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WORKING HOLIDAYMAKERS

GUIDANCE - GENERAL

1. PERSONAL STATUS - REQUIREMENTS

1.1. Nationality

A working holidaymaker must be a national or citizen of a country listed in Appendix 3 of the Immigration Rules for Working Holidaymakers* or be a

- a British Overseas Citizen;
- a British Overseas Territories Citizen; or
- a British National (Overseas)

*NB The countries on the list in Appendix 3 are all Commonwealth countries, but the list includes only those Commonwealth countries which have in operation bilateral agreements with the United Kingdom for the purpose of the scheme, which include satisfactory returns agreements. If an agreement is suspended at any time (temporarily or otherwise) the relevant country is removed from the list. (Any Commonwealth national was eligible under the nationality requirement until the Immigration Rules change that took effect on 8 February 2005.)

1.2. Age

The Rules require that a working holidaymaker must be within the age group of 17-30 years (inclusive) when he lodges his application for an entry clearance in the category. Provided that this condition was met the working holidaymaker may enter and be readmitted to the United Kingdom at any time during the validity of his entry clearance.

1.3. Family commitments

A working holidaymaker should normally be single, widowed, or divorced. Where an applicant is not single it is particularly important to consider what family commitments he has.

A prospective working holidaymaker who is married can **only** qualify for entry clearance if he and his spouse intend coming on a working holiday **together** and **both** qualify in their own right under requirements (i), (ii) and (iv)-(x) of Paragraph 95.

Where, however, the spouse is an EEA national (see **Chapter 7 Section 3** below) who is coming to the United Kingdom, or is a non-EEA national who otherwise qualifies for

entry under the Rules, the applicant should be advised to apply to accompany the spouse as a dependant , if the Rules provide for this.

A working holidaymaker must not have any dependent children who will be 5 years of age or over during any part of his working holiday.

1.4. Funds/Support

A working holidaymaker must have sufficient funds to pay the cost of the outward fare to the United Kingdom. The requirement to have the means to pay for the return or onward journey should be flexibly applied where there is reasonable expectation that the necessary funds will be earned before the expiry of the 2 year period.

Any working holidaymaker must also be able to satisfy the Entry Clearance Officer that he has the means to support himself for at least the first 2 months after arrival or for at least one month if he has a job arranged in advance.

NB The working holidaymaker Rules require that a working holidaymaker must be able and intend to maintain and accommodate himself and any dependants without recourse to public funds.

1.5 Intentions

A prospective working holidaymaker must be genuinely seeking entry clearance for the purpose of a holiday not exceeding 24 months in duration, and must intend to leave the United Kingdom at the end of his working holiday i.e. on completion of leave endorsed on the entry clearance for the purpose of the holiday.

It is understood that in the course of a 2 year stay plans may change, and a working holidaymaker may decide to apply for an extension of stay in another category. In such circumstances, an application for leave to remain in another capacity may be granted provided that the requirements of the Immigration Rules are met. It is important to note that working holidaymakers are permitted under the Immigration Rules to switch into work permit employment only if the occupation involved is listed on the Work Permits (UK) list of shortage occupations (published on the Home Office website: www.workingintheuk.gov.uk). ***NB They may only switch into such employment after they have spent more than 12 months in the United Kingdom in the Working Holidaymaker category.***

NB They are not permitted to switch into work permit employment which is not on the shortage occupations list.

For an Entry Clearance Officer considering an application for entry clearance as a working holidaymaker the relevant consideration is whether, at the time of the application, he can be satisfied that the applicant genuinely intends to leave the United Kingdom at the end of his working holiday.

2. EMPLOYMENT

2.1. Intention to work

A working holidaymaker should come to the United Kingdom with the intention of taking paid work here **as an incidental part of his working holiday**. If he does not intend working he will not meet the requirements of the working holidaymaker Rules and will be refused entry clearance.

2.2. Work incidental to a working holiday

Working holidaymakers are expected to intend to take work in the United Kingdom as an incidental part of their working holiday. Those wishing to enter in the category should treat the work that they do as a purely incidental part of their holiday (which should be their primary reason for being here) rather than being the reason for which they have sought entry to the United Kingdom. Accordingly, working holidaymakers must not intend to spend more than 12 months of their stay in employment, and must intend to spend the rest of their stay holidaying.

Entrants in the category may take most employment of their choice, including voluntary work.*.

However, they may not engage in business or provide services as a professional sports person, and they may only engage in work for a maximum period of 12 months in total throughout their stay. They may choose when to work and when to take their holiday breaks as they wish, but those who exceed the maximum 12 month period of work permitted will be in breach of their conditions

(The restriction on engaging in business does not rule out all self-employed activity where the latter is clearly temporary in nature, but any activity which involves commitments such as investment in premises, expensive equipment or the employment of staff is to be regarded as activity for which a person would be required to qualify under the Rules relating to business.)

(* Information on the National Minimum Wage and on the exemption under the NMW Act for voluntary workers is set out in Chapter 17 Section 9 of the Immigration Directorates' Instructions.)

NB Those granted entry clearance before the Immigration Rules change which took effect on 8 February 2005 are not subject to any restrictions on the amount or type of work they may do during their stay – any Entry Clearance vignettes issued after that date will include reference to the restrictions which apply.

See IDI Chapter 17 Section 12 for information on the Concessionary Leave Outside the Rules for Teachers with Leave as Working Holidaymakers.

2.3. Study

It is acceptable for a working holidaymaker to engage in some part-time study and short periods of full-time study whilst he is here. He should not however intend to engage in full-time study for the whole period of his stay since, in those circumstances, he would not satisfy the requirement that he intends to take employment incidental to a working holiday. An applicant who intends to do so should be refused an entry clearance and be expected to meet the requirements of the Rules relating to students.

3. DEPENDANTS

3.1. Spouses

The Rules require that a working holidaymaker be unmarried or, where such a person is married, the spouse **must** qualify for admission as a working holidaymaker in his or her own right **and** both parties should intend to take a working holiday of the same duration together. Applicants applying as a dependant of a prospective working holidaymaker should be refused under Paragraph 320(I); the prospective working holidaymaker should be refused under Paragraph 95(iii).

3.2. Children of working holidaymakers

Children of working holidaymakers will be admitted only if they are under 5 years of age and will not reach that age before the parents complete the **period of stay as working holidaymakers authorised by their entry clearances**. Other than in the circumstances set out in paragraph 101(iv) (a), (b) or (c) of the Rules a child should be accompanying or joining both parents who will be expected to maintain and accommodate the child without engaging in employment other than incidental employment consistent with a working holiday. Children must hold a valid entry clearance for entry in this category.

4. SWITCHING

A person admitted to the United Kingdom for any other purpose should be refused an extension of stay as a working holidaymaker under Paragraph 322(1) of HC 395, on the grounds that the variation of leave to enter is being sought for a purpose not covered by the Immigration Rules.

NB Advice on switching into work permit employment or the student category is contained in Immigration Directorates' Instructions Chapter 5 – "Employment" and Chapter 3 – Students" respectively.