

Visits, Sponsor Licences and Judicial Review

What counts and what is making a
difference?

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Visits

Framework: Appendix V to the Immigration Rules

Questions:

Is a visa required?

Which visitor route is appropriate?

Obstacles?

Is a Visa Required?

V 1.3 & 1.4

Non-visa national only needs visa if:

- More than 6 month stay intended
- Plans to marry/enter civil partnership/give notice during visit

Otherwise, non-visa nationals can seek LTE on arrival.

4 Visitor Routes

V 1.5

- Standard visit
- marriage / civil partnership visit
- Permitted -Paid Engagements (PPE) visit
- Transit visit

- Standard visit

6 months LTE

Permitted activities in Appendix 3

Must not receive payment from a UK source, subject to limited exceptions in V 4.7

- PPE Visit

1 month LTE

Permitted activities in Appendix 3 and Appendix 4

May receive payment from UK source for permitted engagements as per Appendix 4 in addition to v.4.7 exceptions

Avoiding Pitfalls

V 3.6 False information
(includes non-disclosure of a material fact)

V 4.2 Genuine Intention to Visit

V 4.3 third party maintenance/accommodation

Challenging refusal: Human Rights Appeal?

Abbas [2017] EWCA Civ 1393; [\[2018\] 1 W.L.R. 533](#);

Art.8 in its private-life aspect is not engaged in respect of a person outside the contracting state seeking to enter to develop that private life

Kopoi [2017] EWCA Civ 1511; [2017] 10 WLUK 205; [2018] Imm. A.R. 330

Difficult for a person other than a close family member to establish that a relationship amounts to “family life” within Art 8.

Onoruah [2017] EWCA Civ 1757; [2017] 11 WLUK 56

Applying Abbas & Kopoi – no family life between adult siblings living in different countries.

JR Grounds: Procedural Fairness

See *Balajigari* [2019] EWCA Civ 673; [2019] 1 W.L.R. 4647

Proper opportunity to meet credibility concerns?

Sponsor Licences/Judicial Review

R (Sri Lalithambika Foods) v SSHD [2019] EWHC 761 (Admin)

- *Wednesbury* rationality not heightened scrutiny;
- authority to grant a CAS is a privilege which carries great responsibility: the sponsor is expected to carry out its responsibilities "*with all the rigour and vigilance of the immigration control authorities*";
- The courts should respect the experience and expertise of UKBA when reaching conclusions as to a sponsor's compliance with the Guidance.

“Decisions by the Defendant in this area are not easily challenged. I have not been told about any case in which such a decision has been held to be irrational... That is at least in part because, as Courts have repeatedly ruled, the Defendant has a wide discretion in deciding how to react to any concern about a sponsor's compliance with the Guidance. That in turn is because, in order for the points-based system to work, the Defendant needs to be able to place a high degree of trust in sponsors”

The position of a sponsored worker if the sponsor's licence is revoked

Pathan v SSHD [2018] EWCA Civ 2103; [2018] 4 W.L.R. 161

Two key points:

- a) The Court on JR can intervene on grounds of procedural fairness, but not on the basis it considers the substantive decision to be unfair, unless that unfairness amounts to irrationality.
- b) A Tier 2 migrant does not have any right to a period of grace to find alternative employment

End

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