

## University of Sussex

### Visa Renewal and 'Overstayers' Policy

Student Visa immigration guidance on 'Overstayers' (paragraph 5.84) published on 5 October 2020 gives the following guidance in cases where a student's visa (their permission to remain) has expired and they are applying for a new visa:

"All migrants wishing to apply for further permission must do so before their existing period of permission expires. There are limited exceptions relating to overstaying previous conditions (remaining in the UK when the applicant's permission to be here has expired). Any period of overstaying will not count against the applicant where either of these conditions apply:

1. the application is made within 14 days of the applicant's permission expiring and the Secretary of State accepts there is a good reason beyond the control of the applicant, or their representative, preventing the application from being made in time. The reason for the overstay should be provided in the application
2. the application is made following the refusal of a previous application for permission to stay which was made in-time (or to which the exception at point 1 above applied) and within 14 days of:
  - the refusal of the previous application for permission to stay; or
  - the expiry of any permission which has been extended by section 3C of the Immigration Act 1971; or
  - the expiry of the time limit for making an in-time application for administrative review or appeal; or
  - any administrative review or appeal being concluded, withdrawn, abandoned or lapsed."

#### 1. New students seeking registration

**Policy aim: to ensure demonstrable compliance with UKVI guidance by registering only those students who are either:**

- **already in possession of a Sussex-sponsored Student or Tier 4 visa (including Sussex Centre for Language Studies (SCLS)); or**
- **in the UK on the basis of holding a Student or Tier 4 visa sponsored by our embedded college Study Group or another HEI, and who are able to evidence that they have made an in-time application to switch to a Sussex-sponsored Student visa, using a Sussex CAS;**
- **in the UK on the basis of holding another valid immigration status which permits study for the duration of the course.**

1.1 UKVI rules allow new students to enrol with the University with an unexpired Student or Tier 4 visa not issued by Sussex, provided they can show proof they have made a visa application using a Sussex CAS (and that they understand that they do so at their own risk in terms of possible refusal of the visa application by UKVI).

1.2 They must make a new visa application using a Sussex CAS by the 'latest arrival date' listed on the CAS (or exceptionally a revised date agreed with Admissions or the Research Student Administration Office) and *before the expiry of their existing permission to study in the UK*.

1.3 All prospective students must therefore show us their proof of new application (based on Sussex CAS) by the relevant deadline (which requires sight of an application cover sheet or UKVI

acknowledgement letter); and, before a student is registered, they must demonstrate that they made this application *before their current visa expiry date*.

- 1.4 Prospective students who made applications within an 'overstaying' period will not be permitted to register provisionally (prov-visa), and will not be registered until they can supply a valid visa for study. If this cannot be achieved by the latest arrival date then they cannot be registered but may defer subject to agreement with Admissions or the Research Student Administration Office.

## **2. Current Students seeking visa renewal**

**Policy aim: to ensure that the University meets its obligations under UKVI guidance in handling cases where the student commences their studies with a valid visa (whether based on a Sussex CAS or another valid visa), but subsequently needs to extend that visa.**

- 2.1 Although students here on Student or Tier 4 visas should themselves be aware of the need to make their visa extension applications *before their current visa has expired*, UKVI guidance indicates an expectation that the University be pro-active in its approach to ensuring that this is in fact the case.
- 2.2 Therefore all staff responsible for overseeing student progress i.e. in the Research Student Administration Office and the Student Systems and Records Office, must have processes in place to monitor visa and passport expiry dates and to contact students well in advance of these dates to ensure students plan for visa renewal.
- 2.3 All current students who have allowed their visas to expire without making a new application should be immediately referred to International Student Support (ISS) and the Compliance Officer in OSCAR to assess their situation.
- 2.4 Current students whose visas have expired and who would be required to make a new visa application overseas will be immediately temporarily withdrawn for visa purposes (TWD-visa). TWD-visa will normally be for a maximum of one month depending on the student's circumstances. A new CAS will only be issued if the student can supply evidence of having left the UK, unless 2.5 applies. The course start date on a new CAS would be the original course start date. It will be reported to UKVI that the student has deferred their studies (pending the outcome of their application).
- 2.5 Current students whose visas have expired but who may be able to extend in the UK and who haven't yet had a CAS issued or made an application, should only have an CAS issued if:
  - a. It is within 14 days of the student's permission expiring.
  - b. They can demonstrate to the satisfaction of an International Student Adviser and Compliance Officer that there is a good reason beyond their control (or their representative's control), preventing the application from being made in time
  - c. All other circumstances are in favour of a successful application, including good attendance.
- 2.6 Students must discuss their circumstances with ISS and those who cannot meet the criteria set out in 2.5 will be TWD-visa and will need to leave the UK and apply for new entry clearance from outside the UK. Unusual circumstances must be agreed with the Compliance Officer in OSCAR. The School and SSRO will determine whether the time involved in returning home will require the student to take a period of intermission or not.

