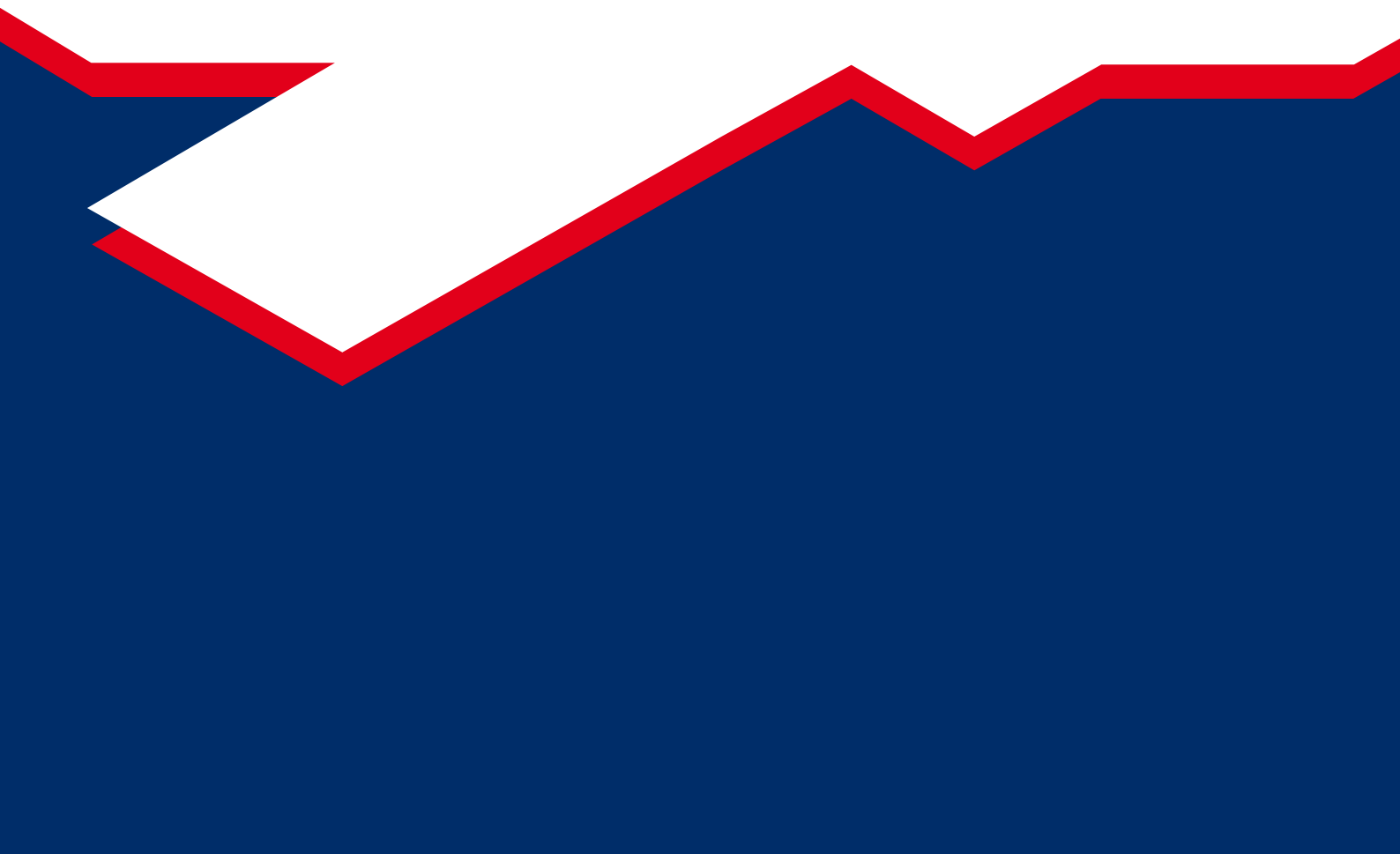




**SECURING
OUR BORDER
CONTROLLING
MIGRATION**

GUIDANCE FOR EMPLOYERS ON PREVENTING ILLEGAL WORKING ASYLUM SEEKERS AND REFUGEES

August 2010



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The information contained in this document is correct at the time of publication but may be subject to revision. You should read this in conjunction with the latest guidance on preventing illegal working available on the UK Border Agency website: www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/

Please note that the Comprehensive Guidance for Employers on Preventing Illegal Working (February 2008) is currently under revision. The information contained in this interim guidance will be incorporated into the new version.

