



WORK PERMITS

GENERAL AGREEMENT ON TRADE IN SERVICES FOR OVERSEAS EMPLOYERS

(BULGARIAN AND ROMANIAN NATIONALS ONLY)

Guidance for Employers

From 03 August 2009

These guidance notes provide information for overseas employers wishing to employ Bulgarian and Romanian nationals under the General Agreement on Trade in Services (GATS) work permit arrangements and advice on how to make an application. They are updated regularly, therefore, please read them before filling in the application form. This supersedes all previously issued guidance. For the purpose of these guidance notes, the terms 'we', 'us' and 'our' refer to the UK Border Agency.

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Section 1 – The Criteria

Overview

1. The GATS agreement enables Bulgarians and Romanians, whose employer does not have a commercial presence in the European Union (EU), to work in this country on a service contract awarded to their employer by a UK based organisation.

2. The concession is intended to facilitate access to UK service contracts by non-EU based companies or organisations who employ persons having high level professional skills whose work in this country would otherwise be subject to work permit restrictions.

3. The GATS agreement only extends to organisations of those countries who are members of the World Trade Organisation (WTO) and who have signed up to the agreement. Please contact your nearest British Diplomatic post for further advice or go to the WTO website: www.wto.org.

4. If an application made under the GATS work permit arrangements is approved, we will issue a letter of approval. This, on its own, does not give permission for a Bulgarian or Romanian national to work in the UK. To obtain authorisation the Bulgarian or Romanian national should, on receipt of the letter of approval, complete an application for an accession worker card on form BR3 and submit both to the UK Border Agency. Only on receipt of the Accession worker card can the person commence work with an employer. Form BR3 can be found on the UK Border Agency website and details of the accession state worker authorisation scheme can be found in the [guidance for Bulgarian and Romanian nationals](#).

Summary of criteria

5. Decisions on GATS applications are made against the following:

- (a) The service contract must not exceed a period of 3 calendar months;
- (b) The person will not be permitted to work in this country under this agreement beyond 3 calendar months in any 12 month period;
- (c) The service provided must fall within one of the service sectors listed at paragraph 8;
- (d) The person must have the appropriate qualifications and experience;
- (e) The person should have spent 12 months in

your employment, as a formal salaried employee;

(f) The agreement does not extend to self-employed individuals, or to employment agencies or similar organisations who do not formally employ workers but simply supply or hire them out; and

(g) The contract must have been awarded through an open tendering procedure or any other procedure that guarantees the bona fide nature of the contract.

6. In addition, permission for employment in this country is granted on the condition that there is an intention to leave the UK once the work on the service contract has been completed or the maximum period of 3 calendar months in 12 has been reached.

7. Information you supply on the application form will be assessed against the criteria outlined in these notes. You, the overseas employer who has been awarded the contract, should complete a form GATSA in English, and supply certified translations of any supporting documentation

Service sectors, occupations or industries for which GATS work permits can be issued

8. Letters of approval are issued for work on service contracts in the following sectors:

- (a) Legal services
- (b) Accountancy services
- (c) Book-keeping services
- (d) Taxation advisory services
- (e) Architectural services, urban planning and landscape architectural services
- (f) Engineering services*
- (g) Integrated engineering services*
- (h) Advertising*
- (i) Management consulting services*
- (j) Services relating to management consulting*
- (k) Technical testing and analysis services*
- (l) Translation services*

(m) Site investigation services*

9. GATS letter of approval cannot be issued for occupations or professions that fall outside these sectors.

10. For applications within the sectors in paragraph 8 marked*, we will need to be provided with information to confirm that the service contract has met the requirements of an “economic needs test”, i.e. that the UK contractor has justified the need to award the contract to an organisation outside the EU.

11. You will not have to provide this information. We will contact the UK contractor direct once we have received and considered your application. You should, however, take this into account when making an application since this process is likely to prolong the time it will take to make a final decision.

12. It is however, your responsibility to supply the following information:

(a) The original advertisement that you responded to when you submitted your tender for the contract on offer. It should be of the whole page of the newspaper or journal, etc, used, so as to show the publication’s name and date. If this is not available, we will require a copy of the text used and an invoice for the advertisement as this will also show the name and date of the newspaper or journal used by the UK contractor;

If any other means were used whereby you become aware of the contract on offer you will need to supply full details and supporting documentation;

(b) A copy of the service contract awarded to you by the UK contractor. If possible, the contract should be signed by both parties; and show a start and end date.

