

Recent changes to tiers 1 and 2 of the UK immigration system

The government has recently brought into force a range of changes to the UK immigration system as part of its pledge to “reduce net immigration from the hundreds of thousands to tens of thousands”. Broadly, the reforms seek to significantly reduce the number of lower earning and lower skilled nationals of countries outside the European Economic Area (EEA) and Switzerland (Migrants) that are eligible under the UK’s points based visa system, whilst at the same time aiming to attract those who are able to make a significant financial investment and/or create new jobs in the UK.

Investors

The Investor visa category is designed for Migrants who want to make a substantial financial investment in the UK without having to take the more proactive steps that are involved with an “Entrepreneur” visa (discussed below). There is no “cap” on Investor visa numbers.

As of 6 April 2011, an applicant for a Tier 1 (Investor) visa has to show that they are able to make an investment of not less than £1 million in the UK. The money must, for instance, be controlled by the applicant, be disposable in the UK and be held in a regulated financial institution. Alternatively, the applicant can show that, taking into account any liabilities, they have assets worth more than £2 million and have on loan from a UK regulated financial institution no less than £1 million of which is under the applicant’s control and disposable in the UK. Applicants are required to provide documentary evidence that they have the funds available to invest in the UK and also, in some circumstances, the source of the funds.

Examples of ways in which the investor visa category has been made more attractive include:

- Accelerated settlement (i.e. indefinite leave to remain). With an investment of no less than £10 million or £5 million, and if certain other criteria are met, Migrants can apply for settlement after 2 or 3 years respectively instead of having to wait 5 years to apply for settlement;
- Allowable absences from the UK have been increased from 90 to 180 days a year;
- Applicants no longer need to meet a minimum English language competency standard.

Entrepreneurs

The Entrepreneur visa category is designed for Migrants who wish to establish, join or take over one or more businesses in the UK. To apply for a Tier 1 (Entrepreneur) visa, an applicant or joint applicants have to be able to show, for instance, that they have access to the required funds and that the funds are held in a regulated financial institution and disposable in the UK. In addition, the applicant or joint applicants must be able to show that

they meet the UKBA's English language competency and financial maintenance requirements.

This Tier 1 category is also not subject to a "cap" on visa numbers.

Examples of ways in which the entrepreneur visa category has been made more attractive include the following:

- It is now possible for two entrepreneurs to apply together (without a requirement for increased levels of funding) provided that they can show that they have equal access to the funds;
- Accelerated settlement. An entrepreneur can apply for settlement after 3 years if they have created 10 full time jobs for resident workers for at least 12 months or the company of which the entrepreneur is a director has generated a total turnover of £5 million over the 3 year period (for start up companies) or an additional turnover of at least £5 million compared with the previous 3 year period (for existing businesses);
- The normal £200,000 funding threshold has been reduced to £50,000 if an applicant has access to qualifying funding, for instance, from a registered and regulated venture capital firm or from a UK government department;
- There is a new 6 month entrepreneur visit visa that allows prospective entrepreneurs to visit the UK to secure backing for their business from relevant potential investors;
- Allowable absences from the UK have been increased from 90 to 180 days a year.

Exceptional talent

The government has stated that it wishes to "ensure that Britain remains open to the brightest and the best" and is therefore introducing a new "Exceptional Talent" visa category for scientists, academics and artists who are internationally recognised as being outstanding in their field or are likely to achieve such recognition. This category is expected to be subject to a cap of 1,000 for the period up until 5 April 2012.

Skilled workers

The Tier 2 (General) visa category is designed for Migrants who have a "skilled" job offer to fill a gap in the UK workforce that cannot be filled by a resident worker.

To be able to apply for one of these visas, Tier 2 Migrants have to first be sponsored by an employer that holds a licence, from the UKBA, to act as a Tier 2 sponsor.

On 6 April 2011, the first annual cap on the number of Certificates of Sponsorship – without which an applicant cannot apply for a Tier 2 visa – issued under the Tier 2 (General) visa category came into force. The cap has been set at 20,700 for the first year and is divided into 12 monthly allocations. However, it does not apply to applicants who will be paid £150,000 or more.

The skilled worker category has also been made stricter in other ways including raising the minimum English language competency level and limiting the category to graduate level occupations only.

Intra-company transfers

The Intra-Company Transfer (ICT) visa category is designed for employees of multinational companies who are being transferred by their overseas employer to a UK branch of the organisation on a short or longer term basis. Although not subject to a “cap”, this category has been restricted in a number of ways, for instance:

- As with Tier 2 (General), this category is now reserved for graduate level occupations only;
- Only applicants paid £40,000 per annum or more will be able to stay in the UK for more than a year; those who qualify and earn between £24,000 and £39,999 per annum can now only stay in the UK for up to 12 months.

Going forward

- For those who are able to invest at least £1 million or establish, join or take over one or more businesses in the UK, it is now easier to obtain a UK visa. We expect many investors and entrepreneurs to be particularly interested in the new “short cut” to settlement rights;
- Employers wishing to rely on the Tier 2 (General) and/or ICT categories to hire Migrant staff should assess the impact of the new restrictions and identify and try to work through any problem areas to help minimise disruption to staffing;
- Employers wishing to employ skilled Migrant workers under Tier 2, and who have not yet applied for or obtained a sponsor’s licence, should consider becoming a sponsor and bear in mind that the application for sponsor status takes time to prepare and process.

For further information, please contact a member of our Business Immigration Team:

Edward Wanambwa

Partner

020 8394 6445

Edward.Wanambwa@russell-cooke.co.uk

Fudia Smartt

Solicitor

020 8394 6525

Fudia.Smartt@russell-cooke.co.uk

Kate Minett

Solicitor

020 8394 6557

Kate.Minett@russell-cooke.co.uk

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice. No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP. © Russell-Cooke LLP. June 2011.