



Guide to UK immigration and visa options for US citizens wishing to live in the UK

Introduction

The result of the 2016 US election and the divisive nature of the campaigning has left a number of US citizens looking at their current circumstances and at what options may be open to them should they choose to leave the US and relocate elsewhere. We have already received numerous enquiries about the possibility of US families moving to the UK. Some may have connections to the UK through marriage or British ancestry, but many have asked for general advice on the range of options open to them to relocate to the UK with their families.

We are often asked by clients to provide a summary of the various options which are available for coming to live in the UK. Sadly, the UK does not have any visa category which enables an individual to simply come and live here without having a place on a full time educational course, a job offer with a UK sponsoring employer, an intention to start a UK business or significant funds to invest in the UK. While the UK visitor rules allow US nationals to visit visa free, these rules do not allow US citizens to base themselves in the UK and stay for longer than 6 months in a year. This can be frustrating for families who simply want to spend a more extended period in the UK for example to be nearer to family, to take a year out from the US and use the UK as a base to explore Europe or for those who want to relocate more permanently.

The purpose of this guide is to provide a little more information about the main visa categories which enable US citizens to stay longer than as a visitor. While this is a basic overview and not intended to be a detailed explanation of each category, it will help you consider immigration options that may be possible.

Are you British?

Many US citizens have ancestral connection to the UK and some may have British citizenship without knowing this. This will be the case if they were born in the UK before 1983 (even if they have never applied for a British passport) or if one of their parents was born in the UK and they were born abroad. British nationality law is extremely complex and if you do have any connections to the UK through the birth of parents or grandparents here then we can advise on your eligibility.

Are you or one of your family members an EU national?

EU citizens have a right to reside in the UK, which is currently a member of the European Union. This means that any EU national can come and live and work in the UK without any restrictions. Following the referendum vote on 23 June 2016, it is likely that the UK will leave the EU in mid-2019. Until that time, it is possible for EU nationals and their non-EU family members to continue to come to the UK and set up their residence here.

Many US citizens have European ancestry and in some cases it is possible for them to obtain EU passports. In general, this is only possible where the individual has a parent or grandparent who was born in an EU country and who held EU citizenship. The rules for the passing on of EU citizenship and whether dual nationality is allowed differ in each EU country, so you would need to take specific advice on whether or not you are entitled to apply for citizenship of that country. We can assist with sourcing this advice for you where required.

Are you married to a British citizen?

If your spouse, civil partner or unmarried partner is a British citizen you can apply for a settlement visa (also known as a spouse visa) to join them in the UK. There are a number of key requirements which need to be met including the financial requirements, under which you would have to show that your British partner either had a job offer in the UK or has already come to the UK and has started working in a role earning at least £18,600 per annum. Alternatively, you can show that you meet the financial requirements through having significant savings in the US equivalent to approximately £62,500 for a couple. The level of the financial requirement will increase if you have children who are not themselves British citizens. You would also have to show that you are in a genuine relationship and that you have suitable accommodation when you arrive in the UK.

These applications can take between three to 12 weeks to process depending on whether you use the settlement priority service available for those applying in the US. We provide a full service to support those applying for settlement visas.

Do you have UK ancestry?

If you are a citizen of a Commonwealth country and have a UK born grandparent then it is possible for you to come and work in the UK. Some US citizens may be eligible for Canadian citizenship which combined with a UK born grandparent, could provide access to the UK ancestry visa route. You must have an intention to work in the UK and either show that you have been offered a job here or have realistic prospects of obtaining a job or establishing a business in the UK. If you have a British born grandparent but are not a Commonwealth citizen, it is sometimes possible to obtain Commonwealth citizenship through acquiring citizenship by investment offered by certain Caribbean countries. We can provide further advice on this.

Will your children be attending school in the UK?

If your children are intending to come to the UK to study and at least one child is aged under 12 years old, it is possible for one parent only to come under the Child of a parent at school category. This visa is only available until the youngest child turns 12.

To qualify under this visa category, the child must be coming to the UK as a Tier 4 (Child) student to study at a fee paying independent school in the UK. Only one parent is allowed to apply as a parent of a child at school and it must be shown that the other parent will remain based outside the UK.



during the period of the child's studies. It is possible for the other parent to visit the UK but these visits will need to be limited to show that the other parent remains based abroad and is not using the visitor visa category to base themselves in the UK with the rest of their family.

Do you want to study in the UK?

Some of our clients choose to use a period away from home to study in the UK, for example pursuing a Master's degree. If you plan on pursuing a full-time graduate or post graduate course then you can come to reside in the UK under the Tier 4 Student category and bring your spouse or partner and children with you. In some cases you will be able to work part-time while you are studying and your spouse may also be able to work while you are studying in the UK. Your and your partner's rights to work in the UK will depend on what course you want to follow.

Please note that studying in the UK as a foreign student can be expensive. Course fees for graduate or post graduate courses at British Universities can be up to £20,000 per annum not including accommodation costs.

Do you intend to work in the UK?

The UK no longer has any visa category which allows you to come to the UK to look for a job on the basis that you are highly skilled. If you intend to work in the UK you must have an offer of employment from a registered sponsor and that employment must be at graduate level. Manual, administrative or clerical roles cannot generally be sponsored.

