

The Right Honourable Priti Patel MP, Secretary of State for the Home Department
Kevin Foster MP, Minister for Safe and Legal Migration
Paul Karim, Deputy Director – Head of Work Operations

17 March 2022

Dear Madam or Sir,

Flexibility in the Skilled Worker route for those fleeing the Russian invasion of Ukraine

1. Background

- 1.1 Given the current situation in Ukraine, we are writing to you in relation to sponsorship under the Skilled Worker route. Whilst our primary position is that the Home Secretary should lift visa requirements to enable persons fleeing Ukraine to travel to the UK, we also suggest some necessary concessions in respect of the Skilled Worker route for all individuals who are Ukrainian nationals, or who were resident in Ukraine and were forcibly displaced because of the conflict ('individuals').
- 1.2 We are aware that a number of registered licensed sponsors are willing and able to sponsor such individuals under the Skilled Worker route as they have genuine vacant roles. Many have flagged their interest to ILPA members and we are aware of voluntary organisations travelling from the UK to Poland and working with recruitment agencies to help identify Ukrainian nationals who may be a good fit for the vacant roles.
- 1.3 We are writing to you with four principal requests in respect of potential applications for these individuals, and the exercise of discretion by the Home Office as set out below.

2. English language requirements

- 2.1 The first request relates to the English language requirement. As you know, all applicants applying for entry clearance as Skilled Workers must show ability on the Common European Framework of Reference for Languages in all 4 components (reading, writing, speaking and listening) of at least level B1 (intermediate), and must demonstrate they meet this requirement as specified in Appendix English Language of the Immigration Rules.
- 2.2 As you will appreciate, given the current circumstances in Ukraine and the situation that many people find themselves in having crossed the border into neighbouring countries at short notice, it may be difficult for some individuals to provide the documents required to

- demonstrate that they meet the English language requirement (for example degree or examination certificates).
- 2.3 In addition, individuals in question find themselves in a situation of distress. Requiring them to sit an English language test in these circumstances imposes a logistical and practical burden at a time when peoples' lives have been turned upside down.
 - 2.4 In the first instance, we would request that the Home Office introduce a concession through which the English language requirement would be waived completely for these individuals applying under Skilled Worker.
 - 2.5 Removing the barrier of the English language requirement would facilitate entry under the Skilled Worker route, which would in turn relieve pressure on other routes into the UK for Ukrainians and Ukrainian residents and allow individuals to enter the UK under a framework which is already in place. Individuals would need to satisfy the sponsorship and salary requirements rendering them financially independent. In addition, the strict sponsorship requirements should help alleviate concerns surrounding potential trafficking of individuals.
 - 2.6 In the alternative, if the Home Office will not waive the English language requirement, we ask that it consider exercising discretion to grant leave to enter and permission to stay under the Skilled Worker route to individuals who have not satisfied the English language requirement, on the basis of compelling and compassionate personal circumstances. Individuals can then satisfy the requirement when they come to apply for settlement in the UK, after completing their five years of continuous residence in the UK. We would like to draw your attention to similar concessions which have been introduced in relation to those unable to satisfy the continuous residence requirements for settlement in the UK due to COVID-19.
 - 2.7 Finally, if the Home Office will not waive the English language requirement or exercise discretion (as set out in paragraphs 2.4 and 2.6 above), we ask that it consider granting leave to enter under the Skilled Worker route to individuals who cannot satisfy the English language requirement, and imposing a condition on their leave to sit an appropriate Secure English Language Test within 12 months of arriving in the UK. This would be similar to the condition imposed upon certain nationals to register with the police upon arrival in the UK, whereby failure to do so can lead to curtailing of permission to stay and being unable to extend their permission in the future. This would remove the obstacle of needing to evidence English language ability at this juncture for many potential Skilled Worker applicants, meaning applications could be made more quickly, whilst retaining the integrity

of the existing English language requirement for Skilled Workers and the existing framework of Secure English Language Test providers.

3. Request for discretion in relation to tuberculosis testing requirements

3.1 The second request relates to testing for tuberculosis (“TB”). As you will be aware, applicants who have been present in Ukraine for more than six months immediately prior to making an application, and who are applying for entry clearance to come to the UK for more than six months as a Skilled Worker, must present with their application a valid medical certificate from an approved medical practitioner, confirming they have undergone screening for active pulmonary tuberculosis and that this tuberculosis is not present in the applicant (a “TB certificate”)¹.

3.2 We note that the government’s published guidance on a concession to the Immigration Rules for Ukrainian nationals on family routes, and for those on work and study routes, waives this requirement for those who fall within that concession, noting that TB test facilities in Kyiv are closed and that screening for TB cannot reasonably take place.² As published, this concession appears to apply only to those who had entered the UK prior to 24 February 2022 or who had made an application for entry clearance prior to this date and subsequently entered the UK.

3.3 We respectfully request that, in the circumstances, the requirement for TB testing be waived for all individuals who are Ukrainian nationals, or who were resident in Ukraine and were forcibly displaced because of the conflict making applications under Skilled Worker and other points based system routes. Given that the requirement has already been waived for those who fall under the concessions referred to in paragraph 3.2, we can see no reason that it should not be waived in this instance.

4. Request for discretion in relation to criminal record certificates

4.1 The third request relates to the requirement, for applicants whose roles fall within certain occupation codes, to provide a criminal record certificate from the relevant authority in

¹ Immigration Rules paragraphs SW 3.2 and A39; and Appendix T.

