

Care Homes Briefing

Solicitors

Number 63

Senior Care Workers - New Border & Immigration Agency Guidelines

Senior Care workers (who are non-EU citizens or not UK citizens) require work permit approval to work in the United Kingdom. Senior care worker posts have to meet the general work permit criteria, namely that the post on offer has to be at NVQ Level 3 or above.

In August 2007, the Border & Immigration Agency issued new guidance for the processing of all work permit applications for senior care worker positions. The guidance was updated following research and consultation with the Department of Health and other key sector stakeholders. This apparently showed that senior care worker positions which met the work permit skills criteria would be extremely rare. As a result, all new applications for senior care worker permits are therefore very likely to be refused.

The Government's policy is now to expect employers to recruit within the United Kingdom or wider European Economic Area to fill such vacancies below the level of the work permit skills criteria rather than outside these areas.

As a transitional measure, and to ensure continuity of care, the Border & Immigration Agency guidelines stated that the work permit skills criteria would be waived for in-country extension applications for senior care workers after 13 August 2007. Therefore existing senior care workers in the United Kingdom on work permits applying for further work permit approval would be able

to extend their work permits subject to all elements of their post remaining unchanged and the salary meeting a new minimum rate of £7.02 per hour.

New Guidance issued 18 January 2008

The Border & Immigration Agency has now reviewed the transitional measures put in place in August 2007 regarding senior care worker applications. Two further measures are also now being introduced. Firstly, the existing transitional measures are being extended to include change of employment applications for senior care workers providing the person is already in the United Kingdom. This means that for senior care workers wishing to move to another employer, the work permit skills criteria will be waived providing the new employer is paying the going rate of £7.02 per hour. Fresh advertising of the post will not be required.

Secondly, those senior care workers who had work permits approved prior to 31 December 2003, will be eligible for an exceptional extension of up to a maximum of twelve months provided the person is in the United Kingdom. In those particular circumstances, as well as the skills criteria, the requirement to pay the going salary rate of £7.02 will be waived as will the requirement to carry out the job as described on the previous work permit approval as long as the senior care worker continues with a care role for the same employer as their existing work permit. In those circumstances, the salary

info@rlb-law.com
www.rlb-law.com

5 Great College Street
Westminster
London SW1P 3SJ
Tel +44 (0)20 7222 7040
Fax +44 (0)20 7222 6208
LDE 113

6-7 Park Place
Leeds LS1 2RU
Tel +44 (0)113 234 1220
Fax +44 (0)113 234 1573
DX 14086 Leeds Park Square

25 Park Place
Cardiff CF10 3BA
Tel +44 (0)29 2034 3035
Fax +44 (0)29 2034 3045
DX 33063 Cardiff 1

must be at least equal to that on their previous work permit approval.

The Future

It is likely that these transitional measures will continue at least until the introduction of the points based system

later in 2008. A Statement of Intent is likely to be published by the Border & Immigration Agency regarding Tier 2 of the points based system in the first quarter of 2008. This will provide details of the arrangements that will be made for work permit holders already in the country before Tier 2 is introduced. These will apply to existing senior care worker work permit holders.

Lisa Parsons

© RadcliffesLeBrasseur

January 2008

For more information on Care Home Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7222 7040, or email: andrew.parsons@rlb-law.com.

Out of office emergency advice available 24hrs on 07802 506 306.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

Future editions can be received by email. Please e-mail: marketing@rlb-law.com or telephone 020 7227 7476.