

Immigration Law Update Seminar | No8 Chambers | Bushra Ali Group

COVID -19 POLICY AND PROCEDURE

7th May 2020

Emma Rutherford

Emma Rutherford No8 Chambers
emmarutherford@no8chambers.co.uk



Introduction

- Overriding principle for Home Office is that

“The Home Office and its Ministers are very clear that no one will have a negative outcome through the immigration system due to a circumstance that was beyond their control.”

- Contact email address for the Coronavirus Immigration Help Centre CIH@homeoffice.gov.uk
- Telephone: 0800 678 1767 (Monday to Friday, 9am to 5pm)

Visa Extensions

- 17th February 2020 Chinese citizens in UK told would get automatic extensions to 31st March 2020 if
 - Visa had an expiry dated between 24th January 2020 and 30th March 2020
 - Been compliant with conditions of visa prior to coronavirus outbreak
 - For those who would have left the UK but cannot due to virus
- Non Chinese citizens who ordinarily live in China and are non EEA nationals got an extension of leave if they contacted the coronavirus hotline.

- On 24th March 2020 policy extended to all nationalities and leave now extended to 31st May 2020. This includes those covered by earlier automatic extension
- Not automatic need complete online form and explain why you cannot leave
- Within 5 days should get confirmation from SSHD
- Concerns been raised regarding whether section 3C of the Immigration Act 1971 applies

People Outside the UK Waiting to Travel

- If your 30 day visa to travel to the UK for work, study or to join family has expired, or is about to expire, you can request a replacement visa with revised validity dates free of charge until the end of this year.

Applications for Further Leave to Remain

- No concessions regarding meeting requirements of Immigration Rules

Switching

- Can now switch in country where previously not allowed
- Current leave must be due to expire before 31st May 2020
- Still required to meet all requirements of relevant Immigration Rule
- Must pay normal application fee and the IHS
- Section 3C of the 1971 Act will apply here

NHS Workers

- Automatic one year extension of LTR
- Has been expanded from doctors, nurses and paramedics and their family members to much wider list of front line workers
- Applies if LTR expires before 1/10/2020
- No fee to pay and no IHS to pay
- Employer will tell those who are eligible
- Need to send BRP to SSHD and will be sent replacement with new date leave expires
- If already applied email the UKVI NHS team to withdraw existing extension application and apply for a refund. You cannot do this if provided biometrics.

- No restrictions on number of hours can work or volunteer if work for the NHS as a doctor, nurse or paramedic and have LTR in the following categories:
 - Tier 4 student
 - Tier 2 worker and NHS job is a second job
 - visiting academic researcher
 - holder of a short-term visa and are permitted to volunteer
- For pre-registration nurses in the UK the deadline to sit the Occupational Structured Clinical Examination has been extended to 31 December 2020

Tier 1 Entrepreneurs

- For those whose business has been disrupted the following applies
- No longer need to employ at least 2 people for 12 consecutive months each. The 12 month period can be made up of multiple jobs across different months
- Time when employees were furloughed will not count towards the 12 month period
- If not been able to employ staff for 12 months in total by the time visa expires, allowed to temporarily extend stay to allow time to meet the requirement
- Will continue for applications made after 31 May 2020, where the jobs relied upon were disrupted due to COVID-19

Tier 4 Students

- Distance learning is allowed for existing Tier 4 students
- New students issued with a Tier 4 visa but who have not travelled can undertake distance learning and sponsorship does not need to be withdrawn
- Students whose leave to remain expires between 24th January 2020 and 31st May 2020 who would otherwise be unable to extend in country now can
- Students who are unable to complete their course of study within the current period of leave due to COVID-19 will be able to apply in country to complete the course
- Those who need more time to complete their course as a result of COVID-19 will be exempt from showing academic progression

- Students applying for extensions of leave to remain from 21st March 2020 who would usually be required to register with the police or who need to register any other change in circumstances they are exempt from doing so
- Limitations on working hours now lifted for student doctors, nurses and paramedics who have work rights and who are employed by an NHS trust
- Those whose sponsor has suspended all study can work full time
- Can volunteer as a NHS Volunteer Responder

- A discretion may be applied if an extension is sought that will take an Applicant over the normal period allowed on a Tier 4 (General) visa
- Graduate Route is still scheduled to start summer 2021

Short Term Students

- In country switching into Tier 4 allowed on exceptional basis until at least 31st May 2020
- Still must meet other requirements of route
- Can start to study on new course from the date of application subject to obtaining an ATAS certificate if required
- If given an extension in this category as a result of COVID-19 will be allowed to study on a further course other than the one which they originally entered the UK to undertake
- No provisions in the Immigration Rule to make an application to extend leave in the short-term study category
- Short term students whose leave is due to expire before 31st May 2020 can request a short extension of leave until 31st May 2020

Sponsors' Duties

- No need to report student or employee absences related to coronavirus
- No not need to withdraw sponsorship if because of coronavirus:
 - a student is unable to attend for more than 60 days
 - an employee is absent from work without pay for more than 4 weeks
- Until 31st May 2020 students can study through distant learning whether in the UK or abroad. New students who cannot travel to UK can commence studies via distant learning with no need to withdraw sponsorship
- No need to tell Home Office students moved to distant learning
- If a student has permanently withdrawn from their studies or deferred their studies for reasons unrelated to coronavirus, must report this as usual.

