

International Law

A Guide to Visas for Overseas Workers



Author



Skylar McKeith

Consultant Solicitor – Head of Immigration Team

E: skylar.mckeith@mackrell.com

Challenges with recruitment and a skills shortage in certain sectors in the UK have forced many employers to look for talent overseas. While recruiting from other nations opens up additional opportunities for growth and talent acquisition, it also places additional immigration obligations on employers that they must consider.

Acquiring Work Visas

The Government has introduced a range of new Visa routes to support economic immigration to the UK. Each route is designed with particular needs in mind but can typically be broken down into Skilled Work or Global Mobility Visas. To help you better understand these new schemes we have outlined each one here.

Skilled Worker Visas

Under the Skilled Worker route, points are awarded for various factors, such as having a job offer at the appropriate skill level in an eligible occupation, knowledge of English and a salary threshold, which will typically be at least £25,600.

Where the applicant's salary is below £25,600 but above £20,480, they may be able to rely on an exception to make an application. These include where:

- The job is in a shortage occupation.
- The worker is under 26, studying or a recent graduate, or in professional training.
- They have a science, technology, engineering or maths (STEM) PhD level qualification that's job relevant.
- They have a post-doctoral position in science or higher education.

Despite this rule, the worker must still be paid a minimum amount of £12.21 per hour. Employers looking to recruit under the new system will also need to obtain a Sponsor Licence to be able to employ individuals from outside the UK.

The Health & Care Worker Visa

Part of the Skilled Worker Route, this scheme offers medical professionals:

- 50 per cent Visa fee reduction.
- Exemption from the Immigration Health Surcharge (IHS).
- Speedier decision following an application including a decision within three weeks.
- Reduced fees for an applicant's dependants and exemption from the IHS.

Since its introduction, the scheme has been expanded further to help fill gaps in the adult social care workforce. As a result, from 15 February 2022, care staff of all levels, including social care workers, care assistants and home care workers, will be eligible to apply for the Health and Care Worker Visa as well.

These new occupations will be added to the senior care workers, registered managers and other medical professionals who already benefit from this scheme.

The addition of care workers to this scheme reflects that they will be the only occupation under RQF level 3 that is eligible to use the Points-based Immigration System (PBS). Care workers taking up this new opportunity will be able to apply for the scheme over a minimum period of 12 months.

To be considered for a Health and Care Visa an applicant must:

- Have an eligible job offer from an approved sponsor that is an approved and licensed Home Office sponsor.
- Meet the English Language requirement.
- Be paid at least £20,480 per annum.

If successful, applicants will be permitted to stay in the UK for up to five years and bring their dependants with them. If they remain employed, then they may be able to take advantage of the pathway to settlement.

Obtaining a Sponsor Licence

The Home Office rules on eligibility for Sponsor Licences are fairly flexible. Most employers meet the eligibility criteria:

- They don't have unspent criminal convictions for immigration offences or other crimes, such as fraud.
- They haven't had a Sponsor Licence revoked in the last 12 months.

There are no restrictions on the income of a business or the length that it has been trading, but you must ensure you have appropriate systems in place to monitor and manage sponsored employees.

Once you make an application, UK Visas and Immigration will review it and may visit your business to make sure you are trustworthy and capable of carrying out your duties as a sponsor. Other than that, the process is relatively straightforward with the right advice from a specialist immigration lawyer.

Visa Sponsor responsibilities

There are various obligations that employers must fulfil once they become a Visa sponsor. These include:

- Confirming that foreign workers have the necessary skills, qualifications or professional accreditations for their role, including documentation – copies of which should be retained.
- Only providing certificates of sponsorship to workers when the job is suitable for sponsorship.
- Informing Visas and Immigration when a sponsored worker does not comply with the Visa conditions.

Failure to fulfil these responsibilities could result in a licence being downgraded, suspended or withdrawn.

To ensure you meet these obligations you must make sure you have sufficient monitoring and management processes in place. The process should include:

- Track and record employee attendance.
- Regularly review your employees' status.
- Retaining copies of all relevant documents.
- Keeping updated contact details.
- Report issues to UK Visas and Immigration.

Benefits of a Sponsor Licence

Even if you aren't recruiting overseas now, the Sponsor Licence is a requirement for sponsoring overseas workers on Skilled Worker Visas in the future. This doesn't mean you can recruit every role from overseas, but it does open the door for you to offer jobs to those who are eligible to apply for a Skilled Worker Visa as a sponsored employer.

