

The new immigration sponsorship licencing system

The need to apply for a licence

From mid November 2008, the work permit scheme will be replaced with a new points-based qualifying system. This represents a big shake-up of the immigration system. There are harsh fines and in some cases imprisonment for those not obeying the rules and who hire illegal works. All employers who wish to employ skilled or temporary workers from outside the European Economic Area to work in the UK must now apply for a licence by joining the Sponsorship Register. Organisations which apply for Licences are known as "sponsors".

A or B Rating

All sponsors will be rated A or B according to the UK Border Agency's assessment of the risk they pose. The best compliant employers will be rated A and where employers have failed in some way to be fully compliant with the relevant obligations, they will be rated B. A sponsor that is B rated must comply with a time limited action plan, which will set out the steps it needs to take in order to gain or regain an A rating. If the sponsor does not comply with this action plan, it is likely to lose its Licence altogether.

Documents

All Licensing applications will need to be supported with the documents specified for organisations of their particular kind. We can advise you of the mandatory documents required. If your application is not supported by the necessary mandatory documents, your application will be refused. It is important therefore, that organisations obtain professional legal advice from experienced solicitors.

The UK Border Agency may also refuse the application if there is anything in the sponsor body's history, or that of the people managing or controlling it, that suggests that it could be a threat to immigration control, or that it would be unable or unwilling to carry out its duties.

Once licensed, the sponsor will be able to issue Certificates of Sponsorship, which it will allocate to migrants who wish to come to, or stay in the UK to work or study.

Duties of Sponsor

Where the UK Border Agency consider that a sponsor has not been complying with its duties, has been dishonest in its dealings with them or otherwise poses a threat to immigration control, the UK Border Agency may withdraw its Licence or downgrade it to a B rating.

All sponsors must keep mandatory records of foreign nationals working for them and are under an obligation to report to the Home Office on the status of employees. The UK Border Agency will not hesitate to issue civil penalties or refer cases for prosecution where appropriate. It is therefore vital that sponsors comply with the conditions of their Licence and only employ people who are legally allowed to work here.

Roles

The sponsor must appoint and register the following roles:

- Authorising officer.
- Key contact.
- Level 1 user; and
- Level 2 user.

The authorising officer is responsible for the staff who use the sponsorship management system. The sponsor will be held fully responsible for the actions of its authorising officer and therefore it should ensure that it gives this position to a senior and competent officer within the organisation.

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A key contact is the person who will act as the main point of contact between the UK Border Agency and the sponsoring organisation. The key contact will liaise with the UK Border Agency should any queries arise. The key contact has no automatic access to the sponsorship management system, but can be set up as a Level 1 or Level 2 user if the sponsor wishes.

The Level 1 user will liaise with the UK Border Agency and will be authorised to issue Certificates of Sponsorship. He or she will be required to report any unauthorised activity by migrant employees to the UK Border Agency and to notify the UK Border Agency of changes in the sponsor's circumstances. The Level 1 user will undertake the day to day operations of the sponsor's activities, including assigning Certificates of Sponsorship to migrants, notifying the UK Border Agency of minor changes to the sponsor's details, requesting an increase in the number of Certificates a sponsor can issue (its limit) and so on.

Sponsors can appoint Level 2 users if they consider it necessary. The Level 2 user will have more restricted access to the Register than a Level 1 user. A Level 2 user may assign Certificates of Sponsorship to migrants and report "migrant activity" to the UK Border Agency.

Concluding summary

The application process for a Licence is complicated and involves an on-line application followed by presentation of the appropriate documentation. The current Work Permit Scheme will be transformed into Tier 2 from mid November 2008. The Government is targeting rogue employers, bringing in strict new legislation with tough new penalties for businesses and agencies which exploit workers.

For further information, please contact:

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