



THE AIRE CENTRE

Advice on Individual Rights in Europe

BRIEFING ON THE RIGHTS OF A2 NATIONALS (ROMANIANS AND BULGARIANS)

On 23 November 2011, the UK authorities announced that they will maintain restrictions on the rights of Bulgarian and Romanian nationals ('A2 nationals') to access the labour market until 31 December 2013.¹ It is unlikely that a challenge to this would be successful. The purpose of this brief is to familiarise immigration and welfare benefits practitioners on the rights of A2 nationals to access the labour market and/or social assistance and social security benefits during the next two years.

Self-Employment

If they are not exempt from worker authorisation, A2 nationals are nonetheless able to exercise all of the other free movement rights that other EEA nationals have. In particular, they can take up self-employment in the UK. Self-employed A2 nationals can access such benefits as Housing Benefit and Council Tax Benefit, as well as allocation of housing and homelessness assistance (if they meet the other conditions British Citizens would have to fulfil to access these benefits). Even part-time self-employment can count. See, e.g., [2009] UKUT 58 (AAC) (11 March 2009) (where the Secretary of State for Work and Pensions conceded that a Czech national only engaged in self-employment for three to four hours a week and not turning a profit was self-employed for benefits purposes – although usually the authorities will expect to see more stable and continuous activity than that). Self-employed Bulgarians and Romanians can retain their 'self-employed' status and get out-of-work benefits (e.g. income-related Employment and Support Allowance) if they are temporarily unable to continue their self-employment due to illness or accident. If a self-employed A2 national's self-employed work dries up, (s)he may be able to access income-based Jobseeker's Allowance while continuing to look for more self-employed work. See *Secretary of State for Work and Pensions v AL* [2010] UKUT 451 (AAC) (09 December 2010); but see *Tilianu v Secretary of State for Work and Pensions*, [2010] EWCA Civ 1397. Family members (spouses, civil partners, children under 21, older dependent children, dependent relatives in the ascending line) of A2 self-employed persons can also access benefits; this includes separated spouses or civil partners, where there has not yet been a final divorce/dissolution.

Exemption from Worker Authorisation

If an A2 national is exempt from worker authorisation, (s)he can work and access all the in-work benefits a similarly situated British Citizen would get (including housing). Also, if an A2 national is exempt from worker authorisation, (s)he can get income-based Jobseeker's Allowance, Housing Benefit and Council Tax Benefit (again, if (s)he meets the other conditions for these benefits). The exemptions are found in Regulation 2 of the Accession (Immigration and Worker Authorisation) Regulations 2006. The following A2 nationals are exempt:

- those who have leave to remain with no restriction on their right to work;
- those who were working legally in the UK on 31 December 2006 and who had completed twelve months' continuous work on that date;
- those who have completed twelve months' continuous, legal work ending after 31 December 2006;

¹ See <http://www.ind.homeoffice.gov.uk/sitecontent/newsarticles/2011/november/44-labour-restrictions> for the announcement and <http://www.ind.homeoffice.gov.uk/sitecontent/documents/news/wms-eu2.pdf> for the written ministerial statement.

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- those who are also UK nationals or nationals of another EEA State;
- those who are married to or in a civil partnership with a British Citizen;
- those who have acquired permanent residence (usually after five years' continuous, legal residence in the UK);
- the family members (spouses, civil partners, children under 21, older dependent children, dependent relatives in the ascending line) of other EEA nationals, unless those other EEA nationals are workers still subject to worker authorisation themselves or if they are students who are only allowed to work because of their student status;
- highly-skilled persons;
- students (who are allowed to work up to 20 hours a week during term time and more than that otherwise, including working up to four months after finishing their course – but they can only work once they have obtained a 'yellow card' from the UK Border Agency);
- posted workers.

Some examples and other information:

- In relation to family members of other EEA nationals, if an A2 national is self-employed, his A2 wife will be able to work (or get benefits while she seeks work). After she completes twelve months' work, she will be exempt from worker authorisation and have the same rights as any non-accession EEA national. At that point, her A2 husband can work as the family member of a worker not subject to worker authorisation.
- An A2 student might work a part-time job for a full year as a student. After completing that full year of part-time work, (s)he is now exempt, having completed a full year of work, and has the same rights as a non-accession EEA national. However, students may now be expected to show UKBA that they have private comprehensive sickness insurance before they will be granted a 'yellow card' allowing them to work part-time. See the AIRE Centre's separate updated note on sickness insurance.
- An A2 national who is working with an exemption from worker authorisation can retain worker status (e.g. if temporarily unable to work due to illness).
- It may be possible for a non-exempt worker to get worker authorisation. Visit UKBA's website for more information.²

Benefits that A2 Nationals Can Always Get

Contribution-based benefits (e.g. contribution-based Jobseeker's Allowance, contribution-based Employment and Support Allowance) are based only on past National Insurance contributions. If an A2 national has paid any National Insurance contributions in the UK, then in accordance with Article 6 of EU Regulation 883/04, Jobcentre Plus must also take into account any social security contributions paid anywhere else in the EEA (e.g. Bulgaria or Romania) as if they were National Insurance contributions that had been paid in the UK. This is known as the principle of 'aggregation'. A2 nationals should also be able to get Disability Living Allowance, Attendance Allowance and/or Carer's Allowance in exactly the same circumstances as British Citizens.

Documents and More Information

A2 nationals who are exempt from worker authorisation or who are self-employed should (and in the case of students, must, if they want to work) fill out form BR1. There are other forms for other categories as well.³

For more information, particularly on issues related to permanent residence and/or sickness insurance for A2 nationals, feel free to contact the AIRE Centre: info@airecentre.org.

The AIRE Centre
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² The information can be found at <http://www.ukba.homeoffice.gov.uk/eucitizens/bulgaria-romania/work-permits/liveworkuk/>.

³ The forms can be found at <http://www.ukba.homeoffice.gov.uk/eucitizens/bulgaria-romania/work-permits/applying/>.