

ARK HOUSING ASSOCIATION LTD

1.0 INTRODUCTION

This procedure is intended to give ARK Board of Management, Managers and staff clear and straightforward best practice guidance on the Asylum and Immigration process for existing employees

2.0 BACKGROUND

Prior to appointment, all potential employees provide proof of eligibility to work in the UK when attending an interview for ARK.

If when appointed into a role within ARK and eligibility to work in the UK is for a limited period of time the following procedure will be adhered to.

3.0 HR PROCEDURE

- 3.1 On appointment, 6, 3 and 1 month diary reminders will be set up in HR Personnel diaries to alert HR that a Visa (eligibility to work in the UK) is due to expire.
- 3.2 HR will contact the Line Manager at these alerts and ask them to check in with the employee that they are aware and have plans in place for renewal and update HR.
- 3.3 Update HR team that this has been done to keep everyone in the loop.
- 3.4 Remove the hard copies of the passport and Visa from the ID section of the personnel file and attach to the inside of the front cover with Communication Log (Appendix 1) - this must be kept updated with any communications throughout the Visa renewal process. If there are no hard copies in the personnel file, issue letter requesting documents immediately (Appendix 2)
- 3.5 Employees cannot apply for their new visa until one month before their current visa expires.
- 3.6 Meeting 1: One month before the visa expires issue invitation to employee (Appendix 3). This meeting is to officially request documentation (see Appendix 4 for acceptable documentation) and should be set 2 weeks before their current documents are due to expire to allow them sufficient time to apply. An endorsed hard copy must be placed in the personnel file.
- 3.7 At this meeting the employee must supply their Case Reference Number

If employee supplies requested information, follow points 4.0 to 5.3

If the employee does not supply the requested information, go to point 6.0

4.0 EMPLOYER CHECKING SERVICE

- 4.1 In order to continue employment with ARK, as an organisation we are required to run an online Employer Checking Service (ECS) check with the Home Office and receive the Positive Verification Notice (PVN) in time for the documents expiring. This document allows the employee to continue to work for the period of time defined while their application to renew their status is with the Home Office.
- 4.2 Run ECS check here: <https://www.gov.uk/employee-immigration-employment-status> You will receive confirmation within 24hrs that the check is in progress (Appendix 5). It can take up to 5 working days for the PVN to come through. If the check does not come through in 5 working days, contact 0300 123 5434 or BusinessHelpdesk@homeoffice.gsi.gov.uk
- 4.3 When the PVN has been received, check the information is correct – name, Nationality and D.O.B.
- 4.4 Section 4 “Work Restrictions” must advise the employee is still able to work (see Appendix 6 for an example of PVN). If they are not able to work they must be dismissed from duty immediately.
- 4.5 For satisfactory PVNs; set a diary reminder for the HR Team for four months from the date issued. The PVN is valid for 6 months however, checking every 4 months allows us sufficient time to run another check should the employee not have received their Visa and ensures ARK are always covered. The PVN advises to check “on or before X date” however the check can take up to 5 working days so it may not be received on time if you run it later than 1 week before. If the PVN expires, ARK are no longer covered with a “time-limited statutory excuse” which can result in a £20,000 fine.
- 4.6 Print the PVN and attach it to the inside cover of the employees personnel file with the other documents (communication log, last Visa etc), update the Communication Log and advise the Line Manager.
- 4.7 HR must continue to run and diarise the PVN until the employee has submitted their Visa.

5.0 CONFIRMATION OF ELIGIBILITY TO WORK IN THE UK

- 5.1 Once the Visa has been received, colour copies of both the passport (photo page and front cover) and Visa must be made – the employee must bring the originals to their Line Manager or The Priory.
- 5.2 Copies must be clear so if taken by the Line Manager they must be posted to The Priory (signed for) and not scanned. All copies must be clearly endorsed.
- 5.3 Update Asylum & Immigration spreadsheet. Set new 6, 3 and 1 month diary reminders for Visa expiring for HR Team and cancel any remaining PVN reminders.