- If already issued a CAS or CoS and Applicant has not yet applied for a visa they can still do so
- The start date for the course or employment stated on the CAS or CoS may have changed. Such cases will not automatically be refused but will be considered case by case basis
- Higher education providers with a track record of compliance will be able to self-assess students as having a B1 level of English

- Students can start their studies before their visa application has been decided if:
 - The educational institution is a Tier 4 sponsor (other than Tier 4 Legacy Sponsor)
 - A CAS has been assigned
 - The application for further leave to remain was submitted before their current visa expired and the institution has seen evidence of this
 - The course they start is the same as the one listed on their CAS
 - The student has a valid ATAS certificate if required
- Reporting responsibilities start from the date the CAS is issued
- If the application is unsuccessful the studies must be terminated

- Don't need to notify if employees are working from home due COVID-19
- Employees can start work before their application has been decided if
 - They have been assigned a CoS
 - They submitted their application for LTR before their current visa expired
 - They are employed in the same role as the one on their CoS
- Reporting responsibilities begin from day assign CoS
- Cannot report information to the Home Office via the SMS but must record and maintain all relevant information
- Any changes that will impact of the application should be updated on the CoS
- If the employee's application is unsuccessful must terminate employment

- Can use furlough arrangements provided
 - any changes to earnings are part of a companywide policy to avoid redundancies
 - all workers are treated the same
 - that the changes are temporary
 - that pay returns to previous levels once arrangements have ended
- Right to work checks can be done remotely

Immigration Detention And Bail Applications

- No plan for wholesale systematic releases
- The High Court rejected a challenge by Detention Action which aimed to secure release of all immigration detainees
- Various commitments were made to safeguard detainees in detention
- Undertaking to proactively review the detention of all immigration detainees
- Very strong presumption against new detentions for people facing removal from approximately fifty different countries

- Bail applications being looked on favourably by Judges
- Judges are triaging them
- If minded to grant having looked at the papers the Judge is issuing a notice to that effect with proposed conditions and asking for parties views
- If SSHD still opposes bail or issue with conditions will be a hearing

- Points to Consider in Bails
- No imminent removal
- Low risk of reoffending
- COVID-19 risk to particular Applicant.

- Since 17th March 2020 reporting as a condition of immigration bail temporarily paused
- Confirmation via text message that reporting suspended and will be contacted when reporting is to resume

No Recourse To Public Funds

- No blanket policy change to NRPF restrictions
- Those with NRPF requirement are able to access the following support
 - Coronavirus testing and treatment
 - Food and medicine deliveries if shielding as a particularly vulnerable person
 - SSP
 - Contributory ESA
 - Coronavirus job retention scheme and self employment income support scheme

- If need further recourse need to apply to have restriction lifted.
- Can apply for a change to your conditions if:
 - financial circumstances have changed since being given permission to stay in the UK and no longer able to provide food or housing for yourself or your family
 - Your child is at risk because of your very low income
 - had financial problems when you first applied but did not provide evidence of this and you now want to provide this evidence.
- Guidance instructing staff to *'provide sympathetic and expeditious decision making'* when considering applications to lift NRPF restrictions
- There are consequences of applying to have NRPF requirement lifted

Tribunal Procedure

- On 19th March 2020 a pilot practice direction was issued by the Senior President of the Tribunal
 - Tribunals can now triage cases to identify those that it is considered can be dealt with on the papers
 - The Tribunal can give an indication as to its preliminary view of the appeal
 - Parties will be notified of the Tribunal's preliminary view and can make representations. If a hearing is required by one of the parties it will be listed
 - Where a hearing is required it is if possible to be dealt with remotely

First Tier Tribunal Procedure

- Operational Update for the First Tier Tribunal
- *The tribunal has suspended face to face hearings (other than in exceptional circumstances) until further notice. A notice containing instructions on the next steps in your case will be sent to you. We are working through the listed cases in priority and date order and you should wait until we contact you. Please do not call us unless your enquiry is urgent. Bail applications will be prioritised and where a hearing is required, will be listed to take place by telephone or video. Users are advised to contact the relevant hearing centre on the email addresses below until further notice.*

- PRESIDENTIAL PRACTICE STATEMENT NOTE No 1 2020:
ARRANGEMENTS DURING THE COVID-19 PANDEMIC
- Requires commencement of all appeals with the exception of HR/EEA appeals using online procedure
- If cannot do so can commence appeal without using online procedure but must explain why not possible

- Standard Directions are being issued with the following introductory paragraph

In view of the rapidly changing circumstances created by the Covid-19 pandemic, the President of the First-tier Tribunal (IAC) has directed that all appeals will proceed by way of a Case Management Hearing (CMR) via telephone or Skype which will take place on a date to be notified in a time slot to be allocated. All current scheduled hearings are vacated.