INTRODUCTION

The aim of this guidance is to help United Kingdom (UK) employers understand the status of asylum seekers, refugees and those with Humanitarian Protection. The guidance also highlights what documents you should ask prospective employees to produce to ensure that they have such status and that they can lawfully work for you.

Since August 2005, people granted refugee status or Humanitarian Protection have been granted five years limited leave to enter or remain in the UK. After five years a refugee or beneficiary of Humanitarian Protection who wishes to extend their leave should apply to the UK Border Agency and may, on application, be granted Indefinite Leave to Remain (ILR) in the UK – this is also known as settlement.

An employer is acting unlawfully if they employ a person who does not have the right to work in the UK.

The UK Border Agency aims to work together with employers to ensure that illegal workers cannot obtain work in the UK. The UK Border Agency will also continue to take tough action against those employers who make use of illegal labour.

If you employ refugees and those with Humanitarian Protection, including those who are due to apply or are applying for settlement protection, this guidance will advise you about the particular checks which you should undertake in order to verify the status of your prospective employee and their right to work.

RIGHT TO WORK

There is a difference between the entitlement of asylum seekers, refugees and those with Humanitarian Protection to work in the UK.

ASYLUM SEEKERS

The term asylum seeker is used to describe those who have made an application to be recognised as a refugee under the 1951 United Nations Convention Relating to the Status of Refugees¹ and the 1967 Protocol on the basis that it would be contrary to the UK's obligations to remove them from the UK. An asylum seeker cannot be removed from the United Kingdom until their asylum application has been considered and, if rejected, all appeal rights have been exhausted.

Checking right to work

An asylum seeker does not have a subsisting right to work and may only be lawfully employed if the UK Border Agency has lifted restrictions on their taking employment.

Only a small number of asylum seekers are permitted to work here whilst they await a decision on their claim. If the asylum seeker is permitted to work they will hold a Home Office issued Application Registration Card (ARC). The ARC will state 'allowed to work' or 'employment permitted' on both sides of their card as indicated in the images on this page. (Please note that new ARCs are to be issued in the near future with the wording 'UKBA APPLICATION REGISTRATION CARD' instead of 'IND APPLICATION REGISTRATION CARD', both are acceptable).

The steps that you need to follow to check and copy any documents including ARCs are described in the Summary Guidance for Employers under the Section "How to Establish the Excuse Against Payment of a Civil Penalty" (pages 9-14): www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/currentguidanceandcodes/summaryguidance0208.pdf?view=Binary



1 For more information, see www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf

You will only be able to establish an excuse against liability to pay a civil penalty if the ARC has been checked by the UK Border Agency Employer Checking Service (ECS). You must inform your employee that you are undertaking this check before doing so. See page 10 for details of the ECS or the UK Border Agency website at: www.ukba.homeoffice.gov.uk/employingmigrants

The Application Registration Card is listed at paragraph 6 of List B in the Civil Penalties for Employers Code of Practice (www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/). List B documents demonstrate that the holder has been granted leave to enter or remain in the United Kingdom for a limited period of time. If an individual provides documents from List B you should carry out the checks before the employment of the individual begins and then carry out follow up checks at least once every 12 months.

Therefore checking the ARC along with verification by the ECS provides you with an excuse against liability to pay a civil penalty for up to 12 months. You should carry out a follow up check on your employee's right to work within 12 months of the date on the verification letter sent by the ECS.

If you are presented with an ARC which states 'forbidden from taking employment' or 'employment prohibited' on either side, as shown on this page, then the holder does not have permission to work. If you employ them, you may be liable for payment of a civil penalty for employing an illegal migrant worker, or be charged with a criminal offence of knowingly employing an illegal migrant worker, unless the person can otherwise demonstrate their entitlement to work in the UK.

A Standard Acknowledgement Letter (SAL) or Immigration Service Letter (IS96W) is not evidence that an asylum seeker has permission to work and checking these documents will not provide you with a statutory excuse. If an asylum seeker presents these documents to you, refer them to the Home Office on 0151 213 2174 for further advice on how they can obtain an ARC.

See questions 1 to 5 on pages 11-12 for further information on employing asylum seekers.

Asylum seekers are allowed to volunteer providing they are carrying out the voluntary work on behalf of a registered charity, voluntary organisation or a body that raises funds for either. Please see questions 6 and 7 on page 12 for further information.



INDIVIDUALS WITH REFUGEE STATUS OR HUMANITARIAN PROTECTION

An asylum seeker whose claim is successful is granted refugee status. Refugees are foreign nationals who the UK Border Agency have permitted to remain in the UK because they have demonstrated a well-founded fear of persecution for one of the reasons listed in the 1951 Geneva Convention. Where a person does not qualify for protection under the 1951 Geneva Convention but there are substantial grounds for believing that there is a real risk that if they were removed to their country of origin they would face serious harm, Humanitarian Protection is granted instead.

