery, you must provide a prepaid Special Delivery envelope which is large enough. If your application is successful, your Biometric Residence Permit will be sent to you separately by secure delivery.

General Guidance for Applicants to the Points Based System

Self-assessment

8. We have a points based calculator that enables an applicant to self-assess whether he/she is likely to score enough points for his/her application to succeed.

9. The points based calculator is on our website at: <http://www.ukba.homeoffice.gov.uk/pointscalculator>.

10. The points based calculator calculates the points we may award for the attributes (main requirements) section of the points assessment. The applicant can also enter details of whether he/she has enough money to support himself/herself in the United Kingdom.

11. The points based calculator will provide a summary of the information an applicant enters, the points awarded for each section, and the overall score.

12. Under Tier 5 (Temporary Worker) an applicant must score:

- 30 points for certificate of sponsorship (Appendix A of the immigration rules); and
- 10 points for maintenance (funds available) (Appendix C of the immigration rules).

13. The results of the points based calculator show the possible points an applicant might score and does not guarantee the application will be successful. We make a decision after receiving the full application and the evidence to support it.

Documents we require

14. The applicant must ensure he/she provides all of the necessary supporting documents at the time he/she sends us the application. We will only accept the documents specified in this guidance.

15. If the applicant does not provide the specified documents, we will not contact him/her to ask for them. Therefore, if the applicant fails to send the correct documents we may refuse the application.

16. Any documentary evidence that the applicant provides must be the original (not a copy) unless we say otherwise.

17. Where a document is not in English or Welsh, the original must be accompanied by a fully certified translation by a professional translator. This translation must include details of the translator's credentials and confirmation that it is an accurate translation of the original document. It must also be dated and include the original signature of the translator.

18. We only need evidence that is directly relevant to the application, as set out in this guidance. We will not consider unrelated evidence when calculating the points score.

Verification and other checks

19. We aim to consider applications quickly. However, we must also be confident that applications meet the requirements of the Immigration Rules, and that the information an applicant provides is a true reflection of his/her background.

20. We will ask for a variety of verifiable documents to enable us to consider the application.

21. We may want to check the supporting documents an applicant sends with his/her application. Therefore, he/she must ensure that all the evidence comes from a source that can be clearly identified and that it can be independently confirmed as being genuine.

22. There are two situations in which we will undertake a check:

- **Verification checks** – where we have reasonable doubts that the documents are genuine; or
- **Other checks** – where we carry out further checks, for example where we have doubts about an application or the documents sent with the application but the doubts are not serious enough for us to make a verification check.

Verification checks

23. Where we have **reasonable doubts** that

a specified document is genuine we may want to verify the document with an independent person or government agency.

24. The purpose of these checks is to ensure that the document provided is genuine and accurately reflects statements made in the application. If the document is being used as evidence to score points, we also want to ensure that it entitles the applicant to claim those points.

25. Verification may delay our decision on an application so we will only do it when there are clear reasons for it.

Reasonable doubt

26. There are many reasons why we may doubt that a specified document is genuine and what we consider to be a reasonable doubt will depend on an individual application. However, our judgments will be based on the facts we have.

Outcome of verification check

27. There are three possible outcomes of a verification check:

- **Document confirmed as genuine.** If we can conclude that the document is genuine, we will consider the application as normal.
- **Document confirmed as false.** If we can conclude that the document is false, we will refuse the application, whether or not the document is essential to the application. If a document is confirmed as false we will normally refuse the application for more than one reason. For example, if an applicant sends us a bank statement to show that he/she has enough funds available, and we have evidence that the statement is false, we will refuse the application because the applicant does not meet the funds requirement and because he/she has sent a false document. Where we confirm that a document is false it will be retained by the UK Border Agency and is likely to jeopardise any future application.
- **Verification check inconclusive.** If we cannot verify that the document is either

genuine or false then we will ignore it as evidence for scoring points. If the applicant has sent other specified documents as evidence for scoring the relevant points, we will consider these as normal. If the applicant has not sent any other documents, we will award zero points in that area.

Refusing applications without making verification checks

28. We may refuse an application without making verification checks in two circumstances:

- Where we are concerned about a piece of evidence but would in any event refuse the application for other reasons, those reasons will form the basis of the refusal. We will not make verification checks in these circumstances. However, we will always verify passports if we doubt they are genuine.
- Where there is evidence that proves a particular document is false. If we can confirm that a document is false we will normally refuse the application for more than one reason. For example, if an applicant sends us a bank statement to show that he/she has enough funds available, and we have evidence that the statement is false, we will refuse the application because the applicant does not meet the funds requirement and because he/she has sent a false document.

Other checks

29. We will make other checks where, for example, we have doubts about an application, or the documents sent with the application, but these are not serious enough for us to make a verification check.

30. These checks may delay our decision on an application so we will only make them when we have clear reasons to do so.

Extra checks

31. Sometimes we will have suspicions about a document, but they will not be enough to make us doubt that it is genuine. For example, this may be because previous verification checks have found that some

supporting evidence is invalid and some is genuine, or where evidence provided contradicts information we already have. In these cases, we may carry out more checks.

Outcome of other checks

32. There are four possible outcomes of these checks:

- **Document confirmed as genuine.** If we can conclude that the document is genuine, we will consider the application as normal.
- **Document confirmed as false.** If we can conclude that the document is false, we will refuse the application, whether or not the document is essential to the application. If a document is confirmed as false we will normally refuse the application for more than one reason. For example, if an applicant sends us a bank statement to show that he/she has enough funds available, and we have evidence that the statement is false, we will refuse the application because the applicant does not meet the funds requirement and because he/she has sent a false document. Where we confirm that a document is false it will be retained by the UK Border Agency and is likely to jeopardise any future application.
- **Check inconclusive.** If we cannot verify that the document is either genuine or false then we will consider the application as if it is the document is genuine.
- **Check gives us cause to have reasonable doubt about the genuineness of a specified document.** If we cannot verify that the document is either genuine or false but as a result of the checks we find other reasons to doubt the genuineness of a particular specified document, we may decide to make a verification check.

Procedure for verification and other checks

33. The procedures for both verification checks and other checks will usually be similar and will vary from case-to-case, but they may involve:

- checking the details or genuineness of documents with employers, the relevant

embassy or high commission, other government departments (in the United Kingdom and overseas); and

- checking the accuracy and authenticity of documents with banks, universities, and professional bodies.

Standard procedure

34. We will use a standard form to record the results of our enquiries, to ensure that we record any feedback consistently.

35. If we cannot obtain an immediate answer to enquiries, we will normally wait for up to a maximum of four weeks for the necessary information.

