

Immigration and Right to Work Update – August 2014

1) Additional form now required when appointing Tier 4 visa holders

When appointing a Tier 4 visa holder who is not switching to a Tier 2 visa, departments/institutions are now required to complete a [Tier 4 Student Right to Work Checklist \(HR35\)](#) and submit this with the CHRIS/10(A) New Appointment Request form or CHRIS/11 New Short Term Appointment form before the individual starts work. It should be completed at the same time that the right to work check is undertaken. HR will then issue a document with the individual's contract paperwork that explains the working conditions associated with their Tier 4 visa.

A slightly different version of the HR35 (the HR35a) will need to be completed and retained by departments/institutions when paying a Tier 4 student for work using the University Payment System (UPS). In addition, working conditions will need to be issued to the student and retained on the individual's file within the department/institution. Copies of the working conditions and full guidance on paying Tier 4 students through UPS are found at <http://www.hrsystems.admin.cam.ac.uk/systems/systems-overview/university-payment-system-ups>.

These new processes have been introduced because:

- Employers now have a legal duty to obtain and retain the details of the student's academic term and vacation dates before Tier 4 visa holders undertake any work. The HR35 provides a framework for collecting these details for non-University of Cambridge students (HR provides term dates for the files of University of Cambridge students).
- Employers are required to ensure that Tier 4 students abide by the work restrictions placed upon them. The restrictions can vary according to the type of study being undertaken, the stage that an individual's studies have reached and whether it is term-time or not. The HR35 and HR35a help to ensure that the University has a clear record (and, where required, evidence) of these details and, therefore, the maximum number of hours (if any) that the individual is permitted to undertake.

Full guidance on Tier 4 and working hours can be found on the HR Immigration webpages at:

<http://www.admin.cam.ac.uk/offices/hr/immigration/new/tierfour/>

2) Changes to Right to Work Checks

As explained in our last immigration update, UK Visas and Immigration (UKVI) has reviewed its requirements for checking right to work in the UK. Please find their latest publications (including a helpful checklist which can be used when reviewing right to work evidence) at

<https://www.gov.uk/government/collections/employers-illegal-working-penalties>. Important points for you to note (in addition to those which were included in our last update) are found below.

A) IMPORTANT - Expired passports no longer accepted for non-EEA nationals

Employers, including the University, can no longer accept an expired passport with a visa/ILR stamp inside it as an acceptable right to work check for non-EEA nationals. In these circumstances, the individual must apply to transfer their visa to a Biometric Residence Permit (BRP) and this must be presented with the valid passport before employment can commence. Details of how the applicant can complete this process are found at: <https://www.gov.uk/transfer-visa>.

We have been informed by UKVI that standard visa processing times will apply where an individual needs to transfer their visa. For points-based visas this is 8 weeks, and up to 6 months for those with ILR. Where there is an issue relating to these new rules, please contact the Compliance Team for further advice.

We can still accept expired passports as evidence of right to work for EEA nationals provided you are satisfied that the appearance of the individual is consistent with the photograph inside the passport.

B) Front cover of passport no longer required

UKVI has abolished the requirement for employers to copy the front cover of passports. Departments/institutions are, therefore, no longer required to provide these to the HR Division.

For full details of how to check, copy and verify right to work documents, please see the Right to work section of the Recruitment Guidance: <http://www.admin.cam.ac.uk/cam-only/offices/hr/recruitment/checks/right/#what>.

3) Premium Sponsor Priority Visa Service

UKVI has introduced a new visa application scheme exclusively for premium sponsors. The aim is to provide our certain Tier 2 applicants with a decision on their visa applications within 10 working days. The details of the scheme are as follows:

- There is no additional fee for this service, either for the individual or the department.
- Only individuals eligible to make their Tier 2 application inside the UK can use this route. That encompasses all individuals 'switching' visa category to Tier 2, individuals extending their current Tier 2 visa and existing Tier 2 visa holders making a new Tier 2 application to change employment. Individuals applying from outside the UK are not eligible.
- There is currently a limit which will be dealt with on a first come, first served basis. The limit is 30 requests per day from all Premium Sponsors nationally. The limit will be reviewed throughout the pilot and may be changed according to demand.

