

GLOBAL IMMIGRATION UPDATE

Vol. 3, No. 1 • February 2013

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AUSTRALIA

New visas became available as of November 24, 2012.

The New Visa Subclasses:

Subclass 401 (Temporary Work (Long Stay Activity) Visa) has replaced the Exchange visa (Subclass 411), the Sport visa (Subclass 421), and the Religious Work visa (Subclass 428) with a single Long Stay Activity sponsorship. The previous subclasses became categories under the Long Stay Activity Visa for which an applicant can apply.

Subclass 402 (Training and Research Visa) has replaced the Visiting Academic visa (Subclass 419), the Occupational Trainee visa (Subclass 442), and the Professional Development visa (Subclass 470) with a single Training and Research sponsorship. The previous subclasses became categories under the Training and Research Visa for which an applicant can apply.

Subclass 403 (Temporary Work (International Relations) Visa) has replaced the Government Agreement visa (Subclass 406), the Foreign Government Agency visa (Subclass 415), the Domestic Worker – Diplomatic or Consular visa (Subclass 426), and the Privileges and Immunities *provisions* previously in the (Subclass 456 and 457) visas with a single subclass to cover applicants undertaking work related to Australia's international relations. The previous subclasses *and provisions* became categories under the International Relations Visa for which an applicant can apply. No sponsorship is required.

Significant Investor Visa

The Significant Investor Visa is part of the Australian government's business innovation and investment program and is designed to boost the local economy by increasing the collection of funds managed locally and promoting growth in areas such as finance and real estate from foreign investors. This visa initiative, listed under Subclasses 188 and 888, began on November 24, 2012.

To be eligible for this visa, an investor must submit an Expression of Interest in Skill Select, receive a nomination from a state government, and make investments, held either personally or with a partner, of at least \$5,000,000 (AUD) in complying investments.

Complying investments include government bonds, Australian Securities and Investment Commission (ASIC)-regulated managed funds with a mandate for investing in Australia, or direct investments in private Australian companies.

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BELGIUM

The major change in 2012 was the implementation of the European Union (EU) Blue Card Directive, effective September 10, 2012. There are also new conditions for eligibility for two types of citizenship and a renewed focus on compliance issues.

Blue Card implementation. The Blue Card is atypical for Belgium, as it is both a work permit (issued by the regions) and residence permit (issued by the federal authorities). This is reflected in the processing of a Blue Card application:

- An employer who wishes to employ a highly qualified non-EU/European Economic Area foreign employee can apply for temporary work authorization with the regional authorities.
- The second step is that the foreign employee applies for a Blue Card, which is a residence permit, with the federal authorities.
- As a Blue Card holder, the foreign employee may work in Belgium without a work permit. He or she can invoke a work permit exemption.

The following conditions must be met:

- The employer and the foreign employee must have entered into an employment contract of indefinite duration or a fixed-term employment contract of a duration of at least one year.

- The foreign employee must be entitled to an annual gross salary of at least €49,995 (amount for 2013).
- The employee must have a degree from a higher education institution, awarded for an education program with a duration of at least three years.

The legal texts implementing the Blue Card are inconsistent on some points: it is not yet entirely clear how administrative authorities will interpret the rules governing the Blue Card. It is clear, however, that the Blue Card will exist alongside, without replacing, the already existing "fast-track" work permit for highly skilled personnel. Belgium does not apply numerical limits.

A potential future change relates to the transfer of the legislative power regarding work permits from the federal level to the regions. At present, the regions (Brussels, Flanders, and Wallonia) process work permits on the basis of federal legislation. The coalition agreement of the federal government mentions the transfer of legislative authority regarding economic migration to the regions. Negotiations are rumored to be starting shortly, which could lead to different rules for Brussels, Flanders, and Wallonia.

Belgian citizenship changes. The Nationality Act changed drastically effective January 1, 2013. It has become more difficult to obtain Belgian citizenship on the basis of residence, and requests for Belgian citizenship can no longer be filed from abroad. These changes do not apply, in general, to foreigners to whom Belgian citizenship can be attributed, for example, on the basis of their parents' nationality or birth in Belgium. The "old" rules with regard to eligibility and processing continue to apply to applications filed before January 1, 2013.

The following summarizes the new conditions for eligibility for two procedures for obtaining Belgian citizenship:

Naturalization

- The applicant must have an authorized stay in Belgium at the time of the filing of the application. This means that the applicant must be entitled to a residence permit valid for indefinite term or to permanent residence;
- The applicant must be at least 18 years old at the time of the application;
- The applicant must have had, or can offer, exceptional merits for Belgium on scientific, sport, or socio-cultural levels and can thus contribute to the international prestige of Belgium. The merits are now well-defined in the Nationality Act. For example, an athlete can be eligible if he or she meets the international or Belgian selection criteria for a European championship, a world championship or the Olympics, or if he or she is deemed, in the opinion of the relevant sports federation, to provide potential added value for Belgium for qualifiers or the final tournament of a European championship, a world championship or the Olympics;
- The applicant must explain and justify why he or she cannot obtain Belgian citizenship through a declaration of nationality.

Declaration of Nationality

This is possible at the earliest after five years of legal stay in Belgium, combined with the knowledge of one of the three national languages of Belgium, and proof of social integration and economic participation. The Nationality Act includes specific criteria for this social integration and economic participation.

