



FLR Tier 1 (HSMP) Review Guidance Notes

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Valid From 6 April 2010

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**FLR Tier 1 (HSMP) Review
GUIDANCE NOTES
Valid From 6 April 2010**

SECTION 1: Introduction

1. Following the High Court Judgment of 8 April 2008, migrants who obtained leave to enter or remain based on a letter of approval issued under the HSMP criteria in place **before** the programme was suspended on 7 November 2006 should be considered against the extension criteria in place when they joined the programme. Provision has now been put in place for those who fall within this category. Under these provisions qualifying applicants will be considered against the published policy document on Highly Skilled Migrants of 9 July 2008. This document allows **those who have applied and failed an extension test** under the new rules who fall under the remit of the judgment to be considered under the extension criteria as it stood prior to 7 November 2006.

Who can apply on form FLR Tier 1 (HSMP) Review

2. You should use this application form if you:
 - Were refused further leave to remain under the HSMP arrangements in place after 5 December 2006 and subsequently switched to another immigration category, or were granted discretionary leave or leave outside the immigration rules.
 - You should not use this form unless you have applied unsuccessfully to extend your leave under HSMP. If you have not previously applied to extend your leave and fall within the group affected by the judgment you need to complete an FLR Tier 1 (HSMP) form.

Dependants

3. Form FLR Tier 1 (HSMP) Review can also be used to apply for an extension of stay (limited leave to remain) in the UK for the following dependants providing that they were included on your unsuccessful application: a spouse, civil partner, unmarried partner, same-sex partner, or child under the age of 18.
4. If your dependants apply separately to you, they will need to apply on separate application form and pay the appropriate fee, if applicable. Details of the

different application forms can be found on the UK Border Agency website.

5. Dependent children aged 18 or over wishing to remain in the UK as your dependants need to make a separate application. For further information on this, please see our website: www.ukba.homeoffice.gov.uk.

Do I need to pay a fee?

6. No, you have already paid for your unsuccessful application. This form acts as a formal request for the previous decision to be reconsidered.
7. Section 2 of these guidance notes provide further details of the supporting documentation that you will need to include with your application.
8. There is no additional fee for any dependants included in your application.

SECTION 2: Supporting Documentation

9. You must submit documents that demonstrate the following:
 - If you are employed, your economic activity and your personal earnings to date during your period of immigration leave;
 - If you are self-employed, evidence of the business you have established, such as a business plan and evidence that you have established a business bank account;
 - if you are not economically active you will need to provide evidence to show that you have taken all reasonable steps to do so during your stay in the UK, e.g. several job applications relevant to your skills and experience.

Standard documents required

10. We will only be able to consider your application if you have included with your completed application form all the relevant supporting documentation specifically listed in Section 6 (the '**Documentary Evidence**' section) of the FLR Tier 1(HSMP) Review application form.
11. In addition to completing Section 6 (the '**Documentary Evidence**' section) of the FLR Tier 1(HSMP) review you should complete Section 9, the

'Documents Checklist', which can be found on the final page of the application form. This will help us to confirm the receipt of your documents and to safeguard them whilst they are with us.

