



Produced by Refugee Action Kingston January 2007

Opening the doors for Refugee Employees...

Introduction

Employers face increasing pressure to prevent illegal working in the workplace. Every day the media throws out stories of organisations that have been raided and subsequently given huge financial penalties for employing illegal immigrants.

These days it may seem a risk too far to even consider employing a foreign-born worker. Not doing so, however, would be a greater waste of skills and exciting diversity. Refugees have a wide range of professional qualifications and experience but, as a group, suffer from a high rate of unemployment or underemployment.

Most refugees are motivated by a strong desire to contribute their skills and experience to the country, which has granted them protection and safety from persecution. Refugee Action Kingston (RAK) hopes that this document will serve as a guide to employers who would like to tap this potential wealth of skills but are confused about how to go about this.

What is a refugee?

The UK has signed the 1951 Geneva Convention on Refugees and is therefore bound by international law to protect refugees in accordance with this piece of legislation. A Convention refugee is:

- 'A person outside his/her country who needs and deserves protection because he/she reasonably believes that her civil or political status puts her at risk of serious harm in that country, and that her own government cannot or will not protect him/her.'¹

A refugee is NOT:

- An economic migrant. Refugees do not leave their country in search of work. They MUST leave their country for their own protection.

What employment rights do refugees enjoy?

All people with full refugee status, Exceptional Leave to Remain (ELR) or Humanitarian Protection (HP) have the same employment rights as UK citizens (excluding employment in certain government jobs). They do not need to seek permission from the Home Office to get a job or start their own business.

If somebody has a time limit on their leave to remain in the UK they are entitled to apply for an extension to this and eventually for Indefinite Leave to Remain (ILR) in the UK. However, even if an application is made on time, a decision from the Home Office can take up to a year.

As long as an application is made on time, an individual continues to enjoy the same employment rights whilst they wait for a decision to come through from the Home Office.

¹ (Professor James Hathaway), 'The Law of Refugee Status'.



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How can I prevent illegal working without discriminating?²

The Home Office advises employers that the “best way to make sure that you do not discriminate is to treat all job applicants in the same way at each stage of your recruitment process”.

It is important that you do not assume that a **foreign national** or someone from an ethnic minority has no right to work in the UK.

In order to treat all applicants the same way, you should ask everybody who comes for an interview to prove their right to work in the UK. The Home Office has produced two lists of documents that employers can check to help them with this. Applicants must be able to produce ONE document ONLY from List One, or TWO documents from List Two.

You must though bear in mind the following:

- Whilst a large number of refugees will EVENTUALLY be given permission to live in the UK indefinitely (ILR or Indefinite Leave to Remain), most will initially only be granted leave to remain in the UK for up to five years. This makes it virtually impossible for most refugees to come up with a document from List One.
- ALL refugees should be able to find two documents from List Two to satisfy a potential employer but many will still find even this quite difficult. The Citizen's Advice Bureau (CAB) should be able to advise potential employees on this matter. If an applicant cannot immediately produce two documents from List Two tell them to go to the CAB to discuss this before assuming that they are trying to work illegally.

Here are the two Home Office Lists:

List 1

- A passport showing that the holder is a British citizen, or has a right of abode in the United Kingdom.
- A document showing that the holder is a national of a European Economic Area country or Switzerland. This must be a national passport or identity card.
- A resident permit issued by the Home Office to a national from a European Economic Area country or Switzerland.
- A passport or other travel document endorsed to show that the holder can stay indefinitely in the United Kingdom, or has no time limit on their stay.
- A passport or other travel document endorsed to show that the holder can stay in the United Kingdom; and that this endorsement allows the holder to do the type of work you are offering if they do not have a work permit.
- An Application Registration Card issued by the Home Office to an asylum seeker stating that the holder is permitted to take employment.

List 2

ALL applicants must be able to show you:

² <http://www.ind.homeoffice.gov.uk/lawandpolicy/preventingillegalworking/codeofpractice/>

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- A document giving the person's permanent National Insurance Number and name. This could be a: P45, P60, National Insurance card, or a letter from a Government agency.

Along with checking and copying a document giving the person's National Insurance number, you must also check and copy only one of the following documents:

- a full birth certificate issued in the United Kingdom, which includes the names of the holder's parents; OR
- a birth certificate issued in the Channel Islands, the Isle of Man or Ireland; OR
- a certificate of registration or naturalisation stating that the holder is a British citizen; OR
- a letter issued by the Home Office to the holder which indicates that the person named in it can stay indefinitely in the United Kingdom, or has no time limit on their stay; OR
- an Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the person named in it can stay indefinitely in the United Kingdom, or has no time limit on their stay; OR
- a letter issued by the Home Office to the holder which indicates that the person named in it can stay in the United Kingdom, and this allows them to do the type of work that you are offering; OR
- an Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the person named in it can stay in the United Kingdom, and this allows them to do the type of work that you are offering.

Glossary of Terms

Exceptional Leave to Remain (ELR)

People uprooted by civil war fall outside the UN definition of a refugee because they have not been individually targeted for persecution. In the UK asylum seekers who do not meet the criteria of the 1951 Convention but nevertheless need protection may be granted Exceptional Leave to Remain (ELR). It may also be granted on human rights grounds, for example, if a person is likely to be 'subjected to inhuman or degrading treatment', or would not receive a fair trial if they returned home. ELR is normally, but not always, granted for a period of four years (one year initially, then a three year extension). After four years with ELR, a person can apply for Indefinite Leave to Remain (ILR).³

Humanitarian Protection (HP)

From 1st April 2003, in the UK ELR was replaced by 'Humanitarian Protection' for new asylum applicants who do not meet the criteria of the 1951 Convention yet still require protection on human rights grounds. 'Humanitarian Protection' will be granted for three years, after which it will be reviewed and, if continued protection is required, Indefinite Leave to Remain will be granted. There is also a new category of 'Discretionary Protection', used in cases where it would be inappropriate or unlawful to return someone to their country of origin.⁴

Asylum Seekers

³ http://www.unhcr.org.uk/info/briefings/basic_facts/definitions.html

⁴ See above



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An asylum seeker is a person who has left their country of origin, has applied for recognition as a refugee in another country, and is awaiting a decision on their application.⁵

Useful Contacts

Citizen's Advice Bureau

Neville House, 55,
Eden St, Kingston upon Thames,
KT1 1BW
0870 126 4019

Refugee Council Head Office

240-250 Ferndale Road
Brixton, SW9 8BB
020 7346 6700
www.refugeecouncil.org.uk

Immigration and National Directorate (IND)

Employers' Helpline: 0845 010 6677
www.ind.homeoffice.gov.uk/lawandpolicy/preventingillegalworking



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⁵ http://www.unhcr.org.uk/info/briefings/basic_facts/definitions.html