

## Visits, Sponsor Licences and Judicial Review

### What counts and what is making a difference?

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## Visits

### **1. Brief Overview**

Framework: Appendix V to the Immigration Rules

#### Is a Visa Required?

**V 1.3 & 1.4** Non-visa national only needs visa if:

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

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

But the provisions of the immigration rules apply equally to both visa and LTE applicants.

#### 4 Visitor Routes (whether or not visa required)

##### **V 1.5**

Standard visit – *up to 6 months*

marriage / civil partnership visit - *up to 6 months*

Permitted Paid Engagements (PPE) visit - *up to 1 month*

and

Transit visit – *usually up to 48 hours*

2 main scenarios arise in the context of business immigration:

- a) Person seeking entry for business purposes;
- b) Person in the UK for business purposes who wants to arrange a visit by family/friends

#### Entry for business purposes

NB: Not all visits in connection with a business will require a PPE visa/LTE.

#### **V 4.5:**

*“The applicant must not intend to work in the UK, which includes the following:*

- (a) taking employment in the UK;*
- (b) doing work for an organisation or business in the UK;*
- (c) establishing or running a business as a self-employed person;*
- (d) doing a work placement or internship;*
- (e) direct selling to the public;*
- (f) providing goods and services;*

***unless expressly allowed by the permitted activities in Appendices 3, 4 or 5”.***

#### **V 4.7**

***“The applicant must not receive payment from a UK source for any activities undertaken in the UK, except for the following:***

- (a) reasonable expenses to cover the cost of their travel and subsistence, including fees for directors attending board-level meetings; or*
- (b) prize money; or*
- (c) billing a UK client for their time in the UK, where the applicant’s overseas employer is contracted to provide services to a UK company, and the majority of the contract work is carried out overseas. Payment must be lower than the amount of the applicant’s salary; or*
- (d) multi-national companies who, for administrative reasons, handle payment of their employees’ salaries from the UK; or*

*(e) where the applicant is engaged in Permitted Paid Engagements (PPE) as listed at Appendix 4, provided the applicant holds a visa or leave to enter as a PPE visitor; or*

*(f) paid performances at a permit free festival as listed in Appendix 5”*

**Visitor Appendix 3** lists the **activities that may be undertaken by all visitors**, but it is subject to V 4.5-V 4.8 and re-iterates that payment can only be received in accordance with **V 4.7**

All visitors may:

*“(a) attend meetings, conferences, seminars, interviews;*

*(b) give a one-off or short series of talks and speeches provided these are not organised as commercial events and will not make a profit for the organiser;*

*(c) negotiate and sign deals and contracts;*

*(d) attend trade fairs, for promotional work only, provided the visitor is not directly selling;*

*(e) carry out site visits and inspections;*

*(f) gather information for their employment overseas;*

*(g) be briefed on the requirements of a UK based customer, provided any work for the customer is done outside of the UK”.*

**Visitor Appendix 4** lists the activities that may be undertaken by a PPE Visitor

Very limited: academics, experts, pilot examiners, lawyers, musicians, actors, sports persons.

## **2. Avoiding Pitfalls**

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

**V 4.2** Genuine Intention to Visit

*cf*

**V 4.3** third party maintenance/accommodation

### 3. Challenging Refusal

#### Appeal or JR?

Abbas [2017] EWCA Civ 1393; [2018] 1 W.L.R. 533; [2018] 2 All E.R. 156

CA held that the First-tier Tribunal had been wrong to hold that there was a positive obligation under ECHR art.8 to allow a foreign national to enter the UK to develop his private life by visiting relatives outside his immediate family: 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. SC refused PTA.

**So current position means that it will be very rare for a refusal of a visit visa /LTE to attract a right of appeal to the FtT.**

#### JR Grounds: Procedural Fairness?

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

Worth considering, particularly in cases where refusal is based on conclusion that no genuine intention to leave at end of visit.

## Sponsor Licences/ Judicial Review

Need to be aware of a series of cases, post Raj & Knoll [2016] EWCA Civ 770 consistently emphasising the high hurdle for Claimant seeking to challenge a decision to revoke a sponsor licence:

London St Andrew's College v SSHD [2018] EWCA Civ 2496

R (Taste of India) v SSHD [2018] EWHC 414 (Admin)

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

- no heightened level of scrutiny on JR. The test is *Wednesbury* rationality;
- The 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"*

(per Charles Bourne QC Dep. HCJ Sri Lalithambika Foods [28-29]).

Presumably, the same principles will apply on suspension: possibly with even more force.

**As previously, in this area, building a good relationship with the Home Office is vital – and if problems arise, negotiation is generally more fruitful than challenge.**

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:

*“the whole purpose of the Tier 2 regime for migrant workers is to match up their application for leave with a particular vacancy in this country in circumstances where the local labour market (including for this purpose the EEA) has been shown not to lead to a suitable worker being employable. In those circumstances, it is pre-eminently a political judgment on the part of the Secretary of State whether people should be able to put forward an alternative sponsor if the particular sponsor has had its licence revoked. People may reasonably disagree on whether that would be a good thing or a bad thing. However, as a matter of law, this court cannot possibly stigmatise the decision which the Secretary of State has taken as being irrational”.*

Appn for PTA to Supreme Court outstanding.