If you do have an offer of employment in the UK, your employer would need to be registered as a Sponsor under the Tier 2 (General) category of the Points Based System to be able to issue a Certificate of Sponsorship (a type of work permit) to you. These Certificates can only be issued if the UK employer has demonstrated that they have advertised the position and that there are no suitable candidates who are UK nationals, EU nationals or UK permanent residents.

To become a Tier 2 Sponsor, the UK business company needs to submit corporate documentation to show it is a trading business and must also show that it has appropriate HR systems, policies and processes in place which will enable it to comply with its compliance duties as a Sponsor. We can assist with registering the UK business as a sponsor.

If an UK employer is able to sponsor you as a new hire for their UK business, you can obtain a visa for up to five years and be accompanied by your family including spouse, civil partner, unmarried partner and any children aged under 18. If you complete five years employment in the UK and spend at least 185 days per year in the UK in each of these five years, you will generally be eligible to apply for indefinite leave to remain (permanent residence).

Does your US employer want to send you to work in the UK?

If you are currently employed by a US entity which has a group company in the UK, it is possible for you to be transferred to those offices under the Tier 2 (Intra Company Transfer) route. This requires the UK office to be registered as a Tier 2 sponsor (see above) and for you to have worked for your US employer for at least 12 months in a skilled graduate level role.

If you work for a US company which has no office or presence in the UK, and the company wishes to send you to the UK to set up its branch or subsidiary, you may be able to apply for a Sole Representative visa. To obtain this visa, you must not be a significant shareholder in a US business and must be a senior employee who has full authority to take commercial decisions and sign contracts on behalf of the US parent company. This visa option is not available if the US company already has a branch or subsidiary established in the UK which is operational and has UK staff employed. Visas can be obtained for an initial period of up to three years which can be extended for a further two years after which you will be able to apply for indefinite leave to remain (permanent residence). Spouses/partners and children under 18 can apply as dependants and can work.

Are you a person with exceptional talent?

You can apply to come to the UK if you are recognised as a recognised leader or future leader in the fields of science, humanities, engineering, medicine, digital technology or the arts. Before applying for a visa, you will need to apply for endorsement from one of the appointed bodies which assesses applications according to specific criteria. The route is open to those who have already demonstrated achievement at the highest international, such as Nobel prize and Oscar nominees and winners. It is also open to those who have already demonstrated “exceptional promise” in their international careers. We advise clients on whether they will meet the eligibility criteria and can assist in preparing both endorsement and visa applications.

Do you want to set up a business in the UK?

Some of our clients often indicate that they wish to set up a small business in the UK, work as freelancers or be self-employed.

The only scheme which allows individuals to be self-employed in the UK is the Tier 1 (Entrepreneur) route. In summary, this route requires the entrepreneur to produce a detailed business plan setting out their proposed business in the UK, show that they have at least £200,000 of available funds to invest into a genuine and viable UK business and that the business will create at least two full-time jobs which have existed for at least 12 months by the end of the person’s initial visa. Visas are issued for an initial period of three years and four months. Family members including spouses, civil partners and unmarried partners and children under 18 can accompany the Tier 1 (Entrepreneur) and can work in the UK.



The entrepreneur route cannot generally be used by those who only wish to freelance on their own account and who do not intend to have a substantive business in the UK and employ staff here. It also does not allow visa holders to work in other businesses or take employment in the UK.

Residence by Investment

The UK sadly closed its “Retired persons of independent means” visa in 2008. The UK no longer has a retirement visa which allows self-sufficient people who do not intend to work to come to the UK.

For those who wish to come to live in the UK without needing to study, work or run a business, the UK Tier 1 (Investor) scheme is available where you can show that you have at least £2 million available (around US\$2.48 million) to invest in the UK. The funds need to be in your name (or in joint names with your spouse, civil partner or unmarried partner). The funds should generally be held for three months before the application is made or, if obtained within less than three months (for example through a family gift, the sale of a property, liquidating investments or business income) these funds can be used as long as there is evidence of the source of the funds. Property owned in the UK or UK investments made more than 12 months ago cannot be counted toward the £2 million investment. It is advisable to take tax advice before coming to the UK to reside under the Investor category.

You will have to open a UK investment account with a UK bank or wealth manager before you apply for your visa. You will also need to provide police certificates from any countries which you have lived in for at least 12 months in the past 10 years.

Once the visa application is approved, you will need to invest the £2m into UK government bonds, shares in UK listed companies or loan capital in UK corporate bonds within 90 days of your arrival in the UK. Visas are issued for an initial period of three years and four months and can be extended as long as the investment is maintained. As an Investor visa holder, you can work in the UK, as can your family members. You can apply for indefinite leave to remain (permanent residence) after five years residence, as long as you have not been absent from the UK for more than a 180 days in each of the five years. We provide a full service to support Investors moving to the UK, including tax advice.

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Further information

In these uncertain times, we hope that we have provided you with a helpful overview of the various UK visa categories available, which are provided as an overview only and are included to enable you to consider the various options available. If you would like to discuss any of the above options, please contact Nicolas Rollason or Andrew Tingley.

Alternatively, please visit our website at www.kingsleynapley.co.uk or call us on +44 (0)20 7814 1200 to speak with a member of our private client immigration team.



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