36. Our compliance team may visit the applicant's employer before we make a decision on the application.

Administrative review (entry clearance applications only)

37. If we refuse an application for entry clearance and the applicant thinks that a mistake has been made, the applicant can ask us to check our decision. This is known as an 'administrative review'. Full guidance on administrative reviews can be found at **Annex A**. Please note applicants who are already in the United Kingdom cannot apply for an administrative review.

Appeal rights (in-country applications)

38. If we refuse an application for leave to remain and the applicant thinks that a mistake has been made, the applicant may be able to appeal against our decision. Details on how and if an applicant can appeal against our decision will be included with his/her reasons for refusal letter.

Date of application

39. The date of application will be taken to be the following:

- **For applications made in the UK:**

- o where the application form is sent by

post, the date of posting; or

- o where the application form is sent by courier, the date on which it is delivered to the UK Border Agency of the Home Office;

• **For applications made outside the UK:**

- o The date of the application is 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.

Sponsorship

The role of the sponsor

40. To apply under Tier 5 (Temporary Worker), an applicant must have a sponsor. A sponsor is an United Kingdom based organisation that the applicant wants to work for (for Government Authorised Exchange the sponsor is an overarching body) in the United Kingdom.

41. In order to sponsor applicants, an employer will need to have registered as a licensed sponsor. The sponsor will need to meet the requirements for the particular sub-category within Tier 5 (Temporary Worker) and accept certain responsibilities to help with immigration control.

42. Find more information for sponsors our website at: <http://www.ukba.homeoffice.gov.uk/employers/>.

43. The sponsor will need to assign a certificate of sponsorship before the applicant can apply for leave under Tier 5 (Temporary Worker). The certificate of sponsorship will act as an assurance that the applicant is able to undertake a particular job and intends to do so.

The certificate of sponsorship

44. The certificate of sponsorship is not an actual certificate or paper document but is a virtual document similar to a database record. Each certificate of sponsorship has a unique reference number and contains information about the job for which the certificate of sponsorship is being issued and the applicant's personal details.

45. We will not provide the applicant with his/her certificate of sponsorship reference number as this is the responsibility of his/her sponsor.

46. The sponsor may also need to provide an applicant with some of the information declared when the certificate of sponsorship was assigned. The applicant may need this information to accurately complete the points based calculator and the application form.

What is a live certificate of sponsorship?

47. Within the Sponsorship Management System (the system that sponsors use to assign a certificate of sponsorship) an applicant can only have one 'live' certificate of sponsorship for a given period of leave. A certificate of sponsorship is 'live' when a sponsor has assigned it to an applicant, but that applicant has not yet used that certificate of sponsorship's reference number to make an application for leave.

48. If an applicant has given his/her personal details to one prospective sponsor, and that sponsor assigns a certificate of sponsorship reference number to that applicant, then no other prospective sponsor will be able to assign a certificate of sponsorship to that applicant for the same period of leave. It is very important that where possible an applicant only gives his/her personal details (for example passport number) to a prospective sponsor with whom he/she intends to work.

49. If an applicant does not want to take up the post because he/she wishes to take up an offer of a job from a different sponsor, he/she must contact the sponsor to withdraw the certificate of sponsorship. The applicant must contact the sponsor in writing or by email and give the sponsor five working days to action this request. If the sponsor fails to action this request, the applicant should send a reminder to the sponsor. The sponsor will have a further five working days to action the request. If the sponsor refuses or fails to withdraw the certificate of sponsorship within the specified time, the applicant should contact the Sponsor Licensing Unit. The Sponsor Licensing Unit will cancel the certificate of sponsorship if necessary after discussions with the sponsor.

50. The applicant should contact the Sponsor Licensing Unit either by:

email: sponsorlicensing@ukba.gsi.gov.uk; or

post:

Sponsor Licensing Unit

UK Border Agency

North East, Yorkshire and Humber Region

PO Box 3468

Sheffield S3 8WA

The applicant must provide the following information when contacting the Sponsor Licensing Unit:

- full name;
- nationality;
- the name of the sponsor he/she no longer wishes to work for;
- the certificate of sponsorship reference number he/she wishes to be cancelled;
- the name of the sponsor he/she wishes to work for;
- the reason why he/she wishes the certificate of sponsorship to be cancelled;
- the date he/she first contacted the sponsor to request the certificate of sponsorship be cancelled;
- the date he/she contacted the sponsor again to remind it to cancel the certificate of sponsorship.

51. The applicant must also provide the Sponsor Licensing Unit with a copy of any correspondence sent to his/her sponsor, which must clearly show who the correspondence was addressed to within the sponsoring organisation. The applicant must also provide any correspondence from that sponsor in connection with those requests (for example, acknowledgement email or letter).

52. If the applicant does not want to come to the United Kingdom, he/she should tell his/her sponsor that he/she will not travel, and ask the sponsor to withdraw the certificate of sponsorship. Applicants do not need to contact the Sponsor Licensing Unit as the certificate of sponsorship will automatically expire three months after it was assigned.

A withdrawn/cancelled certificate of sponsorship

53. A certificate of sponsorship can be withdrawn/cancelled at any time by either us or the sponsor. Where a certificate of sponsorship has been withdrawn/cancelled, the same procedures apply to the applicant as where a certificate of sponsorship becomes invalid.

What is a valid certificate of sponsorship?

54. A valid certificate of sponsorship is one that:

- has the same details on it as in the applicant's passport; and
- it was assigned no more than three months before the date of application; and
- it has not been withdrawn/cancelled by either the sponsor, or us.

55. The certificate of sponsorship will expire if it is not used for a leave application within three months of it being assigned. If the applicant submits an application using a certificate of sponsorship that has expired, the application will be refused. The applicant must get a new certificate of sponsorship from his/her sponsor.

56. The fact that a certificate of sponsorship has been issued does not guarantee that the applicant will succeed in obtaining entry clearance, leave to enter, or leave to remain. The applicant must meet the conditions for category and tier and apply for entry clearance or leave to remain.

Sponsorship duties

57. The sponsor has a number of record keeping and reporting duties for the applicants that it sponsors.

58. Record keeping duties include keeping copies of the applicant's passport or United Kingdom immigration status document, and contact details.

59. Reporting duties include:

- if a sponsored migrant does not turn up for his/her first day of work;
- if a sponsored migrant is absent from work for more than 10 working days, without the sponsor's reasonably granted permission;
- if a sponsored migrant's period of engagement (including where the migrant resigns or is dismissed) or if any registration he/she needs to work in the United Kingdom

(such as with a governing body) is ended;

- if the sponsor stops sponsoring the migrant for any other reason (for example, if the migrant moves into an immigration route that does not require a sponsor);
- if there are any significant changes in the migrant's circumstances, for example, a change of job or salary (but not job title or annual pay rise);
- if the sponsor has information which suggests that a migrant is breaching the conditions of his/her leave;
- if the sponsor has information which suggests that the migrant may be engaging in terrorism or other criminal activity, it must give the police any information it may have.

