

ESTABLISHING A GENUINE VACANCY

Caseworkers should ensure that evidence of a genuine vacancy is established for every application submitted. This ensures that there is sufficient work at the appropriate level, for the amount of hours and period requested in the role described on the application form. The post must not have been created for the purpose of recruiting a particular person.

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What to do if?

- The Risk Assessment grid is checked
- The overseas national has been working for the employer and the post has not been advertised
- A large number of resident workers applied for the post
- The post was advertised in an inappropriate medium
- The employer continually uses the same publication although it always obtains a nil response
- The employer is not established
- The job description and/or advertisement is too restrictive
- The overseas national is wanted to switch from a TWES to a B&C work permit
- The information provided indicates a genuine vacancy does not exist
- A Representative has been used and the application is from a high risk sector
- The evidence provided meets the requirements of the work permit criteria and shows that there is a genuine vacancy

gLOBE

Caseworkers should search gLOBE under 'Single Applications' for the employer to establish the number of work permits that have been issued to this employer. This will provide an indication of the number and type of applications submitted. If a search is then undertaken on the postcode, it will also highlight if there is more than one employer at the address. See 'What to do if there is more than one employer at an address'.

Response to Advertising

In order to establish that a genuine vacancy exists for Tier 2 applications, employers are normally required to undertake a recruitment search from the resident labour market. Caseworkers should ensure the advertisement meets the work permit criteria.

Caseworkers should consider the answer to the question on the application form detailing the number of people who applied for the vacancy and reasons for refusal of each resident worker who applied. Caseworkers should then assess the **credibility** of the statement that no suitably qualified or experienced resident worker was available to fill the post. If large numbers of resident workers applied for the post, caseworkers should ask why none of these were appointed (see 'What to do if a large number of resident workers applied')

Appropriate Advertising

Any advertising undertaken must be in the most appropriate medium for reaching suitably qualified or experienced resident workers. The employer should explain on the application form why they used this method. This may include evidence of previous successful recruitment campaigns in this medium. Caseworkers should also assess the **credibility** of the employer's genuine attempt to recruit from the resident labour market if continually using a publication which elicits a nil response from vacancies placed.

Employer Established

In order to establish that a genuine vacancy exists, a UK-based employer must show that they are in a position to offer a job for the duration of the permit requested. See Establishing the Employer. **NB:** Caseworkers may use the DFES Register of Providers on Knowledge Base when assessing applications for educational establishments.

Job Description

The job description should provide details of the specific skills and experience required for the job on offer. Further information can be requested using paragraph P60A. The description should provide a picture of a genuine vacancy requiring genuine skills applicable to the job on offer and should not be tailored to exclude resident workers from applying. Caseworkers should check the job description against the relevant occupation sheet to ensure the skills required correlate to the job title and are above the skills threshold. For Intra-Company Transfer applications, please refer to that section.

Business Plan

Where the company has only recently been established and business accounts, balance sheets and VAT returns are not available, it may be appropriate to request a copy of the business plan using paragraph P63D.

This should show details of the number of staff employed, the products or services, anticipated levels of turnover, income and expenditure, publicity or marketing material. The business plan should clearly demonstrate the need for specific roles within the company. Information of this type should be noted in the gLOBE employer comments for future reference.

Invoices

A business will usually be able to provide invoices for equipment or services. Invoices for equipment needed by the OSN to do their job can be used to build a case which might suggest a genuine vacancy exists.

Contracts

Caseworkers may request copies of any contracts currently held by the company using paragraph P62T. These should be signed and dated by all parties concerned and show the deliverables (see Contract). The contracts should clearly show that the company exists and that there is work to be undertaken by the company as a whole. The contracts do not need to be specific to a particular vacancy but should demonstrate that the company exists and that work is generated as a result of these contracts.

Staff Lists

Staff lists can be requested from all employers using paragraph P64D. A staff list should include the names and positions of all people employed, as well as the vacancies in the organisation which have yet to be filled. The list should also indicate if any current staff are work permit holders. A staff list may give an indication of future applications that the company will make and will demonstrate when people have left employment. NPEE forms or P35 forms should also be submitted as evidence.

Employers have the right to refuse to provide **personal data** (i.e. names, NI numbers, etc.) of staff who are not work permit holders. In this instance, caseworkers should advise them that they must still provide the information requested but they may remove any personal data for resident staff.

Staff Hierarchy Charts

A hierarchy chart can be requested using paragraph P60B. A hierarchy chart should show that the company has a vacancy that needs filling and the level of seniority of the job. This will demonstrate the amount of responsibility and supervision a position holds and can be compared with the job description in the application form and advertisements.

