



McGILL & CO

# EMPLOYING OVERSEAS NATIONALS

## SPONSORSHIP UNDER THE POINTS BASED SYSTEM OF THE IMMIGRATION RULES

Anyone who would like to employ someone who is not British or Irish needs to have a skilled worker sponsor licence (unless the overseas national already has a visa which allows them to work). Once the licence is in place, an organisation can issue a certificate of sponsorship to enable an overseas national to apply for a skilled worker visa. There are three main requirements for this visa:

1. The job must be listed in Table 1 of Appendix Skilled Occupations of the immigration rules;
2. The salary paid must exceed the applicable 'global rate', the applicable 'going rate' for the specific occupation, and the hourly rate of £10.10 per hour;
3. The applicant must sit and pass an English language test.

The 'global salary' rate is usually £25,600, although a lower rate is applied in some circumstances. For instance the minimum salary for a 'new entrant' - which includes anyone under the age of 26 - is £20,480. This lower rate also applies if a job appears in Appendix Shortage Occupation List, which as the name suggests lists occupations for which the UK is currently suffering a skills deficit. The 'going rate' is different for each occupation. The salary applicable for each job can be found in Appendix Skilled Occupations. Normally an employer must pay 100% of this going rate. Although again this can be lower in some circumstances. For instance new entrants must be paid 70% of the going rate and those doing a job on the shortage occupation list

must be paid 80% of the going rate. The going rates are usually based on a 39 hour working week. If the overseas national will work different hours, the salary must be pro-rated. The hourly rate of £10.10 an hour is the same regardless of the migrants circumstances. As such a 'new entrant' working 48 hours per week must be paid £25,209.60 per annum ( $10.10 \times 48 \times 52$ ), even though the global rate is £20,480. Only guaranteed basic gross pay can be included for the purposes of the salary requirement. Overtime, bonuses, allowances, accommodation provision, employee benefits such as health insurance or a company car, and travel costs are all excluded. The salary calculations can be complex and depend on the particular circumstances of the case. It is best to seek advice before assigning a certificate of sponsorship to an overseas national, as if the salary does not comply with the immigration rules the visa application can be refused. The overseas national must pass a Home Office approved English language test - including reading, writing, speaking, and listening - at level B1. If the overseas national has a degree taught in English or is a national of a majority English speaking country, they can rely on this to meet the English language requirement instead. If the overseas national is already in the UK you can assign an undefined certificate of sponsorship from your annual allocation. If the application is being made from abroad, a defined certificate must be requested.

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There are various costs associated with sponsoring a skilled worker. The fee for the licence (if the employer does not already have one) is £536 for a small organisation and £1,476 for a large organisation. This only needs to be paid once every 4 years. The remaining fees must be paid each time an overseas national is sponsored. The fee for assigning a certificate of sponsorship is usually £199. An immigration skills charge must also be paid at this stage. This is £363 per year for a small organisation and £1,000 per year for a large organisation. When the migrant makes their visa application they will need to pay an application fee, which will be between £232 and £1,408 depending on the

circumstances. An immigration health surcharge of £624 per year must also be paid at this stage. The total Home Office fees for sponsoring a migrant for 3 years is usually approximately £5,600 for a large sponsor and approximately £3,700 for a small sponsor. The health surcharge and skills charge are refunded if the application is unsuccessful. The other fees are not refunded. It is therefore important to get it right first time. At McGill & Co we have years of experience dealing with the sponsorship system. We can guide you through the process and ensure compliance with the immigration rules to maximize the chance of success.

## JAMES RITCHIE



James joined McGill & Co full time in August 2017. He assists clients with all areas of immigration, asylum, EU residence, and nationality law. He graduated with an LLB from Edinburgh Napier University in 2016 and proceeded to undertake his Diploma in Professional Legal Practice at the University of Edinburgh graduating in late 2017. James presently assists international investors, entrepreneurs, and employers who wish to obtain a sponsorship licence to enable them to recruit foreign migrants.

James has a keen interest in maritime immigration law, and has recently assisted several fishing companies to obtain Skilled Worker sponsor licenses, enabling them to hire foreign crew. James is a member of the Scottish Young Lawyers' Association, JUSTICE Scotland, and the Immigration Law Practitioners' Association.

[jritchie@mcgillandco.co.uk](mailto:jritchie@mcgillandco.co.uk)

## JACK FREELAND



Jack qualified as a Solicitor in September 2020 and works full time from our Edinburgh office. He assists with all matters pertaining to immigration, nationality & asylum law. Having previously completed the LLB (Hons) at the University of Aberdeen, Jack subsequently graduated with a commendation in his LLM International Law & Strategic Studies. Jack joined the firm in 2017 working as a Postgraduate Intern, before returning to university to complete his Diploma in Professional Legal Practice at

the University of Glasgow. Jack commenced his traineeship with the firm in August 2018, providing regular assistance to the solicitors of the firm in a variety of cases. He has since taken a particular interest in family immigration work and British nationality law. Jack is an Affiliate member of the WS Society, and a member of the Scottish Young Lawyer's Association and the Immigration Law Practitioners' Association.

[jfreeland@mcgillandco.co.uk](mailto:jfreeland@mcgillandco.co.uk)