6.0 FAILURE TO PROVIDE REQUIRED DOCUMENTATION

6.1 Meeting 2: If the employee failed to supply their documents at the first meeting, issue an invitation (Appendix 7) to a second meeting within 7 days of the original meeting/at least 5 days before their current documents expire. The employee must provide one of the following:

a) ID as detailed in Appendix 4. This should prove 'Right to work'

Or

b) Acknowledgement letter from Home Officer as shown in Appendix 4 This enables an ECS check

Or

c) Proof they have submitted an 'in time' application. See Appendix 4 for acceptable documentation. This provides ARK with a 28 day statutory excuse.

6.2 If, on the date on which permission expires, we are reasonably satisfied that the employee has submitted an in time application (point c above) to extend or vary their permission to be in the UK our statutory excuse will continue from the expiry date of the employee's permission for a further period of up to 28 days to enable ARK to obtain a positive verification from the Employers' Checking Service.

6.3 Meeting 3: If the employee has not supplied documents or provided sufficient Information as to why they have not proven their current Visa status you must issue an invitation to a Disciplinary hearing (Appendix 8), following the Disciplinary process/policy.

If at this meeting they again fail to provide the required documentation and Case Reference Number ARK will have no option than to dismiss them from the organisation with immediate effect/expiry date of Visa. (Appendix 9)

6.4 Meetings 1 and 2 will provide evidence towards to the final decision made at meeting 3.

7.0 CONFIRMATION OF ELIGIBILITY TO WORK IN THE UK AFTER DISMISSAL

7.1 Re-recruitment of a dismissed employee on the grounds of a visa status may be considered by the HR department within a reasonable time.

7.2 If an employee is re-recruited there will be no continuous service.

Reviewed by SLT – August 2018
Next Review Due – August 2021

Appendix 1

Visa Check Communication Log

Action	Date	Initials

Appendix 2

STRICTLY PRIVATE & CONFIDENTIAL

Name

Address
Town
Postcode

Date

Dear Name,

Re: Request for right to work documentation

You may be aware of the Government legislation requiring employers to check that all colleagues have the right to live and work in the UK.

Employers who employ people who are not permitted to work could be liable for fines of up to £20,000 per 'illegal worker'.

It has come to light that we do not have documentation confirming your right to work in the UK on your personnel file.

Please bring original documents (passport/ identity card and right to work permit) that confirm that you are legally permitted to work, to XX, before the start of your next working day.

A full list of documents that may be produced to prove your right to work in the UK are described on the attached form.

If you have any queries please speak to Name of HR Assistant on XX.

Yours sincerely

Name
Post

STRICTLY PRIVATE & CONFIDENTIAL

Name
Address
Town
Postcode

Date

Sent via Email/ First Class/ Record Delivery

Dear **Name**,

Re: First invitation to discuss your right to work in the UK

I am writing to inform you that your right to work in the UK documentation is due to expire on **xx**.

Please bring documents confirming your continued right to work beyond this date to a meeting with Name as detailed below:

Date: **XX (2 weeks before documents expire)**
Time: **XX**
Location: **XX**

If you have not yet received your new permission documents, you may prove you have made an application to extend your permission to stay and work within the UK, if you have an acknowledgement letter from the Home Office, OR a copy of your application form (or on-line application) plus proof of postage to the Home Office. Please note that a solicitor's letter/email is not sufficient evidence alone and must be accompanied with proof of postage.

In addition, we ask that you please provide your Case Reference Number for use to complete our checks online with the Home Office. ARK will assume that by providing this Case Reference Number you are granting permission for ARK to complete the online checks with the Home Office.

If you are unable to provide documentation in line with Home Office requirements, or are unable to demonstrate that your application is pending on the expiration date of your current visa or work permit, ARK will have no alternative but to dismiss you from the organisation.

If you have any questions about this or are unable to attend the meeting, please contact me to arrange an alternative date/time on **XX**.

Yours sincerely

Name
Human Resources Assistant

Appendix 4

Acceptable Documentation for Right to Work from the Home Office guide.

Appendix 4

If at the point that permission expires and we are reasonably satisfied that our employee has an outstanding application or appeal to vary or extend their leave in the UK, your time limited statutory excuse will continue from the expiry date of your employee's permission for a further period of up to 28 days.

Proof of an 'in time' application would be

1. Proof of postage along with a copy of the application
2. Proof of postage along with a solicitors letter confirming the date they sent the application.

