

Spouse Visa Advice

This information is accurate as of February 2017. We will be updating this information semi-annually.

Law, process, and procedure

A spouse visa is a form of entry clearance, which is given to people who wish to come to the UK to join a husband, wife, or civil partner. People sometimes call this kind of visa a marriage visa. The 'applicant' is the person overseas who wishes to come to the UK.

In order to apply for a visa of this kind a person must be married or in a civil partnership with a person who is either a British Citizen, or has 'settled status' in the UK, which really means any person with Indefinite Leave to Enter or Remain. This person will be known as the applicant's, sponsor'.

Applications for spouse visas, which are granted, will be valid for a period of 2.5 years. After this initial 2.5 year period, an application must be made to the Home Office for this to be extended. Extensions will again be for a 2.5 year period. Initial applications are made by applying to the relevant British Embassy, High Commission, or Visa Application Centre in the applicant's country of origin.

This advice sheet will tell you a little about the requirements that someone must satisfy when applying for a spouse visa, and a little about the procedure that must be followed. Please note that every case is different and this advice sheet is not to be taken as a substitute for obtaining legal advice specific to your personal situation.

The Immigration Rules: Spouse Visa applications

Applications for spouse visas are made under Appendix FM of the Immigration Rules. This means that in order to be granted a spouse visa an applicant must satisfy each part of the relevant section of Appendix FM, and provide evidence to prove that they meet the rules to the relevant embassy, high commission, or visa application centre in the applicant's country of origin.

This advice sheet will look at each of the rules in turn and give examples of the kinds of evidence that you can submit to satisfy them. The examples given are not exhaustive however, and there are no set rules on the kinds of evidence that can be used to satisfy each part of the rules. Don't be afraid to submit other kinds of evidence if you think it will help to prove a particular point.

The 'partner' requirement

To satisfy this part of the rules the applicant needs to show that their partner in the UK (the sponsor) is either a British Citizen or has indefinite Leave to Remain. Usually a copy of the relevant passport, status document or biometric residence permit will be sufficient to establish the sponsor's status in the UK.

The 'age' requirement

Next, it is necessary to show that both the sponsor and the applicant are over 18 at the time they apply for the visa. This can be established by providing proof of each parties identity including date of birth. A passport, identity cards or birth certificate will usually be sufficient.

Prohibited Degrees of Relationship

Next, it is necessary to show that neither the sponsor nor the applicant are in the 'prohibited degrees of relationship'. This means that they must not be too closely related. In short, parents, grandparents, siblings, uncles, aunts, nephews and nieces are not permitted to marry or enter civil partnerships. There are further rules applicable if either of the parties has been adopted or in a previous marriage or civil partnership, and is proposing to marry or enter into a civil partnership with a party who is in some way related because of the adoption or previous marriage or civil partnership. If this applies to you, you should seek advice on this if necessary.

Requirement to have met

This means that the applicant must submit some evidence to show that they have met the sponsor. This may be evidence that you have visited one another such as plane tickets or previous visas, or for example, photographs of you both together.

Genuine and subsisting relationship

It will be necessary to demonstrate that the relationship between the applicant and the sponsor is genuine and subsisting. This can be shown in a number of ways and with a number of different types of evidence. A good starting point is often to provide a letter, from either the sponsor, the applicant, or both, outlining the nature of the couple's relationship. Remember however, that there are no set categories of the kinds of evidence that you can provide for this.

For example, evidence of continued contact between the parties may be of assistance. This can be shown by providing telephone records, copies of email correspondence, or copies of letters and cards sent. Evidence of visits such as aeroplane tickets and photographs of the sponsor and applicant together can also be of assistance. Further, evidence which shows that the sponsor and applicant have been sending gifts or money to each other can further help to demonstrate a genuine and subsisting relationship.

Often the only evidence that the parties will have of their continued contact is pre-paid telephone cards. Whilst these can be used to support an application, it is often better to try and obtain printed telephone records. This can sometimes be done by contacting the company who produce the telephone cards and asking them to provide you with printed records of the calls made.

Further, contact is increasingly maintained by way of programs such as SKYPE, Facebook and by smart phone apps such as Whatsapp and VIBER. If the applicant and sponsor use programs such as these to keep in touch then they will need to attempt to contact the company involved to see if they can provide them with printed records of the contact between each other.

Remember that the above is only a guide and that there are many other kinds of evidence which may assist in showing that the relationship is genuine and subsisting.

The need for a valid marriage or civil partnership

Of course the applicant and sponsor need to have entered into a marriage or civil partnership, and that marriage or civil partnership must be legally recognised in the UK. The rule of thumb to apply here is that where a marriage or civil partnership is recognised as valid in the applicant's home country then this will further be considered valid in the UK. So, for example, if an Islamic marriage is considered valid in the applicant's home country then it will likewise be considered so in the UK. However, if the applicant and sponsor were married in another country which does not recognise Islamic marriages then this would not be recognised as valid in the UK.

