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IMMIGRATION DIRECTORATES' INSTRUCTIONS

CHAPTER 5 SECTION 12

DOMESTIC WORKERS IN PRIVATE HOUSEHOLDS

1. INTRODUCTION

1.1. Recent Developments

On 23 July 1998 a number of significant changes were made to the concession relating to Overseas Domestic Workers in private households. The main change in 1998 was to limit entry to those domestic workers whose duties exceeded those set down in the International Standard Classifications of Occupations. The other significant change in entry clearance requirements was that the domestic worker was required to have been employed in the same household by the current employer for only 12 months (previously 24 months). The other major change for those domestic workers already in the UK was that they could change employer if they had suffered abuse or exploitation, regardless of whether their employer was here as a visitor or in another capacity.

On introduction of these changes, an undertaking was given to review the criteria after two years of operation. A number of issues were raised during this review and Ministers decided that the criteria should be changed to reflect these concerns. The requirement for the domestic worker's duties to exceed the ILO classification was dropped and it was decided to permit all domestic workers in private households to change employers regardless of their reasons for leaving their original employer. The amended criteria were implemented administratively from 17 October 2001 and were formally incorporated into the Immigration Rules on 18 September 2002 (paragraphs 159A –159H refer).

1.2. The Regularisation Programme

In addition to the changes to the Overseas Domestic Workers Concession announced on 23 July 1998, Ministers also agreed to consider regularising the stay of domestic workers who, having been admitted under the provisions of the previous concession (with the correct entry clearance), had found themselves in an "irregular situation". Essentially this would have been that as a result of abuse or exploitation they had left their original employer. Their stay was regularised provided that the individual brought themselves to the attention of IND within 12 months of the announcement and that they had continued to be employed in a domestic capacity. The regularisation programme ran from 23 July 1998 until 23 October 1999. Details of how to deal with these applications can be found at **Annex BB**.

2. GENERAL KEY POINTS

The requirements for leave to enter or remain as a domestic worker are set out in Paragraphs 159A-159H of HC395 and *must* be referred to when reading this guidance.

Further details regarding the requirements to be met by a person seeking leave to enter as a domestic worker are provided below.

2.1. **Qualifying age**

18-65 inclusive.

2.2. **Period of previous employment**

Term of employment with employer overseas before seeking entry clearance: 12 months minimum immediately prior to application for entry clearance. The purpose of the minimum period of previous employment with the employer (or with the employer's spouse or minor child forming part ***of the same*** household) is to ensure that there is a genuine existing employer/employee relationship and to prevent recruitment of overseas domestic workers by people in the United Kingdom. A short gap in the 12 months does not necessarily disqualify the applicant unless it indicates the lack of a genuine existing employer/employee relationship.

2.3. **Terms of Employment**

Prior to coming to the UK a domestic worker ***must*** have been carrying out duties in a private household, i.e. under the same roof of the person receiving the services or working in a household that the employer uses for himself on a regular basis and where there is evidence that there is a connection between employer and employee.

There is no objection to the employers company paying for the domestic worker if it is part of his/her employment package nor do we object if an individual employer pays the domestic worker through his or her own business as an employee of that business, provided but we are certain that the employment is confined to the employers private household.

2.4. **Job description**

The standard of work no longer has to exceed the basic level of domestic work set out in the International Standard Classification of Occupations. Overseas domestic workers may include cleaners, chauffeurs, gardeners, cooks, those carrying out personal care for the employer or a member of the employer's family and nannies if they are providing a personal service relating to the running of the employer's household.

2.5. **When first travelling to the UK**

The domestic worker is expected to travel with the employer, his employer's spouse or his employer's **minor** child. However a domestic worker may be admitted if travelling independently, provided that there is no excessive time lapse and provided satisfactory evidence, e.g. a letter from the employer, is produced, explaining why he is travelling alone.

2.6. Maintenance and accommodation

When seeking entry clearance, the employer must certify that the domestic worker can maintain and accommodate himself adequately without recourse to public funds. The entry clearance officer will require **the employer** to sign a written undertaking that the employee will be able to maintain and accommodate themselves without recourse to public funds and that the domestic worker will be provided with a separate bedroom if living in. There is no requirement for the domestic to live in the same accommodation as the employer, however if this is not the case care should be taken at the entry clearance stage to ensure that either the employer is going to be paying for the accommodation or that the domestic worker's wages are sufficient to cover the expense.

2.7. Statement of terms and conditions of employment

The employer must also complete and sign a statement of the main terms and conditions of the domestic workers employment at the entry clearance stage or when a leave to remain application is being submitted for the domestic worker to remain with a new employer.

