

UK opens its doors to exceptionally talented migrants
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As part of the UK Government's recent reforms to reduce net migration into the UK and to tackle abuse, whilst at the same time encouraging the best and the brightest migrants, the Government announced on 20 July 2011 the requirements and application procedures for the recently introduced Tier 1 (Exceptionally talented) route under the Points Based System. Laid before Parliament on 16 March 2011, the new, free-standing route came into force on 6 April along side a number of other material changes to the Immigration Rules, and is now set to open for applications on 9 August 2011. Significantly, the Tier 1 (Exceptionally talented) category should facilitate not only those who have already been recognised as leaders in their fields, but also, for certain fields, those with the potential to be recognised as such.

With this niche category, the Government hopes to attract the world's top talent in the fields of science, humanities, engineering and the arts to come and work in the UK. However, as viable avenues of migration to the UK for skilled and highly skilled workers continue to atrophy and even disappear all together, the new route's initial limited allocation of only 1,000 places could likely serve as a barrier rather than a beacon to many of those 'exceptional' individuals whom the government hopes to attract to the UK.

Designated Competent Bodies

The Tier 1 (Exceptional talent) route will be overseen by four 'Designated Competent Bodies' whose primary roles will be to review individual requests and determine whether the migrant is, in their opinion, exceptionally talented. Appointed by the UK Border Agency (UKBA), these Designated Competent Bodies will also be tasked with agreeing upon, publishing and maintaining the requirements under which initial application are made. This approach appears to be in line with the UKBA's approach under Tier 2, Tier 4, and Tier 5, where a lion's share of the assessment of applicants has been delegated to third parties. The UKBA will, however, retain power to enforce the rules.

By doing this, the UKBA hopes to ensure that those selected are the brightest and best in their respective fields. Each Designated Competent Body will be allocated a set number of places, but it will be possible to transfer places among the four bodies to meet additional demand. At launch, the Designated Competent Bodies will be comprised of:

- the Royal Society, a fellowship of the world's most eminent scientists, which will be allocated up to 300 places;
- the Arts Council England, the national development agency for the arts, which will be allocated up to 300 places;
- the Royal Academy of Engineering, Britain's national academy for engineering, which will be allocated up to 200 places to nominate; and
- the British Academy, the national academy for the humanities and social sciences, which will be allocated up to 200 places.

It noteworthy that although the majority of these Designated Competent Bodies will consider both individuals with 'exceptional talent' as well as those with 'exceptional promise' in accordance with the stated purpose of the new rule, the Arts Council England has only published eligibility criteria for the former. Whether this is an oversight or intentional remains to be seen.

Process

The application process under Tier I (Exceptional Talent) is divided into four principle stages:

1. applicants must first request a Unique Reference Number from the UKBA. This request must be made by email and must indicate which Designated Competent Body the applicant will be seeking his or her endorsement from;
2. provided there is still a place available in the field indicated by the applicant, the UKBA will provide a Unique Reference Number to the applicant;
3. the applicant must then send the completed application with their supporting documentation and Unique Reference Number to the UKBA within ten days of receiving the number. The application will then be forwarded to the Designated Competent Body, which will advise whether the applicant meets the criteria;
4. provided that the Designated Competent Body has endorsed the applicant, the UKBA will then make the final decision whether, in light of the Immigration Rules, the application should be approved.

Grants of Leave and requirements

As with the other Tier I migrant subcategories, applicants seeking entry under the Tier I (Exceptional talent) route will not need sponsorship by an employer. Additionally, there is currently no provision for

an individual already legally in the UK under another immigration category to switch while in-country. Tier I (Exceptional talent) applicants who are endorsed by a Designated Competent Body and who meet all other requirements of the Immigration Rules will initially be granted permission to stay for three years and four months. Thereafter, they will be able to extend their leave for a further two years provided that they are economically active in their respective field, the Designated Competent Body has not withdrawn their initial endorsement and they meet an English language requirement. After spending a period of five years of continuous residence in the UK as a Tier I (Exceptional talent) migrant, individuals may apply for indefinite leave to remain.

Allocation

As noted above, there will be an initial limited allocation of 1,000 endorsements between 9 August 2011 and 5 April 2012. This inaugural period will be divided into two stages with each stage receiving 500 places. The stages will run from 9 August to 30 November 2011 and from 1 December 2011 to 5 April 2012, after which the number of places available will be reviewed. The total number of places will be divided among the fields with 300 allocated for arts and culture, 300 allocated for the natural sciences and medical science research, 200 allocated for engineering and 200 allocated for the humanities and social sciences.

Conclusion

There are obvious and quantifiable benefits to the new Tier I (Exceptional talent) category. It should come as no surprise that the UK should wish to attract the best and brightest minds to its shores, and having a clearly defined route (or routes) for the world's greatest minds is not only advisable, it is imperative.

On the other hand, it is too soon for applause. It is curious that the UKBA should wish to put a limit on the number of the exceptionally talented individuals entering the UK. Indeed, the Government's stated mantra of reducing net immigration from the hundreds of thousands to the tens of thousands seems at times blindly misguided, focused more on public perception than reason or reality. Why, one must query, would the current Government wish to limit, among others, Nobel laureates, Academy Award nominees, Pulitzer Prize winners and other remarkable and talented individuals from entering the UK for work?

Moreover, the limit does not seem to have precedent with other current Tier 1 sub-categories. There are, for example, no caps on the number of Tier 1 Investors or Entrepreneurs entering the UK. Why then with 'exceptionally talented' people?

In a recent press release, Immigration Minister Damian Green stated, "The UK is a global leader in science, humanities and engineering and we are a cultural centre for the arts. We will continue to welcome those who have the most to offer and contribute to our society and economy."

This stands in stark contrast to a recent Science Insider interview with Paul Nurse, president of the Royal Society, one of the four Designated Competent Bodies appointed by the UKBA. In that interview, Mr. Nurse expressed his and his colleagues' disapproval at the Government's approach, stating, "The fact is the Royal Society does not believe there should be restrictions' on the number of scientifically talented individuals who can work in the United Kingdom."

It remains to be seen how the new category of Tier 1 (Exceptional talent) will play out during its initial period from 9 August 2011 to 5 April 2012. What seems certain, however, is that it will fall far short of its intended purpose.

Matthew Meyer at Laura Devine Attorneys LLC contributed to this article.