



UK Immigration Update

Guidance Note for Employers and Individuals November 2009

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UK Immigration Update

The Points Based System - Introduction

Immigration to the UK is now governed by the Points Based System (PBS). The PBS was implemented over a phased basis from February 2008. Under the PBS there are five “tiers” of entry within which non EU nationals (referred to as “Migrant Workers”) applying to work or study in the UK will be categorised as set out below:-

Tier and Title	Requirements
Tier 1 - Highly Skilled Workers, Investors Entrepreneurs and Post Study Workers	These are highly skilled or wealthy individuals who will contribute to growth and productivity or who wish to invest in the UK. This category encompasses the Highly Skilled Migrant Programme, Business Persons and Investors visa.
Tier 2 - Sponsored Skilled Workers	This replaces the work permit scheme. The PBS requires employers to be licensed by the UK Border Agency as sponsors before they can employ Migrant Workers. Under this tier people can work in the UK if they have a job offer to fill gaps in the UK labour force from an employer with a sponsorship licence and they also meet qualifying criteria.
Tier 3 - Low Skilled Workers	This tier is currently suspended.
Tier 4 - Students	Students now need to be sponsored by the education provider. As before, students on full time study courses will be able to work part time during their studies and full time during scheduled vacations.
Tier 5 - Sponsored Temporary Workers and arrangements for young people	These people will be allowed to work in the UK for a limited period of time to satisfy primary non-economic objectives. Examples are: working holidaymaker and performers.

Tier 1 - Highly Skilled Workers, Investors, Entrepreneurs and Post Study Workers

Tier 1 (General) (covers Highly Skilled Workers and Post Study Workers)

The individual needs 75 points out of a possible 120 for 'attributes' such as age (points are available if under 32 years at the time of the application), qualifications, previous earnings and experience in the UK. The individual must also provide evidence that they have good knowledge of English and have enough extra funds to support themselves and any dependants without any help from public funds. Special points are available for individuals who have completed a recognised MBA within 12 months prior to making the application. Work experience outside of the UK is not considered.

If successful the individual will be free to seek employment without having a sponsor or to take up self employment / business opportunities in the UK.

The initial permit will be granted for 3 years. This can be extended by a further 2 years if the requirements are still met.

Individuals in the UK on a student visa who have completed a degree or masters from a UK university can apply for a Post Study Worker visa. This visa is for a period of 2 years and allows the individual to work or set up a business in the UK. The two year period under this visa does not lead to settlement. This visa is considered a bridging visa to the Highly Skilled visa or Tier 2 (general) visa. The individual must also provide evidence that they have good knowledge of English language and funds to support themselves.

Tier 1 (Investor)

The individual will need to obtain 75 points out of the 75 available which will only be awarded if they have:-

- At least £1 million of their own money held in a regulated financial institution and disposable in the UK **or**
- Assets with a value exceeding £2 million and have £1 million loaned to them by a UK regulated financial institution and disposable in the UK.

For the purposes of (a) the individual can rely on money held by their spouse jointly or solely in the spouse's name, provided they can show that they have unrestricted access to the money. Likewise for the purposes of (b) the individual can rely on assets held jointly with their spouse or in the spouse's sole name.

At least £750,000.00 must be invested by the individual in the UK in Government bonds, share capital or loan capital in active and trading companies that are registered in the UK. The investment should be made within 3 months of entry to the UK.

Apart from the above investment, there are no other restrictions on living and working in the UK.

The initial permit will be for a period of 3 years. After this period the individual can apply for a 2 year extension provided they have complied with the investment requirement.

Tier 1 (Entrepreneur)

The individual will need 75 points out of the available 75 and must provide evidence that they have good knowledge of English and have enough extra funds to support themselves and any dependants without any help from public funds. If successful the individual will be able to invest in the UK by setting up or taking over and being actively involved in the running of one or more businesses in the UK.

To gain the 75 points, the individual will need to show that they have access to at least £200,000 which is held in regulated financial institution(s) and is disposable in the UK.

The initial permit is granted for 3 years. When applying for a 2 year extension the individual will need to demonstrate that the £200,000 was invested as originally planned, the individual has been registered either with HMRC as self employed or with Companies House as a director, the individual is engaged in business at the time of the application and the business has created two new full time jobs.

Tier 2 – Sponsored Skilled Workers

This category replaces the former work permit scheme.

day or is absent from work for more than ten working days without the sponsor's permission.

