

## Risks of employing overseas nationals without permission to work



On 22 September 2009, the UK Border Agency issued a statement regarding Baroness Scotland's employment of a migrant who did not have the right to work in the UK. The UK Border Agency confirmed that following an investigation, the UK Border Agency will be imposing a civil penalty of £5,000 on Baroness Scotland as the employer of an individual who was not legally permitted to undertake work in the UK.

In the event that an employer employs a migrant who does not have the right to work, it may be fined up to a maximum of £10,000. In this instance, the UK Border Agency, in accordance with its guidance on preventing illegal working, reduced the level of the fine to £5,000 on the basis that Baroness Scotland co-operated with the UK Border Agency officials and that she had taken some but not all of the steps to check the individual had the right to work in the UK. However, she had failed to retain copies of the documents and accordingly the fine was not reduced completely. Had she taken and retained copies of the relevant documents

she may have been able to establish a full statutory defence.

The high level of press attention surrounding Baroness Scotland and the illegal employment of the migrant without the right to work in the UK serves as a timely reminder for employers that they must ensure that they take copies of migrant's documents proving their eligibility to work in the UK before they commence their employment and, if the migrant is first employed on or after 29 February 2008, they must request the migrant's right to work documents every 12 months and take copies of these for their files.

### Contact

If you require in-house training or advice regarding prevention of illegal working and the obligations on employers please contact Tracy Evlogidis or Nick Hobson of our immigration team.

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