Appendix 4

Home Office Acknowledgement:

	UK Visas and Immigration Permanent Migration PO Box 306 Liverpool L2 0QN Tel 0870 606 7766 Fax 0151 213 2909 Email Web www.gov.uk/visas/immigration
Address	Our Ref
	Case ID
	Your Ref Your Ref
	Date 04 June 2014

Dear Sir/Madam,

Re:

CERTIFICATE OF APPLICATION

Thank you for your application for a Residence Card/Permanent Residence Card/Derivative Residence Card. We will make a decision on the application as soon as we can and, in any event, within the next 6 months.

Please do not telephone or make enquiries about the progress of the application before you hear from us unless a passport or other document is needed urgently, as this diverts resources from making decisions.

We advise you not to make any non-urgent travel plans until we have decided your application and returned your passport(s) or travel document(s).

You are permitted to accept offers of employment in the United Kingdom, or to continue in employment in the United Kingdom, whilst your application is under consideration and until either you are issued with residence documentation or, if your application is refused, until your appeal rights are exhausted.

An employer may ask to see this document as evidence of eligibility to work, so you should keep it in a safe place until the application has been decided as it may not be replaced.

Note for employers

This document may form part of a statutory defence against liability to pay a civil penalty under section 15 of the Immigration, Asylum and Nationality Act 2006 for employing an illegal migrant worker. However, it should only be accepted for this purpose if presented within 6 months of the date of issue and provided you can demonstrate that the document has been verified by the Home Office Employer Checking Service.

The holder must present the original document. You should request verification of the document by downloading the Employer Checking Service form from the Home Office website and e-mailing it to Employerchecking@ukba.gsi.gov.uk and retain a copy of it in your records. Further information about the Employer Checking Service and the responsibilities of employers can be found at <https://www.gov.uk/government/organisations/home-office>.

ECD.4820 1 of 2

Appendix 5

Confirmation ECS has been received (via email from: eforms.homeoffice@topev.com)

eForms Message

Acknowledgement of application sent from ARK Housing Association Ltd on behalf of Quathu Kapanda

Employer's or labour supplier's information

I can confirm that the individual has been informed that a work status check may be carried out and has given permission for their personal information to be shared with the Home Office for these purposes. I understand that these details may be held by the Home Office in accordance with the Data Protection Act (1998). (The response from the Home Office will also contain personal data and should be treated accordingly.)

Contact name

Job title

Business name

Address line 1

Address line 2

Town

Postcode

Contact telephone

Contact e-mail

Business type

Employee's information

Full name (including middle names)

Date of birth

Nationality

Address line 1

Address line 2

Town

Postcode

Job title

Hours per week

Does this person already work for you?

On what date did they start working for you?

Employee acquired as a result of a TUPE transfer?

Date of TUPE transfer

Document or application type

Payment reference number of ongoing application / Case ID

IFB reference

ARC serial number

Have you seen the original documentation?

Been in the UK since before 1973?

Contact telephone number

Place of birth

Year of entry to the UK

Email

National Insurance Number

Appendix 6

Employer Checking Service – Positive Verification Notice



UK Visas
& Immigration

Employer Checking Service (ECS) Positive Verification Notice

Carol Sheridan
ARK Housing Association Ltd
The Priory
Canaan Lane
Edinburgh EH10 4SG

Date of Notice:
Unique ECS Reference:

This Notice is issued in respect of your duty to prevent illegal working set out in sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006.

You have requested an ECS check

This means that you contacted the Employer Checking Service to verify the right to work in the UK of the named person below.

Our response:

1 Who we have checked and for what type of work	Name: <input type="text"/> Date of Birth: <input type="text"/> Nationality: <input type="text"/>
2 Outcome of our check	This person has the right to work subject to the restrictions in section 4
3 Expiry date of our check	The result of this check is valid for 6 months. It expires on <input type="text"/> . You should carry out a follow-up right to work check on this person on or before this date.
4 Work restrictions	<input type="text"/>
5 What this means	This Positive Verification Notice will provide you with a time-limited statutory excuse against liability for a civil penalty in respect of this person. You must retain this Notice. If this person has provided you with an Application Registration Card or a Certificate of Application, you should retain a copy. You should see our Shortage Occupation List for a list of the restricted roles for people with an Application Registration Card.
6 Ensure your compliance	You should note that your time-limited statutory excuse will not apply if at any time you become aware that this person no longer has the right to do the work in question and you may also be prosecuted for knowingly employing an illegal worker which means you may face an unlimited fine and/or imprisonment.
7 If you need further information	You should visit www.GOV.UK to view our range of guidance, Codes of practice and helpful tools to assist you to comply with your duty as an employer to conduct right to work checks.

