



Employing Refugees

A guide for employers:
documents providing evidence
of entitlement to work.

Equality and
Human Rights
Commission

equalityhumanrights.com



March 2009



The Refugee Council is a human rights charity, independent of government, working to ensure that refugees are given the protection they need, that they are treated with respect and understanding, and that they have the same rights, opportunities and responsibilities as other members of our society. For more information visit: www.refugeecouncil.org.uk



The Equality and Human Rights Commission is working to eliminate discrimination, reduce inequality, protect human rights and to build good relations, ensuring that everyone has a fair chance to participate in society. You can find out more at: www.equalityhumanrights.com

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1. Introduction

Overview of the guide

This guide aims to explain and provide clarity on the documents that refugees, and some asylum seekers, have which demonstrate their entitlement to work in the UK. Refugees do not usually have a national passport but instead are issued with separate Home Office documents.

This guide outlines the documents that you will need to check prior to employing a refugee or asylum seeker. These documents are recommended by the UK Border Agency's (UKBA) *Prevention of Illegal Working: Comprehensive Guidance for Employers on Preventing Illegal Working* (referred to as Comprehensive Guidance in this guide). This applies to all employees who started working for you on or after 29 February 2008ⁱ and can be accessed at: www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking

UKBA is the part of the Home Office responsible for asylum, permission to work and permission to stay in the UK. UKBA recommends that you check the documents of all prospective employees. New rules which came into effect on 29 February 2008 mean that employers can be fined up to £10,000 or even imprisoned for employing employees who do not have the right to work in the UK. In order to establish a statutory defence an employer should carry out certain pre-employment checks to verify an employee's right to work in the UK. You should refer to pages 9-10 of UKBA's Comprehensive Guidance to find out about the steps to take when making these checks.

Background

Refugees have the same protection against discrimination in the workplace, (i.e. on the grounds of gender, race, religion and belief, disability, sexual orientation and age) as everyone else in the UK.ⁱⁱ But they can also experience particular problems because there is confusion about their rights and entitlements.

ⁱ See www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/ For employees recruited before this date, you should refer to the previous comprehensive guidance which came into force on 1 May 2004. [Accessed 2 March 2009]

Refugees should be considered differently to economic migrants. They are not part of the points-based system: where migrants are required to meet particular skill and experience levels and employers given sponsorship duties. Refugees have been forced to leave their countries due to a fear of persecution. They are able to work in the UK without any restrictions and are legally protected from discrimination.

2. What can refugees bring to the workplace?

Refugees have a range of valuable skills and experience, resources that can be of great benefit in the workplace. The majority of refugees were working before they arrived in the UK, and have backgrounds in a wide variety of roles, from skilled trades to managers and senior officials. Research shows that refugees are highly motivated to find employment in the UK and to make a positive contribution at work; 96% of refugees in a recent survey indicated their desire to work, and 60% expressed an interest in job based training and development.

3. Documents demonstrating entitlement to work in the UK for refugees

Who is a refugee?

Refugee status is granted to a person who has had a positive decision on their claim for asylum under the 1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention) and has been granted leave to remain in the UK. Refugees are forced to flee their countries because of a fear of persecution, often as a result of direct state action.

ii Refugees, in common with other employees in the UK, are covered by the Disability Discrimination Act (1995), Employment Equality (Age) Regulations (2006), Employment Equality (Religion or Belief) Regulations (2003), Employment Equality (Sexual Orientation) Regulations (2003), Human Rights Act (1998), Race Relations Act (1976) and Sex Discrimination Act (1975), which also includes protection against discrimination on the grounds of transgender.

In the past, refugee status meant the individual was granted indefinite leave to remain in the UK. However, from 30 August 2005, refugees have been granted five years leave to remain.

Individuals who do not meet the Refugee Convention's criteria for Refugee Status may qualify either for Humanitarian Protection (granted for five years) or Discretionary Leave to Remain (granted for up to three years). This guide uses the term 'refugee' to include Refugee Status, Humanitarian Protection and Discretionary Leave to Remain.

Refugees are not restricted in the type of work they are permitted to undertake in the UK. Those with limited leave to remain in the UK can apply for further leave. During this time, a refugee continues to have the same rights to employment and training as before. (See Section 5 for further details).

Documentation

The Home Office issues an Immigration Status Document to refugees when they are granted leave to remain in the UK. A refugee can also apply to the Home Office for a Travel Document. Before April 2004, the Home Office also issued a letter when a refugee was granted leave to remain. All of these provide evidence of entitlement to work in the UK and are outlined below.

You may also need to check additional documents for employees. This might involve taking a copy of official documents issued by a Government Agency, such as HM Revenue and Customs or Department for Work and Pensions, or a previous employer, giving the person's permanent NI number and their name. Examples of documents include a P45, P60 or National Insurance Card. UKBA also recommends making annual checks on the entitlement to work for employees with limited leave to remain in the UK.

