

Accepting Volunteers from Overseas

Summary

With the growth of international migration, study and tourism more and more people from overseas are applying to volunteer with organisations in the UK.

The rules governing this type of immigration matter can be complicated. Generally there should be no problem with an organisation accepting someone from overseas to volunteer, but the individual must ensure that they have permission to volunteer in the UK.

This Information Sheet looks at recruiting or accepting potential volunteers from outside the United Kingdom. It covers the following:

- The role of the UK Border Agency
- Legal restrictions on employment and 'illegal working'
- People from within the European Union and European Economic Area
- Refugees and asylum seekers who are already in the UK
- People from outside the EU/EEA
 - Migrants applying to come to the UK with the main intention of working for a charity on an unpaid basis
 - Migrants who wish to volunteer in addition to the central purpose of their stay in the UK
 - Rules for specific groups
- Further information and useful government guidance

Please note that this document is provided as a simple summary for information purposes and **should not** be regarded as a substitute for immigration or legal advice.

The UK Border Agency (UKBA)

The UK Border Agency is an executive agency of the Home Office. It manages border control, migration and customs rules for the UK. It is also responsible for considering applications for permission to enter or stay in the United Kingdom, citizenship and asylum. This Information Sheet refers to two key guidance documents published by UKBA and includes quotations from relevant sections. We strongly advise that you consult the original UKBA guidance in conjunction with reading this Information Sheet. Links to the guidance are provided where relevant and are also listed at the end.

Legal restrictions on employment and 'illegal working'

The Immigration, Asylum and Nationality Act 2006 makes it a criminal offence to employ a person who does not have the right to work in the UK. The Act replaces similar provisions in the Asylum and Immigration Act 1996.

For further information about Act's provisions, please refer to UK Border Agency guidance ***Prevention of Illegal Working: Immigration, Asylum And Nationality Act 2006: Comprehensive Guidance For Employers On Preventing Illegal Working*** available on the UKBA website at

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/>

Volunteers

Because the illegal working rules relate to employment, we understand that they should not apply to taking on genuine volunteers who are not working under a contract of employment. However, note that the 2006 Act explains that a contract could be 'express or implied' and 'oral or written'.

⇒ For more information about volunteers and potential employment contracts, please refer to chapter 1 of the Volunteering England publication *Volunteers and the Law*.

<http://www.volunteering.org.uk/law>

Although **organisations** are free to take on any person for a genuine volunteer role, **an individual** could be in breach of their visa or entry clearance conditions if he/she volunteers when not permitted to. As part of good practice in working with volunteers, it is sensible for organisations to remind potential or new recruits to check whether they are allowed to volunteer.

Voluntary workers

At present, it is unclear exactly how the provisions on illegal working could apply to anyone who is engaged as a 'voluntary worker' as described under section 44 of the National Minimum Wage Act. If you wish to engage someone from outside the EU according to the 'voluntary worker' criteria, we suggest seeking advice from the UKBA.

⇒ For further information about 'voluntary workers' as described in the National Minimum Wage Act, please refer to guidance by the Government department for Business Enterprise and Regulatory Reform, listed at the end of this Information Sheet.

European citizens

People from European Union (EU) member countries (pre-2005)

There are no restrictions on volunteering by people from Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, France, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden (members of the European Union).

People from the European Economic Area (EEA)

The same freedom to volunteer is extended to nationals of Iceland, Norway, Liechtenstein and Switzerland which are members of the European Economic Area.

Recent accessions to the European Union (after 2005)

Romania and Bulgaria joined the European Union in 2007. At the time of writing, freedom of movement and work has not been extended fully to citizens of these countries. If someone from Bulgaria or Romania wants to volunteer, we suggest that they contact the UK Border Agency to confirm what they are allowed to do.

⇒ The UK Border Agency website section about Romanian and Bulgarian nationals: <http://www.ukba.homeoffice.gov.uk/eucitizens/bulgarianandromaniannationals/>

⇒ The UK Border Agency website contains a list of contact details: <http://www.ukba.homeoffice.gov.uk/contact/>

The telephone number for the UKBA immigration enquiry bureau is: 0870 606 7766.

Refugees and asylum seekers

Refugees

People who have refugee status or who have exceptional leave to remain, and their family members, are allowed to do any type of work including volunteering.

Asylum seekers

Many people seeking asylum want to use their skills and contribute something to the society in which they wish to live.

Since April 2000, asylum seekers (people in the process of applying for refugee status) have been allowed to volunteer in certain types of organisation. Asylum seekers generally receive a document which states that they cannot take up paid or unpaid employment, but this does not apply to volunteering.

UK Border Agency guidance ***Prevention of Illegal Working: Immigration, Asylum And Nationality Act 2006: Comprehensive Guidance For Employers On Preventing Illegal Working*** provides clarification of where asylum seekers can volunteer. Appendix A of the guidance is divided into a series of questions and answers. It contains a section covering 'Voluntary Activity'. An excerpt of the most relevant question is provided below, as well as a link to the official guidance.