The job will need to have a Standard Occupation Code (SOC) and the job must meet the minimum salary threshold. The Government sets a 'going rate' for each job with an SOC, so you will need to confirm this before advertising and sponsoring a role.

When it comes to the minimum salary threshold for the Skilled Worker Visa, the immigration rules say that the worker must be paid the minimum salary threshold of £25,600 or eighty per cent of the going rate for the job, whichever is higher.

However, if the Skilled Worker Visa applicant qualifies as a 'new entrant' it may be possible, with the help of a skilled immigration lawyer, to reduce the threshold from £25,600 to £20,480.

Senior or Specialist Worker Visa

This Visa route is for overseas workers who are undertaking temporary work in the UK, where the worker is a senior manager or specialist employee and is being assigned to a UK business linked to their overseas employer. It permits a worker to stay in the UK for up to five years or the time on their Certificate of Sponsorship, plus 14 days, whichever is shorter.

However, they can apply to extend a Visa or apply for another one as many times as they like up to the maximum total stay of either:

- Five years in any six years if paid less than £73,900 a year.
- Nine years in any 10 years if paid £73,900 a year or more.

This replaces the previous Intra-Company Transfer route. As such it allows, existing Intra-Company workers to apply for extensions and changes of employment under the Senior or Specialist Worker.

To be eligible, an applicant needs to:

- Have a valid Certificate of Sponsorship from an employer.
- Have worked for their employer outside the UK for at least 12 months.
- Do a job on the list of eligible occupations.
- Be paid the minimum eligible salary required for the job.

Those who earn over £73,900 per year are exempt from the requirement to have worked for their employer outside of the UK for at least 12 months.

There is also a minimum salary requirement of £42,400 per year or the 'going rate' for the job, whichever is higher. You will need to provide your employee with a Certificate of Sponsorship with information about the work they will do.

Applicants will need the reference number from the Certificate of Sponsorship for their Visa application.

Graduate Trainee Visa

The Graduate Trainee route replaces the Intra-Company Graduate Trainee route and allows a worker to come to or stay in the UK to work in a UK branch for up to 12 months or the time given on their Certificate of Sponsorship, plus 14 days, whichever is shorter.

The job they are taking must be eligible and part of a recognised graduate training programme for a managerial or specialist role. To qualify, they must:

- Be an existing employee of an organisation that is an approved Home Office sponsor.
- Have worked for the sponsor outside the UK for at least three months immediately before they apply.
- Have a 'Certificate of Sponsorship' from you, their employer.
- Do a job on the list of eligible occupations.
- Receive a minimum salary of at least £23,100 per year.

They cannot extend this Visa, but could apply for another Graduate Trainee Visa from outside the UK. This means that they cannot apply to switch to a Graduate Trainee Visa while already working in the UK.

Employees can apply for a Visa online up to three months before their start date and also include a partner and children within their application.

Service Supplier Visa

The Service Supplier Visa route is open to employees of overseas companies or self-employed professionals based overseas who have a contract to provide services for a UK company.

Successful applicants can stay in the UK for six months or 12 months. Depending on the trade agreement they're providing services under, or the time given on their Certificate of Sponsorship, plus 14 days, whichever is shorter. To be eligible for this Visa, they must:

- Be an employee of an overseas business, or a self-employed service provider based overseas.
- Be providing a service to a UK business under a contract that is covered by a valid international trade agreement.

- Be doing an eligible job – if the job is not eligible they may still qualify if they have relevant qualifications and experience.
- Have a Certificate of Sponsorship from a UK sponsor.
- Have worked for their employer for at least 12 months outside the UK, or have at least 12 months of professional experience if they are a self-employed service provider.

As with the other Global Mobility, Visa routes your approval may depend on the job and whether it is included on the list of eligible occupations. A partner and children can be included in the application to stay in the UK as dependants if they are eligible.

Secondment Worker Visa

Employees can apply for this Visa if their employer is transferring them to the UK to do a job from the list of eligible occupations for a different organisation.

If you are an overseas employer you must also have a high-value contract with the UK organisation for the applicant to be eligible.

The eligibility for this Visa route is the same as the Senior or Specialist Worker route.

UK Expansion Worker Visa

The UK Expansion Worker Visa allows a person to come to the UK temporarily to set up a branch of an overseas business that has not started trading in the UK yet.

A condition of this Visa is that the applicant already works for the overseas business as either a senior manager or specialist employee.

The eligibility for this Visa route is the same as the Senior or Specialist Worker route but is expanded upon so that for a Japanese national doing work for a Japanese company that is expanding to the UK, they do not have to have worked for their company for 12 months.

