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Permission to Work Judgment 3

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This information sheet provides additional information to the “Permission to Work Judgment 2” information sheet. That information sheet explained the judgment of the Supreme Court. It set out some information regarding the UK Border Agency and the Government response to the judgment.

The Government has now made changes to the Immigration Rules. These are explained in this information sheet.

The changes to the Immigration Rules

These changes are to come into effect on 9 September 2010. The changes will restrict the type of work that those asylum-seekers who are permitted to work may do. From 9 September, an asylum-seeker who is granted permission to work will be subject to the following restrictions:

- He or she will not be permitted to be self-employed
- He or she will not be permitted to set up in business
- He or she will only be permitted to take a job of a type listed on the UK Border Agency’s shortage occupation list

Transitional arrangements

The changes will not affect permission to work that has been granted to an asylum-seeker before 9 September 2010. The changes will not affect permission to work that is granted to an asylum-seeker following an application for permission to work made before 9 September 2010. However, the UK Border Agency has said it will delay consideration of applications for permission to work by those who rely on having made a fresh claim for asylum; and that it will not give the benefit of the transitional arrangements to these people. This is unlawful. It is, in effect, an attempt to reintroduce the distinction between first and fresh asylum claims ruled unlawful by the courts.

Those asylum-seekers who may be granted permission to work

It will remain the case that asylum-seekers will not usually be granted permission to work. However, permission to work may be granted if an asylum-seeker:

- has been waiting for a year for an initial decision on his or her first asylum claim
- has been waiting for a year for an initial decision on his or her fresh claim for asylum

Asylum-seekers who are refused asylum by the UK Border Agency within a year of making an asylum claim, or whose fresh claim for asylum is refused within a year of its being made, will not be permitted to work.

The UK Border Agency's shortage occupation list

On 19 August 2010, the UK Border Agency published information about these changes to the Immigration Rules. That information is available at:

<http://www.bia.homeoffice.gov.uk/sitecontent/newsarticles/2010/275292/50-implementation-zo-somalia>

Included with the information at that page are:

- the UK Border Agency's shortage occupation list (this also applies for Tier 2 of the Points Based System) – the list may be changed from time to time
- an impact assessment

The shortage occupation list sets out general areas of work, and then sets out the level or specific type of work that is included for the purpose of the list. The list is very restrictive. All the levels or types of work included on the list are skilled work, and in many instances highly skilled work. However, not all skilled or highly skilled work is included on the list. Thus, the list includes engineers, medical practitioners, teachers, social workers and care assistants among the general areas of work. However, most jobs within these areas are not included. For example, only teaching jobs in schools for children with special education needs or teaching jobs in maths, physics, chemistry or biology at secondary schools are included within the area of teaching.

Reasons for introducing these changes

The reasons for introducing these changes are set out in the impact assessment. This sets out two general reasons. Firstly, it says:

“The objectives of the new policy are to ensure the [Supreme Court] judgment is implemented in a way which is consistent with wider immigration and labour market policies, ensuring that foreign workers are diverted to occupations where a national shortage of skilled labour has been identified and thereby offer the greatest value to the UK.”

However, if the UK Border Agency deals with asylum and fresh asylum claims in a reasonably timely way, there should be very few asylum-seekers that could ever successfully apply for permission to work. The impact on the job market should, therefore, be so small as to be generally insignificant. However, the restrictions may well mean that an asylum-seeker, who is entitled to permission to work, gets no benefit from this at all because most asylum-seekers will likely not have the skills or experience to take one of the listed jobs. Secondly, the impact assessment says:

“The policy should also protect the asylum system, guarding against abuse so that all cases are processed quickly and fairly so that those with a genuine protection need can integrate quickly.”

However, permission to work is not granted to an asylum-seeker unless the UK Border Agency has failed to make a decision on his or her claim for at least 12 months. If the asylum-seeker is wholly or partly responsible for the 12 months delay, he or she may be refused permission to work. If the UK Border Agency is processing claims quickly and fairly, it would ordinarily be highly unlikely that an asylum-seeker would have to wait for more than 12 months for a decision. There is no need, therefore, to restrict the jobs that asylum-seekers are permitted to do in order to guard against any perceived abuse. There is simply a need for the UK Border Agency to deal with claims in a reasonably timely way.

The Government will review these changes next year.