60. The applicant must give his/her sponsor all the information needed for his/her sponsor to be able to fulfil the above duties.

61. The applicant may wish to report any instances where he/she believes that the sponsor is not complying with its duties, or has provided false information to us about him/her.

62. Applicants, or any member of the public, can contact the Intelligence Unit about abuse of the points based system either by:

email: workabuse@homeoffice.gsi.gov.uk; or

post:

UK Border Agency

Intelligence Unit

PO Box 3468

Sheffield

S3 8WA

telephone: **0114 207 2934**

fax: **0114 207 2935**

Alternatively applicants can contact the Sponsor Licensing Unit either by:

e-mail: sponsorlicensing@ukba.gsi.gov.uk; or

post:

Sponsor Licensing Unit

UK Border Agency

North East, Yorkshire and Humber Region

PO Box 3468

Sheffield

S3 8WA

63. Find a full list of the sponsorship record keeping and reporting duties on our website at: www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/sponsorshipduties/.

Sponsor's licence

64. There are certain circumstances in which the status of the sponsor's licence may have an effect on the applicant. These are detailed below.

If a sponsor's licence is suspended

65. When a sponsor has its licence suspended, it will not be able to assign any new Certificates of Sponsorship, but this does not immediately affect anyone that it is sponsoring at that time.

66. An applicant can continue to submit applications for leave during the time the sponsor's licence is suspended if his/her leave is due to expire.

67. If an applicant submits an application for entry clearance or leave to remain while the sponsor's licence is suspended, we will not consider the application. We will hold the application until the suspension is removed.

68. If an applicant has already been given entry clearance on the basis of a certificate of sponsorship assigned by that sponsor but he/she has not yet travelled to the United Kingdom, they will be allowed to enter and start working for the sponsor. However, we advise all migrants to check the status of their sponsor's licence before they travel and we recommend that migrants do not travel to the United Kingdom if their sponsor's licence has been suspended.

69. An applicant who has already travelled to the United Kingdom will be allowed to enter the United Kingdom and start work for the sponsor.

70. If the sponsor's licence is withdrawn

however, the certificate of sponsorship will be cancelled and the application will be refused. If the application is made while the applicant is in the United Kingdom, and it is refused, we may curtail the applicant's leave:

- to 60 days where the applicant was not complicit in the actions that resulted in the sponsor having its licence withdrawn. If the applicant has less than 6 months of his/her leave remaining, we will not curtail this leave. An applicant may wish to make a further application for leave; or
- with immediate effect where we consider the applicant to have been complicit.

If we are thinking about taking action against a sponsor

71. If we notify a sponsor that we are considering taking action against it, which may lead to the withdrawal of its licence, we will not consider any application for entry clearance or leave to remain made by an applicant to whom that sponsor has assigned a certificate of sponsorship. We will hold the application until a decision on the sponsor's licence is made.

72. If we can, we will try to contact an applicant granted entry clearance relying on a certificate of sponsorship from a sponsor assigned prior to its licence being suspended before they travel to the United Kingdom. We will advise him/her not to travel to the United Kingdom until we have made a decision on the sponsor's licence.

73. An applicant who has already travelled to the United Kingdom will be allowed to enter the United Kingdom and start work for the sponsor.

74. An applicant can submit applications for leave during this time if his/her leave is due to expire. If the sponsor's licence is withdrawn however, the certificate of sponsorship will be cancelled and the application will be refused. If the application is made while in the United Kingdom, and it is refused, we may curtail the applicant's leave:

- to 60 days where the applicant was not complicit in the actions that resulted in the sponsor having its licence withdrawn. If the

applicant has less than 6 months of his/her leave remaining, we will not curtail this leave. An applicant may wish to make a further application for leave; or

- with immediate effect where we consider the applicant to have been complicit.

If a sponsor's licence is withdrawn

75. If a sponsor has its licence withdrawn, any certificate of sponsorship it has issued will become invalid. This affects both applicants who have yet to apply for entry clearance, leave to enter, or leave to remain, and applicants who are already working for the sponsor.

76. We will refuse any application for entry clearance, leave to enter, or leave to remain made by an applicant using an invalid certificate of sponsorship.

77. Where an applicant has already been granted entry clearance but has not travelled to the United Kingdom, the entry clearance will be revoked. Where the applicant has already travelled to the United Kingdom, he/she will not be allowed to enter the United Kingdom.

78. Where an applicant is in the United Kingdom and working for a sponsor when its licence is withdrawn, we may curtail the leave of the applicants being sponsored:

- to 60 days where the applicant was not complicit in the actions that resulted in the sponsor having its licence withdrawn. If the applicant has less than 6 months of his/her leave remaining, we will not curtail this leave. An applicant may wish to make a further application for leave; or
- with immediate effect where we consider the applicant to have been complicit.

Sponsor takeover and/or transfer of employment

79. If an applicant's sponsor is taken over by another organisation and/or there is a transfer of employment, the new employer must apply to become a licensed sponsor within 28 calendar days of taking over the business.

80. If it does not, we are likely to curtail

an applicant's leave to 60 days, as he/she will not be working for a licensed sponsor. If the applicant has less than 6 months of his/her leave remaining, we will not curtail this leave. An applicant may wish to make a further application for leave.

When we visit, we may also want to speak to the applicant and other migrant workers the sponsor is employing.

81. If the new employer does not get a licence, any certificate of sponsorship issued by the previous employer will be invalid.

82. Find more information about sponsor takeover and/or transfer of employment in the 'Guidance for sponsor applications Tier 2, Tier 4 and Tier 5 of the points based system' on our website at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance>.

If a sponsor does not renew its licence

83. If the sponsor does not renew its licence, any certificates of sponsorship it has issued will become invalid. We may curtail the leave of the applicants it sponsors to 60 days. If the applicant has less than 6 months of his/her leave remaining, we will not curtail this leave. Applicants may wish to make a further application for leave. We may refuse entry to the United Kingdom to any applicants who have not yet travelled.

Termination of employment

84. If an applicant's employment ends before his/her period of leave, we may curtail his/her leave to 60 days. If the applicant has less than 6 months of his/her leave remaining, we will not curtail this leave. An applicant may wish to make a further application for leave.

85. Find more information about the sponsor's licence status in the 'Guidance for sponsor applications Tier 2, Tier 4 and Tier 5 of the points based system' on our website at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance>.

Visiting officer visits

86. Sponsors may get a visit from our visiting officers at any time. The visit may be to check that the sponsor is complying with its duties.

Tier 5 (Temporary Worker) overview of terms and conditions

87. The following tables explain some of the key features of Tier 5 (Temporary Worker). Full details of the requirements are in paragraphs 245ZM to 245ZR of the Immigration Rules.