- Important points to note from the standard directions that are being issued
- Any witness statements and other evidence upon which the Appellant intends to rely must be sent electronically to the Tribunal and to the Respondent together with an Appeal Skeleton Argument ('ASA')
- The Respondent must serve a response to the ASA. If no response is received within the time limit it will be assumed that the Respondent does not take issue with the submissions contained in the ASA
- The ASA and the response together with all the evidence provided will be considered by a Judge who will consider, having given the parties an opportunity to make written representations, whether the appeal can be justly determined without a hearing
- In cases concerning international protection the Appellant must set out in the ASA a summary of the Appellant's case together with a schedule of issues and the Respondent must respond accordingly

- Where it is not considered appropriate for the matter to proceed without a hearing, consideration will be given to the hearing of this appeal by remote means. To that end each party must provide at the CMR or before
 - the means by which they, the appellant(s) and any witnesses, will engage with the Tribunal (the Tribunal expects all representatives to have access to Skype or Skype for Business);
 - the location of the Appellant;
 - the location of each witness, if any;
 - language of interpreter(s) if not already provided;
 - the number of pages in the bundle of documents to be relied upon;
 - no bundle may exceed 50 pages without the consent of the Tribunal;
 - any documents provided to the Tribunal must be in .pdf format and reduced to the minimum number of documents required
 - generic bundles will not be accepted.

Upper Tribunal

- Operational Guidance states
- There may be some delays in processing non-urgent work. Please see below different ways in which we are dealing with appeals and judicial reviews.
- Appeals and Permission to Appeal applications to UTIAC:
 - Appeals that were listed for hearing have been postponed. All appeals to UTIAC are being judicially case managed. There is also limited monitoring of the appeals email inbox currently taking place.
- Judicial Reviews in UTIAC:
 - Non urgent judicial review applications should be sent by post and will be processed when our capacity increases.
 - The fees counter at Field House is currently closed and calls to 020 7073 4278 may not be answered

- UPPER TRIBUNAL IMMIGRATION AND ASYLUM CHAMBER
PRESIDENTIAL GUIDANCE NOTE No 1 2020: ARRANGEMENTS DURING
THE COVID-19 PANDEMIC
- 9. Rule 34 gives the UTIAC power to make decisions in appeals without a hearing. Provided it has regard to any view of a party or parties, the UTIAC may do so without the parties' consent. Paragraph 4 of the Practice Direction provides that, during the pandemic, decisions should usually be made in this way.

- 11. The judge will consider whether, in all the circumstances known to the judge, his or her provisional view is that it would be appropriate for UTIAC to decide the following questions without a hearing:
 - (a) whether the making of the First-tier Tribunal's decision involved the making of an error on a point of law; and, if so
 - (b) whether the First-tier Tribunal's decision should be set aside.

12 Where the judge reaches that provisional view, he or she will give directions to the parties, including a direction to the party who has been given permission to appeal to make further submissions on the error of law and set aside issues; a direction for the other party to file and serve any submissions in response; and (where there is such a response), directions to the appellant to file and serve a reply.

- 13. The process just described will include a direction to enable the parties, within a stated time, to express their respective views, if any, on whether there should be a hearing to decide the questions in paragraph 11(a) and (b) above, giving reasons for any such views. The judge will have regard to any such views, pursuant to rule 34(2).

- 17. It is important to emphasise the limited scope of the process described in this Part of the Guidance. It is confined to whether the First-tier Tribunal's decision should stand. If the decision reached is that the First-tier Tribunal's decision should be set aside, the UTIAC will then need to determine whether to remit the case to the First-tier Tribunal or re-make the decision. In reaching its determination on that issue, the UTIAC will require the parties' submissions, if it does not already have them. If the outcome is that the appeal should be re-made in the UTIAC, then, again, the parties can expect further directions. In the event that oral evidence needs to be given and findings of fact made, in order to re-make, the UTIAC is more likely to proceed by way of a hearing; but where some or all of this evidence is uncontroversial, UT rule 15(1)(e), permitting evidence to be given by witness statement, may be of assistance.