13. If this information is not available to you, you should arrange for the UK contractor to send it direct to us quoting any available reference numbers. We will only approach the UK contractor ourselves if there are genuine reasons why you are unable to supply the information requested.

Skills, qualifications and experience criteria

14. To qualify for a GATS work permit, we expect the person(s) required to work on the contract in this country to have:

(a) A recognised degree level qualification; and

(b) Professional qualifications; and

(c) 3 years professional experience in the sector, the last 12 months of which should have been as a formal salaried employee of the organisation that has been awarded the service contract.

15. The following services are exceptions:

(a) Advertising and translation services require relevant qualifications and 3 years professional experience;

(b) Services related to management consulting require an university degree or technical qualifications demonstrating technical knowledge and 3 years professional experience;

(c) Management consulting (managers and senior consultants) require an university degree and 3 years professional experience.

16. For all of the exceptions, the last 12 months employment should still have been spent with you as a salaried employee.

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Section 2 – Making an application

How do I apply?

17. Where an application has been made to employ a person who is outside of the UK at the time of the application, we will issue a letter of approval, which should be forwarded on to the person overseas.

18. As soon as you have identified the employee(s) that you wish to send to this country to work on the service contract you should apply using the GATSA application form.

Please note: We reserve the right to check documentation that you supply with your application and if necessary verify the details provided. Submission of false or forged documents, or other misleading information, may result in refusal of applications.

How much does a letter of approval cost?

19. There is no fee for Bulgarian and Romanian nationals

Where can I get a work permit application form?

20. You can download and complete all work permit application forms on screen from [the work permit section](#) of our website.

What if I want to use a Representative?

21. If you make an application through a representative/agent who is not part of your business or organisation they must fill in and sign the representative declaration.

22. If you choose to use a representative, you must sign the completed application and verify that all the information is correct.

23. Representatives acting on behalf of an employer who are offering advice and services provided in connection with an immigration employment document application will need to be registered with the Office of the Immigration Services Commissioner (OISC), unless they are exempt from the requirement to do so. This is a requirement of Section 84 of the Immigration and Asylum Act 1999. The application form will require representatives to tick the appropriate box indicating whether they are registered or the basis on which they are exempt from the registration requirement (see paragraph 30 for OISC contact

information).

24. The UK Border Agency reserves the right to contact the employer directly to verify details of applications.

25. If you are not required to register because you are regulated by a designated legal professional body (as defined by the Immigration and Asylum Act 1999, for example the Law Society); or if you work under the supervision of a registered person; you will need to provide us with supporting evidence. For example the name of the legal professional body and your membership number.

26. Members of a designated legal professional body that are not regulated by them for Immigration purposes (for example some registered foreign lawyers or non-practicing barristers) should ensure that they abide by the OISC codes of practice and seek regulation with the OISC if they wish to continue to provide immigration advice or services.

27. Anyone unsure of their status should contact the OISC.

28. Employers dealing with their own staff or prospective staff do not need to register with the OISC.

29. If a representative makes an application on behalf of an employer, and that representative is not permitted to provide advice and immigration services (by section 84 of the Immigration and Asylum Act 1999), the UK Border Agency will inform both the representative and employer of the requirements of the Act by contacting the employer stated on the application.

30. Queries about OISC requirements should be addressed to:

OISC
5th Floor
Counting House
53, Tooley Street
London SE1 2QN

Tel: 020 7211 1500
Fax: 020 7211 1553
E-mail: info@oisc.gov.uk
Website: www.oisc.gov.uk

Who signs the Declaration?

31. There are two declarations at the end of the GATSA form. You must fill in and sign the employer declaration in all cases.

How do I get advice on making applications?

32. Further details on employing migrant workers can be found at www.businesslink.gov.uk. The site includes information on how to check staff, an outline of the legal requirements, case studies covering a range of sectors and a series of frequently asked questions.

33. For general enquiries, advice about completing an application form or clarification of these guidance notes please contact our Customer Contact Centre at:

UK Border Agency
Customer Contact Centre
PO Box 3468
Sheffield
S3 8WA

Telephone: 0114 207 4074
Fax: 0114 207 4000
E-mail: accessionenquiries@ukba.gsi.gov.uk

34. Applications are allocated according to team resource. Please do not contact teams for progress checks, as this will hold up the consideration time. If you wish to check the progress of your application please see our on-line guidance on [waiting times](#) or contact the Customer Contact Centre.