12. All documents included with your application must be originals.
 13. We are unlikely to grant your application without seeing the original documents.
 14. Please note: If all documentation required in order to consider your application is not supplied at the outset, we will contact you and provide you with a relevant correspondence address to send the additional documentation to. However, if the requested documentation is not submitted within the timescale stipulated, your application will be rejected as 'invalid' and will be returned to you, together with your application fee.
 15. The following list should assist you in providing all the documentation required to ensure that your application is considered to be valid:
 - Two identical photographs of yourself, with your name written on the back of each one. Please make sure that the staple or paper clip does not damage or mark the photographs. All photographs must be as specified in the photo guidance. A copy of the photograph guidance can be found at:
<http://www.bia.homeoffice.gov.uk/sitecontent/applicationforms/pbs/193059>
 - Two identical (no more than 6 months old for children under 16) photographs of each dependant applying for an extension of stay in the UK included on your application, with each dependant's name written on the back of the photograph. All photographs must be as specified in the photo guidance;
 - Your current passport, travel documents or Identity Card For Foreign Nationals (ICFN)– if you last entered the UK on a previous passport or travel document, please also provide this document if you have it;
 - Current passport(s), travel document(s) or ICFN(s) – for each dependant applying for an extension of stay in the UK with you and included on this application form – if they last entered the UK on a previous passport(s) or travel document(s), please also provide these document(s) if you have them;
 - Your police registration certificate (if you have been asked to register with the police);
 - The police registration certificate(s) of each dependant applying for an extension of stay in the UK included in your application (if they have been asked to register with the police) and included on this application form;
 - A full birth certificate (i.e. one that shows the parents' names) for each dependant child for whom you are applying for an extension of stay in the UK included in your application form;
 - Your marriage certificate/civil partnership document if you are applying for an extension of stay in the UK for your spouse/civil partner;
 - If you are not married or in a civil partnership and are applying for an extension of stay in the UK for a partner (opposite-sex or same-sex), we will need to see evidence of a two-year relationship. This may include:
 - Evidence that any previous marriage, civil partnership, or similar relationship, has permanently broken down;
 - Evidence that you have been living together in a relationship similar to marriage or civil partnership for two years or more;
 - Documents showing joint commitments, such as bank accounts, investments, rent agreements or mortgages;
 - Letters linking you to the same address; and
 - Official records of your address such as your National Insurance card or health card.
 - Evidence that you have the funds to maintain and accommodate yourself and any dependants without recourse to public funds. The evidence must be formal documents such as bank statements, a building society passbook, or wage slips (but do not send us cheques, traveller's cheques or credit cards). If a relative or friend is supporting you, the evidence should be a letter from him/her confirming this, together with formal documents showing their financial situation. (The documents provided should cover at least the last three months.)
 - Evidence that you have made all reasonable attempts to become economically active in the UK. This should be in the form of payslips where employed or evidence of a thorough job search/applications where not in employment
16. Where any of the documents provided are not in English, the original must be accompanied by a translation certified by a recognised translator.
 17. Translated documents should have an official authenticated stamp confirming that the translator belongs to a professional body.

SECTION 3: Completing your FLR Tier 1 (HSMP) Review Application

18. You should complete the form by typing or printing the required details in English in **BLOCK** letters and in **BLACK INK**. The notes included in this section of the guidance are designed to help you in completing your application.

Personal Details of Applicant

(Completing Section 1 of the form – all applicants)

19. This section of the application form requires you, as the main applicant, to provide your personal details. (Personal details of any dependants being included in your application are requested under a later section of the application form).

Immigration Status

(Completing Section 2 of the form – all applicants)

20. You will need to complete this section of the application form, to establish your immigration status at the time you make your application.

Details of your Family

(Completing Section 3 of the form – complete only where applicable)

21. As outlined in Section 1 of these guidance notes, form FLR Tier 1(HSMP) Review can also be used to apply for an extension of stay in the UK for your spouse, civil partner, unmarried partner or same-sex partner and/or children under the age of 18, if they were included in your original application.

22. This section of the application form requires you to provide personal details for each of the dependants on whose behalf you are applying for an extension of stay on this application form.

23. You will need to include evidence to establish your relationship with each of the dependants included in this section of the form. Section 2 of the guidance notes above provides details of acceptable documentation for the purposes of establishing your relationship to each of the dependants you include on your application.

Your Home and Finances

(Completing Section 4 of the form – all applicants)

24. This section of the application form requires you to provide details of your living circumstances and your personal finances in the UK.

25. These details are required in order to:

- Assess whether you will be able to maintain and accommodate yourself, and any dependants included in your application, in the UK without recourse to public funds;

and

- Establish that, in your preceding period of leave to enter/remain in the UK, you have not had access to Public Funds.

