

Migrant Workers

Migrant Workers – Security Checks

- Asylum and Immigration Act 1996 – an employer is defined as a person who employs an individual under a contract of employment.
- If comply with requirements -establish defence against conviction
- Pre- employment Checks – either 1 original document from List 1 or 2 original documents from the combinations specified in List 2.
- Keep a copy of each document produced
- To avoid being accused of racial discrimination, treat all applicants in the same way.

List 1 and List 2 (brief summary, check in full)

- List 1 includes passport for EU and EEA citizens, a passport showing indefinite leave to remain and work in UK, a registration card confirming holder can work in UK
- List 2 birth certificate issued in UK specifies names of holder's parents, cert of registration as a British citizen, HO documentation re leave to enter/remain, work permit from Work Permits UK

Main groups not subject to immigration control

- British citizens.
- Nationals of the common travel area –UK, Channel Islands, the Isle of Man and Ireland.
- Commonwealth citizens with the right of abode in the UK.
- European Economic Area (EEA) nationals **BUT** note A8 nationals (transitional arrangements).
- Family members of nationals from EEA countries, providing that the EEA nationals lawfully resided in the UK.

European Economic Area

- Comprising the 25 countries of the European Union - Austria, Belgium, Cyprus, Czech Republic*, Denmark, Estonia*, Finland, France, Germany, Greece, Hungary*, Ireland, Italy, Latvia*, Lithuania*, Luxembourg, Malta, Netherlands, Poland*, Portugal, Slovakia*, Slovenia*, Spain, Sweden, UK.

*denotes A8 country

- In addition, the European Free Trade Area Countries – Norway, Iceland, Liechtenstein have rights to free movement in the UK.
- Switzerland is also included by virtue of signing an Association Agreement with the EU.
- Nationals from these countries are not subject to immigration control except certain conditions for A8 nationals.

Transitional Arrangements for A8

- Cease to have effect by 20/4/2011
- Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.
- Required to register with the Home Office under the new Worker Registration Scheme as soon as they find a job – obligation on employee.

- When applying for registration, these workers are required to provide a letter from their employer which confirms the start date of their employment.
- After 12 months of working legally and continuously, permitted to work in UK, no further requirement for registration.

Romania and Bulgaria (A2 Nationals)

- Must obtain an Accession Worker Card before permitted to commence employment in the UK
- If doing approved seasonal agricultural work or employment in the food processing sector, where prospective employer makes a work permit application or A2 national has a successful application under the Highly Skilled Migrant Programme

Equality Implications

- CRE Code of Practice – no applicant or worker should be placed at a disadvantage by rules, requirements, conditions or practices that have a disproportionate adverse effect on his/her racial group.
- The Equality Commission Good Practice Guide for Employers – June 2007
- www.equalityni.org/archive/pdf/empmigrantworkers.

ECNI Guide Key Points

- Employers should have a procedure for evaluating the comparative value of qualifications gained overseas. Advice on these matters can be obtained from the CCEA.
- References – does it place applicants outside this jurisdiction at a substantial disadvantage? Employer must be able to justify the practice of seeking references.

Some Key Points (2)

- It is not good practice to ask applicants about their immigration status
- Questions about nationality should be left off the application form.
- It is permissible to ask all job applicants whether they need permission to work in the UK on the application form.
- Employers making document checks should request these from all perspective new employees, not just migrant workers.

Further information

- www.businesslink.gov.uk
- www.ind.homeoffice.gov.uk/lawandpolicy/preventingillegalworking/codeofpractice