31 JANUARY 2018

Staff Immigration and Right to Work News Bulletin

From the Staff Immigration Team

Who should read this bulletin?
- Staff involved in the administration of Certificates of Sponsorship (CoS) and visa applications
- Staff who manage sponsored visa holders

Feedback welcome
We welcome your feedback about the Staff Immigration and Right to Work News Bulletin. Please email tim.currie@admin.ox.ac.uk

Staff news
Angelina has changed her surname to Pelova and her email is now angelina.pelova@admin.ox.ac.uk

Immigration news and updates

The Home Office has made many changes in the past few months, and this bulletin is therefore rather long. All the changes listed here have been reflected on the SIT web pages. This bulletin also includes news of improved processes to help departments and colleges with CoS applications.

Home Office Rule Changes

Closure of Tier 1 (General)
The Tier 1 General route closed in April 2015, however there remains a small number of individuals who hold this visa status. Tier 1 General visa holders have until 6 April 2018 to apply for Indefinite Leave to Remain (ILR) to settle in the UK, if eligible. The Staff Immigration Team have contacted all known Tier 1 General migrants identified through Core HR to offer advice.

Should you have any Tier 1 General migrants within your department or college who require advice in relation to applying for ILR, please contact Tim Currie at tim.currie@admin.ox.ac.uk

Tier 1 Exceptional Talent
The Home Office has introduced several improvements:

- The endorsement allocation has been doubled to 2,000 per year.
- Exceptional Talent visa holders will only need to evidence 3 years continuous lawful residence in the UK when applying for Indefinite Leave to Remain (ILR). Those endorsed under Exceptional Promise still need to evidence 5 years continuous residence to qualify for ILR. Please see further details of changes to the ILR requirements below.
- A new simplified Stage 1 application process for the accelerated routes (specific peer-reviewed fellowships and senior appointments) which reduces the documentation required, and speeds up the decision process to approx. 5 weeks.

The introduction of an accelerated endorsement route for Senior Academic appointments will enable individuals appointed to Associate Professor (AP), Statutory Professor (SP), and Reader roles at HEI’s, to apply for Tier 1 endorsement with certainty that their application will be successful. We recommend this route where possible for all new AP and SP roles where a visa is required.

Continues overleaf
Tier 1 Exceptional Talent (contd.)

For the accelerated endorsement route, a letter of support is required from the Director of Human Resources (or equivalent) that confirms the required recruitment process was carried out, including:

- that an open competition was held for the position;
- at least 3 references were received;
- 4 senior academic representatives from the host institute were present on the interview panel; and
- at least 1 senior external expert in a relevant field not employed by the host institute participated in the interview or provided written input.

The Newton International Fellowship (Royal Society/ British Academy/ Academy of Medical Sciences) has been added to the list for accelerated endorsement for peer-review fellowships. Previously the University has progressed Tier 5 (GAE) sponsorship for such awardees. For future applications or current fellows who may wish to ‘switch’ into Tier 1, please contact Lisa Crook; lisa.crook@admin.ox.ac.uk

The full list of specific peer-reviewed fellowships can be downloaded from the Royal Society website www.royalsociety.org/~media/about-us/tier-1/eligible-fellowships-for-accelerated-process.pdf?la=en-GB

A SIT Training course on the Tier 1 Exceptional Talent visa route is available, please see: www.admin.ox.ac.uk/personnel/permits/sittrain/

4 week limit on delayed Tier 2 start dates

The new Home Office rule prohibiting a delay in start date of more than 4 weeks for Tier 2 visa holders (mentioned in our April 2017 bulletin) has been clarified and incorporated into the Immigration Rules.

The rule now states that if a start date is delayed by more than 28 days after either the Tier 2 CoS start date or the date the Tier 2 visa is issued, whichever is later, sponsorship must be withdrawn.

As a result of this risk to individuals’ sponsorship, SIT will continue to highlight where start dates listed in CoS applications are not achievable, and closely monitor arrivals. The start date listed on a Tier 2 CoS can be amended before the visa application is submitted. If you have any cases where a start date may be delayed please speak to SIT as early as possible.