Lapsed/Revoked Citizenship

Under the new Nationality Act, the Belgian court can declare citizenship lapsed/revoked in the event of certain criminal convictions or if citizenship was obtained through a marriage that has been annulled as a fake marriage. Contrary to the other new rules, these new rules on loss/lapse/revocation of citizenship are immediately applicable on pending applications as of December 24, 2012.

Compliance focus. There has been an increasing focus on compliance issues in Belgium, such as in the field of cross-border employment. For example, the Belgian government has begun an initiative against fraud and abuse regarding social security in the context of international mobility.

European regulations have set rules to determine what legislation applies in a particular situation. For example, an employee who is posted by his German employer to Belgium will, under certain conditions, remain subject to German social security; he will receive an "A-1" document from the German social security authorities as proof.

At present, as confirmed by European case law, European Union Member States' courts must accept an A-1 document, even if it is subject to discussion. Only the Member State that has issued the document can withdraw it. For instance, if there were discussion about the real nature of the posting of the German employee to Belgium, a Belgian court must still accept the German A-1 document as long as it has not been withdrawn.

A new rule effective January 10, 2013, entitles Belgian courts to set aside the European coordination rules in the event of "abuse," which is defined as the incorrect application of the European coordination rules to try to avoid being subject to Belgian social security. The Belgian courts could, in the event of such abuse, decide that Belgian social security applies anyway. For example, if the Belgian court believes that there has been fraud or abuse of the European coordination rules and that the German employee is not posted to Belgium but in fact works under the authority of the Belgian third party, it can set aside the German A-1 document.

This new rule is controversial, especially in light of European law.

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CHINA

Citizens of 45 countries are now allowed visa-free transit entry for up to 72 hours.

As of January 1, 2013, Beijing and Shanghai are now allowing citizens of 45 enlisted countries visa-free transit entry for up to 72 hours.

Qualified foreign nationals include those who transit through Beijing International Airport, Shanghai Hongqiao International Airport, or Shanghai Pudong International Airport. Before arriving in China, they must qualify for entering the third country and must have purchased a plane ticket with confirmed seating to that country. The transit period in China can be no longer than 72 hours. Such foreign nationals may leave the airport during their transit period and engage in tourism within the boundary of their city of arrival. The 45 countries include the United States, Canada, the United Kingdom, Russia, France, Germany, Italy, Spain, Brazil, Argentina, Australia, Japan, and Singapore.

Foreign nationals who travel outside of their city of arrival or stay beyond 72 hours may face punishment. Beijing has announced that foreign nationals who, due to uncontrollable circumstances, need to stay longer than 72 hours or travel outside of Beijing must apply for a visa at the Department of Entry-Exit Administration of the Beijing Public Security Bureau. Foreign nationals who fail to apply for a visa under these circumstances may be punished

according to the law and regulations related to illegal presence. Serious violations may result in restrictions on their future entries.

Beijing's and Shanghai's new policies are more lenient than China's current transit visa waiver regulation, which only allows foreign nationals wishing to transit through China up to 24 hours without a transit visa. They must have a valid connecting ticket with confirmed seating on an international flight and they must remain in the airport. The new program also expands Shanghai's existing transit visa waiver program, which exempts citizens of a shorter list of countries from the visa requirement if the travelers transit by air through Shanghai and stay for no more than 48 hours.

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FRANCE

The Prime Minister has declared a new enforcement plan against illegal work.

The Prime Minister of France issued a press release on November 27, 2012, on the opening of a National Commission on the fight against illegal work. The Prime Minister declared a new enforcement plan against such work. Before the Commission, the Prime Minister reiterated the need for joint action by the state and the labor unions to effectively fight against illegal work, which he said distorts competition between companies and causes harm to France through evasion of tax and social security payments. The plan is to address the most common forms of illegal work and is aimed more specifically toward preventing organized fraud, based on complex arrangements with multiple and international stakeholders.

Plan 2013-2015 has five main areas:

- The fight against the various forms of undeclared work;
- Enforcement against unpermitted secondments in the framework of international service delivery;
- The control of subcontracting;
- Sanctions against using false status; and
- Sanctions against the use of undocumented foreign workers and safeguarding their vested rights.

The plan, approved by all the trade unions and employers, increases controls. It will be implemented by inter-institutional and departmental anti-fraud committees (*comités départementaux anti-fraude*, or CODAF). The government is committed to a review of related actions each year.

For more information, see

http://www.gouvernement.fr/sites/default/files/fichiers_joints/plan_national_de_lutte_contre_le_travail_illegal.pdf; <http://www.gouvernement.fr/presse/communique-sur-le-plan-de-lutte-contre-le-travail-illegal>.

A related press release is available at <http://www.gouvernement.fr/presse/communique-sur-le-plan-de-lutte-contre-le-travail-illegal>.

There have also been changes in professional immigration legislation in France:

List of understaffed occupations applicable to third-country nationals: a decision of Council of State returns the list to its January 2008 version:

With a decree of August 11, 2011, the government had halved the understaffed occupations where the labor market test does not apply to foreign nationals of third countries in the European Union. In a judgment of December 26, 2012, the Council of State annulled the decree based on the irregularity of the procedure of consultation with trade unions.

The cancellation of the August 11, 2011, decree implies that the list has been returned to its state as it existed under the decree of January 18, 2008, which contained 30 understaffed occupations designated by region. The government could revise this list of understaffed occupations, as it did recently for Romanian and Bulgarian nationals (Order of October 1, 2012). The latter order greatly expanded the list of occupations open to Bulgarian and Romanian nationals without labor market testing.