Periods of grant

<p>For people in the creative and sporting and charity workers categories.</p>	<p>For a maximum period of 12 months, or the time given in the certificate of sponsorship plus 28 days, whichever is shorter (beginning no more than 14 days before the start date given on the Certificate of Sponsorship).</p> <p>The exception to this is for creative workers only who can apply for an extension for a maximum of 12 months at a time up to a total of 24 months if they remain with the same sponsor</p>
<p>For people in the religious workers, Government authorised exchange and international agreement categories.</p>	<p>For a maximum period of 24 months, or the time given in the certificate of sponsorship plus 28 days, whichever is shorter (beginning no more than 14 days before the start date given on the Certificate of Sponsorship).</p> <p>The exception to this is for those applying as private servants in diplomatic households, or as employees of overseas governments only, who can apply for an extension for a maximum of 12 months at a time, up to a total of six years.</p>
<p>Leave to Remain (Extension) where previous grant of leave was as a Tier 5 (Temporary Worker) migrant, irrespective of category, and the migrant had Entry Clearance.</p>	<p>Up to the maximum time allowed in the category, or the time given in the certificate of sponsorship plus 14 days, whichever is shorter.</p>

Switching

<p>Switching into or from the Tier 5 (Temporary Worker) category.</p>	<p>A sports or entertainer visitor is allowed to switch into the Tier 5 (Temporary Worker) creative and sporting sub-category, if he/she has a valid certificate of sponsorship that was assigned to him/her before he/she came to the United Kingdom.</p> <p>A Qualifying Work Permit Holder is allowed to switch into the Tier 5 (Temporary Worker) International Agreement sub-category, provided his/her certificate of sponsorship shows that he/she is being sponsored in the Government Authorised Exchange subcategory and he/she will be continuing in employment with the same organisation.</p> <p>An Overseas Government Employee (granted under paragraphs 160-162 and 164-165 of the Immigration Rules) is allowed to switch into the Tier 5 (Temporary Worker) – International Agreements sub-category of the Points-Based System</p> <p>A Qualifying Work Permit Holder is allowed to switch into the Tier 5 (Temporary Worker) Government Authorised Exchange, sub-category provided the applicant was previously issued with a work permit for the purpose of employment as a sponsored researcher, and has been granted a COS to continue this employment.</p> <p>A footballer in Tier 5 is allowed to switch into Tier 2(Sportsperson) sub-category within the UK, provided they meet all the requirements of Tier 2(Sportsperson), including the English language requirement. However, if a footballer is unable to meet the required standard for English language while they are in the UK under Tier 5, they will be required to leave the UK at the end of the 12 months in order to apply for re-entry under Tier 5.</p> <p>An overseas qualified nurse in the UK under Tier 5 (Temporary Worker) Government Authorised Exchange sub-category is allowed to switch into a Tier 2 job as an overseas qualified nurse or midwife providing that the applicant has completed their registration with the Nursing and Midwifery Council.</p> <p>All other switching into or out of Tier 5 (Temporary Worker), or between subcategories of Tier 5 (Temporary Worker) is not permitted.</p>
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Conditions of leave

<p>Conditions applicants must meet.</p>	<p>Applicants in any Tier 5 (Temporary Worker) category will be subject to the following conditions:</p> <ul style="list-style-type: none"> • no recourse to public funds; and • registration with the police, if this is required by paragraph 326 of the Immigration Rules; and • no employment, except: <ul style="list-style-type: none"> ○ Working for the sponsor in the employment stated on the certificate of sponsorship, or, in the case of an applicant whom the certificate of sponsorship records as being sponsored in the government authorised exchange sub-category of Tier 5 (Temporary Worker) for any person for whom the sponsor directs him/her to work, provided that work is in the employment that the certificate of sponsorship records that the applicant is being sponsored to do; ○ Supplementary employment; and ○ Where the applicant is sponsored in the creative and sporting subcategory of Tier 5 (Temporary Workers), employment as a sportsperson for his national team while his national team is in the UK.
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88. All applicants wanting to travel to the United Kingdom under Tier 5 (Temporary Worker) of the points based system will need prior entry clearance. The exception to this will be non-visa nationals seeking entry to the United Kingdom for a period of less than three months in the Tier 5 (Temporary Worker) Creative and Sporting sub-category. Any applicant applying for either entry clearance or further leave to remain in the United Kingdom will need a valid certificate of sponsorship reference number before he/she can submit his/her application.

89. The applicant will be able to enter the United Kingdom up to 14 days before his/her start date, the date given by his/her sponsor on the certificate of sponsorship.

90. Where the applicant is under 18 years of age, the application must be supported by the applicant's parents or legal guardian, or by just one parent if that parent has sole legal responsibility for the child.

91. Where the applicant is under 18 years of age, the applicant's parents or legal guardian,

or just one parent if that parent has sole responsibility for the child, must confirm that they consent to the arrangements for the applicant's travel to, and reception and care in, the UK.

Tier 5 (Temporary Worker) Points Scoring

92. In order to obtain leave to enter or remain within Tier 5 (Temporary Worker) sub categories, an applicant must score enough points and send supporting evidence where appropriate.

Tier 5 (Temporary Worker) Point Scoring Requirements

93. Under Tier 5 (Temporary Worker) an applicant must score:

- 30 points for possessing a valid certificate of sponsorship (Appendix A of the Immigration Rules); and
- 10 points for Maintenance (Funds) (Appendix C of the Immigration Rules).

94. All the requirements of the Immigration Rules have to be met.

95. The points available are:

- | | | |
|----------|----------------------------|-----------|
| A | Certificate of sponsorship | 30 points |
| B | Maintenance requirement | 10 points |

96. In order to claim points for section **A** of the above table, the applicant must have a valid certificate of sponsorship issued by his/her sponsor.

97. Further details of each sub-category of the Tier 5 (Temporary Worker) category are given below. For further information on the conditions under which sponsors should issue certificates of sponsorship, please see our website at: <http://www.ukba.homeoffice.gov.uk/employers/>.

Creative and Sporting

98. This category is for applicants in the creative and sporting sector who are entering the United Kingdom for short term contracts/engagements in the United Kingdom.

99. For sportspeople, the applicant must be internationally established at the highest level in their sport and/or whose employment will make a significant contribution to the development and operation of that particular sport in this country; coaches must be suitably qualified to fulfil the role in question.

100. In order for a certificate of sponsorship to be issued for a sportsperson under Tier 5 (Temporary Worker - Creative and Sporting), the sponsor will need to have an endorsement for the applicant from the appropriate governing body for his/her sport. The endorsement will confirm that:

- the player or coach is internationally established at the highest level; and/or
- his/her employment will make a significant contribution to the development of his/her sport at the highest level in the United Kingdom; and
- the post could not be filled by a suitable settled worker.