New Tier 2 Resident Labour Market Test (RLMT) / advertising exemptions

The following two new exemptions to the Tier 2 advertising (RLMT) requirements have been introduced, with effect from 11 January 2018:

- Where an applicant has been selected, based on their own research proposal, to fill a supernumerary research position funded by a third party organisation and the funding agreement with the Sponsor includes ‘objectively justified requirements that effectively prohibit any settled worker from undertaking the role’.
  
  We understand that this is aimed at advertised Marie Skłodowska-Curie roles. Please speak to SIT if you have any of these roles.

- Where an applicant has previously worked with the lead researcher as part of their team for a continuous period of 12 months immediately before the new Tier 2 visa application.
  
  We understand that this is aimed at cases where a research group is moving to the University but it is not considered to amount to a ‘relevant transfer’ for the purpose of Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). This is likely to arise very infrequently but if you think this may be relevant speak to SIT.
Tier 4 student switching into Tier 2 rules

Eligibility
The rules on eligibility to apply to switch from a Tier 4 student visa into Tier 2 have been relaxed slightly so that non-PhD students can now apply as soon as they have completed their course (instead of only after they have received their results). We have updated our forms and guidance to reflect this small change.

Unconditional consent letter if financially sponsored during studies
The rule requiring Tier 4 students, who have been financially sponsored during their studies within the last 12 months, to provide an unconditional letter of consent from their funder has been amended and slightly clarified. The main points are that:

- 'Sponsored' means supported by an award which covered both fees and living costs;
- Consent is required whether the sponsorship was from the UK Government, the applicant’s home government, or any international scholarship agency (i.e. from outside or inside the UK);
- The consent letter must give unconditional consent (i.e. with no mention of a return home); and
- If the organisation does not give unconditional consent, or only gives permission to remain in the UK for a limited time, the Tier 2 application will be refused.

SIT recommends double-checking with Tier 2 CoS applicants whether they received any form of financial sponsorship, and submitting information about any and all support during studies so that SIT can confirm whether or not a consent letter will be required.

Indefinite Leave to Remain (ILR)

Change in how the ‘continuous residence’ 180 days limit on absences from the UK is calculated
The ‘continuous residence’ requirement for the standard five year ILR route has changed from:

- no more than 180 days absence from the UK in any consecutive period of 12 months within the five year qualifying period;

this means that instead of counting the 180 day limit in each of five 12 month blocks counted back from the date of application, the 180 day limit is now counted within any rolling 12 month period during the five years. This is a significant change with retrospective effect which means it is no longer possible to split a longer period of absence across two consecutive 12 month periods.

If an applicant believes that they will be adversely affected by this change in the ‘continuous residence’ rule please advise them to talk to SIT.

‘Continuous residence’ rule now also applies to dependants
The change in Home Office rules requiring dependants applying for ILR to also meet the ‘continuous residence’ requirement (announced in our December 2016 Bulletin, but then removed as announced in our April 2017 Bulletin), has now been re-introduced, but will only apply to time spent under visas issued after 11 January 2018.

SIT will be highlighting this new requirement in their ‘Visa Holder Briefing Sessions’ for new sponsored Tier 2 visa holders, and also when existing Tier 2 visa holders are extending, recommending that their dependants also start to collate a history of their absences from the UK to help ensure they meet this requirement.
Indefinite Leave to Remain (ILR) contd.

Potential further increase in ILR application fee in April
No details of the expected annual April increases in immigration fees have yet been released, however, as the ILR fee increased by 25% in April 2016 and a further 22.5% in April 2017, it is possible that the fee might increase still further on 6 April 2018.

While SIT will circulate relevant details of the new immigration fees as soon as they are published, those in a position to, may want to submit their ILR application before April, if possible.

Advice and assistance with ILR applications
SIT pro-actively contacts University sponsored Tier 2 visa holders who are approaching their six year limit under Tier 2 to discuss applying for ILR and offer assistance. Contact is normally made around six months in advance of the expiry of their current Tier 2 visa.

While SIT are not in a position to check ILR applications, Tim Currie provides advice and assistance with any queries in relation to the ILR requirements, application process, and completing the application form.

