

ILPA information sheet

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Steve Symonds ILPA Legal Officer 020-7490 1553 steve.symonds@ilpa.org.uk

Immigration Law Practitioners' Association www.ilpa.org.uk 020-7251 8383 (t) 020-7251 8384 (f)

Senior Care Workers

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The following description is taken from current UK Border Agency internal guidance:

“Senior Care Workers (SCWs) work in a variety of health and social care settings, including hospitals, hospices, residential care homes and nursing homes, and in other community settings including day-centres. Some work as Senior Domiciliary Care Workers in clients’ own homes.”

Around 2007 there were significant changes made to the how what is now the UK Border Agency dealt with applications for leave to enter or remain by senior care workers. This information sheet provides information about these changes and the problems these caused. The changes and current situation are complicated, and anyone who may be affected should consider seeking legal advice.

Changes made in 2007

On 13 August 2007, the Border and Immigration Agency (now the UK Border Agency) issued new guidance about senior care workers. This guidance included two changes to the requirements that would be applied to applications for leave to enter or remain by senior care workers:

- the minimum wage level for a senior care worker job was raised (to £7.02); and
- the skills requirement (S/NVQ level 3) were to be assessed more strictly

(NVQ stands for National Vocational Qualification, the equivalent in Scotland is the SVQ which stands for Scottish Vocational Qualification. More information about S/NVQs is available at: http://en.wikipedia.org/wiki/National_Vocational_Qualification)

The new guidance included a concession to senior care workers already working in the UK. The concession was that the skills requirement would not be applied to senior care workers applying to extend their leave (i.e. applying to stay longer in the UK) provided they were applying to stay in their current job. However, some senior care workers had already been refused an extension of leave before August 2007. The Border and Immigration Agency said on 13 August 2007 that it would, if requested, review any refusal made within the past 28 days (i.e. between 16 July and 13 August); and those who had been refused earlier could make new applications for further leave.

Changes made in 2008

In January 2008, the UK Border Agency extended its concession to include those applying to extend their leave as a senior care worker but working for a new employer. In June 2008, it revised the guidance. The two changes set out in August 2007 (see above) remained. The June 2008 guidance also set out that the skills requirement would not be applied to any of the following:

- a senior care worker who was applying to extend his or her leave (provided the application was made in time – i.e. before his or her original leave expired)
- a senior care worker who had remained in the UK (after the period of his or her original leave – i.e. overstayed) and was applying for further leave as a senior care worker within six months of his or her leave having expired
- a senior care worker who had left the UK and was applying for further leave as a senior care worker within 28 days of his or her previous leave having expired (but in this case, only if the application was to work for the same employer as previously)

The new minimum wage of £7.02 (from August 2007)

This was introduced in August 2007 (see above). It was said that it reflected the skills requirement (S/NVQ level 3). As described above, under the 2007 and 2008 concessions, some senior care workers were permitted not to satisfy the skills requirement, but none of the concessions permitted employment at a wage below the new minimum. This seems inconsistent. If senior care workers were to be permitted to take jobs not at the skills level reflected by the new minimum wage, it is difficult to understand why or how they were expected to find such jobs paid at that wage.

Note that the new minimum wage requirement did not apply to leave extension applications by senior care workers who had been working in the UK on a work permit since before 2004 – provided they were seeking to stay with the same employer.

Problems experienced by senior care workers

The changes made in 2007 and 2008 have caused serious problems for many senior care workers. Some of these problems were debated in Parliament in October 2007. That debate is available at:

<http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm071023/halltext/71023h0009.htm#07102325000003>

Some of the greatest problems have affected those whose applications to extend their leave were refused before either the 2007 or 2008 concessions were introduced. For some, this was because the stricter approach to the skills requirement began before August 2007. For others, this was because the initial concession (in August 2007) did not protect them because they needed to change employer. Others experienced problems simply because of the new minimum wage as neither their current employer nor any other employer was willing to pay the new minimum wage. This was despite the fact that these senior care workers had been working lawfully in the UK and did have employers who wanted to continue to employ them.

Some of these senior care workers were forced to leave the UK. Some changed the basis of their lawful stay in the UK (e.g. switched their immigration status to being a student) so as to avoid becoming an overstayer (someone who remains in the UK after his or her leave has expired). Some were overstayers for a period (in some cases of several months) before being granted leave to remain again as a senior care worker following either the 2007 or 2008 concession. For those who remained in the UK, but switched their immigration status or became overstayers, their immigration position became more vulnerable. If they had been able to continue as senior care workers without any break, they would have been permitted to apply for settlement (indefinite leave to remain) after five years in the UK with continuous leave (i.e. without any break) as a senior care worker. However, some of these may be able to benefit from another 2008 concession to allow senior care workers to apply for settlement after a total of five years leave despite a gap in their leave between 13 August 2007 and 27 November 2008.

One organisation that continues to campaign about the problems caused to senior care workers is the Filipino community organisation – Kanlungan. Their website is at:

<http://www.kanlungan.org.uk/>