At present, refugees are not issued with ID cards. However, UKBA are expected to start issuing some refugees with ID cards from 2011.

UKBA's Comprehensive Guidance has two lists:

List A:

documents that show that the holder is not subject to immigration control, or has no restrictions on their stay in the UK. The documents will state that the holder has Indefinite Leave to Enter or Remain in

the UK. If a prospective or existing employee produces a List A document (or one of the combinations of documents specified below), they can work for you for an indefinite period.

List B:

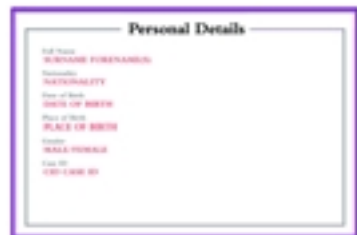
documents endorsed to show that the holder has been granted leave to enter or remain in the UK for a limited period of time and is allowed to do the work in question. The document will state the date on which the holder's leave expires. If an individual provides documents from list B, you will also need to carry out follow-up checks of the same kind at least once every 12 months.

Refugees with List B documents are entitled to apply for further leave before their current leave expires. A refugee's entitlements to employment and training continue during this period of waiting for a decision on their application for further leave. However, applications for further leave will require a refugee to send their original documents to the Home Office. See Section 5 for further details on the steps you need to follow in this situation.

The following are the documents, and combinations of documents, that refugees are likely to have to demonstrate their entitlement to work in the UK.

Immigration Status Document

An Immigration Status Document (ISD) is given to an applicant following the grant of leave where no passport is held or where it would not be appropriate to endorse a national passport. The ISD provides details of the applicant, length of leave in the UK and may indicate their status (Refugee, Humanitarian Protection or Discretionary Leave).



Different sections of the ISD

List A - ISD: The ISD stating that the holder has Indefinite Leave to Enter or Remain **and** an official document issued by a Government agency, such as HM Revenue and Customs or Department for Work and Pensions, or a previous employer and giving the person's permanent NI number and their name. Examples of documents in combination with ISD include a P45, P60 or National Insurance number card.

List B - ISD: The ISD **and** an official document issued by a Government agency, such as HM Revenue and Customs or Department for Work and Pensions, or a previous employer and giving the person's permanent NI number and their name and follow-up checks of the same kind at least once every 12 months. Examples of documents in combination with ISD include a P45, P60 or National Insurance number card.

Home Office Letter

Until March 2004, a letter was issued by the Border and Immigration Agency (now UKBA), clearly stating that the person named in the letter is allowed to stay in the UK and has entitlement to employment.

List A - Home Office letter:

The Home Office letter **and** an official document issued by a Government agency, such as HM Revenue and Customs or Department for Work and Pensions, or a previous employer and giving the person's permanent NI number and their name. Examples of documents in combination with Home Office letter include a P45, P60 or National Insurance number card.



A sample Home Office letter

List B - Home Office letter:

The Home Office letter **and** an official document issued by a Government agency, such as HM Revenue and Customs or Department for Work and Pensions, or a previous employer and giving the person's permanent NI number and their name and follow-up checks of the same kind at least once every 12 months. Examples of documents in combination with Home Office letter include a P45, P60 or National Insurance number card.

Travel Documents

As most refugees will not have a national passport they can apply for a Travel Document. There are three types of travel documents:

- The Convention Travel Document (blue colour) is issued to people granted refugee status and entitles the holder to travel to any country except their country of origin from where the holder fled persecution.
- Certificate of Identity (brown colour) is issued to people granted Humanitarian Protection and Discretionary Leave.
- On 17 March 2008 the Certificate of Identity changed its name to the Certificate of Travel. The colour of the document has also changed from brown to black. The validity and criteria for issuing the document has not changed. The brown document can still be used until it expires.
- Some refugees may also have a stateless persons' travel document (red colour).

List A - Travel Documents:

The Travel Document is required stating that the holder has indefinite leave to enter or remain in the UK (i.e. no time limit on the holder's stay in the United Kingdom).

List B - Travel Documents:

The Travel Document **and** follow-up checks for the same kind at least once every 12 months.



*Examples of
Travel
Documents*

4. Documents demonstrating entitlement to work in the UK for asylum seekers

Who is an asylum seeker?

An asylum seeker is a person who has applied for recognition as a refugee under the Refugee Convention and is awaiting a decision on their asylum claim. The right to seek asylum from persecution is a fundamental human right to which everyone is entitled.

Documentation

Asylum seekers are issued with an Application Registration Card (ARC). This document confirms the cardholder's identity and that he or she has been admitted into the asylum determination procedure. This document also states whether the person is permitted to work or not. It only falls into List B. It is not a List A document because an asylum seeker does not have permission to work in the UK indefinitely.