Refugees and those who have been recognised as requiring Humanitarian Protection have no restrictions on the type of work they can do in the UK, as long as they continue to hold this qualifying status.

These individuals do not have to meet the tests of the points-based-system², and as an employer you do not need to be a sponsor under this scheme to employ a beneficiary of one of these statuses.

The UK Border Agency is committed to the integration of refugees and those with Humanitarian Protection.

Checking right to work

Most refugees or people with Humanitarian Protection can demonstrate their status and therefore right to work with a combination of documents from List B of the Civil Penalties for Employers Code of Practice (www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/). List B documents demonstrate that the holder has been granted leave to enter or remain in the United Kingdom for a limited period of time. If an individual provides documents from List B you should carry out the checks before the employment of the individual begins and then carry out follow up checks at least once every 12 months.

The steps that you need to follow to check any documents are detailed in the Summary Guidance for Employers under the Section “How to Establish the Excuse Against Payment of a Civil Penalty” (pages 9-14): www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/currentguidanceandcodes/summaryguidance0208.pdf?view=Binary

² The points-based system (PBS) was introduced in 2008 based on the Australian style immigration system. Sponsorship is the keystone of the PBS and means that those employers and educational institutions who seek to bring migrants to the UK take responsibility for them and ensure that they have the intention and ability to meet the conditions of their visa. For more information on the points-based-system refer to: www.ukba.homeoffice.gov.uk/employers/points

Combinations of documents

In addition to checking and copying a document giving the person's National Insurance number³, you should also check and copy ONE of the documents listed at either number 1 or 2:

- 1. An Immigration Status Document (ISD) issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to the holder with an endorsement indicating that the person named in it can stay in the United Kingdom, and is allowed to do the type of work in question.**

The ISD contains a United Kingdom Residence Permit endorsement which clearly states what leave the holder has. The ISD also states whether the individual is free to work in the UK and whether the entitlement to work is subject to any conditions. You should copy and retain the copy of all of the parts that are pictured on this page.

The Residence Permit clearly shows that the individual has Limited Leave to Remain.

Please see Appendix C in the Comprehensive Guidance for Employers on Preventing Illegal Working for a guide to UK government immigration stamps and endorsements (www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/)

Personal Details	
Full Name	SURNAME, FORNAME(S)
Nationality	NATIONALITY
Date of Birth	DATE OF BIRTH
Place of Birth	PLACE OF BIRTH
Gender	MALE/FEMALE
Coin ID	CID CASE ID

Humanitarian Protection

The Secretary of State has granted the applicant asylum on the basis that there is a real risk of persecution if he is returned to his country of origin. The Secretary of State has also granted him humanitarian protection on the basis that he is at risk of serious harm if he is returned to his country of origin.

The period of leave issued is valid until the end of the period of leave issued. The period of leave issued is valid until the end of the period of leave issued.

While the period of leave issued remains valid, the holder is able to work in the United Kingdom without any immigration restrictions limiting the type of work they can undertake.



3 For example, a document issued by a previous employer or Government agency, e.g. Inland Revenue (now HM Revenue and Customs), the Department for Work and Pensions, Jobcentre Plus, the Training and Employment Agency (Northern Ireland) or the Northern Ireland Social Security Agency, which contains the National Insurance number and name of the holder.

A P45, P60, National Insurance number card, or a letter from a Government agency may be acceptable evidence of a person's permanent National Insurance number in order to have this part of your excuse against liability to pay a civil penalty

