

HSMP FORUM LTD JUDICIAL REVIEW: POLICY DOCUMENT

Who does this document apply to?

1. This policy document covers migrants who:
 - a. Received a Highly Skilled Migrant Programme (HSMP) approval letter issued under the requirements in place before 7 November 2006;
 - b. Were granted Entry Clearance or an Extension of Stay on the basis of that letter; and
 - c. Fall into one of the following three categories:
 - i. Currently hold HSMP leave and have either applied for an extension of stay or will need to do so in the future;
 - ii. Have been refused an extension of stay under the “new” HSMP arrangements introduced on 5 December 2006; or
 - iii. Did not apply for an extension of stay under the “new” HSMP arrangements.
2. This policy document **does not** apply to migrants who joined HSMP after receiving an approval letter under the arrangements that were brought in on 5 December 2006.

Background

3. The HSMP was suspended on 7 November 2006 and new immigration rules for the Programme applied from 5 December 2006. The new rules introduced (amongst other changes) a stricter extension test.
4. The extension test that existed before 7 November 2006 required migrants to show that they had made all efforts to become lawfully economically active in the United Kingdom. The extension test introduced from 5 December 2006 required them to score a minimum number of points for previous earnings, qualifications, age and United Kingdom experience, and to meet an English language requirement.
5. The HSMP Forum Ltd brought a judicial review on the grounds (amongst others) that migrants who had already joined the HSMP before the immigration rules changed had a legitimate expectation that the new extension test requirements would not be applied to them.
6. On 8 April 2008 the High Court ruled in favour of the HSMP Forum Ltd on this point.
7. This policy document has been produced to give effect to the High Court’s judgment into effect.

Migrants who currently hold HSMP leave and have either applied for an extension of stay or will need to do so in the future

8. The requirements for an extension of stay will be those that were in place before 7 November 2006.
9. If an applicant meets these requirements we will grant them:
 - a. Three years' leave; or
 - b. Enough leave to enable the applicant to complete the qualifying period for settlement,whichever is the greater.
10. Their grant of leave will confer the same rights and impose the same conditions as their previous HSMP leave.
11. The migrant's previous HSMP leave will count towards the qualifying period for applying for settlement as a highly skilled migrant, as will any leave issued under the terms of this policy.
12. Migrants will be able to apply for subsequent extensions of stay under these provisions should they not wish to apply for settlement.
13. Migrants will be charged the Tier 1 (General) further leave application fee in place at the time they make their application.

Migrants who were refused an extension of stay under the HSMP arrangements in place after 5 December 2006

14. Arrangements for these people will depend on whether they:
- a. Switched immigration categories and are still in the United Kingdom with valid leave (including discretionary leave or leave outside the immigration rules);
 - b. Left the UK after they were refused an extension of stay; or
 - c. Have an outstanding appeal or judicial review against the refusal.

HSMP migrants who switched categories

15. These migrants can ask us to review the original decision to refuse an extension of stay. If they do this, we will look at their case again and decide whether they met the HSMP extension of stay requirements in place before 7 November 2006.
16. If they do meet these requirements, we will grant them:
- a. Three years' leave; or
 - b. Enough leave to enable the applicant to complete the qualifying period for settlement,
- whichever is the greater.
17. Their grant of leave will confer the same rights and impose the same conditions as their previous HSMP leave.
18. The migrant's previous HSMP leave will count towards the qualifying period for applying for settlement as a highly skilled migrant as will:
- a. Any leave issued under the terms of this policy; and
 - b. The time between the end of their HSMP leave and the start of any leave issued under the terms of this policy.
19. Migrants will be able to apply for subsequent extensions of stay under the provisions in paragraphs 8-13 should they not wish to apply for settlement.
20. Migrants will not be charged a fee to apply for the review described in paragraph 15.

HSMP migrants who left the UK

21. These migrants can ask us to review the original decision to refuse an extension of stay. If they do this, we will look at their case again and decide

whether they met the HSMP extension of stay requirements in place before 7 November 2006.

22. If they do meet these requirements, we will grant them an Entry Clearance that gives them:
 - a. Three years' leave; or
 - b. Enough leave to enable the applicant to complete the qualifying period for settlement,whichever is the greater.
23. Their Entry Clearance will confer the same rights and impose the same conditions as their previous HSMP leave.
24. The migrant's previous HSMP leave will count towards the qualifying period for applying for settlement as a highly skilled migrant, as will:
 - a. Any leave issued under the terms of this policy; and
 - b. The time between the end of their HSMP leave and the start of any leave issued under the terms of this policy.
25. Migrants will be able to apply for subsequent extensions of stay under the provisions in paragraphs 8-13 should they not wish to apply for settlement.
26. Migrants will not be charged a fee to apply for the review described in paragraph 21.

HSMP migrants with an outstanding appeal or judicial review against the refusal

27. We will withdraw the immigration decision that gave rise to the appeal or judicial review claim. We will then reconsider the migrant's case and decide whether they met the HSMP extension of stay requirements in place before 7 November 2006.
28. If they do meet these requirements, we will grant them:
 - a. Three years' leave; or
 - b. Enough leave to enable the applicant to complete the qualifying period for settlement,whichever is the greater.
29. Their grant of leave will confer the same rights and impose the same conditions as their previous HSMP leave.