The new provisions concerning the accompanying families of foreign employees transferred to France:

The implementation of OFII (*Office Français de l'Immigration et de l'Intégration*) as the "single desk" OFII was an opportunity for the administration to clarify the "Accompanying Family" scheme. The "Accompanying Family" category is now available only for the following categories of work permits: "Inter-Company Transfer," "Skills and Talents," and "EU Blue Card."

The "Accompanying Family" category was initially created by administrative practice, which created exceptions to family reunification rules, allowing several categories of foreign assignees to enter France with their spouses and minor children. The scheme allowed an initial visa and a residence permit for the spouse of a foreign assignee. The benefit of the scheme subsequently become conditional upon meeting a compensation threshold of 1,300 times the minimum guaranty index, while providing access to the labor market for certain categories of foreigners, such as the wives of senior management.

The new scheme applicable following the establishment of the single-desk:

The circular of August 3, 2012, repealed the circulars of March 26, 2004; May 7, 2004; and March 15, 2006. The "Accompanying Family" category is now available only in the proceedings of "Inter-Company Transfer," "Skills and Talents," and "EU Blue Card" categories. "Accompanying Family" status is no longer available to the family members of foreign employees seconded outside the framework of these three proceedings.

In particular, foreign employees seconded on client sites to provide international services may no longer benefit from the "Accompanying Family" scheme. Their family members wishing to come to France must apply for a visitor visa at the French consulate having jurisdiction over their place of residence abroad or make an application under the cumbersome family reunification rules.

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INDIA

India has revised its tourist visa guidelines.

The Ministry of Home Affairs recently revised the guidelines on tourist visas in a notification dated November 23, 2012, and published on December 4, 2012. The Indian government has lifted the two-month gap between two consecutive visits to India by foreign nationals. However, nationals of Afghanistan, China, Iran, Pakistan, Iraq, Sudan, Bangladesh, foreigners of Pakistani and Bangladeshi origin, and "stateless persons" are exempted from this new rule and the two-month gap rule will continue to apply to them.

The above exempted nationals will still need to apply for a re-entry visa if they wish to visit India within two months from the prior visa. This permit is granted only if the need is urgent, and not for business activities or employment or for pursuing studies/research. "Urgent" within the tourist visa category could mean something like coming back to look after a sick relative. It should be a compelling and emergent reason that requires the tourist to come back to India within two months. It will only be granted to one who has already received a tourist visa, has traveled to India, and now wishes to enter India again within two months as a tourist.

If the visa holder is traveling to neighboring countries of India for tourism on the same itinerary, no permit is needed as long as the trip follows the itinerary exactly. The visa holder must carry a copy of the itinerary to show the Immigration Officer.

The tourist visa restriction was introduced in November 2009 in the aftermath of the Mumbai terror attacks when it was found that Pakistani American David Headley had breached security norms to visit India several times over a period of three to four years. A fall in tourist inflow led the government to rethink its decision and issue the new notification in December 2012.

In the order announcing this change, the Ministry of Home Affairs stated, "the provision relating to the two-month gap between two visits of a foreign national to India on a tourist visa has been reviewed by the government. It has now been decided...to lift the restriction of two-month gap on re-entry of foreign nationals coming to India."

The announcement is available at <http://www.pib.nic.in/newsite/erelease.aspx?relid=89835>.

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ITALY

The Ministry of Interior has set a new requirement for obtaining a Blue Card. Also, the Ministry of Internal Affairs has validated same-sex partnerships.

Ministry of Interior

On December 10, 2012, Italy's Ministry of Interior provided clarifications on Blue Card eligibility requirements.

In addition to the apostilled and translated educational degree (at least a three-year degree course), the authorities now also require the individual's professional position to be validated by the Italian Ministry of Education. This new requirement has been enforced by the Immigration Authorities according to the Ministry's official notification number 7591 of December 7, 2012.

To obtain the Ministry's validation, the following documents are required:

- Original Diploma, translated into Italian language and legalized with the apostille/consular stamp;
- Certified copies of university transcripts, translated into Italian and legalized with the apostille/consular stamp;
- Declaration of Value issued by the relevant Italian consulate. The Declaration of Value is an official document that provides a short description of a certain academic or professional qualification, awarded to a specific person by an institution belonging to an educational system other than the Italian one.

Ministry of Internal Affairs

The Ministry of Internal Affairs has officially confirmed with a Directive letter issued on October 26, 2012, that same-sex partners of Italian or European Union citizens may obtain a family permit of stay in Italy, provided that their marriage is duly registered and recognized by the foreign country where the marriage was celebrated.

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NETHERLANDS

The recent change of government in the Netherlands has affected the immigration regulations. Also, new salary thresholds for highly skilled migrants have been published.

Effects of Change in Government on New Immigration Regulations

The State Secretary for Security and Justice of the newly established government announced that he would partly reverse some of the restrictions on family reunification that took effect October 1, 2012, under the previous government. An unmarried partner who is in a durable and exclusive relationship with a Dutch national or foreigner in the Netherlands will be eligible again for family reunification. This change in government regulations will enter into force in the first half of April 2013.