Application Registration Card (ARC) with 'employment permitted' or 'work allowed'

Asylum seekers who are allowed to work will have **'employment permitted'** or **'work allowed'** stated on their ARC.

List B - ARC:

The ARC stating 'employment permitted' or 'work allowed' **and** a completed Employer Checking Service (ECS) form with confirmation from the ECS that the holder still has permission to work. Follow-up checks for the same kind are recommended at least once every 12 months.



A sample of the ARC (front and back)

ECS form can be accessed at www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/ecs/requestform.pdf

The completed form can be faxed to the ECS on 0114 207 5860.

It is the employer's responsibility to inform the prospective employee that they may undertake a check on them with UKBA through the ECS.

5. Applying for further leave to remainⁱⁱⁱ

Refugees granted temporary leave to remain in the UK will need to apply for further leave to remain before their current leave expires. Under Section 3C of the Immigration Act 1971, those making in-time applications for further leave continue to have the same entitlements to work and training as before. However, applications for further leave will require a refugee to send their original documents to the Home Office. This may also include refugees with Exceptional Leave to Remain (ELR) who are still waiting for a decision on their application for further leave. The Home Office stopped granting ELR from 31 March 2003 and this was replaced by different forms of leave, including Discretionary Leave.

If you are recruiting refugees who have made applications for further leave to remain, or have employees in this situation, you should complete the Employer Checking Service (ECS) form. This should be faxed to ECS for confirmation of continuing entitlement to work. On completion of the checks, the ECS will respond directly to you in writing. If the result of the check is that there is an application outstanding, it will clarify for you that the employee or potential employee has the right to work at the point of recruitment and this entitlement can continue until a conclusive decision has been made.

This confirmation, along with an official document issued by a Government agency or a previous employer and giving the potential employee's permanent NI number and their name, will be considered an acceptable combination of documents.

ⁱⁱⁱ This section has been confirmed by the UKBA Illegal Working Unit responsible for the guidance issued to employer.

If the applicant is recruited following the ECS response, you will still be required to check the relevant original documents at the earliest opportunity.

6. Final comments

As the UKBA comprehensive guidance advises, you should ask all prospective employees to present their documents before they begin working for you, whether they are refugees or not. Focusing only on refugees or foreign nationals could leave you open to claims of discrimination on the grounds of race or nationality.

Following the advice in this guide will help to ensure that you act in accordance with the law and do not employ anyone without permission to work in the UK. But doing so will also make sure that you do not miss out on the chance to employ refugees who are legally entitled to work in the UK, have a range of skills and experience, and a lot of motivation to offer your organisation.

7. Further information

UKBA employers' helpline: 0845 010 6677

UKBA Employer Checking Service (ECS) fax: 0114 207 5860

UKBA website: www.ukba.homeoffice.gov.uk/employers/

The Welsh Refugee Council and Scottish Refugee Council can also provide national expertise and support.

Scottish Refugee Council, 5 Cadogan Square, 170 Blythswood Court, Glasgow, G2 7PH, Tel: 0141 248 9799, Fax: 0141 243 2499

www.scottishrefugeecouncil.org.uk

Welsh Refugee Council, Phoenix House, 389 Newport Road, Cardiff CF24 1TP Tel: 029 2048 9800, Fax: 029 2043 2980

www.welshrefugeecouncil.org.uk

Thompsons Solicitors, the trade union law firm, assisted in the production of this leaflet. For more information visit

www.thompsons.law.co.uk

8. Quick reference table

This table is a quick reference guide to the documents and combinations of documents that refugees possess and which allow them to work legally in the UK (for more details on each type of document, see the previous sections).

Document type	List A	List B
	<i>For individuals with no restrictions on their stay in the UK</i>	<i>For individuals with leave to enter or remain in the UK for a limited period of time</i>
Immigration Status Document	The original ISD in combination with an official document issued by a Government agency or a previous employer and giving the person's permanent NI number and their name.	The original ISD in combination with an official document issued by a Government agency or a previous employer and giving the person's permanent NI number and their name and follow-up checks of the same kind at least once every 12 months.
Home Office letter	The original Home Office letter in combination with an official document issued by a Government agency or a previous employer and giving the person's permanent NI number and their name.	The original Home Office letter in combination with an official document issued by a Government agency or a previous employer and giving the person's permanent NI number and their name and follow-up checks of the same kind at least once every 12 months.

Document type	List A	List B
Travel Document	The original Travel Document	The original Travel Document and follow-up checks for the same kind at least once every 12 months.
Application Registration Card stating 'Allowed to work' or 'Employment permitted'		The original ARC, a completed Employer Checking Service form and confirmation from the Employer Checking Service (ECS) that the holder still has permission to work. Follow-up checks for the same kind are recommended at least once every 12 months.

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