101. The endorsement will be obtained from the governing body by the sponsor.

102. Find a list of all approved governing bodies on our website at: <http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/employingmigrants/sportsgoverningbodies/>.

103. For a creative worker and his/her entourage operating in dance, theatre, or film and television, the sponsor must commit to following the specified code of practice, which includes taking into account the needs of the resident labour market in that area. Where the creative or entertainment sector worker's job is not covered by a specific code of practice, the sponsor must show that the post could not have been filled by a settled worker. Examples to demonstrate this might be recruitment activity undertaken, written support from an appropriate industry representative body or sector labour market information.

104. In issuing a certificate of sponsorship, the sponsor will have guaranteed that the applicant:

- is seeking entry to the United Kingdom to work or perform in the relevant sector;
- is not intending to base themselves in business in the United Kingdom;
- poses no threat to the resident labour force; and
- will comply with the conditions of their permission to stay and leave the United Kingdom when it expires.

105. This category is not for people who currently enter the UK under the permit-free concessions for entertainers, including permit free festivals, and sportspeople. These concessions have been brought within the Immigration Rules under the entertainer and sportsperson visitor routes. Professional sportspeople or amateurs wishing to play for professional clubs would need to obtain permission to work under the points based system. For more information on the visitor routes and amateur status see our visitor guidance: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter2/>

106. Applicants entering the United Kingdom under the creative and sporting sub-category must obtain entry clearance prior to travelling to the United Kingdom. The exception to this is non-visa nationals seeking entry to the United Kingdom for a period of less than three months.

107. These applicants will require a certificate of sponsorship, but will not be required to obtain entry clearance. Separate arrangements, consistent with the principles of sponsorship, will enable appropriate checks to be made at the port of entry.

108. An applicant will need to tell the Immigration Officer his/her certificate of sponsorship number when they arrive in the United Kingdom. The Immigration Officer will also ask the applicant to provide his/her evidence of meeting the maintenance requirements. Please refer to the maintenance section for the evidence we expect applicants to provide. It may take the Immigration Officer some time to process the application. If an applicant does not bring all the necessary evidence it may result in his/her application being refused and he/she will not be allowed to enter the United Kingdom.

109. The applicant may wish to bring contact details for his/her sponsor with him/her in case we need to speak to the sponsor, and should ask the sponsor to confirm the details that it has entered on the certificate of sponsorship.

110. Where applicants are granted leave to enter for up to three months by an Immigration Officer on arrival in the UK, their leave will automatically lapse once they travel outside the Common Travel Area (the common travel area is UK, Republic of Ireland, the Isle of Man and the Channel Islands). This means that they will not automatically be able to re-enter the UK on the basis of their original grant of leave. However, an applicant may need to come back to the UK to fulfil his or her engagements for his/her sponsor here. In this instance, the applicant must tell the Immigration Officer his/her original certificate of sponsorship number on arrival. The Immigration Officer will ask the applicant to provide his/her evidence of meeting the maintenance requirements again. The Immigration Officer will carry out checks to ensure that the sponsor has not withdrawn

his or her sponsorship of the applicant since the applicant's original entry, and may wish to speak to the sponsor again to confirm the details on the certificate of sponsorship. Provided the applicant meets all the criteria, the Immigration Officer will be able to grant leave to allow him/her to complete the engagements for his/her sponsor within the period of their original grant of leave.

111. Applicants who wish to come to the United Kingdom for three months or longer will need to get entry clearance.

112. A creative worker or sports person may apply for entry clearance from a country that is not his/her normal place of residence if he/she is in that country for a similar role to the one he/she wants to do in the United Kingdom.

Group certificates of sponsorship

113. An applicant will be able to bring his/her entourage using a group certificate of sponsorship. An entourage can include people whose work is directly related to the employment of an entertainer, cultural artist, sports person or a dramatic production. The person should have proven technical or other specialist skills.

Multiple engagements or performances

114. Due to the nature of the creative sector, at times the applicant may need to perform a number of engagements at a number of venues. If the applicant has a single sponsor, for example an agent, and there is no more than a maximum of 14 calendar days between each engagement, that sponsor can issue a single certificate of sponsorship to cover the whole period.

115. If the applicant is sponsored by individual venues, producers or promoters, then it is still possible for each sponsor to issue a certificate of sponsorship to cover its own show. The periods of work stated on the certificates of sponsorship must not overlap (the applicant may need to co-ordinate the periods of work with his/her sponsors). If there is no more than a maximum of 14 calendar days between each engagement, then entry clearance will be granted to cover the whole period.

116. If there is a gap of more than 14 calendar days between engagements, then the applicant will have to leave the United Kingdom and apply for entry clearance again as a new application.

Charity workers

117. This category is for migrants to undertake unpaid voluntary work in line with the aims of his/her sponsor in the United Kingdom.

118. Applicants coming to work temporarily in the United Kingdom as charity workers should only be doing voluntary activities and not paid work. The applicant should intend to carry out fieldwork directly related to the purpose of the sponsoring organisation.

119. In issuing a certificate of sponsorship, the sponsor will have guaranteed that an applicant:

- intends to undertake voluntary fieldwork directly related to the purpose of the charity;
- will not be paid or receive other payment for his/her work (except reasonable expenses outlined in section 44 of the National Minimum Wage Act), please see: <http://www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&title=National+Minimum+wage+Act&Year=1998&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&TYPE=QS&PageNumber=1&NavFrom=0&parentActiveTextDocId=1571667&ActiveTextDocId=1571728&filesize=12566>
- will not take up a permanent position; and
- will comply with the conditions of his/her permission to stay and leave the United Kingdom when it expires.

Religious workers

120. This category is for applicants coming to work temporarily in the United Kingdom as a religious worker. Duties may include preaching, pastoral work and non pastoral work.

121. For examples of the duties we expect applicants coming in under the Tier 5 (Temporary Worker - religious worker) sub-category to undertake, please see the

'Guidance for Sponsor Application Tier 2, Tier 4 and Tier 5 of the Points Based System', on our website at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance/>.

122. In issuing a certificate of sponsorship, the sponsor will have guaranteed that:

- the applicant is qualified to do the job in question;
- the applicant will only work at the specified location(s), except where working under the supplementary employment provisions;
- it is giving an undertaking that it will accept the responsibilities of sponsorship for the applicant;
- it is giving an undertaking, where applicable, to support the applicant through funds and/or accommodation that are sufficient for them to maintain themselves throughout the duration of the certificate of sponsorship. Applicants who are unable to support themselves could face financial hardship because they will not have access to most state benefits;
- the applicant will not be displacing or denying an employment opportunity to a suitably qualified member of the resident labour force; and
- the applicant will comply with the conditions of his/her permission to stay and will leave the United Kingdom when it expires.

