

# Avoiding the penalties for employing incorrectly those who are subject to immigration control

With effect from the **29th February 2008** employers have additional responsibilities and concerns to look out for when employing foreign nationals. If a foreign national is employed illegally/incorrectly then the Border and Immigration Authority ("BIA") can impose a maximum civil penalty of £10,000. Additionally a maximum two year prison sentence will apply together with an unlimited fine if, as an employer you knowingly employ an illegal worker. The authority for these penalties is the **Immigration, Asylum and Nationality Act 2006**.

How therefore should the industry deal with potential foreign nationals as prospective employees? The best place to start is the very practical government web site **[www.bia.homeoffice.gov.uk](http://www.bia.homeoffice.gov.uk)**. This site will explain in some practical detail what you need to do and how to avoid the pitfalls.

When employing foreign workers it is essential for the industry to distinguish between those workers who come from the European Economic Area (EEA) to include Switzerland, workers from accession states such as Poland and those outside these areas.

Nationals from the EEA and Switzerland can enter the UK without any restriction. Industry employers should be wary and not employ anyone just because they say they are an EEA national. Remember the penalties. You should ask for either or both a national passport or identity card. It is even better if these people can produce a UK residence permit. This entitles them to live and work here. If you then employ the individual keep copies of these documents.

Accession state workers are nationals from 8 of the 10 new countries who joined the European Union on the 1st May 2004. They include Poland, the Czech Republic, Hungary and others. These people must within one month of starting work in the UK register with the BIA under the worker registration scheme. If they are exempted check for a Worker Registration Certificate or documentary evidence of their right to an exemption i.e. if they are self employed or have been working in the UK continuously for 12 months or more. Slightly different rules apply to nationals from Bulgaria and Romania.

When employing from outside the EEA or accession countries ask for a passport endorsed to show that the person can stay in the UK and can do the type of work you are interviewing for. Alternatively, you can request a Biometric Immigration Document issued by the BIA stating the same as in the passport or a residence card. There are a number of other combinations of documents.

As of autumn 2008 foreign nationals from outside the EEA will be able to work in the UK as sports people if they obtain an entry clearance by scoring 70 points or more as a Tier 2 - skilled worker. The 70 points have to be scored from 3 categories namely: sponsorship, meaning that the individual has a job to go to from an organisation which will employ them; they can maintain themselves from savings which are presently set at £800 and they have good English language skills. There are a number of other visa categories for people wanting to work in the UK.

The above information is not intended to be a complete or definitive statement of the law as it is. For further information, please contact **Peter Johnson** at **[epj@awdrys.co.uk](mailto:epj@awdrys.co.uk)** or on **01249 815110**.