35. The team that considers the application will still write out to employers or their representatives direct. If you wish to discuss these letters, please contact the team stated on the correspondence.

Where do I send the work permit application form?

36. Please post your completed application form to:

UK Border Agency
Work Permit (BaRC)
PO Box 3468
Sheffield
S3 8WA

37. We are not responsible for any items sent to us whilst in transit to or from our offices.

What happens next?

38. Your application will be formally acknowledged as soon as it has been received. We may need to contact you by letter, e-mail, or telephone to clarify details of your application or to request further information. However, if all the information requested on the form is supplied it should not be necessary to contact you further until we have made our decision.

39. The application form will ask you to state the date the letter of approval is needed by and we will try to reach a decision, in most cases, by this date. If other Government Departments are involved in the case or we have to contact the UK contractor (see paragraphs 11 and 13), a longer period should be allowed.

40. We try to keep delays to a minimum, but there will be a small number of cases where a decision will take longer to reach as a result of this consultation.

Where will the UK Border Agency send the letter of approval?

41. We will send the letter of approval and all letters to the employer named on the application form unless you are using a solicitor or other representative. In most cases we will send the letter of approval and all letters to them unless they are not permitted to provide immigration advice or service under section 84 of the Immigration and Asylum Act 1999 (see paragraph 26). However, in certain circumstances, as explained in paragraphs 11 and 13, we will have to contact the UK contractor direct to supply any necessary information.

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Section 3 – Verifying applications and Abuse

Verifying Applications

42. We aim to consider your application swiftly. However, we must also be confident that applications meet the work permit criteria, and that the statements and information that employers and representatives provide are a true reflection of what actually happens whilst the migrant worker is in the job concerned.

43. The UK Border Agency reserves the right to verify details. If full contact details are not provided by you or your representative, we may refuse the application.

44. We will ask for a variety of material to support your case during the consideration of your application. In some cases, particularly if your company has not made an application before, or not for some time, we may also visit your company before we make a final judgement on whether to approve your application(s).

45. In some cases, if we have approved your application, we may also carry out a 'compliance check' to ensure the ongoing validity of the permission.

46. The purpose of the compliance check is to make sure that the information given on the work permit application is a true reflection of the employment being offered. We will check that:

- the information given about the employer is accurate and complete.
- the information given about the job and conditions of employment are accurate and complete.
- the employer is able to offer the employment described on the application form.

47. You agree to co-operate with these checks when you sign either the employer or representative declaration page of the work permit application forms.

When do we carry out a compliance check?

48. Checks may happen either at the time you apply for a letter of approval (pre-issue), or once the migrant worker has taken up employment (post-issue).

49. Companies that are subject to a check may have been chosen at random, therefore being the subject of a compliance check does not mean that there is any doubt regarding the application submitted.

50. We may make these checks at any time during the application process or during the validity of a period of approval.

What happens during a check?

51. The UK Border Agency will carry out checks. If we plan to visit we usually, though not always, contact the employer to arrange a mutually convenient time. The compliance officers will then gather material to support the information provided on the application form. We may also wish to speak to migrant workers, colleagues and managers involved in the work permit employment.

52. If we have not yet issued a letter of approval, then we will focus on verifying that the employer is capable of offering the employment specified on the application form. For example, we would check that the employer has suitable premises, has a genuine vacancy, that they have been unable to fill with a resident worker, and holds appropriate licences, etc to offer the employment as specified on the work permit application.

53. If we have already issued a letter of approval, we may make a check by telephone or letter and will ask for material to support the information provided on your application. This is to verify that the information provided on the application form was a full and accurate description of the conditions of employment being undertaken, and that the skills, experience, gross pay and duties of the overseas national are as described on the application form.

54. The compliance officers visiting your premises will have official UK Border Agency identification. If you have any doubts that their presence is bona fide, please contact our Customer Contact Centre on 0114 207 4074 and ask to be put through to the Sponsor Management Unit.

What happens after a check?

55. Where we have carried out a check before a decision has been made on your application, we will report our findings to the team dealing with your application within the UK Border Agency. They will then make the decision on your application using all of the information you provided.

56. The team responsible for making the decision on your application will let you know the outcome. This process will normally be complete within 4 weeks of the date of your application reaching us.