Any queries about ILR (including from those who hold UK visas under other routes) should be sent to tim.currie@admin.ox.ac.uk

Please inform all your List B visa holders of the above changes as they could have a significant effect when they are applying for ILR.

Process Changes

Importance of using current forms & guidance
SIT will always communicate major changes in the rules and requirements but we also at times have to update guidance and forms in response to smaller changes in rules and processes. Please ensure that you always use the current versions of SIT forms and guidance, which can be found on the 'Forms & guidance notes' page at: www.admin.ox.ac.uk/personnel/permits/forms/

PLEASE NOTE: SIT have removed the 'Data Protection Consent form' as it has been incorporated into the 'Client care and conditions form'.

...and of using 7-Zip to password protect documents sent to SIT
Please remember that for information security all documents and applications sent to SIT should be in a 7-Zip password protected folder. You should use the password previously provided to your department/college by SIT. A short guide on ‘How to use 7-Zip’ is provided on the SIT ‘Forms and guidance notes’ page at: www.admin.ox.ac.uk/personnel/permits/forms/

If you have any queries on the use of 7-Zip contact SIT, however, if you have technical queries you should contact your local IT support.
New SIT Excel-based CoS application forms

SIT have produced an Excel-based version of the internal ‘Tier 2 CoS extension application’ form which replaces the existing Word-based version. Please use the new form for all new Tier 2 CoS extension applications.

All SIT forms can be found on their ‘Forms & guidance notes’ page at: www.admin.ox.ac.uk/personnel/permits/forms/

Through the new Excel-based forms, SIT aims to reduce the chance of simple errors and omissions (and the correspondence required to explain and resolve these issues) by using dropdowns, notes, error messages, and fields for SIT feedback on specific issues.

The new Tier 2 CoS extension form has been piloted with members of the SIT User Group who offered useful feedback and comments which assisted the form’s development.

SIT are working on Excel-based versions of the other internal Tier 2 and Tier 5 CoS application forms, which will be released in due course.

Any queries, comments, or feedback on the new Excel based forms should be sent to Tim Currie tim.currie@admin.ox.ac.uk

SIT revised Recruitment Decision Summary form

SIT have added guidance to the template Recruitment Decision Summary form, to make clear the level of information required. The new template Recruitment Decision Summary form is found on the ‘Forms & guidance notes’ page at: www.admin.ox.ac.uk/personnel/permits/forms/

When sponsoring an applicant under Tier 2, SIT must be able to justify why someone who requires a Tier 2 visa was chosen for the role. As a result, recruitment documentation needs to make clear the strengths and weaknesses of each shortlisted and interviewed candidate against the selection criteria, and why they were, or were not, chosen for the role.

Home Office changes to in-country Tier 2/5 visa application process:

Biometric Enrolment Letters

The Biometric Enrolment Letter (BEL) for Tier 2 and 5 in country visa applications is now created automatically when the applicant completes their online application. Once the online application is submitted, the applicant is able to access and print the BEL at the same time as their document checklist. They must then take this BEL to the Post Office to provide their biometric information, and submit their documents to the Home Office as swiftly as possible.

Handling of supporting documents – Outsourced to Xerox

From December 2017 Xerox, on behalf of the Home Office, receive and scan supporting documents submitted for Tier 2 and Tier 5 in country standard visa applications.

Xerox return all documents to applicants within 10 working days via recorded delivery without any covering letter. This has caused a great deal of confusion for applicants who incorrectly assume that their application has been rejected. The Home Office is reviewing this process in light of feedback provided. In the interim, the Tier 2 and Tier 5 guidance notes and email correspondence to applicants has been updated, highlighting this process.

PLEASE NOTE: This does not affect applications made by priority postal or in-person appointments.

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Home Office changes to in country Tier 2/5 visa application process (contd.)

Impact on RTW Check

For Tier 2 and Tier 5 visa holders who do not receive their new BRP within 21 days of their previous visa expiring, departments and colleges are required to complete the Employer Checking Service (ECS) and receive a positive verification notice to continue employment.