2.8. Employers basis of entry/residence in the UK

Employers are not restricted to being visitors and include those coming for settlement or in a category leading to settlement **provided that** the overseas domestic worker in question meets the requirements of the Rules.

3. ENTRY CLEARANCE - FURTHER GUIDANCE

3.1. Endorsements

Entry clearance for overseas domestic workers and any dependants obtained before entry is **mandatory**. Posts are not required to refer applications to the Home Office for decision. The entry clearance endorsement should read "as a domestic worker in a private household valid for up to 12 months" or, where the employer is entering as a visitor, "D: For employment with a visitor as a Domestic Worker in a Private Household for periods up to 180 days". **The endorsement should not give the employer's details.**

3.2. Information Leaflet

Applications for entry clearance from domestic workers are subject to a set procedure. They will be interviewed on their own, at least on their first application, to establish that they understand the terms and conditions of the employment and that they are willing to go to the United Kingdom. If their application is successful, they will be given an **information leaflet** explaining their rights under the United Kingdom's criminal and employment laws – further information about the leaflets is available below.

3.3. The National Minimum Wage

In order to defend any criticism that the Home Office encourages exploitation of workers the employer should be asked to provide a brief statement to the effect that he/she would comply with UK legislation on the National Minimum Wage once here. However a refusal cannot be maintained on the basis that the employer does not comply with this request.

4. ON ENTRY - FURTHER GUIDANCE

4.1. Valid entry clearance

The main points on which the immigration officer needs to be satisfied are that:

- the applicant holds a valid entry clearance endorsed "For employment "as a domestic worker in a private household" and
- there is no reason to believe that false representations were made in order to obtain the entry clearance or that circumstances have changed since its issue.

4.2. The Immigration (Leave to Enter and Remain) Order 2000

As of 2 October 2000 and in accordance with the Immigration (Leave to Enter and Remain) Order 2000, new style entry clearances have been issued which have the effect of conferring leave to enter the United Kingdom. Category D entry clearances issued from 2 October 2000 will normally allow unlimited entries within the period of validity shown on the entry clearance. Leave to enter, will only be endorsed by the immigration officer on the passengers first arrival in the UK and not on any subsequent re-entry occasions.

4.3. Endorsements

Employer a visitor. Leave to enter for up to 6 months on Code 4. Leave should only be granted for the period of the employer's authorised stay.

Employer in another category. Leave to enter on Code 4 for up to 12 months, depending on the period for which the employer expects the domestic worker to remain here and the duration of leave the employer has.

Endorsement wording. In all cases the Code 4 endorsement should read "...other than as a domestic worker in a private household". **The details of the employer must not be added to the endorsement.**

Domestic workers must not be placed on Code 5N, even if the employer is.

Police registration. Domestic workers and any dependants aged 16 or over should register with the police in accordance with the instructions on police registration.

4.4. **Dependants**

Dependants must have entry clearance. They should be admitted on Code 1 if the employer is not a visitor, or Code 3 if he is a visitor, for a period in line with the domestic worker.

4.5. **INDECS**

DWK domestic employee

4.6. **Refusal of leave to enter**

A visa national seeking entry without a valid United Kingdom visa falls to be refused under paragraph 320(5). A non-visa national seeking entry in this capacity without the requisite entry clearance falls to be refused under paragraph 159C of HC 395. See **Chapter 9, Section 2** to these instructions.

Person with entry clearance. Where a passenger seeking entry in this capacity holds an entry clearance for this purpose, refusal may only be considered under Paragraph 321. See **Chapter 9, Section 3** to these instructions.

Person resuming previous leave. In the case of a person returning to the United Kingdom from a temporary absence abroad, within a period for which he was previously given leave, reference must be made, before refusal, to **Chapter 1, Section 9**, "Persons returning to resume previous leave."

4.7. **Right of appeal and corresponding refusal form**

Where no entry clearance is held, there is no right of appeal against refusal of leave to enter in this capacity (the right of appeal is limited by Section 60(7)(a) of the Immigration and Asylum Act 1999). Form IS 82D should therefore be used in such cases.

Form IS 82 gives a Right of Appeal from the UK when an applicant does hold an EC.

Annex AA provides examples of refusal formulae

INDECS Refusal code: E4 - Lack of required non-settlement entry clearance, including on grounds of misrepresentation, forgery, failure to disclose material facts or where a change of circumstances has removed the basis of claim to admission

5. **AFTER ENTRY - FURTHER LEAVE TO REMAIN AS A DOMESTIC WORKER**

The requirements to be met by a person seeking leave to remain in the United Kingdom as a domestic worker in a private household are set out in paragraph 159D of HC395 and *must* be referred to when reading the following instructions.