- 19 If a hearing is necessary, the “default” option during the pandemic is, therefore, that the hearing should be conducted remotely. Rule 1 of the UT Rules defines a “hearing” as “an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication”. There is, accordingly, no question that a remote hearing is a hearing for the purposes of the UT Rules, including rule 34 (see above) and rule 40(1A), which states that, in immigration judicial review proceedings, a decision which disposes of proceedings shall be given at a hearing.

- 23. Documents which a party intends to rely on at a remote hearing must, if practicable, still be filed by sending by post to the UTIAC, in advance of the hearing, and served by post on the other party. In all cases of remote hearings, however, the documents must in any event be filed and served electronically, in advance of the hearing.
- 24. Because of this requirement for electronic filing and service, it is important that the documentation to be relied upon at a remote hearing is confined what is essential. Where case law is relied upon, the bundle should contain a list of the cases concerned, with citations, rather than the text of the judgments; provided the cases are publicly accessible online. Where other documents are publicly accessible online, only the parts relied on should be included in the bundle, together with a reference to the online site at which the full document can be found.

- 27. Unlike face to face hearings, remote hearings in the UTIAC listed for a particular day will be listed at different times, rather than all at 10am. The UTIAC staff member assigned to facilitate the remote hearing will establish contact with the parties approximately 10 minutes before the scheduled time of the remote hearing. The parties must, accordingly, make themselves ready and available in advance. If the judge is to conduct the remote hearing from a courtroom, the judge will enter at the appointed time and conduct the hearing. If the judge is participating remotely, he or she will be invited to join by the staff member, once the parties are logged in.

- 29. In an appeal to the UTIAC, it may be necessary to hear oral evidence to make findings of fact; in particular, in order to re-make the decision under section 12(2)(b)(ii) of the TCEA 2007: see paragraph 17 above. If so, a remote hearing may still be appropriate, depending upon the nature and extent of the evidence and of the findings that may need to be made on it.
- 30 If it is decided that, in a case where a hearing is necessary in order to make a particular decision, there is a particular reason why a remote hearing would not be appropriate, the parties will be so informed. In such a situation, arrangements will be made for the case to proceed by means of a face to face hearing in court, with appropriate precautions to prevent the transmission of Covid-19. Where no such precautions are practicable, the case will be adjourned; but the position will be reviewed from time to time, as may be necessary

- 33. Beginning on 23 March 2020, applications to the UTIAC for judicial review that require urgent or immediate consideration (using or including form T 483 or T 484), must be filed by email to utiac.londonjr@justice.gov.uk. This applies where the applicant is represented; or where the applicant is unrepresented and not in immigration detention or at a removal centre. Details can be found here: <https://www.gov.uk/government/publications/apply-for-urgentconsideration-in-a-judicial-review-form-t483>. This applies to the whole of England and Wales. There is no change to the existing arrangements for urgent/immediate applications, where the applicant is unrepresented and in immigration detention or at a removal centre. There is also no change to the previous arrangements, whereby applications made after 4pm on working days and at any time on a non-working day (weekends and bank holidays) must be made using the out of hours court service.

- 34. If an application for urgent or immediate consideration has been refused by UTIAC without a hearing, the applicant can ask for the matter to be reconsidered at a hearing. During the pandemic, this hearing will take place by telephone with a judge.
- 35. Applications to UTIAC for judicial review, which do not require urgent or immediate consideration may continue to be filed by post (or by hand, if circumstances permit and the relevant office is open).
- 36. UT rule 40(1A) provides that, in immigration judicial review proceedings, a decision that disposes of proceedings shall be given by the UTIAC at a hearing (subject the exceptions listed in rule 40(1B)). As explained in paragraph 19 above, this requirement may be satisfied by the use of a remote hearing. If, in a particular case, a remote hearing is not appropriate, paragraph 30 above applies

- CORONAVIRUS (COVID-19) PANDEMIC JUDICIAL REVIEW APPLICATIONS TO THE UPPER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER)
- Beginning on 30th April 2020 and until further notice, Judicial Review applications made to the Upper Tribunal (Immigration and Asylum Chamber) that do not require urgent or immediate consideration can be filed by email to UTIACJudicialReviewApplications@justice.gov.uk, by post or at the fees counter when the counter re-opens

- Beginning on 30 April 2020, parties lodging applications via email that do not include a successful application for Help with Fees, will be required to make an online payment.
- Cheques/ postal orders will still be accepted if the application for Judicial Review is filed by post
- Cheques/postal orders/banker's drafts/credit and debit card payments will still be accepted if the application for Judicial Review is filed at a fees counter.

Questions?

Emma Rutherford No8 Chambers

emmarutherford@no8chambers.co.uk

0121 2365514

Emma Rutherford No8 Chambers
emmarutherford@no8chambers.co.uk