30. The migrant's previous HSMP leave will count towards the qualifying period for applying for settlement as a highly skilled migrant, as will:
 - a. Any leave issued under the terms of this policy; and
 - b. The time between the end of their HSMP leave and the start of any leave issued under the terms of this policy.
31. Migrants will be able to apply for subsequent extensions of stay under the provisions in paragraphs 8-13 should they not wish to apply for settlement.
32. Migrants will not be charged a fee for the withdrawal and reconsideration described in paragraph 27.

Migrants who did not apply for an extension of stay under the HSMP arrangements in place after 5 December 2006

33. Arrangements for these people will depend on whether they:
- a. Switched immigration categories and are still in the United Kingdom with valid leave (including people who left the UK and subsequently re-entered under another category); or
 - b. Left the UK.

HSMP migrants who switched categories

34. Provided they switched after 7 November 2006, these migrants may apply for an extension of stay as a highly skilled migrant, even if they are currently in an immigration category from which switching to Tier 1 (General) is not permitted under the immigration rules.
35. These migrants must apply by 31 July 2009. After that date, the provisions described in paragraphs 34-40 and paragraph 42 will be removed.
36. When these migrants apply we will first consider whether they meet the requirements to switch to the Tier 1 (General) immigration category. The usual requirements for an extension of stay in this category will apply with the following addition:
- a. Applicants will be required to show that their HSMP leave expired after 7 November 2006.
37. If they meet these requirements, we will grant them:
- a. Three years' leave; or
 - b. Enough leave to enable the applicant to complete the qualifying period for settlement,
- whichever is the greater.
38. Their grant of leave will confer the same rights and impose the same conditions as their previous HSMP leave.
39. If a migrant's application does not meet the requirements for an extension of stay in the Tier 1 (General) immigration category, but they have provided the evidence required in paragraph 36a, we will consider whether they meet the HSMP extension of stay requirements in place before 7 November 2006. If they do, they will receive the same grant of leave as set out in paragraphs 37 and 38.

40. Whether they pass the Tier 1 (General) extension test or meet the old HSMP extension of stay requirements, a migrant's previous HSMP leave will count towards the qualifying period for applying for settlement as a highly skilled migrant) as will:
 - a. Any leave issued under the terms of this policy; and
 - b. The time between the end of their HSMP leave and the start of any leave issued under the terms of this policy.
41. Migrants will be able to apply for subsequent extensions of stay under the provisions in paragraphs 8-13 should they not wish to apply for settlement.
42. Migrants will not be charged a fee for the application described in paragraph 34.

HSMP migrants who left the UK

43. Provided they left after 7 November 2006, these migrants may apply for Entry Clearance as a highly skilled migrant.
44. Migrants must apply by 31 July 2009. After that date, the provisions described in paragraphs 43-50 and paragraph 52 will be removed.
45. If they wish to return to the UK as highly skilled migrants, migrants must apply for entry clearance in the Tier 1 (General) immigration category. In addition to completing the Tier 1 (General) application form migrants will also be required to provide evidence that:
 - a. Their HSMP leave expired after 7 November 2006;
 - b. They left the UK after 7 November 2006;
 - c. They would have met the old HSMP extension of stay requirements when they were in the UK.
46. When these migrants apply we will first consider whether they meet the requirements for entry clearance in the Tier 1 (General) immigration category.
47. If they meet these requirements, we will grant them an Entry Clearance that gives them:
 - a. Three years' leave; or
 - b. Enough leave to enable the applicant to complete the qualifying period for settlement,whichever is the greater.

48. Their grant of leave will confer the same rights and impose the same conditions as their previous HSMP leave.
49. If a migrant's application does not meet the requirements for entry clearance in Tier 1 (General), but they have provided the evidence required in paragraphs 45a and 45b, we will consider whether they meet the HSMP extension of stay requirements in place before 7 November 2006. If they do, they will receive the same grant of leave as set out in paragraphs 47 and 48.
50. Whether they pass the Tier 1 (General) entry clearance test or meet the old HSMP extension of stay requirements, a migrant's previous HSMP leave will count towards the qualifying period for applying for settlement as a highly skilled migrant as will:
 - a. Any leave issued under the terms of this policy; and
 - b. The time between the end of their HSMP leave and the start of any leave under the terms of this policy.
51. Migrants will be able to apply for subsequent extensions of stay under the provisions in paragraphs 8-13 should they not wish to apply for settlement.
52. Migrants will be charged the Tier 1 (General) entry clearance fee in place at the time of their application described in paragraph 45.

General Grounds for Refusal

53. Where the applicant falls for refusal under the General Grounds for Refusal in paragraphs 320-322 of the Immigration Rules, we will refuse their application even if it otherwise qualifies under the terms of this policy. This might happen, for example, if they have previously broken UK immigration law or have a relevant criminal conviction.

Dependants

54. The immigration status of dependants of migrants in the categories covered by this policy will follow that of the principal applicant.

Settlement

55. A migrant who does not have current leave as a highly skilled migrant will not be able to apply for settlement as a highly skilled migrant. Any migrant who does not currently hold HSMP leave must successfully apply to be re-instated as a highly skilled migrant before they can apply for settlement from that category. Migrants who gain re-instatement and, as a result, complete the qualifying period for applying for settlement will then need to make a separate application for settlement.

Employment as a doctor in training

56. We will not place any condition on leave issued under the terms of this policy preventing a migrant from taking employment as a doctor in training.