Previous marriages or civil partnerships

Any previous marriages or civil partnerships that either the sponsor or applicant have entered into need to have broken down completely, and need to have been properly brought to an end either by divorce or dissolution. If either have been in a previous marriage or civil partnership, then this will need to be disclosed on the application form, and evidence of the divorce or dissolution will need to be provided with the application.

Intention to live together permanently

Evidence must be provided which shows that the applicant and sponsor intend to live together permanently in the UK. The kinds of evidence that will be useful here are similar to those that can be used to show that the relationship between the parties is genuine and subsisting. Therefore, a letter from either party, or evidence of the continued strength of the relationship between the parties will be useful here.

The financial, or 'maintenance' requirement

One of the major changes introduced into the immigration rules by appendix FM was the £18,600 per year income threshold. The effect of this requirement is that in order for an application to be successful, the sponsor for any application must have an income of at least £18,600 per year. If the sponsor cannot show such an income, then subject to the exceptions discussed below, the application will be unsuccessful.

The immigration rules further require that the evidence of the income provided to meet this requirement must be provided in a specified format. These requirements include, for example, specifics as to the format of bank statements provided, specifics as to the period which any payslips must cover (a minimum of 6 months), and specifics in relation to the translation of documents. The rules relating to supporting evidence can be found in full here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300962/Appendix_FM_SE.pdf

Savings

In cases where the sponsor does not earn the £18,600 per year, it is possible to make up any shortfall by taking into account the couple's savings. There are a number of requirements.

Firstly, the savings must be in excess of £16,000. Then, in addition, there must be a further amount on top of that £16,000. This amount must total 2.5 the amount of the shortfall. What this means is that if, for example, the sponsor earns only £17,600, then he

or she will need to have £16,000 in savings, in addition to 2.5 times the £1000 shortfall. Accordingly, he or she will need to have total savings of £18,500.

Again, this is subject to the formalities in respect of the evidence to be submitted. It is necessary for example, to show that the savings have been in the possession of the applicant or sponsor for at least 6 months prior to making the application. The full specifics of the evidential rules can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300962/Appendix_FM_SE.pdf

Exemptions

There are some exemptions from the income threshold for those who are in receipt of certain benefits. These benefits are:

- (i) disability living allowance;
- (ii) severe disablement allowance;
- (iii) industrial injury disablement benefit;
- (iv) attendance allowance;
- (v) carer's allowance; or
- (vi) personal independence payment; and

Where a sponsor is in receipt of one of these benefits, then they will only need to show that the applicant needs to provide evidence that they will be adequately maintained, which means that they will be supported financially, without the need for them or the sponsor to obtain further public funds.

To satisfy the requirement in these circumstances, an applicant needs to show that they have sufficient financial resources to support themselves throughout the whole of their visit. The benchmark that is set is the "income support level". This means that a family will need to show that they have at least the same amount of funds available as they would have if they were a family of the same size receiving income support, together with money to meet their housing costs of rent/mortgage and Council Tax. Clearly however, the more finance that the applicant has at their disposal the stronger the application will become.

Wage slips, benefits letter and bank statements, will all be crucial here to show that there are sufficient financial resources available to support the applicant should he or she come to the UK.

Accommodation Requirement

As for the accommodation requirement, evidence will need to be provided to show that the applicant will have adequate accommodation in the UK. For example, a copy of a tenancy agreement or evidence of home ownership of the sponsor will be the most common form of evidence submitted here.

You must bear in mind the rules in relation to overcrowding. The rule of thumb is that children under 10 years old can share rooms, as can couples, but that others should have separate rooms. If therefore there are other people living in the sponsor's property, then the applicant will need to show that there is still sufficient room for them to reside there.

The English Language Requirement

Finally, the applicant must show that they have a sufficient level of English, unless they come from one of the following countries:

- Antigua and Barbuda Grenada Trinidad and Tobago
- Australia Guyana United States of America
- The Bahamas Jamaica St Lucia
- Barbados New Zealand; Canada
- Belize St Kitts and Nevis
- Dominica St Vincent and the Grenadines

If the applicant is not from one of these countries, then there are three ways in which he or she can meet this requirement:

(a) have passed an English language test in speaking and listening at a minimum of level B1 of the Common European Framework of Reference for Languages with a provider approved by the UKVI;

(b) have an academic qualification recognised by UK NARIC to be equivalent to the standard of a Bachelor's or Master's degree or PhD in the UK, which was taught in English; or

(c) are exempt because they are over 65, have a physical or mental disability, or there are exceptional circumstances which prevent them from meeting the requirement.

