

From: European Operational Policy Team
Subject: Jobseekers and retention of 'worker' status
Date: 01 January 2014
Issue Number: 03/2014

Purpose of Notice

1. This notice provides guidance to decision makers on how to consider applications from EEA nationals who are jobseekers or who are in involuntarily unemployment following a period of employment and are seeking to retain 'worker' status in line with regulation 6(2) of the Immigration (European Economic Area) Regulations 2006 ("the Regulations").

Background

2. The Immigration (European Economic Area) (Amendment) (No.2) Regulations 2013 came into force on 01 January 2014 and impose new qualifying criteria which an EEA national must satisfy in order to be exercising Treaty rights as a jobseeker. The amendment also incorporates the Upper Tier Tribunal judgment of *Shabani (EEA – jobseekers; nursery education) [2013] UKUT 00315 (IAC)* into the Regulations at regulation 6(5)(b).
3. This applies to all decisions made on or after 01 January 2014.

Jobseekers status

4. The Home Office has to-date interpreted regulation 6(2) to mean that jobseeker status only applies 'on-entry'; meaning that a person can only be a jobseeker for the period after which they enter the UK in search of work, but before they are first employed. The Home Office has not to-date regarded those people who have worked in the UK and who *voluntarily* leave employment but then seek work again, as jobseekers.
5. Following the Upper Tribunal case of *Shabani*, this position has changed and it is now the case that someone who *voluntarily* leaves employment, without retaining worker status, can revert to being a jobseeker without needing to leave and re-enter the UK, provided they are genuinely seeking employment and have a real chance of being engaged.
6. Regulation 6(4) of the Regulations amends the definition of 'jobseeker' in line with *Shabani*. A jobseeker is now defined as a person who:
 - entered the United Kingdom in order to seek employment **or**
 - is in the UK seeking employment immediately after being a qualified person under regulation 6(1)(b)-(e); **and**

- can provide evidence to demonstrate that they are seeking work and have a genuine chance of being engaged.
7. An EEA national who meets the above conditions cannot continue to be regarded as a jobseeker for longer than six months unless they can provide compelling evidence that they are seeking work and have a genuine chance of being engaged. See paragraph 8 of this notice for an example of this.

Retaining worker status following employment of at least one year's duration

8. Under revised regulation 6(2)(b), an EEA national who is no longer working shall not cease to be treated as worker, where they are in duly recorded involuntary unemployment after having being employed for at least one year, and where they meet the following conditions:
- the EEA national has registered as a jobseeker with the relevant employment office; **and**
 - the EEA national entered the UK in order to seek employment **or**;
 - the EEA national is in the UK seeking employment immediately after being a qualified person under regulation 6(1)(b)-(e); **and**
 - the EEA national can provide evidence to demonstrate that they are seeking work and have a genuine chance of being engaged.
9. An EEA national who meets the above conditions cannot retain the status of worker for longer than six months unless they can provide compelling evidence that they are seeking work and have a genuine chance of being engaged.
10. For example, an EEA national enters the UK as a student and shortly after commences employment. After 13 months he is made redundant and registers his unemployment with Job Centre Plus. Eight months later, he is still seeking work but provides evidence that he has recently undertaken further training which guarantees him a position as an apprentice upon completion of the training course in two months time. In this instance, this would be sufficient to demonstrate that he has provided compelling evidence that he has a genuine chance of being engaged in work.

Retaining worker status following less than one year's employment

11. The new requirement at regulation 6(2)(ba) requires that for an EEA national to continue to be treated as a worker where they do not satisfy 6(2)(b) (i.e they were employed for less than one year prior to seeking work) they must satisfy the following:
- the EEA national has registered as a jobseeker with the relevant employment office; **and**
 - the EEA national entered the United Kingdom in order to seek employment **or**;
 - is in the UK seeking employment immediately after being a qualified person under regulation 6(1)(b)-(e); **and**

- the EEA national can provide evidence to demonstrate that he is seeking work and has a genuine chance of being engaged.
12. In addition regulation 6(2A) specifies that persons qualifying under this category may only retain worker status for a maximum of six months. This is regardless of whether they can provide compelling reasons for this. This reflects the fact that persons in this capacity have not been in employment for any significant length of time.
13. For example, an EEA national entered the UK as a worker for four months after which he was made redundant. He registers with Job Centre Plus, but after a further six months, has still not obtained any employment. In this instance, the EEA national would not be able to retain his worker status any longer and must either become a qualified person in another capacity (for example as a student or self-sufficient person, but not a jobseeker) or he must leave the UK if he has no other right to reside.

Appeal rights

14. Where any of the above factors are not satisfied, the application should be refused in line with regulation 6(2).
15. All such refusals would attract an in-country right of appeal subject to the restrictions in regulation 26.
16. If you have any queries about this notice, please contact <REDACTED – section 40(2)> on <REDACTED – section 40(2)>, or email the European Operational Policy Mailbox at EuropeanOperational@UKBA.gsi.gov.uk

<REDACTED – section 40(2)>
Head of European Operational Policy
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