

Immigration Alert: Significant Changes to Uk Work Permit and Related Immigration Issues

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Earlier this year, the UK government published new rules announcing a 5 tier system of points-based immigration along with other significant immigration and border security reforms. The UK Border Agency calls this the biggest change in the UK immigration system in 45 years.

The primary change to the work permit scheme is a new, 5 tier points-based system referred to as "PBS". The new PBS includes the following categories:

Tier 1: Replaces existing self-sponsorship categories for applicants who are highly skilled, entrepreneurs, investors, or have undertaken advanced studies and want to stay in the UK to work.

Tier 2: Includes skilled workers, intracompany transfers, sports people and ministers of religion. This tier is expected to account for a majority of the non EU workers coming to the UK.

Tier 3: Low skilled workers filling temporary labor shortages (currently suspended).

Tier 4: Students.

Tier 5: Youth mobility and other specific time-limited workers such as musicians to play a concert.

One of the most significant changes to impact UK employers is that under the new system, employers sponsoring foreign nationals for work authorization will need to apply for a license through the UK Border Agency. The agency has a web-based method for completing this registration. The license will be valid for four years. The license application process is available now, but is not required until the end of November 2008. Employers granted licenses will be given either an "A" rating or a "B" rating. A "B" rating is for employers deemed to be a higher risk for immigration violations for failure to have sufficient systems in place to track foreign workers and must follow a sponsorship action plan to help them become "A" rated or risk losing the license altogether. UK employers seeking sponsorship licensing after the system goes live in late November will face a significantly longer wait for processing of applications since the sponsorship application must be completed and approved before any application for a specific foreign national can be submitted.

New rules are also now in place as part of the UK's comprehensive immigration and border security reform program. These include rules for refusal of entry and cancellation of stay for foreign nationals who make false representations on their immigration applications and bans from re-entering the UK following immigration violations.

Any new application for a UK visa or permission to remain in the UK will be refused if the applicant has made false representations, submitted fake documents, or withheld material facts as part of the application process. The new rules now require refusal of applications in such cases, doing away with discretion which was previously permitted. Foreign nationals exempt from the entry clearance requirement may also be refused at the port of entry if the Immigration Officer believes the individual is making misrepresentations in an attempt to enter the UK.

Also now in place is a rule requiring refusal of applications for a visa or leave to remain in the United Kingdom if the applicant has previously violated UK immigration laws by any of the following:

- overstaying;
- violating a condition attached to his/her leave;
- entering without authorization; or
- making false representations in an application for entry clearance or leave to enter or remain.

In addition to the application refusal, false representations in applications will result in a ban on re-entry for 10 years. Other violations of UK immigration law may be subject to re-entry bans ranging from one to 10 years depending on the severity of the violation.

If you would like more information on any immigration matter, please contact your immigration attorney at Mintz Levin or visit www.mintz.com.

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