

GUIDANCE FOR EMPLOYERS

Employing Refugees

The documents required
as evidence of entitlement
to work in the UK



Equality and Human Rights Commission
www.equalityhumanrights.com

The Refugee Council
www.refugeecouncil.org.uk





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What is the aim of this publication?

This guide aims to explain the documents that refugees, and some asylum seekers, have which demonstrate their entitlement to work in the UK, and outlines the documents that need to be checked to ensure the legal employment of refugees or asylum seekers.

Who is it for?

This guide is designed for employers.

What is inside?

This guide covers:

- What refugees bring to the workplace
- The documents which demonstrate that a refugee is entitled to work in the UK
- The documents which demonstrate that an asylum seeker is entitled to work in the UK
- The process for applying for further leave to remain
- Where to turn for further information

Why have the Commission and the Refugee Council produced this guide?

The Refugee Council works directly with refugees, and supports them to rebuild their lives. The Equality and Human Rights Commission promotes and enforces the laws that protect our rights to fairness, dignity and respect. This guide is within the remit of both bodies.

What formats are available?

This Guide is available as a PDF file and as a Microsoft Word file from www.equalityhumanrights.com and www.refugeecouncil.org.uk. If you would like to discuss the option of accessing a Commission publication in an alternative format, please contact: correspondence@equalityhumanrights.com.

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Introduction

Overview

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.

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.

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 Home Office in their Guidance and Codes of Practice.

The requirements that apply to all employees who started working for you on or after 16 May 2014, or for whom a repeat check is required, can be accessed at: www.gov.uk/government/collections/employers-illegal-working-penalties

For employees recruited on or after 29 February 2008 and where the person had permission to work for the duration of their employment before 16 May 2014, you should refer to the previous comprehensive guidance which was published in October 2013. This can be found at: socialwelfare.bl.uk/subject-areas/services-activity/employment/homeoffice/full14.aspx

Until 1 April 2013 UK Borders Agency (UKBA) was the Home Office agency responsible, among other things, for asylum and permission to stay in the UK. UKBA has now been split into two separate units within the Home Office (UK Visa and Immigration and UK Immigration and Enforcement). However these organisational changes do not affect the validity of any reference to UKBA in documents, forms, or immigration rules.

The Home Office recommends that you check the documents of all prospective employees. Rules which came into effect on 16 May 2014 mean that employers can be fined up to £20,000 per illegal worker, with higher penalties for second or subsequent breaches, 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 the Home Office Right to Work Checklist to find out about the steps to take while making these checks.

The checklist can be found at: www.gov.uk/government/publications/right-to-work-checklist

A full guide to the right to work checks can be found at:

www.gov.uk/government/publications/right-to-work-checks-employers-guide

Background

Refugees have the same protection against discrimination in the workplace (i.e. on the grounds of gender, pregnancy and maternity, gender reassignment, race (including nationality or ethnic origin), religion and belief, disability, sexual orientation age, and marriage or civil partnership) as everyone else in the UK. But they can also experience particular problems because there is confusion about their rights and entitlements.

It is important to ensure that all job selections should be on the basis of suitability for the post. You should not make assumptions about a person's right to work or immigration status on the basis of their colour, nationality, ethnic or national origins, accent or the length of time they have been resident in the UK.

Refugees are not part of the points-based system: where migrants are required to meet particular skill and experience levels and employers are given sponsorship duties. They are able to work in the UK without any restrictions and, in common with other employees in the UK, are covered by the Equality Act 2010 and the Human Rights Act 1998.

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.

About the Refugee Council

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

About the Equality and Human Rights Commission

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. It is an independent body responsible for protecting and promoting equality and human rights in Great Britain. It aims to encourage equality and diversity, eliminate unlawful discrimination, and promote and protect human rights. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an 'A status' National Human Rights Institution. <http://www.equalityhumanrights.com>

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.

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 5 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 5 years) or Discretionary Leave to Remain (granted for up to 3 years). People who have been granted Humanitarian Protection or Discretionary Leave to remain are not technically refugees, but they do have permission to live and work in the UK. This guide uses the term 'refugee' as shorthand to include all those who have been granted permission to live and work here either by obtaining Refugee Status, Humanitarian Protection or 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, while an application for further leave is being considered, a refugee

continues to have the same rights to employment and training as before (see below under 'Applying for further leave' for further details).

Documentation

The Home Office issues a Biometric Residence Permit (previously an Immigration Status Document) to refugees when they are granted leave to remain in the UK. These documents provide evidence of entitlement to work in the UK and are described 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 the 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. Repeat checks are required on the entitlement to work for employees with limited leave to remain in the UK.

The Home Office's guidance has two lists, A and B.

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 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. List B is split into Group 1 and Group 2 documents. A Group 1 document is valid until the expiry date of the leave to remain. A Group 2 document is valid for a 6 month period. In either case a follow up check will be required at the end of the period for which the document is valid.

