

## Technical factsheet

### Immigration advice and services

The [Office of the Immigration Services Commissioner](#) (OISC) is an executive non-departmental public body, sponsored by the Home Office, which regulates the provision of immigration advice. It ensures advisers are fit, competent and act in their clients' best interests.

#### **Background**

It is a criminal offence if advice on immigration is given by those who are not regulated by organisations such as OISC or covered by the Immigration and Asylum Act 1999.

As highlighted below, the act defines 'immigration advice' as advice relating to a **particular individual** given in connection with one or more '**relevant matters**' by a person who knows that they are giving such advice.

Accountants who are considering providing immigration advice need to submit the application, pass the competency test and register with the OISC.

As a basic requirement, the OISC considers the fitness of individuals and highlights that if a person can demonstrate the likelihood of compliance with the OISC's regulatory scheme, honesty and legal compliance from previous experience and financial probity, they will be fit to provide immigration advice and services.

Guidance on the fitness of [advisers](#) and [owners](#) provides information on the requirements and assessment methods. Individuals must also sufficiently demonstrate competency, having the skills and knowledge required to meet the needs of clients seeking immigration advice (depending on the advisory level).

The OISC has divided immigration advice and services into [three levels](#), depending on the complexity of work involved:

Level 1 – advice and assistance

Level 2 – casework

Level 3 – advocacy and representation

### **Immigration advice**

The Immigration and Asylum Act 1999, as amended, defines ‘immigration advice’ (section 82) as advice relating to a **particular individual** given in connection with one or more ‘**relevant matters**’ by a person who knows that they are giving such advice.

Relevant matters include:

- a claim for asylum
- an application for, or for the variation of, entry clearance or leave to enter or remain in the UK
- an application for an immigration employment document
- unlawful entry into the UK
- nationality and citizenship under the law of the UK
- removal or deportation from the UK
- an application for bail under the Immigration Act or under the Special Immigration Appeals Commission Act 1997
- an appeal against, or an application for judicial review in relation to any decision taken in connection with a matter referred to above.

Section 84 (1) of the Immigration and Asylum Act 1999 prohibits the provision of immigration advice or services other than by a ‘qualified person’. The act states that a person is a qualified person if they are:

1. a registered person with the OISC within the UK

2. authorised by a designated professional body to practise as a member of the profession whose members that body regulates
3. acting on behalf of, and under the supervision of, a person in categories 1 and 2 above

Immigration advice is also provided by voluntary and community organisations, and most businesses need to apply for OISC registration.

## **Exemptions**

Organisations operating in line with the exemptions can provide immigration advice and services without being regulated by the commissioner.

### *Exemption for worker sponsors and student sponsors*

An individual can be exempt from registering with the OISC if they have a licensed sponsor in specific worker or student routes, providing immigration advice without a fee.

This advice and services must relate to:

- the migrant's application
- an application for entry clearance or leave to enter/remain made by the migrant's immediate family, which is dependent on the migrant's application

### *Exemption of relevant employers*

If an individual provides immigration advice or services free of charge to an employee or prospective employee, they will be exempt from registering with the OISC. The employee or prospective employee must be subject to an application for the work permit submitted by the prospective employer, or have been granted a work permit entitling them to work with the employer.

## **Services provided by levels of advisers**

The guidance of competence gives details on the work covered by each level:

- level 1: basic immigration advice within the immigration rules
- level 2: more complex casework, including applications outside the immigration rules
- level 3: appeals.

## **The application process for all**

- All candidates will need to undergo a DBS service check (only original certificate dated within six months of application is accepted).
- Applications for registering by the OISC are completed online only.
- All candidates also need to complete the new adviser application and competence statement.

All organisations must pay a fee for an application for registration unless the applicant is a person who is:

- providing immigration advice or immigration services in the course of a business that is not for profit
- does not charge a fee, directly or indirectly, for the provision of that advice or those services.

## **Assessment**

- Each new adviser will be invited to sit a level 1 competence assessment as part of an overall assessment of their competence.
- If they then fail to provide all the required information and documentation with their application, it will be refused. The fee will not be refunded in these circumstances.
- When an application is approved, an organisation will normally be granted a registration period of 12 months. Each organisation intending to remain in the regulatory scheme will be required to apply to the OISC on an annual basis.

## **Resources**

[Resource books](#) are available for those taking the assessments and candidates need to learn level 1 resource books for all three levels. [Training courses](#) are also available.

## **APPENDIX IMMIGRATION ADVISERS – LEVEL 1**

Level 1 advisers focus on advising and assisting clients' immigration cases at a basic level.