Global Business Mobility Visas

There are currently five main types of Global Business Mobility routes:

- Senior or Specialist Worker.
- Graduate Trainee.
- Service Supplier.
- Secondment Worker.
- UK Expansion Worker.

Global Business Mobility Visa Limits

Remember, an employee can only stay in the UK for a maximum of five years in any six years. They will need to have spent time on any of these Visas:

- Intra-company Graduate Trainee Visa.
- Intra-company Transfer Visa.
- Global Business Mobility:
 - Graduate Trainee Visa.
 - Secondment Worker Visa .
 - Senior or Specialist Worker Visa .
 - Service Supplier Visa .
 - The UK Expansion Worker Visa.

The Global Business Mobility Visas do not result in permanent settlement in the UK.

These routes also do not count towards the qualifying period of stay required to settle in the UK.

Scale-Up Visa

The new Scale-Up Visa will help foreign nationals who are highly skilled and qualified to come to the UK to support fast-growing businesses.

To apply for this Visa, applicants will need to have a sponsored job with an eligible Scale-Up business. The new rules define this as a business that is experiencing a rapid phase of growth and is ready to move to the next stage of its commercial development.

Despite this broad definition, companies looking to sponsor via this route will need to meet three key eligibility criteria, which are:

- Three years of annual average revenue; or
- Employment growth of 20 per cent; and
- At least ten employees at the start of their three-year growth.

Early estimates for this scheme suggest that around 34,000 businesses could be eligible to become sponsors for the Scale-Up Visa scheme.

This Visa will be open to candidates who meet the following requirements:

- Have a valid Certificate of Sponsorship issued by an eligible UK sponsor.
- A genuine job from a recognised scale-up.
- The job is at an appropriate skill level.
- Salary will be equal to or exceed both £33,000 per year, £10.58 per hour and/or the 'going rate' for the job.
- Proficient in the English language to at least CEFR Level B1.
- Have sufficient money to support themselves.

The Scale-Up route is a route to settlement in the UK and allows applicants to be joined or accompanied by a partner and dependent children.

Individuals who have previously been granted permission as a Scale-up Worker can also apply for an Un-sponsored Application route.

Seasonal Workers Visa

To meet the growing demand for seasonal workers in certain sectors, the Government has introduced a new Seasonal Worker Visa that allows applicants to come to the UK to work in horticulture for up to six months. This route is open to those who come to the UK temporarily each year to do a range of tasks, such as picking fruit and vegetables or flowers.

Similar Visa routes, such as the temporary worker – Seasonal Worker Visa have been available in the past, but this new scheme removes applications related to poultry work, 'pork butchery' or individuals looking to drive a heavy goods vehicle to transport food stuffs.

To apply employees need to have a sponsor and be over the age of 18. Applicants also need to be able to support themselves financially while in the UK.

This Visa does not permit applicants to:

- Take a permanent job.
- Work in a job that isn't described in their Certificate of Sponsorship.
- Receive public funds.
- Bring family members to the UK.
- Neither is this a Visa for settlement in the UK.

High Potential Individual Visa

The new High Potential Individual Visa allows foreign nationals without a sponsor or job offer to come to the UK for up to three years if they have an overseas degree-level academic qualification recently gained from a top university.

This Visa is designed to help successful applicants to come to the UK to work or look for work without a sponsor, including self-employment and voluntary work.

Those who apply will be permitted to bring their dependant partner and children. They can also, at a later date, switch Visa type, which may lead to permanent settlement.

The exact amount of time allowed under this Visa is dependent on qualification level and is not permitted to extend it once this period ends.

As this new Visa is being introduced to encourage potential highly skilled workers, applicants will need to provide the following evidence that:

- They are at least 18 years of age and have sufficient funds to support themselves while in the UK.
- Hold an overseas degree-level academic qualification, gained in the last five years, from an institution that appears on the Global Universities List.
- Are proficient in the English language to at least CEFR Level B1.

This route is not open to applicants who have previously been granted permission under the Student Doctorate Extension Scheme.

Checking Visa allowances

Even if a person already has an existing Visa, whether for work, education or for some other reason, you cannot assume that this grants them the right to work for you.

That is why it is important to check what type of Visa they hold, the eligibility criteria for this, how long it lasts and a host of other considerations.

If you are at all unsure about whether a person has the right to be in the UK or work here, you should seek advice first so that you aren't penalised for recruiting a person without the correct immigration rights.

enquiries@mackrell.com • [mackrell.com](https://www.mackrell.com)