A proposal to amend the Dutch Nationality Act will be withdrawn, the government announced on November 27, 2012. The proposal was sharply criticized, particularly its provisions to further reduce dual nationality. The current law already generally prohibits dual nationality, but applicants who are married to a Dutch person were exempt, as were Dutch nationals who acquire the nationality of another country and are married to a person of that nationality. Other measures that will not go through now are the introduction of an income threshold and a qualification requirement (at least two years of work experience in the Netherlands or at least two years of vocational qualification in the Netherlands).

Also, as of January 1, 2013, the financial penalties for non-compliance with the Employment of Foreigners Act (EFA) have increased drastically. Companies employing foreigners without the required work permit were previously fined € 8,000 per employee. This will be raised to € 12,000. In case of a second offense within five years, this amount is raised by 100% to € 24,000 per employee (previously two years), or even € 36,000 per employee if the EFA is violated for the third time within this five-year period. The company can even be shut down for up to three months in the event of a third offense within five years, provided that the company has been warned in advance about the possibility of being shut down.

There is better financial news for family reunification applicants. Filing fees are reduced considerably as of January 2013. The reduction is a direct consequence of a long-pending complaint of the European Commission against the Netherlands. The Court of Justice of the European Union (CJEU) ruled on April 26, 2012 (C-508/10) that the government fee of € 401 for a European Community long-term resident permit is "excessive and disproportionate." The Dutch High Administrative Court followed this ruling in a judgment of October 9, 2012, on the Family Reunification Directive, applying the same principles of EU law as the CJEU. In response to this ruling, the Netherlands' State Secretary for Security and Justice announced that the government fee for family reunification would be reduced from € 1,550 to € 225 for visa nationals, and from € 1.250 to € 225 for visa-exempted nationals. The government fee for an EU Blue Card remains at € 750. Because the EU Blue Card is also based on an EU Directive, it could be argued that this amount must also be considered "excessive and disproportionate."

Highly Skilled Migrant and EU Blue Card: Salary Threshold 2013

The salary thresholds for permits for highly skilled migrants (knowledge migrants) and EU Blue Card holders as of January 1, 2013, have been published. Foreigners aged 30 or over must earn a gross annual salary of € 52,010 to be eligible for a residence permit to work as a highly skilled migrant. For foreigners under the age of 30, the highly skilled migrant salary threshold is € 38,141. For graduates in the Netherlands, the threshold is € 27.336.

The salary threshold to acquire the EU Blue Card residence permit is € 60,952.

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RUSSIA

The Russian government has approved several new decrees and laws, and extended the list of non-quota positions.

The Ministry of Labor of the Russian Federation approved Decree #567n on November 30, 2012, "On distribution of the quota approved for work invitation letters for 2013 among regions of the Russian Federation." 410,126 quota slots have been approved for the entire territory of the Russian Federation (last year it was 460,510 slots); 21,445 will go to Moscow, and 27,337 to Saint Petersburg.

The decree came into force on December 31, 2012. An expected decree on quota distribution between companies-employers has not yet been officially published.

In addition, the Ministry of Health and Social Development approved and published Decree #568n on December 3, 2012, on non-quota positions for 2013. This decree took effect on January 6, 2013, and companies that plan to use non-quota positions for employment of foreign nationals were able to begin the process immediately after January 9, 2013.

The list of non-quota positions has been extended and includes 59 positions:

Number	Position Title
1	Circus performer
2	Ballet performer
3	Ballet performer (principal)
4	Artist-musician (opera and chamber)
5	Artist-musician (principal)
6	Actor
7	Orchestra performer
8	Symphony (chamber) orchestra performer
9	Deputy production director
10	Deputy art director
11	Ballet master
12	General director of a joint stock company
13	General director of a joint enterprise
14	General director of an enterprise
15	General director of general directorship
16	General director of an inter-industry scientific venture
17	General director of a production facility
18	Senior principal engineer of a project
19	Senior principal engineer (in industry)
20	Director of the department
21	Director (head) of a branch office
22	Director of a plant
23	Director of economic affairs
24	Head of the Representative office

25	Director of a factory
26	Director (head, representative) of directorship
27	Director (head, executive) of an enterprise
28	Director of a firm
29	Director of a joint stock company
30	Director of a joint enterprise
31	Band Director
32	Deputy Chairman of the Board
33	Sound engineer
34	Sound supervisor
35	IT security engineer
36	Engineer of automation and mechanization of production procedures
37	Industrial engineer
38	Engineer for production control system
39	Engineer for automatic process control system
40	Engineer for realization of new technology
41	Quality engineer
42	Setting and testing engineer
43	Engineer for production management and control
44	Pre-production engineer
45	Engineer-welder
46	Design engineer
47	Electrical engineer
48	Ringmaster
49	Stunt coordinator
50	President of a consortium (consolidated group, corporation, etc.) (socio-economic entity)
51	Chairman of the Board
52	Stage manager
53	Production director
54	Ballet coach
55	Drilling technician
56	Setting and testing technician
57	Technician
58	Choreographer
59	Art director

In other news, some recent laws have been signed by the President of Russia and are due to come into force shortly.

One of the Federal laws (#3030-FZ "On amendment to articles 25 and 26 of the Federal law and on rules of departure from the territory of the Russian Federation and entrance to the Russian Federation") provides for long-term visas (for up to five years) for representatives and employees of multinational companies investing in Russia. The criteria for such companies will be stipulated by the Government of the Russian Federation. Such visas will be issued without any official invitation letter processed by Federal Migration Service (FMS), while the basis for a visa issuance will be the application of a particular authority stipulated by the Government of the Russian Federation and sent to a consular post of the Russian Federation.