### **Asylum and protection**

- notifying UK Visas and Immigration (UKVI) of a change of address
- straightforward application to vary the conditions attached to leave already granted, including conditions attached to bail granted by the secretary of state
- straightforward applications for leave in line or refugee status in lone for the UK-born children of refugees and people with humanitarian protection

### **Immigration**

- Basic application for entry clearance and leave to enter or remain in the UK, which includes:
  - visitors
  - spouses/unmarried partners under the five-year route
  - fiancé(e)s
  - other dependent relatives
  - Settled and Pre-settled Status application
  - Points Based Immigration System applications
  - other work visas permitted under the rules (for example, UK Ancestry Visa or Frontier Worker Permit)
  - applications covering extensions of stay and settlement under Appendix ECAA, formerly covered by the European Communities Association Agreement (ECAA).
  - diplomats, their family members and domestic staff
  - BN(O) status holder
- applications for administrative review apart from applications refused based on credibility or a fundamental issue of the genuineness of document or relationships
- straightforward applications to vary the conditions attached to leave already granted, including conditions attached to bail granted by the secretary of state, such as the right to work or study.

Level 1 advisers are permitted to make applications that rely on the straightforward presentation of facts to meet a set of qualifying criteria. These applications will not have an immigration history that may affect the application in question. Level 1 advisers should refer clients to higher-level advisers if the case becomes complicated or if an application is refused. However, level 1 advisers can work on Leave to Remain applications only where the client has extant leave.

Application for reconsideration based on nationality may be undertaken by level one advisers, if there has been a failure by the Home Office to recognise that required information was submitted or a decision has been made prematurely, not those that are incorrect by law.

## **COMPETENCE REQUIREMENTS**

To demonstrate competence, level 1 advisers are expected to fulfil the required knowledge, skills and aptitudes.

### **Knowledge**

Sufficient knowledge on immigration and asylum is needed to identify:

- that a client is subject to immigration control
- possible immigration categories that might apply
- relevant forms, procedures and fees that apply
- the requirements of the immigration rules that must be satisfied in respect of a particular application
- knowledge of the types of evidence needed to support cases and how to obtain such evidence
- relevant time limits
- urgent situations
- published UKVI practice in the consideration of cases, including UKVI Operational Guidance
- mandatory and discretionary general grounds for refusal within the immigration rules
- the operation of the statutory extension of leave to remain when an application is made

- the operation of extensions, variations and curtailments of leave and the conditions of leave
- processes available to challenge negative decisions related to level 1 applications.

Having a clear understanding of the expected knowledge and competence is beneficial to understand the sensitivity of the client's case, in order to decide when the cases need to be referred to higher advisers. Level 1 advisers need general knowledge on this work, specifically in relation to illegal entrants and overstayers, and have a good awareness of the European Convention on Human Rights.

### **Skills and aptitudes**

Advisers should have the ability to draft and complete applications forms accurately using correct terminology. Also, sufficient verbal and interpersonal skills are needed to identify the relevant facts of the case, communicate advice to clients efficiently and inform them of the steps to take for emergencies. It is essential to be able to identify the range of evidence needed to support an application, use appropriate resources and meet the requirements of the code.

## **UK REQUIREMENTS**

### **Proof of right to work**

- British nationals should provide passports to prove their right to work.
- EU citizens should provide a copy of a document that clearly states their immigration status, such as a biometric residence card or a letter from the Home Office confirming their settled status under the EU Settlement Scheme.
- Right to work in the UK should be valid for a minimum of 18 months at the point of application.
- Visa nationals need to provide stamped passports and relevant documents to prove their right to work in the UK.

### **Language requirement**

- It is essential for advisers to communicate clearly and accurately in English.
- Comprehensive skills are expected.

## **Experience**

- Level 1 advisers must at least have three months (or equivalent part-time) experience in providing immigration advice and services or six months full time (or equivalent part-time) experience in providing non-immigration advice such as welfare, debt, housing, legal or employment.
- New candidates should have completed up-to-date training in immigration law, which should have been undertaken with a professional training organisation.

## **Assessment process**

- Applicants must sit tests to demonstrate their competence. The topics covered in the syllabus are:
  - immigration law
  - asylum and protection
  - nationality
  - appeals
  - ethics
  - essential skills and abilities.

## **Fee**

- The level 1 application fee is £575.

## **Level 1 Immigration paper**

- Two sections must be completed in two hours 30 minutes. There is no break between the two sections and candidates should allocate half the time per section.

## **Level 2 papers**

- All level 2 papers consist of scenario-based questions and must be completed in two hours 15 minutes.

## **January 2022**

### **ACCA LEGAL NOTICE**

This is a basic guide prepared by ACCA UK's Technical Advisory Service for members and their clients. It should not be used as a definitive guide, since individual circumstances may vary. Specific advice should be obtained, where necessary.