² Home Office, ‘Concession to the Immigration Rules for Ukrainian nationals on family routes’ (version 1.0, published 25 February 2022) page 7 available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1057364/Concession_to_the_Immigration_Rules_for_Ukrainian_nationals_on_family_routes.pdf accessed 14 March 2022; Home Office,

‘Concession to the Immigration Rules for Ukrainian nationals on work and study routes’ (version 1.0, published 25 February 2022) page 9

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1057423/Ukrainian_nationals_on_work_and_study_routes_-_concessions_to_the_Immigration_Rules.pdf accessed 14 March 2022.

any country in which they have been present for 12 months or more in the 10 years before the date of application, while aged 18 or over.³

4.2 Given the circumstances in which the individuals find themselves, it will not be possible for them to obtain criminal record certificates from Ukraine at the present time. Similarly, it is likely to be difficult and potentially dangerous for them to seek to obtain such a certificate from Russia, in the event that this would be required. It would also cause undue delay to wait for such certificates to be processed by other countries before applying.

4.3 The Immigration Rules already provide that if an applicant provides a satisfactory explanation why it is not reasonably practicable for them to obtain a criminal record certificate from any or all of the relevant authorities, that this requirement does not apply.⁴ We would, however, be grateful for your confirmation that the present circumstances in Ukraine would amount to such an explanation, such that the requirement to provide a criminal record certificate would not apply. We also understand that criminal record certificates that cannot be obtained from Ukraine would fall within the documentary evidence concession already published for those on family routes and those on work and study routes.⁵ We suggest that the Home Office could confirm that this concession could be relied on in circumstances in which a criminal record certificate is required to be obtained under the Skilled Worker route, and could confirm that this concession will apply to those applying for entry clearance to the UK after 24 February 2022.

5. Reporting Duties

5.1 Our fourth and final request relates to the potential for the individuals mentioned above to be offered a “transition period” by their UK employers (i.e. registered sponsors), upon their entry to the UK. Such a “transition period” would be offered in recognition of the need for these individuals to adjust and adapt to life in the UK, and to establish themselves here socially and culturally. Concretely, employees would be offered time off from their employment in order to carry out activities necessary to assist their integration, such as helping children integrate into school, establishing their home lives, and building relationships with local communities.

5.2 Under the current Sponsor Guidance and Immigration Rules, Skilled Workers can take periods of unpaid leave of up to 4 weeks and no reporting of the same is required on the Sponsor Management System.⁶

³ Immigration Rules paragraph SW16.1

⁴ Immigration Rules paragraph SW16.2

⁵ (n 2) page 7 for the family route, and page 9 for work and study routes.

⁶ See, for example, Immigration Rules, 9.30.1.

5.3 Similarly, reductions in salary are permitted where a sponsored worker would still score 20 points for the same tradeable points option as the option in which they scored the points which led to their current grant of permission.⁷ Such reductions must be reported, along with the revised salary.

5.4 Our understanding is, therefore, that any reduction in salary for sponsored workers in the above circumstances, which resulted from an employer providing for additional time off for a sponsored worker during such a “transition period”, would be permitted under the current Rules and guidance, provided that the minimum salary levels applicable to the specific tradeable points option and occupation code continued to be met, and provided that an appropriate report were made on the Sponsor Management System. In view of the unusual circumstances surrounding these proposed reductions, we would be very grateful for your confirmation of the same.

6. Urgent recommendations

6.1 We would be grateful for your prompt consideration of our requests and trust you appreciate their urgency. By way of summary and in case useful for your reference, we are requesting that the Home Office:

- (a) exercise discretion in relation to the English language requirement, either:
 - (i) by waiving the requirement; or
 - (ii) by granting entry clearance in the above circumstances without the need for evidence of this requirement being met by relying on compelling and compassionate circumstances, with individuals being exempt until any application for settlement is made; or
 - (iii) by granting entry clearance in the above circumstances without the need for evidence of this requirement being met with the condition that they must satisfy this requirement within 12 months of entry to the UK;
- (b) exercise discretion in waiving the requirement for TB certificates to be provided, as set out above;

⁷ UK Visas and Immigration, ‘Workers and Temporary Workers: guidance for sponsors part 2: sponsor a worker – general information (accessible version)’ (version 02/22, Updated 15 February 2022) paragraph S4.16 <<https://www.gov.uk/government/publications/workers-and-temporary-workers-guidance-for-sponsors-part-2-sponsor-a-worker/workers-and-temporary-workers-guidance-for-sponsors-part-2-sponsor-a-worker-general-information-accessible-version#Reduction-in-salary>> accessed 14 March 2022.

- (c) confirm that the circumstances above will be deemed a satisfactory explanation as to why it is not reasonably practicable for an individual to provide a criminal record certificate, and therefore as to why the relevant requirement would not apply; and
- (d) confirm that any reduction in salary due to an employer offering a “transition period” for individuals in the above circumstances would be permitted under the sponsor regime, subject to the necessary reporting, on the basis that such a reduction would meet the requirements of a permitted reduction under the sponsor guidance.

6.2 In light of the need for urgent action on the Home Office’s part, we would request that the recommendations are implemented promptly by way of published concessions. We note however, the importance of ensuring that the Immigration Rules subsequently take account of any such concessions in order to ensure that those benefiting from the concessions are not adversely impacted at a later date and would expect the Immigration Rules to be updated at a later day. We note that this approach has been taken by the Home Office in the context of the COVID-19 pandemic.

7. Conclusion

We urge you to consider the policy issues raised in this letter urgently and provide confirmation of the position in each of these areas.

Yours sincerely,

Zoe Bantleman

Legal Director
ILPA