The ECS requests the reference number or Case ID of an on-going application. As the Home Office no longer issue a letter of acknowledgement to Tier 2 and Tier 5 applicants (which contained the Case ID), the ‘Unique Application Number’, which appears on the applicants' online .pdf application document checklist or Biometric Enrolment Letter, should be listed instead.

Tier 2 English Language - UK NARIC Contact Details

Since April 2016 applicants meeting the Tier 2 English language requirements by relying on a qualification studied outside the UK and taught entirely in English must have their qualification verified by UK NARIC.

UK NARIC operate a standard 10 day turnaround to provide a Statement of Comparability (confirming the qualification level equivalent to a UK qualification), and an English Language Assessment. In some instances applicants will be contacted by UK NARIC to notify them that further research into their qualification is required, which can result in the standard turnaround time being exceeded.

SIT now has a point of contact at UK NARIC to look into cases where the standard 10 day turnaround is not met and the applicant has received no communication from UK NARIC. Please raise any cases with Lisa Crook, lisa.crook@admin.ox.ac.uk

PLEASE NOTE: Home Office guidance on the level of English in which an overseas qualification must have been taught to meet the Tier 2 English language requirement has been amended. The level has been reduced from CEFR level C1, to level B1 or higher (in the CEFR scales C is higher than B). Our forms and guidance have been updated to reflect this change.

Police Registration

Thames Valley Police has launched an online registration system for visa holders living in the Oxfordshire area whose visa conditions require them to register with the police. The system allows individuals to:

- Register for the first time, within 7 days of their arrival into the UK, and book an appointment to collect their Police Registration Certificate (PRC).
- Re-register if their personal or contact details change and book an appointment to update their PRC.

Further details can be found at the Thames Valley police website, and on the SIT website:

www.thamesvalley.police.uk/services/foreign-national-registration/
www.admin.ox.ac.uk/personnel/recruit/preempcheck/compulsorychecks/righttowork/noneea/#d.en.50575

Visa holders required to register with the police who live outside of the Thames Valley area should check the registration process for their area at www.gov.uk/register-with-the-police/where-to-register
New University recommendations on reimbursing visa costs

A consultative survey, across the collegiate University, by SIT in summer 2017 revealed a wide variation in reimbursement practices between departments, with some departments paying all their employees visa related costs, and others paying none.

To ensure international staff are treated more equally and provide guidance to departments unsure which visa costs should be reimbursed, the University recommends the following visa reimbursement policy:

- Departments are always expected to pay for the first visa of a new employee if either a Tier 2 (general) or a Tier 1 (Exceptional promise/talent) visa and any premium appointments fees if agreed necessary by the department. Visas may be paid for out of grant funding. Please be aware that visa costs for people already in the UK are a taxable benefit and should be charged as such.
- Departments may decide to pay Tier 2 visa extensions. Please note the tax point above.
- Departments may decide to pay the premium appointment fee for visa extensions to ensure that the employee’s work related travel plans are not interrupted.

It is recommended that departments should not pay for Tier 5 visas, Indefinite Leave to Remain (ILR) applications, applications for British citizenship, any Immigration Health Surcharges, and any dependant related visa costs.

Please note that reimbursement of visa fees is regarded as a taxable benefit unless it is a new employee applying for their visa outside the UK.

Visitors and Access to the NHS

Access to NHS care (except for emergency treatment) is not free to those who are visitors to the UK. Current legislation states all visitors must pay for any medical treatment, charged at a rate of 150% of costs. If a bill for £500 or more is outstanding when applying for a future UK visa, the application will be refused.

The following, who will not have paid the Immigration Health Surcharge, are likely to be considered by the NHS to be visitors:

- All Academic (even if for longer than 6 months), Business, and Permitted Paid Engagement, Visa holders;
- Tier 5 visa holders with a visa of less than 6 months duration;
- EEA citizens and their families visiting, rather than living, in the UK (unless they hold EHIC cards or SI/S2 document);
- British citizens visiting the UK who are normally resident outside the EEA/EU.

You may wish to suggest to visitors under these categories that they consider obtaining medical insurance for their visit to cover any potential costs.

The rules on who can have access to the NHS are very complex and based on whether the person involved is an ‘ordinary resident’ in the UK. If further information is required, please contact SIT.

