

# Immigration and visas advice with Capsticks LLP

Webinar

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workforce supply

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# Agenda

Timings	Speaker	Presentation
11:00 – 11:05	Vickie Hage, NHS Employers	Welcome and Housekeeping
11:05 – 11:45	Nicole Johnson, Capstick LLP Lee Carroll, Capsticks LLP	Immigration system International recruitment General recruitment
11:45 – 11:55	All	Q&A
11:55 – 12:00	Vickie Hage, NHS Employers	Thank you and close

# Immigration and visas advice Webinar

NHS Employers

8 October 2023

# What will we cover?

- Introduction to Business Immigration
- Routes to employment: spotlight on switching recruitment
- Issues in recruitment – international recruitment and general recruitment
- Q&A

# The immigration system

## The Points Based System – an overview

- New Points Based System introduced on 1 January 2021
- Designed to streamline the processes, remove bureaucracy
- Applicants must have a job offer from Home Office licensed sponsor and meet the required skill / language levels

# Visa routes

- Tier 1 → Highly skilled (business development/investor route)
- Tier 2 → Skilled Worker (general and ICT)
- Tier 3 → unskilled [never implemented]
- Tier 4 → students
- Tier 5 → Temporary worker

# The Skilled Worker Visa

- Replaces old 'Tier 2' route
- Need to issue a Certificate of Sponsorship which applicant uses to obtain entry clearance (visa)
- Can last up to 5 years
- Immigration Skills Charge
  - Paid on issue of CoS
  - £1,000 for first 12 months and £500 for each additional 6 months
- Currently takes 4 weeks
- Costs to individuals are between £719 and £1,500 – increased by 15% from October 2023



# Skilled worker Conditions

- 70 points
- 3 fixed characteristics
- Tradeable characteristics
  - Salary level
  - Job on the Shortage Occupation List (SOL)
  - Education qualification
  - Applicant new to the job market
- Demonstrate ability to travel and travel history over the preceding five years
- Valid tuberculosis test results (if from a listed country)
- A criminal record certificate from any country where the migrant has lived for 12 months or more in the last ten years, if working with vulnerable people

Characteristics	Tradeable	Points
Offer of job by approved sponsor	No	20
Job at appropriate skill level	No	20
Speaks English at required level	No	10
Salary of £20,480 (minimum) – £23,039	Yes	0
Salary of £23,040 – £25,599	Yes	10
Salary of £25,600 or above	Yes	20
Job in a shortage occupation (as designated by the MAC)	Yes	20
Education qualification: PhD in subject relevant to the job	Yes	10
Education qualification: PhD in a STEM subject relevant to the job	Yes	20

# Health and Care Visa

- List of eligible professionals and SOC code on UK government website
- Still have to meet Skilled Worker requirements
- Applicant must have a job offer from:
  - the NHS
  - an organisation providing medical services to the NHS
  - an organisation providing adult social care
- Lower fees
- Fast-tracked processes

# The Certificate of Sponsorship

- Used by the migrant worker to make their sponsorship visa application
- Types of COS
  - Defined CoS: issued to applicants applying from outside of the UK
  - Undefined CoS: issued to applicants already in the UK
- Cost £239 per issue

# Student visa

- International Students may have an endorsement in their passport which states that they are permitted to work. Usually:
  - 20 hours per week (Monday to Sunday) in term time; and
  - Full time outside of term time (including after the course is completed)
- Students are not permitted to fill a permanent full-time vacancy unless they are applying to switch into the Skilled Worker or Graduate routes during their study.

# Graduate Visa

- A Graduate visa lasts for 2 years. If the worker has a PHD or other doctoral qualification, it will last for 3 years.
- Sponsorship is not required.
- No limit on hours
- With a Graduate visa holder can:
  - work in most jobs
  - look for work
  - be self-employed
  - continue living in the UK with your partner and children, if they're eligible
  - do voluntary work
  - travel abroad and return to the UK

# Switching Tiers

- Migrant workers may be able to switch to the Skilled worker visa whilst in the UK:
  - Does the job meet the eligibility requirements
  - Language requirements
- Student visas
- Implications for dependents
- Travel whilst awaiting a decision
- Limitations

# Switching Tiers (2)

- Fees
- Usually takes 8 weeks to get a decision
- Application must be made before the current visa expires

# Supplementary Employment

- Skilled workers are allowed in limited circumstances to undertake supplementary work
- Can be with any employer and they don't have to be licensed sponsor
- No need to inform UKVI
- Bank working



# International recruitment

# Ethical recruitment

- What is ethical recruitment
  - Treating individual recruits equal to national recruits
  - not making existing international workforce shortages worse
- WHO Code of practice for International Recruitment
- Red and amber lists
- Active and passive recruitment
- Agency list – maintained by NHS Employers

# Practical considerations of recruitment

- International Recruitment Toolkit (Updated 13 October 2023).
- Marketing
  - Inspire, Attract and Recruit
- Engaging with existing staff
- Using a recruitment agency or service
- Pastoral Support
  - Airport pick up
  - Assistance with accommodation
  - Banking and post office support
  - Footprint in the UK (NI Number, NHS Number)
  - Financial support
  - Transport
  - Welcome pack / inductions

# Route to NMC Registration

- Pre sponsorship (six months)
  - English Language Test (ILETS or the OET)
  - NMC Eligibility and Qualification Application
  - Computer Based Test of Competence
  - Pre employment checks
- Sponsoring (two months)
  - Employer issues a Certificate of Sponsorship
  - Nurse makes a Visa Application
- Pre registration (up to eight months)
  - Nurse commences employment
  - Nurse takes OSCE (3 tries)
  - Nurse completes NMC application
- Post Registration (12 months)
  - Nurse starts Band 5/6 role
  - Preceptorship

# Sponsoring an overseas trained nurse

- 8 months to achieve NMC registration
  - From the start date on COS or start of employment
- Salary considerations
  - Pre registration > Band 3
  - Post registration > Band 5
- Registration process
- Completion of registration

# General Recruitment

# Fair Recruitment Practices

- Equality Act 2010
  - It is unlawful to discriminate in employment practices because of race (race and racial grounds include colour, nationality and ethnic or national origins).
  - Public sector employers must also comply with the public sector equality duty.
- Employers must follow the Home Office statutory code of practice for employers: avoiding unlawful discrimination while preventing illegal working (updated on 11 February 2022)

## Fair recruitment practices – Home Office Code

- If you ask for documents from one applicant, you should make sure you ask for documents from all applicants
- Ensure individuals with a time-limited RTW are not treated less favourably during their recruitment or employment.
- Only ask questions about a worker's RTW status if it is absolutely necessary to do so.
- Do not assume that a person is living or working in the UK illegally because they are not able to produce acceptable documents.
- Monitor the diversity details of applications during the recruitment and selection process (and use that information to review recruitment procedures).



# Identifying the SOC

## ■ Identify the role:

- Is the job description up to date?
- Does your job description match the tasks that the worker is doing 'on the ground'?
- Essential and desirable criteria

## ■ The SOC

- Use the ONS coding tool
- When to check?
- All or nothing?
- Check the SOC is eligible under the Skilled Worker Route

## ■ Matching the right code

- Limited guidance
- Common sense approach
- Take a step back

## ■ MAC Review of the SOL – no changes to health and care roles right now.

# General recruitment

## ■ Restricting applications?

- Outright ban?
- Strong discouragement?

## ■ Direct discrimination

- Race v Immigration status

## ■ Indirect discrimination

- *Osborne Clarke Services v Purohit [2009] IRLR 341*



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**Any Questions?**

# Thank you.

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