Tier 2 covers the following categories: -

- (i) General – for those jobs that cannot be filled by a resident worker or that appear on the shortage occupations list.
- (ii) Intra-company transfers (ICTs) – for multinational companies to transfer an overseas employee to a skilled job in the UK branch of the company.
- (iii) Sportspeople – for elite sportspeople and coaches whose employment will make a significant contribution to their chosen sport at the highest level.
- (iv) Ministers of religion – for coming to the UK as a minister of religion, missionary or member of a religious order.

Tier 2 skilled workers must score points in order to qualify. The Migrant Worker will require a minimum of 50 points to qualify from areas such as qualifications and proposed salary. The Migrant Worker will also need to show they have good knowledge of English and have extra funds for their maintenance.

However, where the Migrant Worker is applying for an ICT under Tier 2 the English language requirement does not need to be met, provided the total length of stay in the UK is not more than three years.

Before applicants are able to apply under Tier 2 their sponsor must have issued a certificate of sponsorship. To be able to issue a certificate of sponsorship, sponsors will need to have registered as a licensed sponsor. The certificate of sponsorship acts as an assurance that the applicant is able and intends to undertake a particular role. The sponsor (or employer) also has a duty to:

The resident labour market test ("RLMT") will need to be satisfied to demonstrate that there is no suitable resident worker to undertake the role. The RLMT includes advertising the position with the national employment agency and Jobcenter Plus. Codes of practice for particular occupations detailing the best way to advertise the job and appropriate rates of pay have been drawn up by the UK Border Agency ("UKBA"). These need to be consulted and followed by the employer prior to issuing a certificate of sponsorship. This information will be included on the certificate of sponsorship issued by the employer.

- Keep records, including keeping a copy of the applicant's passport and contact details; and
- Report, for example, if the applicant fails to turn up to work on their first

The RLMT does not need to be satisfied for jobs listed as shortage occupation, an ICT or those individuals already legitimately in the UK and already employed by the employer in the same role for 6 months prior to switching to Tier 2 (General).

Tier 2 – Proposed Changes

As part of the Government's drive to introduce tighter controls on entry in the UK, it has recently announced new measures in order to enable resident workers to have more of an opportunity to fill vacancies before they are offered to Migrant Workers.

foreign company to the UK linked company under ICT will be increased from 6 months to 1 year. Also the minimum salary level for a post will be increased to £20,000 from £17,000.

From 2010 (the exact date is to be confirmed) all jobs must be advertised in Jobcentre plus for four weeks (extended from the current two weeks) before a Migrant Worker can be employed. Another change is that the length of service of a Migrant Workers wanting to transfer from the

Home Secretary Alan Johnson said that ***"These changes will ensure that businesses can recruit the skilled workers that the economy needs, but not at the expense of British workers, nor as a cheap alternative to investing in the skills of the existing workforce"***.

Tier 4 – Students

Under the new PBS, students will be required to obtain a certificate of sponsorship from an Approved Educational Institution (“AEI”). The AEI need to be registered with UKBA and must send an invitation or visa letter to the student setting out details of the course and confirming that a place on the course has been offered. The student needs 40 points to be successful in their visa application. 30 points are obtained on showing a correct original visa letter and 10 points are obtained by providing evidence that the student has funds for their maintenance and for course fees.

Settlement

After 5 years of continuously living in the UK, an application can be made for indefinite leave to remain or settlement. Short absences such as holiday or for work are permitted. UKBA will use its discretion in determining whether the absences amount to a number inconsistent with living in the UK. The individual will also need to demonstrate knowledge of English and of life in the UK before applying.

Note – Individuals in the UK on a spousal visa can apply for settlement after 2 years.

Citizenship

Once an individual has been granted settlement, they can apply for naturalisation as a British citizen. Absences from the UK will once again be considered by UKBA. After being granted naturalisation an individual can apply for a British passport.

Sole Representative Scheme

This scheme has not been incorporated in the PBS and is under review as to whether it should continue. However for now, a senior employee of an overseas company can come to the UK if it is intended that a subsidiary or branch office will be opened in the UK and the employee will act as the sole representative. The employee should not be a shareholder of the company (although a 10% shareholding may be permissible).

Conclusion

In implementing the PBS the Government's goal was to provide effective control of Migrant Workers and provide a flexible response to changing labour market conditions. The Government has formally established a Migration Advisory Committee to review the PBS's requirements for Migrant Workers.

Recent studies indicate that the UK population will hit 70 million in the next 20 years. 70% of that increase has been put down to migrants and their dependants (*The Real Threat of Immigration* by Sir Andrew Green Chairman of Migration Watch UK. The Guardian Newspaper 23 October 2009). In this current climate, with record high unemployment, the Government is under pressure to ensure entry to the UK is restricted to those who contribute to the UK's economy. We can therefore expect further changes to the PBS over the next few years.

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