Another amendment to this law (#321-FZ) suggests establishment of a ban on entry into the territory of the Russian Federation within three years for foreign citizens and persons without citizenship, who during their previous visit to Russia without a good reason overstayed for longer than 30 days beyond the end of the allowed term of stay.

The Criminal Code has also been amended to strengthen the responsibility for organizing the illegal entry into Russia of foreign citizens and persons without citizenship and their illegal stay and illegal transit, as well as for crossing the Russian border by those individuals whose entry into the Russian Federation is not authorized. The law provides for an increase in the fine

amount of up to three hundred thousand rubles and increased terms of punishment for organizing illegal migration.

Employers can now file an electronic application via the Internet for employment and work permits (as well as amendments, renewals, and duplicate documents) to the FMS. However, paper documents still must be provided to the FMS while the application is pending.

In addition, the law allows employers to use foreign workers with temporary residence permits in the Russian Federation without any additional documents, such as employment or work permits.

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UNITED KINGDOM

Various new developments have been announced.

New Statement of Changes to the Immigration Rules

On November 22, 2012, the United Kingdom Border Agency (UKBA) set forth new Immigration Rules before Parliament, the majority of which took effect on December 13, 2012. Some of the changes relax current rules, while others respond to abuse.

The changes cover applications under the points-based system in Tiers 1, 2, 4, and 5, as well as family and private life applications. The main changes to Tier 1 and 2 are summarized below:

Tier 1

- For Tier 1 (Entrepreneur) there will be a lowering of the English-language requirement from level C1 (advanced) to level B1 (intermediate), in line with other points-based system categories to avoid deterring potentially successful entrepreneurs.
- Students under Tier 4 will no longer be able to switch to the entrepreneur route unless they have funding of at least £50,000 from a specified source, such as registered venture capitalist firms, UK Government Departments, or listed seed funding competitions.
- A Tier 1 (Investor) migrant's visa will be canceled if the visa-holder does not maintain the required level of investment for the duration of his or her stay in this category.
- The rules will expressly state that loans cannot be secured on the investments relied on to obtain a Tier 1 (Investor) visa and the investments cannot be held in offshore custody.

Tier 2

- All Tier 2 intra-company transfer (ICT) migrants were subject to a maximum stay in the UK of five years if they entered the UK in this category after April 5, 2011. Under the rule changes, senior staff members earning at least £150,000 will be permitted to remain in the UK for up to nine years.
- Where a migrant leaves the UK on or before the expiration of his or her visa, a "cooling-off" period applies to prevent the migrant from returning to the UK in this category for 12 months (more about this below). Some flexibility is being introduced in how the cooling-off period is determined so that it can start on the first date the migrant can prove he or she has left the UK, should he or she wish to return to the UK in this category 12 months later. This way, the migrant does not have to wait until the date of expiration or curtailment of the visa by the UKBA.

- For all migrants in Tier 2 and other work routes who are eligible to apply to settle in the UK, permitted absences have increased to 180 days per year over the five years required to qualify.
- Migrants in Tiers 2 and 5 may undertake supplemental employment in a shortage occupation, even if this is a different occupation from the one in which they are being sponsored to work.

For family and private life applications, there will be a relaxation of the rules in relation to the evidence required to meet financial requirements. Specifically, the list of documents to evidence employment in the UK has been scaled back where appropriate and more copies of documents will be acceptable when originals are not available.

The Statement of Policy for Changes to the Points-Based System is available at <http://feedback.kingsleynapley.co.uk/files/uploads/documents/12%2011%2021-Statement-of-Policy-for-Changes-to-the-points-based-system-v3-2.pdf>.

Important Update From the UK Border Agency: Clarification on Proposed Changes to the Tier 2 Cooling-Off Period

Following the proposed Statement of Changes to the Immigration Rules in November, the UKBA has clarified the changes to the Tier 2 cooling-off period mentioned above.

The 12-month period during which a Tier 2 migrant must remain outside the UK can begin on the date the migrant actually leaves the United Kingdom, rather than on the expiration date of the visa or the date the UKBA cancels the visa. The UKBA has clarified that the following evidence is acceptable:

- Travel tickets or boarding card stubs, coupled with a Sponsor Management System report from the sponsoring employer, confirming that the Tier 2 migrant's employment in the UK has ended;
- Exit or entry stamps in the migrant's passport that confirm that they were no longer in the UK; or
- A letter from the migrant's overseas employer confirming the date he or she started work overseas after returning from the UK.

When someone switches into another category, his or her leave in the new category should supersede his or her previous leave. In such a case, the cooling-off period would start from the date of switching.

Changes to the Requirements for Biometric Residence Permits

Following the roll-out of Biometric Residence Permits (BRP) to all in-country visa applicants starting on February 29, 2012, it became apparent that some visa applicants who had already submitted an application before that date had not fulfilled this new requirement.

As of December 1, 2012, all applicants who have an outstanding application that pre-dates February 29, 2012, will now need to supply the UKBA with their biometric data. The UKBA is sending all affected applicants details of how to apply for a BRP. This is to ensure that as of December 1, the UKBA is only issuing this immigration status document in the new format.

BRPs are replacing older forms of documentation and the new format is helping employers and other bodies to check the immigration status and entitlements of foreign migrants.

