

UK immigration: open and ready for business?

A Statement of Changes in Immigration Rules, detailing changes to come into force on 6 April 2011, was laid before Parliament on 16 March 2011. Amongst other immigration categories, the statement announced changes to the Tier 1 category of the Points-Based System as expected, and in particular to the Tier 1 (Investor) and Tier 1 (Entrepreneur) categories, but with more changes than anticipated. A definite Tier 1 (Exceptional talent) category has been established and so the Tier 1 category seems to have been redesigned in accordance with recommendations published by the Migration Advisory Committee (MAC) in their report of 18 November 2010: the Tier 1 (Investor) and (Entrepreneur) categories have been changed with the aim of attracting direct foreign investment as well as creating jobs, and the Tier 1 (Exceptional talent) category will seek to attract the brightest and the best, a recurring theme throughout Parliament's amendments.

On 22 March 2011, changes to the Tier 4 category of the Points-Based System were announced by Home Secretary Theresa May. The Tier 4 category, which deals with non-EEA student migrants, will be redesigned by April 2012 with the stated goal of serving the brightest and the best students. The Home Secretary has also promised a new entrepreneur route aimed at students that would allow those with business ideas and a potential to create wealth an opportunity to remain in the UK after graduation.

These changes seem to be consistent with the Coalition Government's objective of supporting a private-sector-led economic recovery while reducing net migration from hundreds of thousands to tens of thousands. However while they do send the message that the UK is open and ready for business, Britain must be careful not to only favour those willing to invest large sums in the country or are ready to develop businesses, and should provide ways for those who will contribute to UK economic recovery to enter the country.

Tier 1 (Investor)

Beginning 6 April 2011, migrants who apply under the Tier 1 (Investor) category of the Points-Based System will enjoy increased flexibility in their status and will require less time to be able to settle in the UK. Initial leave will be granted for three years and four months, and after investing £5 million in the UK, an investor may settle in the country after three years, and after an investment of £10 million, after two years, both significantly shorter periods of time than the current minimum of five years required for settlement. In addition, investors will be permitted to be absent from the UK for up to 180 days in any 12 months without jeopardising their right to settle, double the current limit of 90 days.

Tier I (Entrepreneur)

Tier I (Entrepreneur) migrants will also be granted an initial leave of three years and four months, with a potential extension of two years and settlement after five years. Entrepreneurs will be able to accelerate settlement after three years in the UK, however, if they generate a turnover of £5 million or create ten jobs in a three-year period. Like investors, entrepreneurs will be permitted absences from the UK for up to 180 days in any 12 month period. Most importantly, while the standard investment threshold will remain at £200,000, businesses that the UK Border Agency considers as 'high-potential businesses' will be allowed to enter the country with £50,000, as long as the sum is provided by registered venture capitalists regulated by the Financial Services Authority, by registered UK entrepreneurial seed funding competitions, by UK Government Departments, or a combination of the three. Entrepreneurs will be able to enter the UK with business partners if they have access to joint funds.

Prospective entrepreneurs

Prospective entrepreneurs will be able to enter the UK with a new type of visitor visa designed especially for those looking to set up businesses in the UK. Unlike those who enter the country with a business visitor visa, prospective entrepreneur visa holders will be permitted to apply for a Tier I (Entrepreneur) entry clearance or visa while they are in the UK.

Tier I (Exceptional talent)

A new Tier I (Exceptional talent) category has been established for those who have been internationally recognised in scientific and cultural fields and for those who show exceptional promise. Migrants will not need to be sponsored by an employer but will need to be endorsed by a Designated Competent Body (to be announced in the near future) and it will be for each of these bodies to select those who will qualify for endorsement. During the first year of this category, there will be a limit of 1,000 grants of entry clearance (700 in science and 300 in the arts), and the limits will be reviewed by April 2012. Migrants will be granted entry clearance of three years and four months, with the option of extending for two years. They will be able to settle after five years of residence in the UK.

Tier 4

Changes to the Tier 4 category, designed for student migrants, will be implemented starting April 2012. The category will be changed to cater to and 'protect' only the best and brightest students, in the words of Home Secretary. In her statement on 22 March, Theresa May expressed her goal of making the student category a route through which migrants would come to the UK 'for a limited period', 'to study, not work', and to 'make a positive contribution' to the UK.

In order to realise this goal, more responsibilities will be placed on both academic institutions and students. Beginning in April 2012, institutions must be classed as Highly Trusted sponsors and be accredited by statutory education inspection bodies by the end of the year 2012 before they can sponsor students. Students, in turn, will also lose their right to work unless they are at universities and publicly funded further education colleges and will no longer be able to bring dependants unless they are postgraduate students at universities or government-sponsored students (currently all students on longer courses are permitted to bring dependants). The overall time that a migrant can spend in the UK on a student visa will also be reduced for some. While the limit will remain at three years for lower level courses, it will be reduced to five years at higher levels (at present, a limit for study at or above degree level does not exist). Students

will also have to demonstrate a proficiency in English at a higher level: at the B2 (upper intermediate) level instead of at the B1 (lower intermediate) level.

The Tier 1 (Post-Study Work) category will close in April 2012, which currently allows students to seek employment in the UK for two years after the end of their courses. Students may find alternative routes to stay in the UK after graduation if they receive an offer of employment (and apply under the Tier 2 category) or if they qualify as 'innovative student entrepreneurs'; the Home Secretary has expressed plans to create a new entrepreneur route for students with business ideas and plans to create wealth in the UK.

Conclusion

Through changes in the Tier 1 (Investor) and (Entrepreneur) and Tier 4 categories as well as plans to establish Tier 1 (Exceptional talent), a prospective entrepreneur visitor visa, and a new entrepreneur route for students, the UK seems to be sending quite an eager message that the country is open and ready for business, at least to those who qualify under the changed Immigration Rules. However if Britain is to live up to the Coalition Government's aim of a private-sector led economic recovery while also reducing net migration, it must be cautious that the Immigration Rules do not merely favour those with large sums to invest, those who have been internationally recognised for their endeavours, or even those who show promise to do so. It must be especially cautious not to penalise legitimate migrants who wish to enter the UK to contribute to the country for the reason that they are unable to demonstrate significant wealth or the clear potential to create wealth at the time of their application, such as recent graduates. Universities and employers have already expressed that many talented students choose to study and work in the UK following their studies rather than in the US, Australia, or Canada because of the country's unique immigration system. Britain must not be blinded by the simple goal of reducing net migration, but should consider who will truly and most significantly make a contribution to UK economic recovery, and provide ways for them to enter the country.

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