



UKRO Guidance on UK visas and the Marie Curie actions

Basic principles and sponsorship

Before a researcher from a non-EU country can apply to come to, or remain in the UK to work and study, they need to apply for a visa. To do so, they must have a sponsor, i.e., a UK organisation that wishes to employ them or provide them with education. To obtain a licence to become a sponsor, an organisation must apply to the UK Borders Agency (UKBA) supplying specified documents to show that it is eligible. The process to follow and documentation are detailed in the UKBA guidance.

For immigration to the UK there are five different categories, or 'tiers'. Sponsors must obtain licences for each of the different tiers it wishes to use. Most UK universities already have the relevant status to sponsor applicants under the appropriate tiers. Once licensed under each tier, the sponsors are able to assign certificates of sponsorship to migrants who wish to come to, or stay in the United Kingdom to work. These certificates are 'virtual documents' which allow the migrant to apply for entry clearance under the appropriate tier; they do not, in themselves, allow entrance to the UK – further procedures are required. In terms of the Marie Curie actions, it is the host organisation that needs to provide the certificate of sponsorship, and not the European Commission.

All guidance documents from the UKBA can be found on the page "Points-based system: guidance for employers and sponsors" available at:

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance/>

The tier system

Immigration routes under the sponsorship system fall into five tiers. Of these, three are applicable to the Marie Curie schemes:

- **Tier 2: Skilled workers with a job offer.** There are four routes within Tier 2 for skilled sponsored workers. Of these, only one, 'General' is relevant for Marie Curie Fellows. This strand offers a route of employment for medium to highly skilled workers who have received a job offer from a United Kingdom employer.
- **Tier 4: General student.** Tier 4 is the only route available for full-time students. There are two categories, 'child student' and 'general student', of which the latter, covering those who wish to come to the UK for their post-16 education, is the only one which might be useful in Marie Curie actions, and even then, only in a limited capacity, for reasons discussed below.

- **Tier 5: Temporary workers.** There are five routes within Tier 5 for sponsored temporary workers, but again, only one of these is useful to Marie Curie Fellows. This is the ‘Government authorised exchange’ strand, which offers migrants “a route to enable a short term exchange of knowledge and best practice through employment whilst experiencing the wider social and cultural setting of the United Kingdom.”

Specific issues relating to Marie Curie Actions under the different tiers

Note: for IAPPs and ITNs, the costs of visa applications would normally fall under the recruitment costs covered in Category E. For Individual fellowships, visa costs aren’t technically eligible as they are normally incurred before the start of the project; they can, however, be offset against the fellow’s allowances.

Tier 2: Skilled workers with a job offer – general

The main issue with applications under this tier from the point of view of the Marie Curie actions is the requirement that, “the vacancy filling process used by the sponsor complies with the resident labour market test or the job is on the shortage occupation list”. In practical terms, this means that the sponsor must have advertised the vacancy as set out in the UKBA guidance, which means “mandatory advertising in Jobcentre Plus for jobs under Tier 2 (General) plus one other advertising method permitted by the relevant codes of practice.” The codes of practice outline acceptable methods of advertising for different types of employment, including, ‘Scientific researchers’, ‘Social Science researchers’ and ‘Researchers not elsewhere classified’. The code is available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pointsbasedsystem/soccodesummarytables>

There are exemptions to this rule, including ‘named researchers’; this means, for example, that Fellows who have been awarded an Individual Fellowship do not have to meet the resident labour market test, and should, as a general rule, be able to apply for entrance under this tier. The general rule of thumb is to ask whether the funding would still be available if the named individual was to withdraw. It thus generally only becomes an issue in relation to fellowships awarded as part of a host action, to which the UK organisations must recruit the fellows. Therefore, problems with this condition have most commonly been encountered so far in relation to the ITN scheme.

The main issue here relates to the mobility requirement of the Marie Curie Actions, which states that Fellowships cannot be filled by those who have spent more than 12 months of the previous three years in the country in which the fellowship is to be undertaken. The fact that this requirement excludes large numbers of UK nationals means that, by definition, an applicant recruited in this scheme does not meet the requirements of the resident labour market test.

Tier 4: General Student

A Tier 4 sponsor must be an education provider that offers courses of study to students; therefore, only HEIs can use this category, and it is of little use to other types of organisation that might participate in a Marie Curie action. As it is a category to support students, the most obvious use of this tier is in the ITN scheme, to attain entry for ITN early stage researchers who are to undertake a PhD in the UK.

There is, however, a problem here arising from the European Commission's requirement that Marie Curie fellows should be appointed on an employment contract and spend 100% of their working hours on their fellowship. As UKBA guidance states that students in this category must be on a full-time course of study, and "...are allowed to work for a maximum of 20 hours per week (during term time)", migrants in this category cannot be employed on full-time employment contracts as the European Commission would wish.