Home Secretary Promises To Investigate Incorrect UK Visa Text Messages

In September last year, the UKBA awarded a multi-million pound contract to the private outsourcing company Capita to track down and remove 174,000 people who had either entered the country without authorization or overstayed their period of admission. Reports have been received of people receiving incorrect text messages from Capita over the holiday period informing them that they must leave the country, even people with British passports. It seems that Capita is relying on records held by the UKBA, some of which appear to be out of date. Capita has confirmed that a contact telephone number is provided with the text message so that those contacted can discuss their cases. Home Secretary Theresa May has promised to investigate these errors.

Youth Mobility Scheme 2013 for Japanese and Other Nationals

On November 26, 2012, the UKBA announced that the Youth Mobility Scheme (YMS) for Japanese nationals would be open for applicants in January. Successful applicants will be able to live, work, and study in the UK for up to two years.

Only 1,000 places will be available for students from Japan in 2013. Other countries that recently joined the YMS are the Republic of Korea and Taiwan. Under the proposed Statement of Changes to the Immigration Rules announced on November 22, 2012, the annual allocations of places are being renewed for 2013. There is an increase in the allocations for Australia (from 32,500 to 35,000 places) and Canada (from 5,000 to 5,500 places), and the Republic of Korea will receive 1,000 places.

The countries and territories participating in the scheme, and the number of places or certificates of sponsorship allocated to them for 2013, are:

- **Australia** - 35,000 places
- **Canada** - 5,500 places
- **Japan** - 1,000 places
- **Monaco** - 1,000 places
- **New Zealand** - 10,000 places
- **Republic of Korea** - 1,000 places (certificates of sponsorship)
- **Taiwan** - 1,000 places (certificates of sponsorship)

For more information on the YMS, see <http://www.ukba.homeoffice.gov.uk/visas-immigration/working/tier5/youthmobilityscheme/>.

Changes to the Immigration (European Economic Area) Regulations 2006

On November 8, 2012, the Immigration (European Economic Area [EEA]) Regulations 2006 changed. The amended regulations provide for the rights of EEA nationals and their family members to enter and reside in the UK and also confirm the criteria for rights to permanent residence.

The key changes to the regulations include:

- Removal of the requirement in regulation 8(2)(a) that an extended family member must have resided in a country in which the EEA national also resides;
- Amendments to confer rights of entry and residence on the primary caretaker of a British citizen. This is based on the European Court of Justice judgment in *Ruiz Zambrano* (this means that those who acquire this derivative right may not acquire permanent residence in the UK, or to sponsor family members in the UK once they have acquired a right to reside);

- Amendments to regulation 26 so that a person claiming to be the durable partner of an EEA national may only appeal where he or she has provided sufficient evidence of the relationship with that EEA national;
- Amendments to enable the Secretary of State to accept alternative evidence of identification and nationality when a person is unable to provide a valid ID card or passport due to circumstances beyond his or her control.

Changes to Job Centre Plus Advertising

Sponsors in the United Kingdom have been required to advertise their vacancies on Job Centre Plus before they can hire a foreign migrant to perform a non-shortage occupation role on a salary of less than £70,000. On November 19, 2012, the Department of Work and Pensions (DWP) launched a new online job posting and matching service, Universal Jobmatch. This replaces the current vacancy management service, Employer Direct and Employer Direct Online, for companies and the Job Centre Plus jobs and skills search facility for job-seekers.

Before placing an ad, an employer first must create an account online and obtain a Government Gateway account. Once the Government Gateway account is set up, the same ID and password is used to log in to Universal Jobmatch and place an advertisement.

The UKBA has confirmed that SOC codes are no longer required in the advertising posting. Also, the number of words has been expanded to enable employers to fully explain the role and skills required for a particular vacancy. This is then matched to resumes posted on the site.

Universal Jobmatch is available at <http://www.dwp.gov.uk/adviser/updates/universal-jobmatch/>.

Roll-Out of TB Testing for Visa Applicants in Malaysia, Nepal, South Africa, Zimbabwe

Tuberculosis (TB) testing requirements now form part of the visa application process for people planning to come to the UK for more than six months, as of December 31, 2012. This follows the UK government's announcement in May 2012 of tuberculosis testing as a requirement of the visa application process for certain countries. The UKBA already rolled out pre-entry TB screening in India beginning on August 16, 2012.

Visa applicants in Malaysia now need to undergo pre-entry TB screening and obtain a certificate verifying that they are not infected with TB before they can obtain a visa to enter the UK for more than six months. Testing will not be required for those traveling to the UK for less than six months; for example, for short-term business or tourism. Only UKBA-approved clinics may carry out the screening.

For more information on TB testing in Malaysia for visa applicants, see <http://www.ukba.homeoffice.gov.uk/countries/malaysia/applying/tb-test/?langname=null>.

Nepal is also one of the 67 countries that has a high incidence of TB, according to the World Health Organization. Pre-entry screening is being introduced there on January 2, 2012, for visa applicants wishing to travel to the UK for more than six months.

For more information about the testing process, requirements, and approved clinics in Nepal, see <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2012/december/41-tb-nepal>.

South Africa and Zimbabwe are the latest to be added to the list of countries where compulsory tuberculosis testing of visa applicants will take place for those applying to come to the UK for more than six months. South Africa and Zimbabwe have been identified by the World Health Organization as one of the 67 countries with a high incidence of the disease. The testing will need to take place at an approved test center.

