



WORK PERMITS

GENERAL AGREEMENT ON TRADE IN SERVICES FOR UK CONTRACTORS (BULGARIAN AND ROMANIAN NATIONALS ONLY)

Guidance for Employers

From 03 August 2009

This guidance note provides information on using the services of Bulgarian and Romanian nationals who are employed by a non-European Union (EU) company which has been awarded a contract for delivering service by an organisation in the United Kingdom under the General Agreement on Trade in Services (GATS). 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.

We will not charge the UK contractor for consideration of information supplied on form GATSB.

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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, therefore, be permitted to work in the UK 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 qualifications and experience;

(e) the person should have spent 12 months in the employment of the overseas employer 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 that is supplied by the overseas employer and the UK contractor will be assessed against the criteria outlined in these notes.

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

8. Permits 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 letters of approvals cannot be issued for occupations or professions that fall outside these sectors.

Economic needs test

10. You will need to complete a GATSB form, which we will send to you once the initial work permit application from the overseas employer has been received.

11. For applications within the service sectors in paragraph 8 marked*, you (the UK contractor) will need to justify why the contract was awarded to a non-EU service supplier. This is known as an 'economic needs test'.

12. You should demonstrate that the contract awarded has been advertised in a fair and open manner, in a relevant publication freely available throughout the EU. The advertisement should relate to the specific contract awarded.

13. The award criteria should not be so restrictive that the contract may only be awarded to a specific contractor or to a contractor from a specific country. However, where the contract requires very specific cultural or specialist skills, evidence for these requirements should be provided.

14. You will also need to explain why you have decided to award the contract to a service provider outside the EU. The reasons for doing so should be consistent with requirements for the service specified in any tender for the contract.

Skills, qualifications and experience criteria

15. 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;
- 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.

16. 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 a university degree or technical qualifications demonstrating technical knowledge and 3 years professional experience;
- (c) Management consulting (managers and senior consultants) require a university degree

and 3 years professional experience;

17. For all of the exceptions, the last 12 months employment should still have been spent with the company you have awarded the service contract to, as a salaried employee.

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Section 2 – Making an application

How much does a letter of approval cost?

18. There is no fee for Bulgarian and Romanian nationals

Where can I get a work permit application form?

19. 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?

20. 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.

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

22. Representatives acting on behalf of an employer who are offering advice and services in connection with an Immigration employment document 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 work permit 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 29 for OISC contact information).

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

24. 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.

25. 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.

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

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

28. 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.

29. 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?

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

31. Persons who are the subject of a work permit application may not sign the employer's declaration.

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

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Section 3 - Verifying applications and Abuse

Verifying Applications

37. 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.

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

39. 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;
- information given about the job and conditions of employment are accurate and complete; and
- employer is able to offer the employment described on the application form.

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

When do we carry out a compliance check?

41. 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).

42. 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.

43. 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?

44. 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.

45. 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.

46. 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.

47. 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?

48. 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.

49. 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.

50. 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

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

52. 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).

53. 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.

54. 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.

Allegations of abuse of the work permit arrangements

55. An employer who uses deception to obtain a letter of approval may commit 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.

56. 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.

57. 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.

58. 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 – Frequently Asked Questions

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

59. 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.

60. 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 GATSB form. You should include further evidence to support your application including, but not restricted to, the issues raised in our letter.

61. 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

62. 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.

63. We will consider the grounds of refusal provided in respect of your initial work permit application and also undertake a full review of all other elements of the decision.

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

65. 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.

66. 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.

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

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

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

To correct errors and omissions

68. 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

69. 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.

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