Therefore, if the applicant has a degree or recognised equivalent then they will not need to undertake any further English language tests. They will need to contact NARIC to obtain confirmation of this to submit with the application. There is a fee to be paid for this. The website for NARIC is below:

<https://www.naric.org.uk/NARIC/Individuals/Default.aspx>

If not however, then they will need to take an English language test in their home country, prior to making the application.

Procedure when making the application

Applications for entry clearance to the UK are made at British Embassies, High Commissions, or Visa Application Centres in the applicant's home country. You can find details of the relevant application centre on the Home Office website:

<https://www.gov.uk/apply-uk-visa#other-ways-to-apply>

or at:

<https://www.visa4uk.fco.gov.uk>

Applicants are required to complete an online form, print this off, and take this along with any supporting documents to an appointment at the application centre. There is also an Appendix, Appendix 2, which needs to be completed by hand. This can be found here **<https://www.gov.uk/government/publications/application-for-uk-visa-for-family-settlement-form-vaf4a>**

There is a fee for the application, and applicants will either be required to pay this online when they make the application, or in person at the relevant British Embassy, High Commission, or Visa Application Centre. The kinds of supporting documents that should be submitted are those listed above, along with anything else which helps to satisfy the requirements of the Immigration Rules. Applicants will also need to submit their passports, and four passport sized photographs. Finally, applicants from many countries are now

required to be tested for tuberculosis (TB) before they apply, and to present a certificate to show that they are free from TB when they make the application. The certificate must be from a centre recognised for this purpose by the Home Office.

Once at the appointment, the documents and application forms will be taken and the application will be processed. Fingerprints and photographs of the applicant will be taken at this stage. Applicants will then be contacted with a decision in due course. Please note that all the documents provided with an application must be originals.

The Decision

Applicants will be contacted with a decision. This will either be a grant of a spouse visa, in which case this will be endorsed in the applicant's passport, or alternatively a refusal. In the case of a refusal, the applicant will receive a document entitled 'Refusal of Entry Clearance'.

The refusal document will state the reasons why the application has been refused. This will be because the Entry Clearance Officer, that is the person who considers the application, does not believe that the applicant satisfies all the requirements of Immigration Rules. Accordingly, the refusal document will identify the parts of the rule that the Entry Clearance Officer does not believe are satisfied.

When an application is refused there are three options open to applicants. These are to appeal, to ask for reconsideration, or to apply again. This information sheet will discuss each one in turn.

Appeals

If the applicant decides to appeal the decision, they will need to lodge the appropriate appeal form with the Immigration and Asylum Chamber of the First Tier Tribunal in the UK. This appeal is lodged by completing form IAFT 6 which is usually provided with the refusal notice. In this form the applicant will need to give the reasons why they think the decision of the Entry Clearance Officer is wrong. Please note that there is a fee for the appeal, which will also need to be paid when the appeal is submitted.

Once the appeal has been submitted there will be a delay of several months while the Tribunal obtains the relevant paperwork from the British Embassy or High Commission which made the decision. Once this is obtained then the Tribunal will set a date for the appeal to be heard. The applicant may arrange for a representative to attend the court on their behalf, or may ask for the Tribunal to look at the papers that the applicant has provided and make a decision on this basis. The appeal procedure can sometimes take up to, and sometimes exceed, six months.

Requests for Reconsideration

Alternatively, the applicant may write to the relevant Embassy or High Commission and ask that the decision be reviewed. This can be a quick and effective way of overturning decisions where it appears that the Entry Clearance Officer has made a mistake. The letter will need to clearly identify why the applicant thinks the decision is wrong, and why they satisfy the requirements of Immigration Rules.

For example, if the Entry Clearance Officer has refused an application because there is not enough evidence that the applicant will be adequately accommodated and the applicant disagrees then the applicant could write to point out that the evidence submitted

with the application is sufficient, and ask that the Entry Clearance Manager review the decision. The Entry Clearance Manager will then look again at the decision and decide if the original refusal should be upheld or not. In practice however, it will usually be advisable to lodge an appeal at the same time to ensure that if the decision is maintained, the applicant's right of appeal is not lost.

Making a new Application

The final option when an application has been refused is to apply again. This will require the applicant to go through the same procedure as outlined above to make an application, however they will need to provide additional evidence which addresses the reasons that were given for the previous application being refused.

For example, if the application was refused because no evidence was given that the applicant will be adequately accommodated, the applicant could reapply, and this time provide evidence as indicated above that he or she will have a place to stay in the UK with their sponsor.

More Information

As noted above, this information sheet is not a substitute for legal advice which addresses your particular circumstances. If, after reading this sheet, you still have questions then please contact our offices and we will see if we are able to offer you further advice and assistance.