123. Applicants must provide an official letter from the sponsor with their application, which gives an outline of the applicant's duties, details of remuneration, and an explanation of how the role passes the resident labour market test. Further information is available in the Codes of Practice for sponsors: <http://www.ukba.homeoffice.gov.uk/employers/points/sponsoringmigrants/employingmigrants/codesofpractice/>.

Government authorised exchange

124. This category is for applicants coming to the United Kingdom through approved schemes that aim to share knowledge, experience and best practice through work placements, whilst

experiencing the wider social and cultural setting of the United Kingdom. This category cannot be used to fill job vacancies or provide a way to bring unskilled labour to the United Kingdom.

125. Individual employers and organisations will not be allowed to sponsor migrants, even if they are licensed as sponsors under other tiers or categories of Tier 5, to prevent potential abuse of this category and the formation of small individual schemes. The only exceptions to this are:

- Sponsored researchers – a scheme has been approved by the Department for Innovation, Universities and Skills, so higher education institutions will be able to recruit sponsored researchers under this category of PBS.
- where the employer is a Government Department or an Executive Agency of a Government Department.

126. There will be an overarching body to manage the exchange scheme. This overarching body will be the sponsor. The scheme and the overarching body must have the support of a United Kingdom government department. The overarching body will assign certificates of sponsorship to migrants who meet the requirements of the scheme.

127. Any work applicants undertake should be skilled. Skilled work is currently defined as being equivalent to N/SVQ level 3 or above. The only exception to this is where the migrant is coming to the UK through a scheme set up as part of the EU Lifelong Learning Programme, where the migrant may undertake vocational education and training at a lower skill level.

128. When the overarching body assigns a certificate of sponsorship, the overarching body will have guaranteed that the applicant:

- is seeking entry to the United Kingdom to work or train temporarily here through an approved exchange scheme;
- does not intend to establish a business in the United Kingdom; and
- meets the requirements of the individual

exchange scheme.

International agreement

129. This category is for migrants who are coming to the United Kingdom under contract to provide a service that is covered under international law, including:

- the General Agreement on Trade in Services (GATS);
- similar agreements between the United Kingdom and another country;
- employees of overseas governments and international organisations; and
- private servants in diplomatic households.

This category does not include the intra corporate transfer commitment of GATS. Migrants coming to the United Kingdom under these arrangements should come under Tier 2 (ICT) of the Points Based System

130. In assigning a certificate of sponsorship to private servants in diplomatic households, the sponsor will have guaranteed that the applicant:

- is aged 18 years old or over;
- will be employed as a private servant in the household of:

a) a member of staff of a diplomatic or consular mission who has diplomatic privileges and immunity as defined by the Vienna Convention on Diplomatic Relations; or

b) an official employed by an international organisation with certain privileges and immunities under United Kingdom or international law;

- intends to work full-time in domestic employment;
- will not take up any other form of job for the sponsor other than as a private servant in the specified household; and
- will leave the United Kingdom when his/her permission to stay has expired.

Please note: domestic workers in private

households will remain outside the points based system, and such applicants should continue to apply as they do now.

131. In assigning a certificate of sponsorship to employees of overseas governments and international organisations, the sponsor will have guaranteed that the applicant will:

- be under a contract of employment with the overseas government or international organisation;
- not take up any job for the sponsor other than that for which the certificate of sponsorship was assigned; and
- not try to avoid immigration controls by changing to a different category of worker within the international agreements category after entering the United Kingdom.

132. In assigning a certificate of sponsorship for migrants under GATS or other international agreements, the sponsor will have guaranteed that the applicant:

- works for an employer or organisation, of a country that:

a) is a member of the World Trade Organisation and have signed up to the agreement; or

b) has a bilateral agreement with the United Kingdom or the European Union; or

c) is a member of the European Union;

- will be engaged in work that meets the terms and conditions of the relevant international agreement; and
- where relevant, works for the employer that was awarded the contract or will provide services to the United Kingdom client.

Tier5 (Temporary Worker) Extensions

133. An applicant in any Tier 5 (Temporary Worker) sub-category will be able to extend his/her leave up to the maximum time in that sub-category. He/she will need to pass the test that is in force at the time he/she applies and this could be different to the test that was in place when the applicant first came to the United Kingdom.

Maintenance (Funds)

Maintenance requirement

134. One of the requirements of the Tier 5 (Temporary Worker) category is that an applicant coming to the United Kingdom must be able to support himself/herself for the entire duration of his/her stay in the United Kingdom without use of public funds (benefits provided by the state). An applicant who is unable to support himself/herself could face financial hardship because he/she will not have access to most state benefits.

135. In order to qualify for Entry Clearance, Leave to Enter or Leave to Remain under Tier 5 (Temporary Worker) an applicant must meet the maintenance requirement. The applicant can do this by:

- demonstrate that he/she has at least £800 of personal savings which must have been held for at least a consecutive 90 day period ending no earlier than one calendar month before the date of application; or
- his/her sponsor indicating on the certificate of sponsorship that it has certified his/her maintenance. Sponsors that certify that migrants meet the maintenance test under Tier 5 should note that it is their duty to make migrants aware that they should not claim state benefits during his/her period of leave as a Tier 5 (Temporary Worker). Please note, only A-rated sponsors will be able to certify an applicant's maintenance. The sponsor will not be able to certify maintenance for dependants.

136. Applicants may want to check the potential costs of living in the United Kingdom. If an applicant does not expect to get any income from his/her work in the United Kingdom after the first month, he/she may want to check that he/she has enough money to support himself/herself and any dependants.

137. Any dependants wishing to join the main applicant must also provide evidence that they have access to sufficient funds. There is separate dependants guidance which can be found on our website at: <http://www.ukba.homeoffice.gov.uk/workingintheuk/>.

Claiming points

138. An applicant can claim points for maintenance by either:

- Showing that he/she has had access to £800 available funds over the 90 day period immediately before the date of application; or
- His/her sponsor certifying the maintenance. The applicant should confirm with his/her sponsor that it has indicated, that his/her maintenance has been certified on the certificate of sponsorship.

139. Applicants who are unable to obtain 10 points in the maintenance requirements section will not be successful in his/her application, even if he/she scores the required number of points for his/her given category and meets all other requirements of the Immigration Rules.

Supporting evidence

Documents we require as evidence of your sponsor certifying your maintenance

140. If your sponsor certifies maintenance, this must be confirmed on your Certificate of Sponsorship.

141. Only A-rated sponsors can certify your maintenance.

Documents we require as evidence of personal savings

142. If you are claiming 10 points because you have personal savings of £800, that have been held for a consecutive 90 day period, you must provide one of the following types of specified evidence.

143. The evidence used to support personal savings for at least a consecutive 90 day period must be original, and issued by an authorised official of that organisation.

144. Evidence must be in the form of cash funds held in an account (this includes savings accounts and current accounts even when notice must be given). Other accounts or financial instruments such as shares, bonds, pension funds etc, are not acceptable,

regardless of notice period.