For more information on TB testing in South Africa, see <http://www.ukba.homeoffice.gov.uk/countries/south-africa/applying/tb-test/?langname=null>. The Zimbabwe announcement is available at <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2012/december/50-tb-zimbabwe>.

Changes in the Assessment of Good Character in Citizenship Applications

As of December 13, 2012, the United Kingdom made changes to the Nationality Instructions that affect anyone applying for citizenship on or after that date. The main changes deal with criminality and how it is assessed in terms of the good character requirement in citizenship applications. Some of the main amendments are summarized below:

- Applications made on or after December 13, 2012, that include a criminal conviction will no longer be assessed against the Rehabilitation of Offenders Act 1974. Instead they will be measured against a new set of sentencing limits.
- Where an application features a sentence of four years or more in prison, this can never fall outside a sentencing threshold. Such an application for citizenship will likely be refused.
- Police cautions will be considered in determining whether someone meets the good character requirement.
- In the case of a non-custodial offense, applications will be refused if the conviction occurred in the last three years.
- Other examples of matters that could be taken into account when considering good character include failure to pay appropriate taxes, a TV license, or council tax, or repeatedly receiving fixed penalty notices.

Changes to the Investor Rules Affect Professional Sportspeople

Changes to the Immigration Rules in December now prevent Tier 1 (Investor) migrants from working as professional sportspeople. In the past, the investor route had been used during the January transfer window by football (soccer) players to circumvent the stringent Sports Governing Body endorsement criteria in the dedicated sporting routes in Tiers 2 and 5. Current Football Association (FA) rules dictate that unless a player has played at least 75% of international matches for his or her country in the last two years, he or she is ineligible for a UK visa. However, most transfers could avoid this requirement by subscribing to the investor category.

It is expected that this change in the rules may prevent sportsmen and women as well as coaches and other sports professionals from moving to the UK.

Changes to the Life in the UK Test

On January 28, 2013, an updated *Life in the UK Test* handbook was published for all applicants wishing to settle in the UK or apply to be naturalized as a British citizen. The updated handbook will be applicable to the new Life in the UK test, which will be introduced on March 25, 2013.

Those who have already taken the existing test but have yet to submit their indefinite leave to remain or naturalization applications do not need to take the new test, even if they will not be submitting their applications until after March 25.

Those who intend to take the Life in the UK test after March 25 should review this latest handbook because the new test will include questions on all sections of the new handbook and not just a few selected chapters, as is the case now. There is also a greater focus on British

culture and history in the new test. Full details of where to purchase the handbook and how to take the test can be found on the UKBA website at <http://lifeintheuktest.ukba.homeoffice.gov.uk/>.

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Member News

Jacqueline Bart (bio: <http://www.abil.com/lawyers/lawyers-bart.cfm?c=CA>) was reappointed as President of the Immigration and Nationality Commission of the Union Internationale Des Avocats (UIA) on October 31, 2012.

Ms. Bart authored the Permanent Residence Chapter 2012 Update of the *Canada/US Relocation Manual* (eds. Bart & Fragomen).

Robert Loughran (bio: <http://www.abil.com/lawyers/lawyers-loughran.cfm?c=US>) will speak on "Potential Changes to Immigration Law and Implications for the Business Community" on Tuesday, February 19, 2013, at the Greater Houston Partnership (GHP) Board Room, Two Allen Center Building, 7th Floor, Houston, Texas. Topics will include immigration reform proposals; being proactive in business and hiring practices in light of possible reforms and the proposed new I-9; the pros and cons of E-Verify and compliance with E-Verify rules; employer sanctions; and revisiting your company's immigration compliance plan. The cost is \$35, which includes lunch. Registration begins at 11:30 a.m. and the program is from noon to 1 p.m. This event is co-sponsored by GHP and Foster Quan, LLP. For more information, contact Victoria Rivera at vrivera@houston.org or (713) 844-3632. To register online, see http://www.houston.org/ghp_secure/login/index.asp?act=Event&ID=130219CLE&utm_medium=email&utm_campaign=CLE+Speaker+Series+Potential+Changes+to+Immigration+Laws+6445&utm_content=CLE+Speaker+Series+Potential+Changes+to+Immigration+Laws+6445+CID_37b13bdcb7c3d5c4e4805cc5ad75fa1d&utm_source=Email%20marketing%20software

Marco Mazzeschi (bio: <http://www.abil.com/lawyers/lawyers-mazzeschi.cfm?c=IT>) founded Mazzeschi s.r.l., a boutique firm specializing in corporate immigration and citizenship law, which was recently added as a member of Invitalia Business Network (Invitalia is the Government's agency for the promotion of foreign investments).

Sharon Mehlman (bio: <http://www.abil.com/lawyers/lawyers-mehlman.cfm>), **Cyrus Mehta** (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>), **Angelo Paparelli** (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm>), and **William Reich** (bio: <http://www.abil.com/lawyers/lawyers-reich.cfm>) will speak at the Federal Bar Association's Immigration Law Seminar to be held May 17-18, 2013, in Memphis, Tennessee. For more information, see <http://fedbar.org/Image-Library/Sections-and-Divisions/Immigration/MemphisCLEbrochure2013.aspx>.