57. Where the UK Border Agency has already issued a letter of approval, we will write to you to

let you know the outcome of the visit.

Discrepancies or issues discovered during checks

58. We anticipate that, on many occasions, checks will not reveal any problems. In these cases, we will notify you that we are satisfied that everything is in order.

59. Where there are discrepancies discovered before we have made a decision on your application, the team will let you know whether they require further information before making their decision on your application(s).

60. If we find discrepancies on applications where the letter of approval has already been issued and the overseas worker has taken up post, we will work with you to take steps to bring the employment back in line with the work permit arrangements if possible.

61. However, there may be occasions where we find evidence to show that an employer or representative has knowingly deceived us, or where we cannot verify the statements made in the application. In these cases, we have the right to revoke the permission. Where appropriate, we may instigate prosecution of employers (or representatives) under the relevant immigration, or other, legislation.

62. Where an employer or representative has been shown to attempt deception on occasions in the past, the UK Border Agency reserves the right to refuse to approve applications where that employer or representative is involved.

Allegations of abuse of the work permit arrangements

63. An employer who uses deception to obtain a letter of approval may be committing a criminal offence. The UK Border Agency's Intelligence Unit in Sheffield deal with information in respect of abuse of the work permit arrangements, carry out investigations and, if appropriate, inform the relevant authorities of its findings.

64. All work permit applications are confidential between the employer and the UK Border Agency, and information submitted by the employer in support of an application cannot, therefore, be divulged to a third party except to other Government Departments and Agencies and Local Authorities to enable them to carry out their functions.

65. Each allegation of abuse of the work permit

arrangements is treated in the strictest confidence. The Intelligence Unit will not be able to advise you of the progress or results of any investigation relating to this information. This is for the following reasons:

- The Data Protection Act (1998) - the provisions of this Act means we cannot disclose information we hold on an individual to a third party unless requested to do so by, or with the written consent of, the party concerned.
- The UK Border Agency's Code of Practice - all investigations are pursued in compliance with the Data Protection Act (1998), the Human Rights Act (1998) and the Regulation of Investigatory Powers Act (2000). This prevents us giving feedback to people who provide information which lead to investigations, and if we were to breach this, it could compromise the success of any prosecution of an identified offender.
- Potential damage to ongoing investigations - the potential damage that disclosure might have on any investigation conducted by us or other government agencies.

66. If you have information about abuse of the work permit arrangements, you can contact the Intelligence Unit at:

UK Border Agency
Intelligence Unit
PO Box 3468
Sheffield
S3 8WA

Tel: 0114 279 3480
Fax: 0114 279 3482
E-mail: workabuse@homeoffice.gsi.gov.uk

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Section 4 – Immigration

Immigration clearance

67. From 1st January 2007, as European Economic Area (EEA) nationals, Bulgarian and Romanian nationals will be able to move and reside freely in any Member State. They will not require leave to enter or remain to reside legally in the UK.

68. Bulgarian and Romanian nationals wanting to work in the UK will still need to obtain authorisation to work before starting any employment. Should the UK Border Agency approve your GATS application, a letter of approval will be issued. This approval letter, on its own, does not constitute full authorisation to work in the UK for a Bulgarian or Romanian national. To obtain full authorisation the Bulgarian and Romanian national must, upon receipt of the letter of approval, apply for an accession worker card. To apply, the Bulgarian and Romanian national should complete the form [BR3](#) and submit the approval letter issued by the UK Border Agency with their application form. For further information see the '[Guidance for Nationals of Bulgaria and Romania](#).' Only on receipt of the accession worker card can the person commence work with an employer.

Please note, a Bulgarian or Romanian national who has been given permission to work and has worked under that permission on a continuous basis for twelve months, will obtain full movement rights as a worker under EU law. They are then exempt from the requirement to obtain a worker authorisation document. Such individuals can obtain a registration certificate confirming an unrestricted right to access the UK labour market. Details of how to apply for a registration certificate are available in the [guidance for Bulgarian and Romanian nationals](#).

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Section 5 – Frequently Asked Questions

What if I want my employee to transfer to another contract whilst in the UK?

69. The agreement will allow a person to change to another contract either with the same UK contractor or a different one. However, as indicated in paragraph 78, the agreement will not allow the person's work in this country to exceed a total of 3 calendar months in any 12 month period.