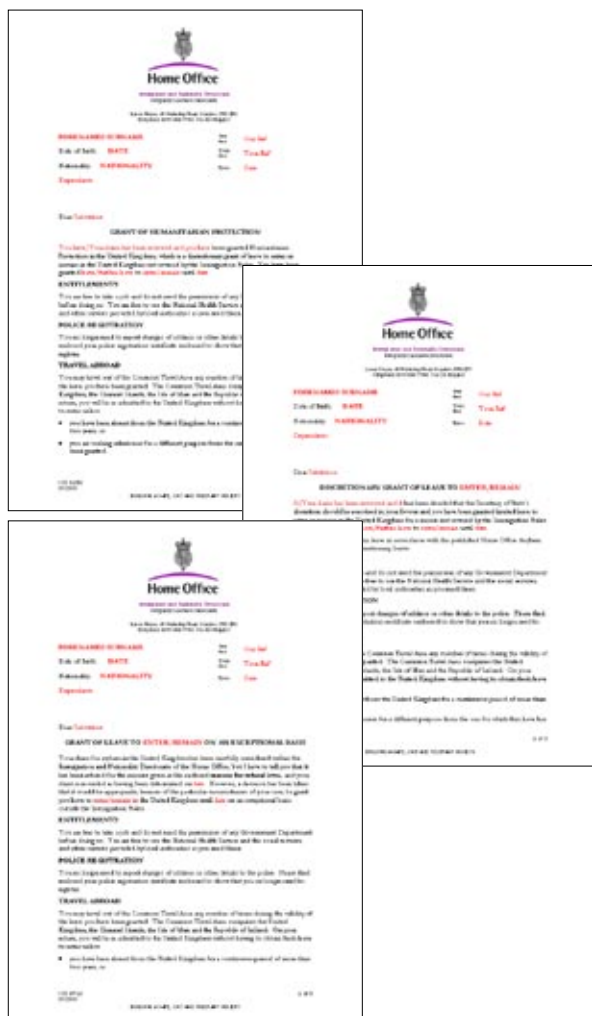
OR

2. A letter issued by the Home Office, the Border and Immigration Agency, or the UK Border Agency to the holder or the employer or prospective employer, which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question.

All of the letters pictured below indicate that an applicant has been granted a form of leave by the Home Office and that they have permission to stay in the UK for a limited period of time. Restrictions may however have been placed on the type of work they can do here, which you should check carefully.

The letter must grant the holder leave to enter or remain in the UK. You should check any stamps on this letter carefully to see if the holder is permitted to take the type of work that you are offering.

See further guidance (www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/) on the UK Border Agency website for more details on the stamp and endorsements that your employee or prospective employee may present to you.



SETTLEMENT PROTECTION (INDEFINITE LEAVE TO REMAIN IN THE UK)

Since August 2005⁴, people granted refugee status or Humanitarian Protection (HP) have been given five years limited leave to enter or remain in the UK. After five years an individual with refugee status or HP who wishes to extend their leave should apply to the UK Border Agency and may, on application, be granted Indefinite Leave to Remain (ILR) in the UK – this is also known as settlement.

Upon formal verification of the application by the ECS, the UK Border Agency will provide a document to the employer which will confirm that the person named has an entitlement to work in the UK.

Refugees and those with HP can apply for settlement a month before their five years limited leave expires. It is the employee's responsibility to ensure that their application reaches the UK Border Agency before their leave expires (i.e. before the expiry date indicated on their status document). To apply for settlement, a refugee or person with HP should submit a SET (Protection Route) application form, which can be obtained from the UK Border Agency website: www.ukba.homeoffice.gov.uk/settlement/applicationtypes/completing_set_protection_route/

If your employee or prospective employee applies to the UK Border Agency for settlement, they will surrender their original status document (they are encouraged to keep a photocopy of the original). The UK Border Agency will provide an acknowledgement letter to confirm receipt of their application.

As your employee or prospective employee will no longer have their original status document(s) available for checking, you are advised to contact the Employer Checking Service (ECS) to verify formally that an application is being considered. Please see page 10 for details on how to request an ECS check. A reply can be expected from the ECS within five working days. Further assistance for applicants is available from the Immigration Enquiry Bureau on telephone number 0870 606 7766.

4 Those granted refugee status before 30 August 2005 will have been given ILR immediately upon recognition as a refugee. Those granted Humanitarian Protection between 1 April 2003 and 29 August 2005 will have been granted 3 years limited leave, at the end of which they are able to apply for ILR. Those granted refugee status or Humanitarian Protection on or after 30 August 2005 will have been given 5 years limited leave, at the end of which they are able to apply for ILR.

THE EMPLOYER CHECKING SERVICE (ECS)

The Employer Checking Service can verify an individual's right to work in the UK where:

- the individual has an outstanding application or appeal with the UK Border Agency, in the case of a refugee or person with Humanitarian Protection this would be a settlement application; or
- the individual has presented an application registration card (ARC) which states that the holder is entitled to work.

Further information on the Employer Checking Service can be found on the UK Border Agency website at www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/support/

To request a check you must complete a form which is to be found at: www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/ecs/requestform.

Once completed, the form is to be e-mailed to: Employerchecking@ukba.gsi.gov.uk. If you are not able to e-mail the form, the helpline will advise you what action to take on 0300 123 4699. The Helpline is open Monday to Friday, between 9am and 5pm, except on Bank Holidays.