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) has co-authored several new blog entries. "When Is a Tweet an Attorney Advertisement?" is available at http://blog.cyrusmehta.com/2013/02/when-is-tweet-attorney-advertisement_4.html. "A House of Many Rooms: The Different Paths to Citizenship" is available at <http://blog.cyrusmehta.com/2013/02/a-house-of-many-rooms-different-paths.html>.

Mr. Mehta spoke at Brooklyn Law School on February 13, 2013. The topic was immigration policy and entrepreneurship, and the panel focused on how immigration laws can promote entrepreneurship, technological innovation, and economic growth.

Mr. Paparelli has published several new blog entries. "Memo to Immigration Reformers: First Catch Your [EB-5] Hare!" is available at <http://www.nationofimmigrants.com/immigration-reform/memo-to-immigration-reformers-first-catch-your-eb-5-hare/index.html>. "The Immigration

Line Is Too Damn Long (and Slow)" is available at <http://www.nationofimmigrators.com/immigration-quotas/the-immigration-line-is-too-damn-long-and-slow/>. "Dear Immigration Director: Let Our Dreamers Go!" is available at <http://www.nationofimmigrators.com/uscis/dear-immigration-director-let-our-dreamers-go/index.html>.

Bernard P. Wolfsdorf (bio: <http://www.abil.com/lawyers/lawyers-wolfsdorf.cfm>) was selected for inclusion in the 2013 "Southern California Super Lawyers" list, along with two other lawyers in his firm. With three lawyers selected, this is more than any other Los Angeles-based immigration law firm. Only five percent of the attorneys in California are listed in Super Lawyers each year, and it is reserved for those lawyers who exhibit excellence in practice. This is the eighth consecutive year in which Mr. Wolfsdorf has been listed in Southern California Super Lawyers. For more information about Wolfsdorf Immigration Law Group, please visit <http://www.wolfsdorf.com>.

Several ABIL members co-authored and edited the *Global Business Immigration Practice Guide*, released by LexisNexis. The *Practice Guide* is a one-stop resource for dealing with questions related to business immigration issues in immigration hotspots around the world.

This comprehensive guide is designed to be used by:

- Human resources professionals and in-house attorneys who need to instruct, understand, and liaise with immigration lawyers licensed in other countries;
- Business immigration attorneys who regularly work with multinational corporations and their employees and HR professionals; and
- Attorneys interested in expanding their practice to include global business immigration services.

This publication provides:

- An overview of the immigration law requirements and procedures for over 20 countries;
- Practical information and tips for obtaining visas, work permits, resident status, naturalization, and other nonimmigrant and immigrant pathways to conducting business, investing, and working in those countries;
- A general overview of the appropriate options for a particular employee; and
- Information on how an employee can obtain and maintain authorization to work in a target country.

Each chapter follows a similar format, making it easy to compare practices and procedures from country to country. Useful links to additional resources and forms are included. Collected in this Practice Guide, the expertise of ABIL's attorney members across the globe will serve as an ideal starting point in your research into global business immigration issues.

Order at:

<http://www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp?pageName=relatedProducts&core=&parent=&catId=31&prodId=70836>. International customers who do not want to order through the bookstore can order through Nicole Hahn at (518) 487-3004 or Nicole.hahn@lexisnexis.com.

Green Card Stories. The immigration debate is boiling over. Americans are losing the ability to understand and talk to one another about immigration. We must find a way to connect on a human level. *Green Card Stories* does just that. The book depicts 50 recent immigrants with

permanent residence or citizenship in dramatic narratives, accompanied by artistic photos. If the book's profilees share a common trait, it's a mixture of talent and steely determination. Each of them overcame great challenges to come and stay in America. *Green Card Stories* reminds Americans of who we are: a nation of immigrants, from all walks of life and all corners of the earth, who have fueled America's success. It tells the true story of our nation: *E pluribus unum--* out of many, one.

Green Card Stories has won six national awards. It was named a Nautilus book award silver medal winner, and won a silver medal in the Independent Book Publishers Association's Benjamin Franklin Award in the multicultural category. The book also won a Bronze Medal in the Independent Publisher's "IPPY" Awards and an honorable mention for the 2012 Eric Hoffer Book Award. Ariana Lindquist, the photographer, won a first-place award in the National Press Photographers Association's Best of Photojournalism 2012 and was a finalist for the International Photography Awards. The writer, Saundra Amrhein, was nominated as a finalist on the short list for the 2011 Santa Fe Writers Project Literary Awards. *Green Card Stories* is also featured on National Public Radio's photo blog at <http://www.npr.org/blogs/pictureshow/2012/07/05/156303716/told-in-pictures-how-50-immigrants-got-green-cards>. For more information or to order, visit <http://www.greencardstories.com/>.

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About ABIL

The Alliance of Business Immigration Lawyers (ABIL) offers a single point of contact for customer needs, news alerts, staff training, and other programs that benefit clients through the collaboration of more than 400 member lawyers and their 1,000 staff. Corporate counsel, human resource professionals, in-house immigration managers, and other corporate decision-makers turn to ABIL lawyers for outstanding legal skills and services. ABIL's work also includes providing speakers and media sources, presenting conferences, publishing books and articles on cutting-edge immigration topics, and sharing best practices, all with the ultimate goal of offering value-added services to business immigration clients.

The Alliance of Business Immigration Lawyers' Web site is at <http://www.abil.com/>.

Disclaimer/Reminder

This e-mail does not constitute direct legal advice and is for informational purposes only. The information provided should never replace informed counsel when specific immigration-related guidance is needed.

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