New Part-Time Tier 4 student visa does not permit work

Please note that a new part-time Tier 4 student visa category announced by the Home Office does not permit the holder to undertake any work (paid or unpaid). This should be clearly stated on the Vignette or BRP. If you encounter one of these new visas or have any queries contact SIT.
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Wording for RTW checks
SIT have noticed that not all departments and colleges are using the updated RTW wording now required by the Home Office. For all new RTW checks, please sign, print name and include this declaration to confirm originals seen:

“The date on which this right to work check was made [insert date]”

Please do not change any RTW check made previously that does not contain this wording, just use the new wording for all new RTW checks being undertaken.

Staff Transferring between Departments
The correct procedure for dealing with the RTW of employees transferring from one department to another is for the old employing department to provide the original RTW document(s) to the new employing department but retain copies of the RTW documentation on file. The new employing department should not complete a new RTW check as the check will take place after their employment commenced with the University. This transfer of the RTW records will allow the new employing department to retain RTW copies that provide a statutory defence for the entire employment period with the University.

The new employing department should check that the RTW screen on CORE is complete, and if not, they should add or update the record.

Care should be taken for List B document holders to ensure that their visa is still valid and permits the type of work in the new post. They should also be added to the new department’s List of List B’s so that the expiry of their visa can be tracked.

Please note that as all new employees must have a RTW check before work starts, Temporary Staffing Service (TSS) workers who transfer to employment status must have a new RTW check undertaken before they start their employment.

Casual Payroll System
Each month SIT checks that Right to Work data has been entered for all casuals submitted for pay that month, and also checks the hours worked by Tier 4s across all departments. Up to now SIT has followed up with departments if incomplete or incorrect details are identified, or there are issues about Tier 4 hours.

For compliance reasons, from March 2018 pay will be stopped unless the following requirements are met:

- CoreHR Right to Work records must be complete and up to date;
- Pay is not claimed for hours worked after the visa expiry date in CoreHR;
- Hours worked should be entered on the spreadsheet in the row corresponding to the week in which the work took place. Sometimes payments are not correctly allocated to each week or entered as a duplicate to a previous payment;
- For current PGR Tier 4 students working more than 20 hours per week, the student or department must provide a letter from the student’s supervisor confirming the student is on holiday during the relevant weeks. This must be sent to Tier4casualpayments@admin.ox.ac.uk, prior to the payroll deadline.

If pay is stopped we will inform the department why this has happened. A correct casual payment request will need to be resubmitted in the following month.
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CoreHR Right to work categories
The categories available in the CoreHR right to work screen have been updated to provide a clearer list with the following options added:

**Under List A:**
- UK long form Birth Certificate with document showing National Insurance Number *(used for UK nationals who do not hold a passport)*
- SIT approved document showing National Insurance Number *(only used for historic right to work checks from 1997-2004 with SIT approval)*

**Under List B:**
- Tier 1 Graduate Entrepreneur
- Tier 1 Investor
- EEA Family Member Residence Card (5 yrs) – *(to differentiate from a 6 month EEA Family Permit)*
- Refugee Status/ Humanitarian Protection / or Discretionary Leave
- Immigration Status Document with document showing National Insurance Number – *(an Immigration Status Document is where a visa is issued on a document instead of in a passport; this is rarely seen)*
- Extension application or appeal pending – *(proof of an extension application is valid to show continuing right to work for up to 28 days after the expiry of a current employee’s visa. A new right to work record will need to be entered within 28 days)*
- Proof of an application or appeal pending with Positive Verification Notice (PVN) from the Home Office Employers Checking Service (ECS) – *(these documents together serve as valid evidence of right to work for six months, or until the application/ appeal is decided. A new right to work record will need to be entered when the application/ appeal is granted or when a new PVN has been received from the ECS if the application/ appeal is still being processed)*

The last two options above separate out confirming ongoing right to work for someone who has an application or appeal outstanding and replace the single previous category of ‘Visa application/ appeal outstanding’.

If you are unsure or have queries when completing the CoreHR right to work screen please contact SIT.

Do not hesitate to contact us if you have any queries
http://www.admin.ox.ac.uk/personnel/permits/