Q&A 54 of the UK Border Agency guidance on 'Prevention of Illegal Working':

"Question: Can asylum seekers volunteer their services?"

Answer: Asylum seekers are allowed to volunteer, as long as they are carrying out the work on behalf of a registered charity, voluntary organisation or body that raises funds for either. Any voluntary activity undertaken should not amount to either employment, or job substitution." (page 58)

Questions and answers 55, 56, 57 and 58 of the UK Border Agency guidance are also relevant. They confirm that asylum seekers are entitled to receive out-of-pocket expenses just like other volunteers and explain whether 'failed asylum seekers' can volunteer pending their departure from the UK. They can be found on page 59 of the UKBA guidance.

If you work with asylum seeker volunteers, for further information, please refer to UK Border Agency guidance ***Prevention of Illegal Working: Immigration, Asylum And Nationality Act 2006: Comprehensive Guidance For Employers On Preventing Illegal Working*** available on the UKBA website at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/>.

People from outside the European Union or EEA

There are two main scenarios for a person from outside the EU or EEA who wants to volunteer in the UK.

- The person is coming to the UK with the main intention of volunteering for a charitable organisation in the United Kingdom. This will be the basis of their application to enter the country.
- The person has come to the UK for a different activity, such as employment, business, study or tourism. Volunteering is not their primary reason for being in the country, but they want to volunteer as an additional activity.

The Points Based System for work and study

Work permits for employing a person from outside the EU or EEA are issued under the new Points Based System (PBS). It was introduced in 2008 to simplify the UK's migration system and create a more systematic way of allocating permission to work or study. The PBS is divided into five tiers of employment. Tiers 1 and 2 cover skilled workers; while the other tiers cover less skilled workers, students and temporary workers. Other immigration categories, such as tourism or visiting business contacts and family, are not covered by the new PBS because it primarily deals with employment.

⇒ Introductory information about the new PBS is provided on the UKBA website at: <http://www.ukba.homeoffice.gov.uk/workingintheuk/howchangesaffectyou/>

Migrants applying to come to the UK with the main intention of working for a charity on an unpaid basis

Unpaid charity workers category

Tier 5 of the Points Based System includes a category called 'charity workers' which was introduced in November 2008 and replaced the 'voluntary worker visa'.

If your organisation wants to engage an unpaid worker from outside the EU under this category, you will need to act as a 'sponsor'. Sponsors are licensed to issue certificates of sponsorship for their workers. (Note that the term does not refer to financial sponsorship.)

The UK Border Agency has published **Guidance for sponsor applications: Tier 2, Tier 4 and Tier 5 of the points based system**, which explains how sponsorship works under the new system.

It includes a section explaining the conditions for taking an unpaid charity worker:

395. Charity workers: *A certificate of sponsorship may only be assigned in this sub-category if the migrant:*

- i. is intending to undertake voluntary fieldwork directly related to the purpose of the charity sponsoring them;*
- ii. will not be paid or otherwise remunerated for their work (with the exception of reasonable expenses outlined in section 44 of the National Minimum Wage Act);*
- iii. will not take up a permanent position; and*
- iv. will comply with the conditions of their permission to stay and leave the United Kingdom when it expires.*

The guidance explains how organisations should apply to become a sponsor and what supporting documents should be provided.

⇒ **The UK Border Agency's Guidance for sponsor applications: Tier 2, Tier 4 and Tier 5 of the points based system** can be accessed at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsor/spbsguidance/>

Further online information about sponsorship

In addition, the following pages on the UKBA website should also be useful to any organisation which is considering becoming a sponsor:
(if the links do not click through to the UKBA's website, please copy and paste the full link into your internet browser)

- What's new for migrants and visitors
<http://www.bia.homeoffice.gov.uk/sitecontent/newsarticles/newformigrants>
- Sponsor application checklist
<http://www.ukba.homeoffice.gov.uk/employers/points/getting-started/checklist/>
- Ten steps to sponsorship
<http://www.ukba.homeoffice.gov.uk/employers/points/getting-started/toptips/>
- A copy of the Immigration Directorate's Instructions:
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/IDIs/>
Chapter 17: Employment outside the rules
Section 9: Voluntary Workers from overseas
Also see: *Chapter 17: Employment outside the rules annexes B and C*
- Explanation for individuals who want to apply for the charity workers category
<http://www.ukba.homeoffice.gov.uk/workingintheuk/tier5/charityworkers/>

Other support from the UK Border Agency

The UK Border Agency has an employers and sponsors helpline. The contact details can be found on the UKBA website at

<http://www.ukba.homeoffice.gov.uk/contact/contactspage/sponsorship/>

The UKBA also has regional teams of visiting officers who are able to provide advice on sponsorship. In the first instance, we suggest contacting the employers and sponsors helpline in order to get contact details for regional teams.