145. Where an applicant is providing evidence of maintenance from a single account, we will always assess the funds available to an applicant from the closing balance given on the document provided.

146. Where two or more pieces of evidence from a single account are submitted (for example two consecutive bank statements) we will assess the funds available to the applicant from the closing balance of the most recent document.

147. Where evidence from two or more accounts are submitted, we will assess the funds available to the applicant using:

- the most recent closing balance of one account, plus
- any additional money available to the applicant on the date of that closing balance, for which the applicant has provided the required evidence.

We will always use the closing balance date from the account that most favours the applicant.

148. Only the following specified documents will be accepted as evidence of this requirement:

i) Personal bank or building society statements covering a consecutive 90 day period

The most recent statement must be dated no earlier than one calendar month before the date of the application.

The personal bank or building society statements should clearly show:

- your name;
- your account number;
- the date of the statement;
- the financial institution's name and logo;
- any transactions during the 90 day period

- that there have been enough funds in your account throughout the period (The balance must always be at least £800) covering the three month 90 day period before the date of application.

All statements must be on the bank's stationery, unless the applicant is submitting electronic statements.

Ad hoc bank statements printed on the bank's letterhead/stationery are acceptable as evidence (This excludes mini-statements from ATMs).

If the applicant wishes to submit electronic bank statements from an online account these must contain all of the details listed above. In addition, the applicant will need to provide either:

- a supporting letter from his/her bank, on company headed paper, confirming the authenticity of the statements; or provided. Alternatively
- an electronic bank statement bearing the official stamp of the bank in question will be accepted. This stamp should appear on every page of the statement.

We will not accept statements which show the balance in the account on a particular day as these documents do not show that you hold enough funds for the full period needed.

ii) Building society pass book covering a consecutive 90 day period, ending no more than one calendar month before the date of application:

The building society pass book should clearly show:

- your name; and
- your account number; and
- the building society's name and logo; and
- any transactions during the 90 day period; and
- that there have been enough funds in your account throughout the period (The balance

must always have been at least £800) covering the consecutive 90 day period before the date of application.

iii) A letter from your bank or building society, or a letter from a financial institution regulated by the Financial Services Authority or, for overseas accounts, the home regulator (This is the official regulatory body for the country in which the institution operates and the funds are located) confirming funds and that they have been held for a consecutive 90 day period, ending no more than one calendar month before the date of application:

This letter must show:

- your name; and
- your account number; and
- the date of the letter (which must be no more than one calendar month before the date of the application); and
- the financial institution's name and logo; and
- the funds held in your account; and
- confirmation that funds of £800 have been in the bank for at least a consecutive 90 day period on and immediately before the date of the letter.

The letter must be dated no more than one calendar month before the date of application.

All statements must be on the bank's letterhead/official stationery

149. We will not accept letters which show the balance in your account on a particular day as these documents do not show that you hold enough funds for the full period needed.

Supplementary employment

150. An applicant can undertake work that is supplementary to that for which his/her certificate of sponsorship has been issued. Supplementary employment must meet the following criteria:

- must be in the same sector and at the same level as the work for which the certificate of sponsorship was issued;
- must be no more than 20 hours per week;
- must be outside of the applicant's normal working hours for which his/her certificate of sponsorship was issued.

151. The applicant must continue to work for the sponsor in the employment that the certificate of sponsorship records that he/she is being sponsored to do.

152. Applicants do not need to advise us of any supplementary employment they undertake, as long as it meets the above stated criteria.

Secondary employment

153. Applicants cannot apply to undertake additional work that does not meet the supplementary employment criteria.

Change of employment

154. An applicant who has previously received permission to enter or remain in the United Kingdom can apply for a 'change of employment'. This is where the applicant wishes to vary his/her stay in the United Kingdom because he/she has changed his/her employment, either within the same organisation or with a new organisation.

155. The work will need to be with a licensed sponsor, and the applicant must have a new certificate of sponsorship.

156. An applicant will need to provide evidence of meeting the maintenance requirement where he/she is making an application for a change of employment.

157. An applicant under the Tier 5 (Temporary Worker) category can apply for change of

employment whilst in the United Kingdom, however, we will only grant permission to stay to reach the maximum time allowed under the relevant sub-category and he/she will not be able to switch into another tier, category or sub-category.

158. An applicant in the creative sector making a change of employment application which would take his/her leave over 12 months must remain working for the same sponsor.

Change of Circumstances

159. If during an applicant's period of employment, he/she wishes to amend:

- personal details; or
- criminal convictions; or
- contact details; or
- representative details; or
- dependants' details

he/she should inform his/her sponsor and fill out a change of circumstances form which can be found on our website at <http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/pbs/migrantchangeofcircumstanc2.pdf>

This should be sent to:

UK Border Agency

PO Box 3468

Sheffield S3 8WA

160. If we consider that the intended change can be treated as a change of circumstances we will confirm this in writing and you should keep this letter with the original documents.

Multiple periods of employment in the United Kingdom

161. If an applicant is based overseas and is required to enter the United Kingdom on a regular basis he/she may be issued with a multiple entry certificate of sponsorship.

162. This type of certificate is not required by a migrant wishing to travel overseas for leisure or domestic purposes or where the migrant is based in the United Kingdom and required to travel overseas on business.

163. Where an applicant has entry clearance, or has been granted leave to remain for more than six months, he/she will not be required to obtain a new certificate of sponsorship in order to return to the United Kingdom for each period of employment.

164. However, if an applicant who does not have entry clearance or has been granted less than six months leave to remain leaves the common travel area (the United Kingdom, Channel Islands, Isle of Man and Republic of Ireland collectively form a common travel area) his/her leave will lapse. In these circumstances the applicant will not be able to re-enter the United Kingdom with that leave and will need to apply for fresh leave after the sponsor has assigned a new certificate of sponsorship.

165. Applicants coming to the United Kingdom under the Tier 5 (Temporary Worker) creative and sporting sub-category for less than three months, who are non-visa nationals, and do not have Entry Clearance, will not be able to take advantage of multiple entry.

Absences from the United Kingdom

166. An applicant may be required to be seconded overseas during the time he/she is employed in the United Kingdom. A new certificate of sponsorship will not be required if he/she returns to the United Kingdom before his/her leave expires or lapses.

167. Where an applicant's leave has lapsed on leaving the common travel area (the United Kingdom, Channel Islands, Isle of Man and Republic of Ireland collectively form a common travel area) or while he/she is overseas or

expired while he/she is overseas the applicant will need to apply for fresh leave after the sponsor has assigned a new certificate of sponsorship.

Annex A: Administrative Review

(Entry clearance applications only)

1. What is Administrative Review?

Administrative Review is the mechanism for reviewing refusal decisions made under the Points Based System where an applicant believes an error has been made in the decision. The Administrative Review is free of charge.

