

Law Society Gazette

Changes to Tier I (Entrepreneur) Category

On 31 January 2013, changes to the Immigration Rules for the Tier I (Entrepreneur) route of the Points Based System took force.

In a written statement, UK Immigration Minister, Mark Harper, explained that the changes were being made in an effort to tackle what he described as 'abuse in the Entrepreneur migration route.' Specifically, Mr. Harper cited 'strong evidence' that mock businesses were being created and applicant funds were being recycled in order to game the system and prove the eligibility of multiple applications.

Significantly, in addition to applying prospectively to any applications made on or after 31 January 2013, almost all of the changes will apply retroactively to applications filed before this date, but which the UK Border Agency (UKBA) have not yet decided.

Funds

Prior to the changes, applicants only needed to demonstrate the availability funds to meet the Tier I (Entrepreneur) requirements at the time of application. Under the amended rules, in order to be 'available' funds must now meet the following criteria on an ongoing basis:

- be in the possession of the applicant; or
- be in the financial accounts of a UK incorporated business of which the applicant is a director; or
- be available from the third party or parties named in the application.

Additionally, applications made on or after 31 January that will rely on third party funds must include a declaration from the third-party donor confirming that the funds will continue to remain available to the applicant until such time as they are either transferred to the applicant or the applicant's business.

Genuineness

Authority has been conferred to UKBA caseworkers to test the credibility of applicants whom they deem suspicious. This may come in the form of additional questions, as well as in-person interviews. Information used to assess the genuineness of an application may include, but is not limited to the following:

- evidence submitted by the applicant;
- the viability and credibility of the source of the funds;
- the viability and credibility of the applicant's business plan;
- the previous educational and business experience of the applicant; and
- the previous immigration history of the applicant.

Curtailement of leave

For individuals who have already obtained leave as a Tier I (Entrepreneur) migrant, the UKBA may now curtail that leave in the event that funds used for the application are no longer available (as defined above), unless the funds were already spent in the setting up, or running of the venture. It should be noted that 'spent' does not include spending on one's own remuneration.

Failure to comply with convention

By convention, the Home Secretary typically lays changes to the Immigration Rules before Parliament no more than 21 days before they are set to come into effect. However, somewhat unusually, the recent changes to Tier 1 (Entrepreneur) took force immediately.

In its Statement of Changes, the Government submitted that this aberration from preferred procedure was necessary in order to prevent prospective applicants from gaming the system in the interim period between the announcement of the new rules and their taking force. The Government cited several reasons in support of this decision, including the immediate need to address current abuse of the route, the fact that this was an improvement in the effectiveness of the rule rather than a policy shift, and a surge in applications in the past when Rules changes have been announced.

The consequences of these changes, as is intended, will likely be fewer applications to the Tier 1 (Entrepreneur) category. Whether it will deter any of the alleged abuse of the UK Immigration System remains to be determined. On the other hand, the lack of notice and abruptness of the implementation of the changes almost surely risks further strengthening the perception that the UK is closed for business.

Laura Devine, Laura Devine Solicitors, London