UK Visas and Immigration is an operational command of the Home Office



Appendix 7

STRICTLY PRIVATE & CONFIDENTIAL

Name

Address
Town
Postcode

Date

Sent via Email/ First Class/ Record Delivery

Dear **Name**,

Re: Second invitation to discuss your right to work in the UK

As you are aware, your right to work in the UK documentation is due to expire on **xx**.

Further to our meeting on **xx**, where you failed to provide documents confirming your continued right to work beyond this date, or demonstrate that you have an application pending, you are required to attend another meeting as detailed below:

Date: **XX (7 days from first meeting)**
Time: **XX**
Location: **XX**

If you are unable to provide documentation in line with Home Office requirements, or are unable to demonstrate that your application is pending, You will be dismissed from the organisation with immediate effect from the date your visa expires.

If you have not yet received your new permission documents, you may prove you have made an application to extend your permission to work within the UK such as if you have an acknowledgement letter from the Home Office, OR a copy of your application form (or online application) plus proof of postage to the Home Office. Please note that a solicitor's letter is not sufficient evidence and must be accompanied by proof of postage.

You will have received a Case Reference Number when you submitted your application; we can use this to complete an employer check with the Home Office. ARK will assume that by providing this Case Reference Number you are granting permission for ARK to complete the online checks with the Home Office.

If you have any questions about this or are unable to attend the meeting, please contact me to discuss an alternative date/time on **XX**.

Yours sincerely

Name
Human Resources Assistant

Appendix 8

STRICTLY PRIVATE & CONFIDENTIAL

Name
Address
Town
Postcode

Date

Sent via Email/ First Class/ Record Delivery

Dear **Name**,

Re: Invitation to a disciplinary hearing

You are required to attend a disciplinary hearing as follows:

Date: **XX (48hrs notice)**
Time: **XX**
Location: **XX**

This hearing will be to discuss why you have not been able to provide documentation confirming your right to work in the UK.

You may have a representative with you who can be either a person who is employed by the union as an official or a fellow colleague. If you would like a representative, please advise us as to who will be accompanying you prior to the meeting.

This hearing may result in disciplinary action being taken against you, up to and including dismissal.

If you have any questions or are unable to attend the meeting, please contact me to discuss an alternative date/time on xx. If you do not inform us that you will not be attending, and in the absence of any mitigating circumstances, the meeting may be held in your absence.

In the event you are able to produce documents confirming you are legally permitted to work prior to this meeting, please forward them to **XX** as soon as possible.

Yours sincerely,

Name
Human Resources Assistant

STRICTLY PRIVATE & CONFIDENTIAL

Name
Address
Town
Postcode

Date

Sent via Email/ First Class/ Record Delivery

Dear **Name**,

Re: Summary dismissal

This letter confirms the outcome of the investigations and my decision following the disciplinary hearing held on date regarding your failure to provide proof of your right to work in the UK.

Following careful consideration of the facts, we have decided to summarily dismiss you in accordance with ARK's Disciplinary Procedures, as you have been unable to provide sufficient evidence of your right to live and work in the UK.

This means that you are dismissed as of xx and will be paid all monies owing including any outstanding statutory holiday pay you may be entitled to. However you will not receive any pay in lieu of notice. Any pay earned, and outstanding holiday pay up to this date, will be paid to you on **XX** together with your leaving documentation.

You have the right to appeal against my decision if you are not satisfied with it. If you do wish to appeal, you must inform **XX, XX** within **7** days, in writing, in accordance with ARK's Disciplinary Procedure, a copy of which is attached for your information. If you do appeal, we will invite you to attend an appeal hearing which you must take all reasonable steps to attend.

If you have any queries regarding the content of this letter, please do not hesitate to contact me.

Yours sincerely

Name
Human Resources Assistant