5.1. Employer

The employer must usually be present in the UK. A person should not be allowed to remain as a domestic worker when the employer is not living in the UK. There may be acceptable cases where the employment continues while the employer is abroad, for example, a housekeeper taking care of a property or a cook working for the employer's family who remain in the UK while the employer himself is abroad. Even then, however, the employer must spend some time in the United Kingdom each year. If cases where the employer is absent for more than 6 months a year consult a Senior Caseworker before reaching a decision.

5.2. Change of employer

As domestic workers are able to change employers once in the UK we need to try and monitor any possible abuse of the concession by either individuals or employers. Domestic workers are therefore expected to inform the Immigration and Nationality Directorate by letter of any change of employer at the earliest opportunity. The following information should be provided:

- Full name and date of birth as in passport
- Where and when entry clearance was issued
- Details of original employer
- Details of new employer
- Reasons for change

On receipt of this information the Proforma at **Annex DD** should be completed and copied to both the post that issued the entry clearance and INPD Section 3. On completion of any application involving change of employer the file should be forwarded to INPD Section 3 to note.

Note: failure of a domestic worker to notify the department of a change of employer does not prejudice future applications.

5.3. Dealing with applications

Same employer as when given entry clearance/previous extension)

Persons seeking leave to remain will need to show that they continue to meet the requirements set out in paragraph 159D of HC395. Documents required:

- (i) Application form FLR(O) and documents required as stated on that form.
- (ii) an updated statement of current terms and conditions of employment signed by the employer and employee. This should include full details of the domestic worker's duties.
- (iii) An employer's letter confirming the employment continues should also be submitted.
- (iv) A letter from the employer confirming that he/she is complying with UK legislation on the National Minimum Wage (note: a refusal of application **cannot** be based on the fact that the employer fails to comply with this request)

Leave to remain as a domestic worker (new employer)

Persons seeking leave to remain with a new employer will need to show that they meet the requirements set out in paragraph 159D of HC395.

Documents required:

- (i) Application form FLR(O) and documents as stated on that form.
- (ii) A statement from the domestic worker or their representative confirming why they have left their original employer.
- (iii) a statement from the new employer to confirm that the domestic worker is able to maintain him/herself without recourse to public funds. If the accommodation is provided by the employer, they should confirm that a separate bedroom is provided for the domestic worker. The employer must also complete and sign a statement of the main terms and conditions of the domestic workers employment.
- iv) A letter from the employer confirming that he/she is complying with UK legislation on the National Minimum Wage (note: a refusal of application **cannot** be based on the fact that the employer fails to comply with this request)

N.B There is no requirement for the employer’s passport to be submitted with either of the above types of application unless caseworkers are not satisfied that the employer normally resides in the UK.

When applying for leave to remain the domestic worker should not be working in a business. (unless in the circumstances as set out in (*Annex BB*)).

Because of the very nature of their situation it is often the case that domestic workers have neither official payslips nor do they hold a bank account. As long as it is clear that the domestic can maintain themselves without recourse to public funds (i.e. the employer’s letter confirms they are responsible for accommodation, food etc), neither applications for settlement or further leave to remains should be refused solely on the ground that these cannot be provided.

5.4. Granting leave to remain

An extension of stay as a domestic worker in a private household may be granted for a period not exceeding 12 months code 4, endorsed “**other than as a domestic worker in a private household.**” The details of the employer must **NOT** be added to the endorsement.

INDECS code F4

5.5. Refusal of leave to remain

An extension of stay as a domestic worker in a private household is to be refused if the Secretary of State is not satisfied that the requirements set out in paragraphs 159D are met. Where the requirements are not met, the application falls for refusal under paragraph 159F of HC395.

Annex AA provides examples of refusal formulae.

INDECS code F9

5.6. Settlement

The requirements to be met by a person seeking indefinite leave to remain in the United Kingdom as a domestic worker in a private household are set out in paragraph 159G of HC395 and *must* be referred to when reading the following instructions.

Settlement may be granted, on application, to a domestic worker in a private household provided:

- (i) He has spent a continuous period of 5 years in the United Kingdom in this capacity
- (ii) He has met and continues to meet the requirements set out in paragraph 159A of HC395 throughout the 5 year period
- (iii) He continues to be required for employment as a domestic worker as confirmed by the current employer.

INDECS Code 1M

Refusing settlement

The general guidance on Adverse Decisions at **Chapter 9, Section 1** provides important advice about the decision-making process and should be consulted whenever an application falls to be refused.

Indefinite leave to remain in the United Kingdom for a domestic worker in a private household is to be refused under paragraph 159H if the Secretary of State is not satisfied that each of the requirements of paragraph 159G are met.

INDECS Code X7 – premature application, applicant still has concurrent leave to remain

INDECS Code X8 – settlement refused, no further leave to remain granted