Administrative Review is an entitlement but the request must be made within 28 days from the date the refusal notice is received by the applicant. For time limits for making a request, see further paragraphs 6 and 7 below.

Administrative Review is a non-statutory scheme; that is there is no legislation setting out what it covers or who is eligible to apply. The policy is contained in this guidance.

2. What if the Administrative Review request refers to matters outside the scope of the Administrative Review?

Where this occurs the matters should be dealt with under the normal complaints procedure. In such cases the applicant will be advised in writing.

3. Who conducts the Administrative Review?

An Entry Clearance Manager will conduct the administrative review. This may mean that in some cases, an Entry Clearance Manager from another Post will conduct the Administrative Review. The applicant may receive the result of the Administrative Review from an entry clearance post that is different to the one that considered the original entry clearance application.

4. Who can apply for Administrative Review?

Anyone refused entry clearance under Points Based System, where they believe the Entry Clearance Officer has made an incorrect decision.

5. How does the applicant apply?

The applicant will receive the Administrative Review Request Notice with the entry

clearance refusal notice.

The applicant must complete the Request Notice in full and send it directly to the address stated on the Request Notice.

Applicants must not send any additional documents such as passport or supporting documents with the Administrative Review request notice. If the refusal is subsequently overturned, the applicant will be asked to send in their passport.

6. What is the deadline for applying for Administrative Review?

The applicant has 28 days from the date of receipt of the refusal notice, to submit a request for Administrative Review.

7. What if an application is submitted late?

Where an Administrative Review request is received outside the 28-day period, the administrative reviewer will consider if there are exceptional circumstances to accept the application outside of the deadline.

If the Administrative Review request is late and the administrative reviewer decides not to perform the Administrative Review, the request notice will be returned to the applicant with a letter explaining why it is not being accepted.

8. How many times can an applicant request an Administrative Review?

Applicants may request only one Administrative Review per refusal decision. Any further review requests received for the same refusal decision will not be accepted. They will be returned to the applicant.

However, where the Administrative Review upholds a refusal but with different refusal grounds, the applicant may request an administrative review of these new refusal grounds. If the applicant has new or further information, documents or other paperwork that they failed to submit with their original application, they will need to make a new application and pay the appropriate fee.

9. How long will the Administrative Review take?

The administrative reviewer will complete their review and notify the applicant in writing of their decision within 28 days from the date of receipt of the Administrative Review request notice.

If, in exceptional circumstances, the administrative reviewer is unable to complete the Administrative Review within the 28 days, they will notify the applicant in writing as to when to expect a decision.

10. What will the administrative reviewer look at?

The administrative reviewer will examine the evidence submitted with the original application, copies of which will be kept at the refusal post.

The applicant is not allowed to provide new evidence. Any new evidence must be disregarded unless the applicant was refused under paragraph 320 (7A) or 320 (7B) of the Immigration Rules on General Grounds for Refusal (see paragraph 12).

Any new evidence submitted by the applicant must be returned to them together with the outcome of the Administrative Review.

11. How are Administrative Review decisions made?

The administrative reviewer should focus on the areas which the applicant has asked to be reviewed. They will check that:

- points have been correctly awarded;
- documents have been correctly assessed; and
- verification checks have been properly carried out.

The administrative reviewer may recommend that the reason for refusal should be overturned, if they find that the Entry Clearance Officer:

- failed to properly consider evidence submitted with the original application;
- failed to apply the Immigration Rules correctly;

- made a mistake in processing the application;
- failed to give adequate reasons for refusing entry clearance. In this case, the administrative reviewer will recommend the Entry Clearance Officer revoke the original refusal and serve a new refusal notice giving a full explanation for the refusal.

Where the administrative reviewer recommends in line with the above, that the reasons for refusal should be revoked, the applicant may still be refused but with new grounds for refusal.

The administrative reviewer will not recommend that the original decision is overturned simply because the applicant claims there is a fault with United Kingdom Border Agency's underlying processes or policies.

12. Does Administrative Review cover General Grounds for Refusal?

Yes. Administrative Review will also look at refusals on the basis of paragraph 320 of the Immigration Rules on "General Grounds for Refusal."

Reviews of refusals made under paragraphs 320(7A) and 320(7B) of the Immigration Rules

The applicant may submit further information with the Administrative Review request, if the refusal is based on paragraph 320 (7A) or 320 (7B) of the Immigration Rules on General Grounds for Refusal. If an application has been refused because a false document was used or a false representation was made, the applicant may claim that they were unaware of the false documents or false representations. The refusal will still stand but the applicant would have to prove that they did not know that false documents or false representations were used, if they are not to have any future applications automatically refused for 10 years. Where the documents related directly to the applicant (for example, employment references, qualifications or financial details), such a claim would be likely to fail unless the applicant has clear evidence that an error has been made (for example, written confirmation

from an employer, financial institution or educational establishment that they had supplied us with incorrect information at the time we verified the original documentation).

If the administrative reviewer does accept that the applicant did not knowingly use false documents or false representations, the refusal will still stand, but the applicant will not automatically have any future applications refused under the rules (paragraph 320 (7B) where false documents or false representations were used.

13. Does Administrative Review cover verification?

Yes. As part of the administrative review process the administrative reviewer will ensure that the Entry Clearance Officer has followed the correct verification procedures.

14. What are the possible outcomes of Administrative Review?

There are three possible outcomes of Administrative Review:

- Uphold decision, reasons for refusal remain the same;
- Uphold decision, with revised reasons for refusal;
- Overturn decision and issue entry clearance.

15. How is the applicant informed of the result of the Administrative Review?

Decision upheld and the reasons for refusal remain the same:

- the administrative reviewer will notify the applicant by letter. The applicant will not be entitled to a further Administrative Review as the grounds for refusal has not changed.

Decision upheld but with revised reasons for refusal:

- A new refusal notice (GV51) will be served along with the Administrative Review letter from the administrative reviewer stating why the refusal has still been upheld. If there are fresh

reasons for refusal which were not notified originally, the applicant will be able to submit a further Administrative Review request limited to those fresh reasons.

Decision overturned and entry clearance to issue:

- The administrative reviewer will notify the applicant by letter and request the applicant's passport.

16. Limited Right of Appeal

The applicant can only appeal on any or all of the grounds referred to in section 84 (1) (b) and (c) of the Nationality, Immigration and Asylum Act 2002. These are that the decision is unlawful by virtue of section 19B of the Race Relations Act 1976 (discrimination by public authorities), and/or that the decision is unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention) as being incompatible with the appellant's Convention rights.

All entry clearance applicants under the Points Based System who are refused will be limited to residual grounds of appeal stated above.

The process for dealing with limited rights of appeal remains unchanged.