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Publicity Material

Publicity material can be requested using paragraph P64A. Publicity material will demonstrate the size and nature of the business and help to indicate whether the work to be undertaken fits into the overall nature of the business.

What to do if?

The Risk Assessment grid is checked – If the doubt about Genuine Vacancy test box is ticked by the Executive Officer (EO) who pre-sifted the case, doubt has arisen regarding the vacancy. Caseworkers should ensure that all the relevant checks have been carried out fully. In most cases the EO will have given comments and any instructions should be carried out. Also see A large number of resident workers applied for the post

The overseas national has been working for the employer and the post has not been advertised – Where the overseas national has been working for the employer as a Working Holiday Maker or Student, for example, the caseworker should insist on seeing evidence of advertising. This is to ensure that the employer is offering a genuine vacancy which would otherwise be filled by a resident worker and that resident workers have had the opportunity to fill the post. If a compelling business case is presented, the requirement to advertise the post can be waived at the discretion of the Business Team's Higher Executive Officer (HEO) (see advertising). If the post is in the Tier 1 category, it will not require advertising.

A large number of resident workers applied for the post- Where a post advertised has elicited a large number of responses from resident workers, caseworkers should request details of each person who responded to the advertisement and reasons for rejection for each person. If caseworkers doubt the reasons why the vacancy has not been made available to resident workers, copies of CVs and job applications can be requested using paragraph P63I in the enquiry letter. If CVs or job applications show that resident workers who applied had skills, qualifications and/or experience which match the job description and job advertisement and were available to take the post, caseworkers should refuse the work permit application on resident workers being available. Paragraph P80L should be used in the refusal letter, detailing the skills of the resident workers who match the job specifications.

The post was advertised in an inappropriate medium – This, on its own, is a ground for refusal, as it may not represent a genuine attempt to recruit resident workers. Paragraph P83D should be included in the refusal letter. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application. That said, if this is the only ground for refusal, caseworkers might wish to discuss with their line manager whether an exceptional approval is justified. In this case the approval letter should include paragraph P70A.

The employer continually uses the same publication although it always obtains a nil response – For us to accept that a genuine vacancy exists, a genuine attempt to recruit from the resident labour market should be made for Tier 2 applications. If an employer/representative continues to use a publication which elicits a nil response to advertised vacancies, the caseworker should normally refuse the application on not making a genuine attempt to recruit resident workers. However, where the publication in question is considered to be the most appropriate place to advertise a specific type of post, such as for a doctor in the Lancet or a teacher in the TES, and there is a genuine shortage of the skills required in the labour market, it may be deemed as a genuine attempt to recruit from resident labour. The refusal letter should include an adaptation of paragraph P83D along with any other reasons for refusal.

The employer is not established - Where an employer has provided business documents which do not show that they can sustain the employment of the overseas national, the application should be refused on not being able to support the vacancy.

The job description and/or advertisement is too restrictive – If the job description is so restrictive that only the person who is the subject of the work permit application can undertake the job, or only a member of a particular ethnic group or organisation could apply, caseworkers must assess the requirements of the job in relation to those normally required for such a position. The relevant occupation sheet/Connexions website will give an indication of the normal requirements for a particular occupation. If in doubt, caseworkers should consult their line managers and, if necessary, the Policy Team. Where it is deemed that the advertisement and/or job description has been written to fit the personal specification of the applicant, the case will fall for refusal. Paragraph P83G should be used/adapted in the refusal letter.

The overseas national is wanted to switch from a TWES to a B&C work permit – B&C applications for TWES switches should be refused and paragraph P85F included in the refusal letter. Caseworkers should note that all refusal reasons should be included in the refusal letter, for example, P83K if the advertising is deemed not to be a genuine attempt to recruit, and all letters should be tailored to the individual application.

A Representative has been used and the application is from a high risk sector – Please refer to the caseworker risk assessment bulletin.

The information provided indicates that a genuine vacancy does not exist – It is important that the evidence clearly shows that the applicant will be working as described in the application form and in any advertisements that are submitted. New information should be considered in conjunction with any previous information submitted to establish if an employer can offer a genuine vacancy. No single piece of evidence should be the sole basis for a refusal, unless this clearly demonstrates there is no genuine vacancy. If the information provided clearly demonstrates that there is not sufficient work for the amount of hours and period requested in the role described in the

application form, the application should be refused on the employer not being able to provide a genuine vacancy. This should be noted in the refusal letter and in the gLOBE employer comments for future applications for this company.

The evidence provided meets the requirements of the work permit criteria and shows that there is a genuine vacancy– Continue the case working process and include any relevant information regarding the employer’s ability to provide genuine vacancies in the gLOBE employer comments.

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