Updates

Volunteering England's Information Service will update this Information Sheet periodically to provide further information about how organisations may need to adapt their working practice for these changes. If you have any feedback about the new process which we could share with others, please do let us know.

Migrants who wish to volunteer in addition to the central purpose of their stay in the UK

People from outside the EU or EEA come to the United Kingdom for a wide variety of reasons and therefore might be granted one of a number of visas or types of entry clearance. Examples include student visas, student visitor visas, visitor visas and spouse's visas.

If your organisation is approached by a potential volunteer from outside the EU/EEA, you should explain that the individual must check their own visa or entry clearance conditions. The person must make sure that they are allowed to volunteer in addition to their main purpose for entering the country. It is important that individual volunteers take responsibility for this, because, as a worst case scenario, a person could jeopardise their visa/immigration status by working or volunteering when they are not allowed to.

If a potential volunteer cannot find the answer clearly on their immigration documentation, you can suggest that they contact the UK Border Agency. The UK Border Agency deals with immigration issues once someone has been issued with a visa/entry clearance and entered the country.

UK Border Agency website list of contact details:

<http://www.ukba.homeoffice.gov.uk/contact/>

Telephone number for their immigration enquiry bureau: 0870 606 7766.

Rules for specific groups

Visitor visa holders

Anyone holding a '**visitor visa**' is not allowed to take up paid or unpaid work during their stay in the UK. (From our current understanding of the rules relating to this type of visa, unpaid work would include volunteering. However, we advise checking in each individual case with the UK Border Agency because Volunteering England is not able to provide immigration advice.)

Students

A person with a genuine '**student visa**' should not need permission to take part-time or holiday work, including volunteering. Some restrictions remain in place, including a limit of 20 hours per week during term time, unless the college agrees otherwise.

Note that a new short-term category of '**student visitor visa**' was introduced in 2007. At the time of writing, we understand that this is different from a 'student visa', and has the same rules as visitor visas, as explained above. If required, please contact the UK Border Agency for further information:

<http://www.ukba.homeoffice.gov.uk/studyingintheuk/quickguideforstudent/typeofstudentvisa/>

For further information, a consolidated version of the immigration rules is available on the UKBA website at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>

Visitors – refer to part 2 of the consolidated rules

Students – refer to part 3 of the consolidated rules

Student visitors – refer to part 2 of the consolidated rules

Future developments

Please note that some of these rules may be subject to change as part of the government's review of immigration laws. Volunteering England is following these developments closely and will update this Information Sheet. This information is correct at the time of writing, to the best of our knowledge, but as previously stated it should not be taken as a substitute for immigration or legal advice.

For further information, please refer to the UKBA website or contact UKBA directly.

Further information

⇒ **Volunteers and the Law.** A readable guide to legal issues on volunteering.

In particular, read chapter 1 'Volunteers and Employment Rights'.

This publication is free to download.

<http://www.volunteering.org.uk/law>

⇒ **UK Border Agency**

(formerly known as the Border and Immigration Agency and as the Immigration and Nationality Directorate)

Public Enquiry Offices are located in Croydon, Birmingham, Liverpool and Glasgow.

Tel: 0870 606 7766

Minicom: 0800 38 98 289

Email: indpublicenquiries@ind.homeoffice.gsi.gov.uk

Website: <http://www.bia.homeoffice.gov.uk/contact/>

In particular, read the UKBA's guidance on:

- ***Prevention Of Illegal Working: Immigration, Asylum And Nationality Act 2006: Comprehensive Guidance For Employers On Preventing Illegal Working***

UK Border Agency, Home Office, February 2008

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/currentguidanceandcodes/comprehensiveguidancefeb08.pdf?view=Binary>

- ***Guidance for sponsor applications Tier 2, Tier 4 and Tier 5 of the points based system***

UK Border Agency, Home Office, (undated)

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance/sponsorapplicationsguidance.pdf?view=Binary>

⇒ **Government Department for Business Enterprise and Regulatory Reform (BERR)**

(formerly known as the Department for Trade and Industry)

- National Minimum Wage Guide
(pages 22-23 cover “voluntary workers” and “volunteers”)
<http://www.berr.gov.uk/files/file47736.pdf>

⇒ **Refugee Council**

The Refugee Council has a number of offices and advice lines for different areas of the country. Please telephone or visit their website to find the nearest office to you.

Refugee Council

240-250 Ferndale Road

Brixton

London

SW9 8BB

Tel: 020 7820 3085

Email: info@refugeecouncil.org.uk

Website: www.refugeecouncil.org.uk

⇒ **UK visas**

Foreign and Commonwealth Office

King Charles Street

London

SW1A 2AH

Tel: 0845 010 5555 (this service is temporarily suspended)

Minicom: 020 7008 8457

Fax: 020 7008 8359/61

Email: Visas.ForUK@fco.gov.uk

Website: <http://www.ukvisas.gov.uk/>

Disclaimer

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