Public Funds

26. Individuals subject to immigration control who have limited leave to enter or remain are not eligible for benefits or services listed as public funds in the Immigration and Asylum Act 1999 and the Immigration Rules. They should also have the basic means to support themselves and any dependants without the need to seek assistance from the State.

27. The following are regarded as Public Funds under the Immigration Rules:

- Housing and homelessness assistance;
- Attendance allowance;
- Severe disablement allowance;
- Carer's allowance;
- Disability living allowance;
- Income support;
- A social fund payment;
- Council tax benefit;
- Child benefit;
- Income-based jobseeker's allowance;
- State pension credit;
- Child tax credit;
- Working tax credit;
- Housing benefit;
- Social fund payment
- Health in Pregnancy grant; and
- Housing and Homelessness assistance

28. In some exceptional cases, the relevant benefits, tax credits or housing legislation allow individuals subject to immigration control to claim certain public funds in their own right. For example, reciprocal social security agreements allow nationals of some countries to claim certain funds despite being subject to immigration control. Further information can be found on the Home Office website www.ukba.homeoffice.gov.uk.

What does not count as public funds?

29. The term public funds only includes non-contributory benefits, tax credits, and housing and homelessness assistance. It does not include benefits based on National Insurance contributions, such as:

- contribution-based jobseeker's allowance;
- incapacity benefit;
- retirement pension;
- widows benefit and bereavement benefit;
- guardian's allowance; and,
- statutory maternity pay.

30. Also, treatment under the National Health Service, or education funded by a Local Education Authority (LEA), does not count as recourse to public funds.

Housing and homelessness assistance

31. Housing and homelessness assistance are included in the term public funds. However, this has a precise definition in the Immigration Rules:

- An allocation of housing, or grant of a licence or tenancy, by a local housing authority, for example through the "housing waiting list"; or,
- Housing assistance under homelessness legislation; or,
- Cases where the housing is provided for either of these purposes on the local authority's behalf, for example, by an independent housing association.

32. However, there are other types of housing that individuals subject to immigration control may receive which are not included in the definition of public funds under the Rules. These include:

- Housing provided independently by housing associations.
- Housing provided by key worker housing schemes.
- Housing paid for by employers, for example where an NHS Trust pays for housing for international nurses.
- Housing being received by your partner if they are not subject to immigration control.

Personal History

(Completing Section 5 of the form – all applicants)

33. This section must be completed for each person (main applicant and each dependant) included on the application form.
34. If you need more space than is available to complete any of the questions contained in this section of the form, you should continue on a separate sheet.
35. You should ensure that you have read fully the guidance included within Section 5 of the application form, before you complete this section.
36. Information provided in your responses, may be checked with other agencies.

Documentary Evidence

(Completing Section 6 of the form – all applicants)

37. This section of the application form asks you to list the documents that you are including with your application.

38. If you are unsure what documentation you will need to include, Section 2 of these guidance notes provides details of the documents that you are likely to need to provide.

39. You should ensure that you tick the relevant box for each of the documents that you are including with your application. This will assist you in making sure that you include all the documents that we require to assess your application fully. It will also assist us in keeping track of your personal documentation whilst it is in our care.

Declarations

(Completing Section 7 of the form - all applicants; and completing Section 8 of the form – to be completed only where applicable).

40. Please sign and date the 'Applicant's Declaration' at Section 7 of the form. Where more than one applicant is included in the form, the signature must be that of the main applicant.
41. If you would like documents and correspondence relating to your application to be sent to your employer (where applicable) or representative, you should indicate this in the box provided at the end of the Applicant's Declaration. They will need to complete Section 8 of the application form, the "Representative's Declaration".