70. If your employee is required to work on a different contract with the same UK contractor, we will need:

(a) A letter informing us of the new details i.e. location, length of contract;

(b) A copy of the new contract that should be signed by both parties and show a start and end date;

71. We will consider this situation as a 'technical change of contract'.

72. If, however, your employee is required to work on a new contract with a different UK contractor, we will need:

(a) A fresh application form;

(b) A copy of the new contract which should be signed by both parties and show a start and end date.

73. We will consider this situation as a 'full change of contract'.

74. In **both** cases we will still apply the full rules of the agreement and will need to see evidence that the contract has been awarded through an open tendering procedure as detailed in paragraph 10. Therefore, you will also need to supply the details as indicated in paragraph 12.

75. We may also have to request further information from the UK contractor to show why they have awarded the contract to a non-EU service supplier.

What if I want to extend my employee's letter of approval?

76. Once a Bulgarian and Romanian national has been given permission to work under the work permit arrangements and has obtained an accession worker card, the card will be valid for as long as the Bulgarian or Romanian worker remains

in the employment for which the card has been issued. United Kingdom employers will not therefore need to seek an extension of the initial approval under the GATS work permit arrangements.

77. Under the GATS agreement however, a contract is strictly limited to a maximum period of 3 months and does not allow for any extensions that will take the contract beyond this period.

78. In addition, your employee's stay in this country to work on the contract should not exceed 3 calendar months in any 12 month period.

If the work is not completed by 3 calendar months your employee will not be allowed further permission to work under the GATS agreement within 12 months of the end of that first period.

For how long can I have a letter of approval?

79. The application must state how long you need to employ the person. We can issue a GATS permit for up to 3 calendar months in any 12 month period, but not beyond the length of the contract.

80. We advise that you take into account the time required to obtain a letter of approval before submitting a work permit application that specifies an end date (e.g. for contracts, see also paragraph 10).

In what circumstances can I request a reprint of a letter of approval?

Requesting reprints of letter of approval issued less than six months ago.

81. We will reprint letters of approval in the following circumstances:

To correct errors and omissions

82. You, the employer, or your representative may request reprints of letters of approval from us to correct errors such as spelling mistakes or incorrect details such as mistyped passport numbers or dates of birth. Requests should be made in writing within one month of receipt of your letter. Reprints will be free of charge once your written request is received, accompanied by the original letter of approval. If the original is not returned or is returned over one month from when you received your letter then your request will be refused and a fresh application will be required.

- Please note, however, that if you request a reprint to change a detail on the letter of approval that was central to the consideration of the original application your request will be refused where that request was made based upon your error or omission. By 'central' we mean, for example, if the job title was wrong, or the address at which the person works, or the salary offered differs from that stated in the original application. You will be required to submit a fresh application.

To replace a lost letter of approval

83. You may request a reprint of a letter lost in transit (includes lost overseas) that has been used to apply for your accession worker card. Requests should be made in writing or by fax to the original team who made the decision. If the original letter is subsequently found, it should be returned, as the reprinted letter supersedes it.

What if I do not agree with the decision on my application?

84. The decision letter we send to you will explain the result of our consideration of your application. If we cannot approve your application the letter will explain why, and if appropriate give details of how to request reconsideration of the decision.

85. If our letter informs you that the information did not meet our criteria, and you wish to re-apply with further information, please complete a GATSA form. You should include further evidence to support your application including, but not restricted to, the issues raised in our letter.

86. If you think that the decision based on the information sent in with your original application was an error, and you wish us to reconsider your previous application, please write a letter to the following address:

UK Border Agency
Work Permits (BaRC)
PO Box 3468
Sheffield
S3 8WA

87. You should write within 28 days of the date of original decision letter and explain why you believe that the decision was wrong, with reference to the guidance notes, and make it clear that you are requesting a review of the decision on your previous application.

88. The grounds of refusal provided in respect of your initial application and also undertake a full review of all other elements of the decision.

89. Before making a decision we may contact the employer/representative for further information to clarify/support the evidence provided with the initial application.

90. Where we identify further grounds for refusal the decision to maintain refusal of an application will stand even when the original ground for refusal has been overturned.

91. We will only accept two reviews per original application refused. If your initial review is unsuccessful, you will only be able to seek one further review of the original application. Any further requests for a review received for the same original application will be returned to you. If you wish to proceed with the application, please complete a fresh application form.

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