If you have an individual who you wish to consider for this route, please contact the Compliance Team who will take the necessary steps to enrol the individual onto the scheme. The process can only begin once the Certificate of Sponsorship has been assigned.

4) Visa extension/expiry process

Please remember to follow the visa extension process (see <http://www.admin.cam.ac.uk/offices/hr/immigration/existing/extensions.html>) if an individual in your department/institution wishes to extend a visa which is approaching expiry. Please note: this process has been updated in recent months to include an additional check now required by UKVI (using their Employer Checking Service). Please review the process if you are not familiar with this change.

5) Entry clearance stamps required for right to work

We would like to remind you that, where you are presented with a visa inside a passport as proof of right to work in the UK, the visa must have been date stamped by an Immigration Officer for it to be considered valid. See below for an example:



Where the visa has not been date stamped, the individual must leave the UK to any European country (except Ireland) and then re-enter and ensure the visa is stamped. We cannot accept an un-stamped visa as proof of right to work in the UK. This does not apply to BRPs.

6) Change to salary determination rules for research assistants

As explained in a previous update to you, UKVI recently raised the minimum salary rates on the SOC Codes. The majority of our appointments under Tier 2 are unaffected by this as the University salary scales are above these minimum rates. However, where departments/institution wish to employ a Research Assistant who is 26 and over and who is not switching visa category from Tier 4 to Tier 2, they must be paid a minimum rate of £27,000. Prior to the pay award this month, only the top of the Grade 5 scale met this requirement. This is likely to be the case again in the spring when the SOC codes will be revalued again.

As a result, the salary determination guidance has been updated. Under-appointments are now made to Grade 5, Point 38 (instead of Point 37). Upon award of their PhD, the employee will be then be appointed to Grade 7, Point 39, with the higher salary backdated to the submission date of their thesis. The new arrangements make no difference to the overall pay that the individual receives as the higher level pay is backdated but it will help avoid immigration problems in the future.

Departments/institutions should be aware that it is not possible to under-appoint in this way if a post has been advertised as a research associate (rather than research assistant/research associate) and the successful candidate requires a certificate of sponsorship.

Full details can be found on the HR Recruitment webpages here: <http://www.admin.cam.ac.uk/cam-only/offices/hr/recruitment/administration/salary.html#research>

7) Tier 1 (Exceptional Talent) automatic endorsement route

UKVI is currently running a 6 month pilot through which awardees of specific competitive and peer-reviewed fellowships and grants can gain automatic endorsement for a Tier 1 (Exceptional Talent) visa, making it quicker and easier to apply for a Tier 1 visa and avoiding some of the complexity of Tier 2.

Depending on which grant/fellowship they have been awarded, the individual will be deemed to have either 'exceptional talent' or 'exceptional promise', and will be endorsed accordingly. The individual can then apply for the Tier 1 visa.

For further details of the types of grants/fellowships that are eligible, and for guidance on the automatic endorsement route, please contact the Immigration and Compliance Manager.

8) Notice of expected audit

UKVI carries out audits of its sponsors at least every 4 years. Following the formation of a new team in UKVI dedicated to higher education, a number of higher education institutions have recently had audits or been given notice of an audit. Given that UKVI did not audit us as anticipated when we renewed our sponsor licence, and as we have not been audited since January 2011, we are expecting that they will visit us within the next few months.

During the audit, UKVI will examine the files relating to individuals sponsored under Tier 2 and 5 of the Points-Based Immigration System. They may also wish to check the files of individuals who hold other types of visa, and they may wish to speak with members of staff who are sponsored individuals.

UKVI have informed us they are obliged to give us one week notice of an audit, during which time we will inform all departments/institutions.

If you have any questions regarding the above, please contact Graeme Ross, Immigration and Compliance Manager, on x65554 or via graeme.ross@admin.cam.ac.uk.