Checklists

(Completing Section 9)

42. Section 9 of the application form, the 'Documents Checklist' and Section 10, the 'Personal Checklist for Form FLR Tier 1 (HSMP) Review', must be completed by all applicants. These checklists are intended to help you ensure that the application you submit is valid, complete and appropriate to your circumstances. The checklists also assist the UK Border Agency in making sure that we have received the documents you have supplied and in keeping a record of them whilst they are in our possession.

SECTION 4: What if I want to use a representative?

43. This form is designed to let you make your own application.
44. Your employer (where applicable) may help you complete the form. However, it is your responsibility to ensure that the application is sent in to us with the correct fee enclosed.
45. You may wish to use an immigration advisor; however you should take care when choosing one. **The Office of the Immigration Services Commissioner (OISC)** regulates immigration advisers. If your adviser is not a solicitor, barrister

or legal executive you should ask if they are OISC authorised or exempt. Anyone else could be committing a criminal offence if they act on your behalf without being OISC authorised or exempted.

46. Your employer, or prospective employer (where applicable), is permitted to give you immigration advice in connection with your application. If they are completing the "Representative Declarations" section of the form, then at the appropriate point they should tick the box marked "Within a category of person specified in an Order made by the Secretary of State under subsection 84(4)(d) of the Immigration and Asylum Act 1999".
47. If you choose to make an application through a representative, such as a solicitor or other agent, we will correspond with them directly and send our decision on the application to them provided they are permitted to give Immigration advice.
Whether you choose to use a representative will not affect how quickly we consider your application.
48. The UK Border Agency reserves the right to contact the applicant directly to verify details on the application.
49. If a representative makes an application on your behalf, and that representative is not permitted to provide advice and immigration services (by section 84 of the Immigration and Asylum Act 1999), the Border and Immigration Agency will inform both you and the representative of the requirements of the Act, and send further correspondence to you.

Authorised immigration advisors

50. A list of authorised advisers is available from the OISC:

By phone: 0845 000 0046
(calls charged at local rate)

By Internet: www.oisc.gov.uk

By post: The Office of the Immigration Services Commissioner (OISC)
5th Floor
Counting House
53 Tooley Street
London
SE1 2QN

By fax: 0207 211 1553

By email: info@oisc.gov.uk

51. The OISC website also has links to websites for solicitors, barristers and legal executives.

SECTION 5: Submitting Your Completed Application

52. You can submit your application using the Royal Mail postal service or by courier.
53. We are unable to accept emailed or faxed applications.

54. Please note that the UK Border Agency is not responsible for any items whilst in transit to or from our offices.

Postal Service

55. In order to simplify the validation procedure, please ensure that the application is packaged in the following order:
- application form with cheque or postal order (if applicable) secured to page one of the form;
 - any supporting letters;
 - passport(s); and
 - supporting documents.
56. If you wish to send more than one application in the same envelope, please ensure that each application is clearly distinguishable from the others by packaging each one separately.
57. Completed applications should be sent to the address below:
- UK Border Agency – Tier 1 (HST)
Vulcan House - Steel
PO Box 3468
Sheffield S3 8WA
58. We recommend that you use Recorded or Special Delivery, as this helps us to record the receipt of your application. Please make sure that you keep a record of the Recorded or Special Delivery number.

SECTION 6: Considering Your Application

How long will it take to consider and decide my application?

59. Please see our website for details of our service standards: www.ukba.homeoffice.gov.uk

What if I want to travel before my application has been decided?

60. We would advise you not to make any plans for non-urgent travel outside the UK until we have returned your own and any dependants' passports or travel documents.
61. If you do wish to travel outside the UK whilst your application is with the UK Border Agency, then your application will need to be withdrawn. In these circumstances your documents and passport will be returned to you. You will not receive a refund. If you still wish to pursue your application a new application will have to be made at a later date, and include a new fee.

How will I be notified of the decision?

62. We will send all letters to the applicant named on the application form unless you are using a solicitor or other representative. In most cases we

will send the decision and all letters to them unless they are not permitted to provide immigration advice or service under section 84 of the Immigration and Asylum Act 1999.