It is the employer's responsibility to inform the prospective employee or existing employee that they may undertake a check on them with the UK Border Agency. The records and documents relating to the check should be retained for examination and be submitted to officials upon request. For further information on copying and retaining documents please see the Summary Guidance for Employers under the Section "How to Establish the Excuse Against Payment of a Civil Penalty" (pages 9-14): www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/currentguidanceandcodes/summaryguidance0208.pdf?view=Binary

If you have questions relating to employment law, you may wish to seek legal advice.

QUESTIONS AND ANSWERS

This section aims to cover some questions you might have. Please refer to existing guidance on the UK Border Agency website for further information or for general queries on illegal working (not case specific) contact the Sponsorship and Employers Helpline on 0300 123 4699.

Q1 Can I employ an asylum seeker?

A. Paragraph 360 of the Immigration Rules allows asylum seekers to request permission to work from the Secretary of State if:

- An application has been made for asylum; and
- No decision at first instance has been made within one year of the date on which the application for asylum was recorded; and
- The delay in determining the asylum application cannot be attributed to the asylum seeker.

If an asylum seeker is granted permission to work under rule 360 they will be issued with an Application Registration Card (ARC) that states 'allowed to work' (see page 4 for more information). That permission will expire when the asylum application has been finally determined, i.e. when the applicant has exhausted their appeal rights against the decision or has been recognised as a refugee or granted Humanitarian Protection status.

Permission to work under paragraph 360 excludes permission to become self-employed or to engage in a business or professional activity.

Q2 How will I know if an asylum seeker can work for me?

A. Since 1 May 2004, any asylum seeker who has permission to work must demonstrate this through their Application Registration

Card (ARC). This will state on the front and back 'Allowed to Work' or 'Employment Permitted' if they are able to work. To have an excuse against liability to payment of a civil penalty you must verify an 'Employment Permitted' or 'Allowed to Work' ARC with the Employer Checking Service.

Q3 What if an individual presents me with a Standard Acknowledgement Letter (SAL), or IS96W letter, which states that they are entitled to work?

A. These documents **do not** demonstrate the holder has permission to work. If you employ anyone on the basis that you have checked either of these documents, you will not have an excuse against liability to pay a civil penalty. Any asylum seeker who is able to work will need to produce their 'Allowed to Work' or 'Employment Permitted' Application Registration Card (ARC) to demonstrate this.

If a job applicant is an asylum seeker who can work, but does not have an ARC, you should advise them to call the UK Border Agency on 0151 213 2174 for further information about how to obtain one.

Q4 I am already employing an asylum seeker, who I employed on the basis of seeing their SAL or IS96W. Should I ask for an Application Registration Card (ARC), or conduct ongoing checks?

A. No. If your existing employee produced a Standard Acknowledgement Letter (SAL) which stated that the holder had permission to work, or an IS96W letter prior to employment which commenced before 1 May 2004 and you established a defence for that person under section 8 of the Asylum and Immigration Act 1996, then you will not need to ask them for an ARC during the course of that employment. You will still have a defence under section 8.

Q5 Are failed asylum seekers allowed to work pending other applications or removal from the UK?

- A. Failed asylum seekers are not normally entitled to work in the UK once their appeal rights are exhausted.

A ruling by the Supreme Court on 28 July 2010 means that failed asylum seekers who have made further submissions asserting that they have a fresh claim for asylum which have been outstanding for 12 months or more, will now be entitled to apply for permission to work where this delay is not the fault of the individual.

The Government is currently considering the detail of the judgment and an announcement setting out how the Government intends to change current rules will be made in the near future.

In order to ensure good administration of any resulting applications, fair processes and the effective implementation of the judgement, the UK Border Agency will not process any permission to work applications from failed asylum seekers whose further submissions have been outstanding for more than 12 months until that policy is implemented.

VOLUNTARY ACTIVITY

Q6 Can asylum seekers volunteer their services?

- A. Asylum seekers are allowed to volunteer, as long as they are carrying out the work on behalf of a registered charity, voluntary organisation or body that raises funds for either. Any voluntary activity undertaken should not amount to either employment, or job substitution.

Q7 Are failed asylum seekers allowed to volunteer pending removal or other applications?

- A. On the grounds that a failed asylum seeker should not be in the United Kingdom at all (unless they have been granted leave to enter or remain in the UK), they should not be volunteering following a final decision on their claim, or if they have exhausted all their appeal rights. The normal course of action should be for the UK Border Agency to issue removal directions and to discourage further voluntary activity.

ISBN: 978-1-84987-242-3

Produced by UK Border Agency, Immigration Group

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