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. However, applications for further leave will require a refugee to send their original documents to the Home Office. See 'Applying for further leave' below for further details on the steps you need to follow in this situation.

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

Biometric Residence Permit

A Biometric Residence Permit (BRP) is issued to an applicant granted leave to remain in the UK. It will show the date the permit expires, and the immigration entitlements, such as permission to work. The permit is a plastic card of similar size to a credit card and has a biometric chip. The permit is machine readable.

List A

To fall within list A the BRP must state that the holder has indefinite leave to remain or has no time limit on their stay in the UK.

List B Group 1

The BRP states that the holder has limited leave to remain in the UK and has permission to work. Follow-up checks are needed when the leave expires. Refugees are not normally restricted to a particular type of work and the BRP will simply state that they are permitted to work.

The Home Office provides an online checking service for employers who wish to ensure that a biometric residence permit is valid. Details can be found at:

<https://www.gov.uk/check-biometric-residence-permit>

Example of Biometric Residence Permit

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, Group 2. 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 Application Registration Card ARC.

Applying for further leave to remain

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 people with Discretionary Leave to Remain (DL) who are still waiting for a decision on their application for further leave. Discretionary Leave replaced the former grant of status known as Exceptional Leave to Remain (ELR).

If you are recruiting refugees who have made applications for further leave to remain or have an appeal pending against a decision on an application, or have employees in this situation, you should complete the Employer Checking Service (ECS) form. This should be emailed to ECS for confirmation of continuing entitlement to work.

You have up to 28 days to contact the ECS to verify that an employee continues to have the right to work while their application for further leave is being determined.

On completion of the checks, the ECS will respond directly to you. 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. A Positive Verification Notice will be issued and will be valid for a further 6 months. If the response is negative you cannot lawfully employ that person.

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.

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

Final comments

As the Home Office 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 and complying with the Home Office checklist will help to ensure that you act in accordance with the law and do not employ anyone without permission to work in the UK. Doing so will also ensure that you do not miss out on the chance to employ refugees who are legally entitled to work in the UK, have lots of motivation and a range of skills and experience to offer your organisation.

Further information

Home Office Sponsorship and Employers' helpline

Tel: 0300 123 4699

Home Office Right to work documentation and Employer Checking Service (ECS)

<https://www.gov.uk/check-job-applicant-right-to-work>

Scottish Refugee Council

www.scottishrefugeecouncil.org.uk

5 Cadogan Square, 170 Blythswood Court

Glasgow, G2 7PH

Tel: 0141 248 9799

Fax: 0141 243 2499

Welsh Refugee Council

www.welshrefugeecouncil.org.uk

Phoenix House, 389 Newport Road

Cardiff CF24 1TP

Tel: 029 2048 9800

Fax: 029 2043 2980

Thompsons Solicitors

www.thompsons.law.co.uk

The trade union law firm who assisted in the production of this leaflet, and may be contacted for more information.

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 For individuals with no restrictions on their stay in the UK	List B For individuals with leave to enter or remain in the UK for a limited period of time
Biometric Residence Permit	A current Biometric Residence Permit which states that the person has been granted indefinite leave to remain in the UK or has no time limit on their stay.	A current Biometric Residence Permit which states that the person has been granted permission to stay in the UK for a period of time and has permission to work. Follow-up checks are required when the leave expires.
Immigration Status Document	A current original Immigration Status Document with an endorsement to show that the holder is allowed to stay indefinitely in the UK or has no time limit on their stay, in combination with an official document issued by a Government agency or previous employer which gives the person's permanent NI number and their name.	A current original Immigration Status Document containing a photograph with an endorsement to show that the holder is allowed to stay in the UK for a period of time and is allowed to do the work in question, in combination with an official document issued by a Government agency or previous employer which gives the person's permanent NI number and their name. Follow-up

Document type	List A For individuals with no restrictions on their stay in the UK	List B For individuals with leave to enter or remain in the UK for a limited period of time
		checks are required when the leave expires.

Document type	List A For individuals with no restrictions on their stay in the UK	List B For individuals with leave to enter or remain in the UK for a limited period of time
Application Registration Card for asylum seekers stating 'employment permitted' or 'allowed to work'		The original Application Registration Card showing the permission to work and confirmation from the Employer Checking Service that the holder still has permission. Follow-up checks are required after 6 months.

Contacts

Employing Refugees: The documents required as evidence of entitlement to work in the UK was published by the Equality and Human Rights Commission in collaboration with the Refugee Council. This publication is available from the Commission's website: www.equalityhumanrights.com. It is also available from the Council's website: www.refugeecouncil.org.uk.

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

Website www.equalityadvisoryservice.com

Telephone 0808 800 0082

Textphone 0808 800 0084

Hours 09:00 to 20:00 (Monday to Friday)

10:00 to 14:00 (Saturday)

Post FREEPOST Equality Advisory Support Service FPN4431

Questions and comments regarding this publication may be addressed to correspondence@equalityhumanrights.com. The Commission welcomes your feedback.

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