Please note – If your application is refused the reasons for the refusal, together with next steps available to you, including any appeal rights you may have, will be included in the letter notifying you of our decision.

Return of information

63. Documentation submitted with your application will normally be returned to you under the same cover as your decision letters.
64. Decision letters and original documentation can only be returned to your current address, declared on the front of the application form, or to the address provided on the representative's declaration page, if one has been appointed. Decision letters and original documents will not be sent to any other address.
65. All documents will be despatched by Recorded Delivery.
- If you wish your passport and documents to be returned to you by Special Delivery, you will need to provide a prepaid Special Delivery envelope appropriate to the size and weight of the documents submitted.
66. If you wish to arrange for a courier to collect your documents you may do so. However, all costs for a courier will need to be borne by the applicant.
67. If you arrange for a courier to collect your documents, you must ensure that you notify the team considering your application.
68. If at the end of one week your documents have not been collected we will post them out by the appropriate postal method as above.
69. Please note, UK Border Agency staff will be unable to sign any documentation when couriers pick up your documents. Therefore you should check with the courier company you instruct that there are no papers to be signed when they collect the parcel from our office.
70. Couriers should be arranged to collect documents during normal business hours only (9.00 am to 5.00 pm on weekdays excluding public holidays).

SECTION 7: Further Information

How can I contact the UK Border Agency?

71. Please do not contact the UK Border Agency before a decision on your application is likely to have been made (see www.ukba.homeoffice.gov.uk for service standards and latest performance information),

unless you have an urgent enquiry. If you do need to contact the UK Border Agency, please use email wherever possible.

72. For general enquires, please contact our Customer Contact Centre, the contact details are provided in Section 4 of these guidance notes. You should also make it clear that you are applying under the HSMP High Court judgment of 8 April 2008.
73. When contacting the UK Border Agency by telephone please make sure you have the following information to hand, and when contacting us in writing please provide the following details in your letter or email:
- applicant's full name, date of birth and nationality;
 - the Recorded or Special Delivery number (if applicable);
 - the date on which the application was posted; and,
 - applicant's Home Office reference number if one has been assigned.
74. Please do not send any correspondence about your application to the Government approved Payment Handling Service in Section 5 of these Notes, as this address is for processing the payment only.

How do I make a complaint?

75. If you are unhappy with the standard of service you have received and you wish to make a complaint, please contact us at:
- Complaints and Compensation Team
UK Border Agency
North East, Yorkshire and the Humber Region CSU,
PO Box 3468,
Sheffield,
S3 8WA
Email: NEYHCustomerSe@ind.homeoffice.gsi.gov.uk
Fax: 0114 207 6368
76. Please be aware that you will be advised to send all complaints in writing.
77. If your complaint is about general procedures within the UK Border Agency we will reply within 20 working days of receiving your letter.
78. If your complaint is about the behaviour, attitude or general conduct of a member of our staff, we will reply within 12 weeks of receipt of your complaint, to allow time for an investigation.
79. If it is not possible to give you a full reply within these timescales, for example because a detailed investigation is needed, we will provide you with an interim reply. This will tell you how we are

dealing with your complaint and when you can expect a full reply.

80. The full reply will include details of who to contact next if you believe that your complaint has not been dealt with properly. This will normally be an appropriate senior official.
81. If you are still not satisfied, you can ask your local Member of Parliament to contact the independent Parliamentary Commissioner for Administration (the Ombudsman) to review your complaint and how it has been handled. If the Ombudsman is satisfied that your complaint has been dealt with fairly, they will close your case and we will not respond to further correspondence about the matter.

Data Protection Notice

82. We will treat in confidence all information you provide in connection with your application. But we may disclose it to other agencies for immigration and nationality purposes or so they can carry out their jobs. The information in the Payment Slip will be known to the Payment Handling Service who work for the Home Office processing application payments.

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