

SHAREHOLDERS

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SHAREHOLDERS

Genuine vacancy

Where the worker holds or has held shares in the UK company or in a company which has a significant interest in the UK company, caseworkers should check that a genuine vacancy exists.

Small shareholdings

Caseworkers should ensure that any shareholding represents a very small proportion of the shares issued by an employer. This should be typically no more than 10% and that the shares do not represent a significant or controlling interest in the UK-based company. It is also important that the caseworker ensures that the shares were only obtained as part of a salary package linked to their employment.

Please note that the 10% figure is only a guideline. It may be the case, for example, that a 5% share holding in one company might be deemed significant if most of the other shareholders own less than 1%, whereas a 12% holding might not be deemed a significant interest if two other shareholders have 30% each.

If the answers given on the application form make it difficult to ascertain whether the person has or has had a significant beneficial interest in the UK company caseworker should ask the following questions the answers to which should be noted on gLOBE:

- i. How many shares are held by the individual?
- ii. How many shares are held by other individuals?
- iii. Do the shares have voting rights?
- iv. On what basis are these shares allocated?
- v. How are the rest of the employer's shares distributed?

Beneficial Interest

Caseworkers should ensure that the OSN does not have a significant beneficial interest:

- Directly through a significant share ownership in the UK company;
- Through a share ownership of an overseas company with a significant holding in the UK-company; or
- Through shares owned by the overseas national but held in trust.

Self Employment

Work permits are not issued for self-employment. Those seeking to establish a new business or to work for a business that they already own or in which they already own shares should apply under the provisions of the Immigration Rules relating to self-employment. Paragraph P80J should be included in the refusal letter.

What to do if?

The worker has shares of more than 10% – Where the worker has shares of more than 10% and other shareholders have an equal or smaller proportion of shares, the OSN may have a significant beneficial interest in the UK-based

company. Caseworkers should refuse the application if that is the case using letter L800/860 and including paragraph P80M.

The OSN has recently transferred shares to spouse, civil partner or children – If this is the case, the OSN may still be trying to avoid using more appropriate Immigration routes. It also follows that a genuine vacancy cannot exist, as they will have still used their influence to obtain the employment. Such applications should be refused using L800/860 and including paragraph P80M.

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