- 2.7 TWD-visa will normally be for a maximum of one month depending on the student's circumstances. The course start date on a new CAS would be the original course start date. It will be reported to UKVI that they have deferred their studies (pending the outcome of their application).
- 2.8 Depending on the timing of the application, the student will normally be asked to **either** make a Super-priority or Priority application. If the student is found to be high risk or the 14 day window has passed, they should be de-registered, withdrawn and advised to leave the UK.
- 2.9 Students who have already been issued a CAS and have made an out of time application without ISS support will be TWD-visa. New CASs for these students should be considered on a case-by-case basis with agreement from the Compliance Officer.
- 2.10 Any students who are TWD-visa must be contacted on a regular basis and the day after their visa decision is expected (1 day for Super-priority Applications or 10 working days for Priority Postal applications). Students will be expected to provide their new visa as soon as it is available (normally within 10 working days), otherwise they may be de-registered and reported to UKVI.
- 2.11 Students who have already been issued a CAS but have allowed their visas to expire without making a new visa application will usually have their CASs withdrawn until they have contacted ISS to make arrangements for a new application in line with points 2.5-2.10. The University reserves the right to withdraw a CAS where it is subsequently considered that there is a likelihood of a visa refusal.

### **3. Students who become 'overstayers' due to visas being refused or rejected as invalid**

- 3.1 Visa application refusals in these circumstances should be immediately referred to ISS who will advise whether there seems to be a technical basis for an admin review under UKVI rules.
- 3.2 If there is no case for admin review a second CAS may be issued if:
- a. Their previous (refused) application for permission was made in-time, or met the criteria set out at 2.5
  - b. Their previous application was made within 14 days of one or more of the following:
    - the refusal of the previous application for permission;
    - the expiry of any permission which has been extended by section 3C of the Immigration Act 1971;
    - the expiry of the time limit for making an in-time application for administrative review or appeal;
    - any administrative review or appeal being concluded, withdrawn, abandoned or lapsed.
  - c. All other circumstances are in favour of a successful application, including good attendance.
- 3.3 ISS will consider these on a case-by-case basis in liaison with the Compliance Officer. Students in these circumstances will be TWD-visa after ISS have established when their 3c leave expires. TWD-visa will normally be for a maximum of one month depending on the student's circumstances. The course start date on a new CAS would be the original course start date. It will be reported to UKVI that they have deferred their studies (pending the outcome of their application).

- 3.4 If the student is overstaying outside of the 14-day window, the student will be de-registered and reported to the UKVI and will need to leave the UK and apply for new entry clearance from outside the UK. The School and SSRO will determine whether the time involved in returning home will require the student to take a period of intermission or not.
- 3.5 If an in-time administrative review has been submitted, the student can continue to be registered until the result of the review is known, unless ISS and the Compliance Officer consider that there are compelling and justifiable reasons why they should not be.
- 3.6 Where a visa application has been rejected as invalid, there is no opportunity for a student to make an admin review. Such students would be required to make a new visa application and if their current visa has expired they will be immediately TWD-visa and their current CAS will be withdrawn. TWD-visa will normally be for a maximum of one month depending on the student's circumstances. In order to receive a new CAS students must be able to demonstrate to the satisfaction of an International Student Adviser and Compliance Officer that a new application is unlikely to fall for refusal. If students have overstayed by more than 14 days a new CAS will only be issued if the student can supply evidence of having left the UK. The course start date on a new CAS would be the original course start date.

#### **4. Students who overstay their visas during periods of resit or intermission**

4.1 Students continuing at the University may have their sponsorship withdrawn during a period of intermission, or be otherwise required to leave the UK during a resit year. If such students remain in the UK and overstay their visas, they will be immediately referred to the Compliance Officer who will coordinate support and/or formal procedures in liaison with:

- The Compliance Manager
- The Director of Student Services
- The School of Study
- International Student Support
- The Student Life Centre
- Security (where required)

#### **5. Former students who are no longer sponsored by the University, but staff are aware that they are 'overstayers'**

5.1 There is no statutory requirement for us to report to the Home Office former students who are overstayers. However, where it is considered appropriate - for example where the student fails to co-operate with ISS and/or UKVI in resolving the matter or there is a risk to the reputation of the University as a sponsor - the Compliance Officer will consult the Authorising Officer and consider notifying the UKVI Premium Account Manager.

#### **6. Legislation and Good Practice**

This policy will be reviewed on a regular basis to ensure it remains compliant with the Student Visa Sponsor Guidance and Immigration Rules as well as good sector practice.

External resources:

The Home Office's [Sponsorship and Policy Guidance](#)

<b>Review / Contacts / References</b>	
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Policy owner:	Office for Student Appeals and Regulations (OSCAR)
Lead contacts / authors:	Damien Jarvis, Compliance Manager and Mike Machin, Compliance Officer