To get around this, one possibility would be to employ fellows under the stipend option rather than an employment contract; however, this would run counter to Marie Curie policy, and the Research Executive Agency is only prepared to consider this on a case by case basis, if all other options have been exhausted. Several universities have also noted that if the PhD students are on stipends rather than employment contracts, it raises difficulties with waiving fees. In the cases of the students concerned, these will be set at international rates and thus become potentially prohibitive, as there is no way to claim these under the Marie Curie rules.

Furthermore a recent clampdown on student visas issued under Tier 4 may reduce the number of visas issued through this route. The new rules include stipulations that:

- Successful applicants from outside the EU will have to speak English to a level only just below GCSE standard, rather than beginner level as at present ; and that
- Those on courses which last under six months will not be allowed to bring dependants into the country.

Tier 5: Temporary Workers - Government Authorised Exchange

This category is for "migrants coming to the UK under the government authorised exchange schemes that aim to share knowledge, experience and best practice. This category cannot be used to fill job vacancies or provide a way to bring unskilled labour to the United Kingdom." Usually, individual employers and organisations are not allowed to use this category to sponsor migrants; there is an exception, however, made for educational institutions recruiting a sponsored researcher, so universities can use it to sponsor Marie Curie fellows (although other organisations may not be able to).

The main issue in this category is that migrants entering the UK under the government authorised exchange sub-category will be given a maximum of 24 months' permission to stay. This means that it cannot be used for ITN fellows awarded a three-year fellowship to pursue a PhD. It is, however, potentially a useful category for the IRSES and IAPP schemes, which have maximum secondment/fellowship durations of one year and two years respectively.

Under which tier should Marie Curie fellows apply?

International Outgoing Fellowships

International Outgoing Fellowships should not generally face visa issues in the UK: the only exception may be researchers from Associated Countries who wish to enter the UK for their reintegration year. In this case, they can apply either under Tier 5 (Temporary Workers: Government Authorised Exchange) or under Tier 2 (skilled workers with a job offer – general), where as named researchers they would not have to fulfil the requirements of the resident labour market test.

International Incoming Fellowships

The most likely of the Individual fellowships schemes to require visas; would again apply under Tier 5 (Temporary Workers: Government Authorised Exchange) or under Tier 2 (skilled workers with a job offer – general), where as named researchers they would not have to fulfil the requirements of the resident labour market test.

Intra-European Fellowships

Will only be an issue when non-EU nationals currently based in another Member State or Associated Country wish to undertake their fellowship in the UK. Would again apply under Tier 5 (Temporary Workers: Government Authorised Exchange) or under Tier 2 (skilled workers with a job offer – general), where as named researchers they would not have to fulfil the requirements of the resident labour market test.

Initial Training Networks

The most difficult scheme in this regard. If the fellowship is for two years or less, then the candidate should be able to apply under Tier 5. If it is for more, the candidate needs to apply under Tier 2 – this is currently problematic, as it is difficult for them to meet the requirements of the resident labour market test. Another option is for the candidate to apply through Tier 4, aimed at students, but this requires agreement from the Research Executive Agency that they can be paid via stipends and not be employed on a contract.

Industry-Academia Partnerships and Pathways

Individuals seconded from overseas industrial partners to UK academic partners should be able to apply under Tier 2 or Tier 5, as they will in most cases be named researchers and have a maximum stay of two years. The Foreign Office has also suggested that another option for employees of small companies would be for the companies to set up subsidiary companies in the UK (a relatively simple and inexpensive process) and appoint the secondees as sole representative of these in the UK. They would then be able to stay for two years, with the possibility of further extensions. Tier 5 may not be possible

for overseas academic staff moving to the UK to undertake a fellowship in an industrial partner, but they should still be able to apply under Tier 2 if they are named on the Commission grant.

International Research Staff Exchange Scheme

Fellows should be able to apply under Tier 2 or 5; a point to consider with regards to IRSES relates to the expense for obtaining a visa in the UK in relation to the level of Commission contribution for each exchange.

Cofund

As fellows are not named researchers on the Commission grant, and are instead appointed through a recruitment process, Tier 2 may not be appropriate, and the applicants are likely to run into the same problems with the resident labour market test as ITN candidates; those with fellowships of two years or less should be able to apply under Tier 5, but as there is no limit on the duration of the fellowships under this scheme, this may not be a viable solution for all.

All enquires relating to specific visa issues should be directed to the UK Borders Agency. Contact details are available at: <http://www.ukba.homeoffice.gov.uk/contact/>

This document is intended as an information note presenting an overview of the relationship between the FP7 Marie Curie Actions and UK visa requirements. It is not intended to replace advice from the UK Borders Agency and specific questions relating to the visa process should be addressed directly to the Borders Agency. The UK National Contact Point for the Framework programme Marie Curie Actions helpdesk, operated by the United Kingdom Research Office, undertakes to use due skill and care in providing advice and guidance, but shall not otherwise contain any condition of warranty, expressed or implied as to the accuracy, quality or suitability of any advice or any factor of matter contained within it or on which it may be based.

UKRO, 7 April 2010