

Labour and Employment Client Service Group

From Bryan Cave, London

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UK Business Immigration – from April 2011

Introduction

The UK Government recently announced plans to dramatically restrict immigration of non-EEA/Swiss individuals wishing to work in the UK, with changes taking effect from April 2011. This bulletin outlines the anticipated impact for UK businesses trying to recruit staff from outside the EEA/Switzerland.

The new immigration system

From April 2011, immigration to the UK for work purposes will be based on a modified version of the current system, which contains five tiers.

An individual wanting to emigrate to the UK for work purposes will need to do so under one of the five tiers. Tiers 1 and 2 are the main tiers relevant to most of our clients' business immigration needs:

- **Tier 1 (Highly Skilled)** - from 6 April 2011 this tier will only apply to "exceptional talent" applicants (1,000 scientists, academics and artists p.a.), post-study graduates (who can currently work for two years after completing their study, but this category may soon close), and investors/entrepreneurs who meet certain capital thresholds.
- **Tier 2 (Skilled)** - there are two sub-categories of Tier 2 cases: "General" and "Intra-company transfers". These are considered in more detail, below. It is anticipated that from 6 April 2011, the number of occupations qualifying for Tier 2 visas will reduce from 192 to 121.

Separate tiers exist for low-skilled workers filling specific labour shortages (Tier 3 - but currently suspended), students undertaking courses (Tier 4) and youth mobility/temporary workers (Tier 5).

There are no other tiers for work-related entry into the UK, however these tiers do not apply to individuals who are able to settle in the UK for non-work related reasons (for example, because their ancestors were British or they are the partner of a British citizen).

Tier 2

Because of the restrictions inherent in Tier 1, from 6 April 2011 only Tier 2 is likely to be relevant to the vast majority of businesses in the UK trying to recruit staff from outside the EEA/Switzerland.

Under Tier 2, an employer must register as a sponsor and issue a “certificate of sponsorship” for an emigrating individual to work for that employer for a particular period of time. Registered employers are responsible for deciding whether an individual meets the relevant requirements for a certificate to be issued (and retaining proof). An incorrect employer assessment may be a criminal offence.

Tier 2 applicants are awarded points for attributes including age, salary and qualifications (the precise calculations will vary from time to time).

Applicant requirements

Under Tier 2, registered employers can only issue a new certificate of sponsorship for a new emigrating employee if the employee:

- has sufficient basic English language skills;
- has had personal savings of at least £800 (plus £533 per dependent) covering a consecutive 90 day period at least one month before the application is made;
- has a job offer of a skilled (at least graduate-level) job in the UK with a commensurate salary of no less than £20,000 p.a.; and
- scores at least 50 points on the points test.

Tier 2 (“General”) requirements

Tier 2 “General” applications are for new non-EEA/Swiss hires to be brought into the UK.

In addition to the minimum requirements for each applicant identified above, from 6 April 2011 the following additional restrictions will apply in respect of Tier 2 (General) applicants:

- the number of individuals able to enter the UK on this basis with salaries of less than £150,000 p.a. will be capped at 20,700 p.a., to be pro-rated on a monthly basis; and
- the sponsoring employer must also ensure that: the contracted hours for the role will be at least 30 hours per week and that there were no suitable EEA applicants for the role or that the role was on the “shortage occupation list”.

Existing migrants working lawfully in the UK, and new hires with a salary of £150,000 or more p.a., do not count towards the cap (but the individual applicant requirements may still need to be satisfied).

The UK Border Agency has indicated that if there are too many applications assessed with the same score on the points based test, it may be necessary to reject all of the applications with a certain score

to avoid having to select between them (in which case the quota for the month may not actually be attained).

Tier 2 (“Intra-company transfers”) requirements

As its name suggest, Tier 2 “intra-company transfer” applications are primarily for existing non-EEA/Swiss company staff to be sent to the UK for fixed periods of time.

There is no annual cap on the number of intra-company transfers that may be sponsored for entry to the UK. However, an individual must leave the UK for a period of 12 months after his/ her visa expires before re-applying for another visa (i.e. after a maximum of 12 months for short term transfers and after a maximum of three years for long term transfers). In addition to the minimum requirements for each applicant identified above, from 6 April 2011 employees can be transferred only if they fall into one of the following categories:

- **Established staff.** Employees who have worked for the organisation for at least 12 months and earn at least £24,000 p.a. Such employees can transfer for up to 12 months (if they earn less than £40,000 p.a.) or for up to three years, possibly extending to five years (if they earn £40,000 p.a. or more). It will not normally be possible to extend a visa beyond this period.
- **Graduate trainee.** Employees who have worked for the organisation for at least three months. The transfer is for a maximum of 12 months.
- **Skills transfer.** Individuals recruited by the organisation abroad transferring to the UK for purposes of either learning or imparting skills and knowledge to the UK. The transfer is for a maximum of six months.

In addition, an intra-company transfer job must be listed on the graduate occupation list. An individual entering the UK under this category cannot transfer to the Tier 2 “General” category.

This guidance only deals with the changes to business immigration post 6 April 2011. There are transitional arrangements in place for pre 6 April 2011 visa holders.

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