



THE HSMP FORUM LTD JUDICIAL REVIEW (JR) JUDGEMENT OF APRIL 2008:
GUIDANCE FOR FORMER HSMP HOLDERS AFFECTED BY THE JUDGMENT WHO
ARE NOW OUTSIDE THE UK AND WHO WISH TO APPLY FOR REINSTATEMENT
AS A HIGHLY-SKILLED MIGRANT
(TO BE READ IN CONJUNCTION WITH THE HSMP FORUM LTD JUDICIAL
REVIEW [POLICY DOCUMENT](#))

Introduction

1. If you received an approval letter under the Highly Skilled Migrant Programme (HSMP) according to the requirements which were in place before 7 November 2006, and obtained entry clearance/leave to remain on the basis of that letter, you may be affected by this judgement if you fall into one of the following two categories:
 - a) you applied for and were refused an extension of stay under the revised HSMP requirements introduced on 5 December 2006, and subsequently left the UK - hereafter you are Category (a) for the purposes of this guidance;
 - b) you left the UK after 7 November 2006 without applying for an extension of stay under the revised HSMP requirements introduced on 5 December 2006 - hereafter you are Category (b) for the purposes of this guidance.
2. This guidance explains how you should proceed if you wish to apply for entry clearance to return to the UK as a highly-skilled migrant on the basis of the HSMP Forum Ltd Judicial Review Judgement (the judgement) of April 2008.

Summary

3. Category (a) If you are a category (a) applicant you may request a review of the original decision to refuse you an extension of leave. This review will be free of charge, and your original application will be reconsidered under the former HSMP extension requirements which were in place before the Rules change (see Annex A).
4. If successful, you will be granted Entry Clearance in Tier 1 (General) for a period of three years **or** a period long enough to enable you to complete the qualifying period for settlement, whichever is the greater. (See paragraphs 21-26 of policy document for full details).
5. Category (b) If you are a category (b) applicant you must first apply for Entry Clearance in Tier 1 (General) and pay the relevant fee. If you do not qualify under Tier 1 (General), you may request that your application then be considered under the former HSMP extension rules which were in place before the Rules change (see Annex A). **Please note that applications in this category must be made by 31 July 2009. Any applications made after this date will not be considered.**
6. If successful, you will be granted Entry Clearance in Tier 1 (General) for a period of three years **or** a period long enough to enable you to complete the qualifying period for

settlement, whichever is the greater. (See paragraphs 43-52 of policy document for full details).

7. Both categories of applicant should complete the Points Based System "Personal Details" form, VAF9 (<http://www.ukvisas.gov.uk/resources/en/docs/1903073/vaf9>) plus Appendix 1: Tier 1 (General) Migrant Self-assessment (<http://www.ukvisas.gov.uk/resources/en/docs/1903073/pbsappendix1>), which have been expanded for your use. You should make your application at the designated entry clearance post/Visa Application Centre (VAC) in your normal country of residence.

Detail: Category (a) applicants

8. If you are in category (a) you should complete the whole of VAF 9. You should also complete the relevant parts of Appendix 1 as directed on the form.
9. You need to provide as much evidence as possible relating to your previous HSMP leave in the UK and the refusal to grant you an extension under the revised Rules. Details will be cross-referenced with those held in UK Border Agency records and used to assess whether you would have met the requirements for an extension under the former Rules (i.e. those in place before 7 November 2006). You will need evidence of your current ability to maintain and accommodate yourself in the UK without recourse to public funds, should your application be successful.
10. In addition, your application must not fall for refusal under the General Grounds for Refusal ([GGFR](#)).

Detail: Category (b) applicants

11. If you are in category (b) you must first make an application under Tier (1) General of the Points Based System, including the points-scoring assessment. (For full guidance on this please see <http://ukba.homeoffice.gov.uk/sitecontent/applicationforms/pbs/tier1genpolicyguide.pdf>). You therefore need to complete the whole of VAF 9. You should also complete the relevant parts of Appendix 1 as directed on the form.
12. Your application will first be assessed under the Tier 1 (General) Rules. If you do not qualify for entry clearance under these Rules, a second, separate assessment will be made, using the information you have provided in Part 9 of the appendix, to determine whether you would have qualified for an extension under the former HSMP Rules (i.e. those in place before 7 November 2006).
13. To facilitate this second assessment, you should provide as much evidence as possible relating to your previous HSMP leave in the UK, including evidence that you left the UK after 7 November 2006. You will also need to provide evidence of your current ability to maintain and accommodate yourself in the UK without recourse to public funds, should your application be successful.

14. In addition your application must not fall for refusal under the General Grounds for Refusal ([GGFR](#)).

Notification of Decision

15. You will be informed of the outcome of your application by the entry clearance post/visa application centre (VAC) where it was made. If your application is refused, the reasons for refusal will be explained in a refusal notice.

Further Information

16. If you have further queries regarding making an application under this judgement, you should address them in the first instance to the designated entry clearance post /VAC where your application is to be made.

ANNEX A: REQUIREMENTS TO BE MET FOR AN EXTENSION OF LEAVE UNDER THE FORMER HSMP CRITERIA (IE, THOSE IN PLACE BEFORE 7 NOVEMBER 2006)

You must:

- i) have taken all reasonable steps to become lawfully, economically active in the UK in employment, self-employment or a combination of both;
- ii) intend to make the UK your main home;
- iii) be able to maintain and accommodate yourself and any dependants adequately without recourse to public funds;
- iv) not fall to be refused on general grounds such as criminal convictions and public funds.

ANNEX B: DEPENDANTS

1. If you are making an application under the judgement you may apply for your dependants (spouse/partner plus children under 18 years) to accompany/join you.
2. Each of your dependants must complete a Points Based System (PBS) Dependant application form, VAF 10. (<http://www.ukvisas.gov.uk/resources/en/docs/1903073/vaf10>). At Part 5 of the form, they need to provide evidence that you can adequately maintain and accommodate them in the UK without recourse to public funds, but they do not need to provide evidence that you/they are in possession of a set amount of money, as required by other Tier 1 (General) dependants. At Part 7.13, they should state that you (their sponsor/the main applicant) are applying for or have been issued entry clearance under "Tier 1 (General) – HSMP Forum JR Ruling."
3. If they qualify for entry clearance, your dependants will be issued leave in line with yours.
4. Any of your children who were previously in the UK with you, who were still under 18 when your family left the UK, but are now over 18, may exceptionally apply in this category if they can provide evidence that they are still dependent on you (i.e. they should be single, living with, and financially dependent on, you).