

# GHERSON

## THE IMMIGRATION UPDATE

Issue 9

### Changes to Tier 4 student category



Jackie Penlington breaks down the latest Tier 4 news

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After a public consultation on reforming Tier 4 of the points-based system, the Home Office has, in the past few months, introduced various changes to the category. Further changes will be implemented in the coming year.

#### Accreditation

All Tier 4 sponsors will need to achieve 'Highly Trusted Sponsor' status by April 2012 and be accredited by the appropriate education statutory body by the end of 2012. Those that fail to do so will become 'legacy' sponsors and will be unable to sponsor any new students.

Until 5 April 2012 colleges already holding Tier 4 Sponsor licences face a limit on the number of students they can sponsor unless they are already Highly Trusted Sponsors and meet the new accreditation criteria.

#### Access to labour market

Students at universities and publicly-funded further education colleges have retained the right to work in the UK. No other students now have the right to work.



#### Dependants

Only postgraduate students at universities studying courses of more than 12 months or government-sponsored students on courses longer than 6 months can now bring their dependants with them to the UK on the basis of their Tier 4 leave. The families of Tier 4 migrants without the right to bring their dependants would need to qualify in their own right to come to live/work in the UK.

#### English language

Tier 4 sponsors must now assess their students' level of English. For those at degree level and above, the required level of English is level B2 of the CEFR (the Common European Framework of Reference for Languages) and level B1 for all those below. Students who are from certain majority English-speaking countries automatically qualify on production of their passport.

For those entering the UK with Tier 4 entry clearance, immigration officers now have the power to refuse entry to students who cannot communicate without the assistance of an interpreter.

#### Limitation on study

As before, students aged 18 or above can only spend a maximum of 3 years in the UK on courses below degree level. However, there is now an overall limit of 5 years for students on higher-level courses, although the Home Office has announced exceptions for Ph.D. students and those on professional courses that are longer than 5 years such as medicine or architecture.

#### Differentiation procedure

There has been a relaxation in the rules for students qualifying for the differentiation arrangements who are considered 'low risk'. They are normally required to produce less documentation in support of their Tier 4 application provided they are:

- sponsored by a Highly Trusted Sponsor; and
- a specified national (Japanese, Singaporean, US and others).

If the Home Office asks to see any of the documents however, they must be provided. Otherwise, the application will be refused.

#### Conclusion

As always, it is crucial to keep on top of these developments to ensure that any application is properly prepared and submitted. Please contact one of the Gherson team if you need any assistance in relation to your Tier 4 application.

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## Is the UKBA fostering family unity or disunity?



Julian Norman reviews the government's latest consultation on family migration

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The government has announced a consultation on family migration, to be concluded in October 2011.

Although this is still at the consultation stage, the key proposals likely to be adopted include:

- defining more clearly what constitutes a genuine and continuing marriage;
- reintroducing an equivalent to the old 'primary purpose' rule, whereby a couple have to show that their combined attachment to the UK is greater than that to any other country;
- a new 'one spouse' rule whereby 'serial sponsors abusing the process' and any person convicted of bigamy, or an offence associated with sham marriage attracts a ban on sponsorship for up to 10 years;
- introducing a new minimum income threshold for sponsors of partners and dependants;
- extending the probationary period before partners can apply for settlement in the UK from 2 years to 5 years;
- requiring partners and adult dependants aged under 65 to demonstrate that they can understand everyday English at B1 level when they apply for settlement;
- working closely with local authorities to ensure that vulnerable people are not forced into marriage;
- compulsory health insurance for some immigration categories and compulsory health screening for TB; and
- reviewing the full right of appeal for family visitor visas.

### What does this mean for you?

For partners, including fiancé(e)s, spouses, civil partners and unmarried partners, it means that the threshold for entry will be higher.

This group will now need to show that they speak and understand English at B1 level, a higher level than the current A1 requirement. They are likely to be called for interview at the embassy and quizzed over their UK-based partner's relatives, living arrangements and life, to show that the marriage is 'genuine'.

It is likely that the minimum income threshold, currently set at the equivalent to income support, will be increased. The government is considering a system similar to the Danish model, whereby a sponsor must pay in a £12,000 'bond' against any future claim to benefits, although we do not yet know whether such a draconian measure is to be introduced. It may well be a fixed sum which the sponsor must earn before they can sponsor a partner.

**“ Once in the UK, partners will have to complete a 5-year probationary period rather than the current 2 years... ”**

One of the most interesting proposals is the reintroduction of the 'primary purpose' rule, which means that couples will have to show that they are attached to the UK. In practical terms, this means that you may face a battle to show that it is more appropriate for the non-UK based partner to enter the UK than for the UK-based partner to move abroad.



Once in the UK, partners will have to complete a 5-year probationary period rather than the current 2 years - and that includes spouses who have been married for over 4 years, who currently get indefinite leave to enter from the outset. Indefinite leave will only be granted after 5 years, and only if the couple is still together.

Finally, we have the proposed abolition of the right of appeal for family visitors. The government argues that most family visit visa appeals would be better dealt with by way of a fresh application. This may be true in cases where the applicant has failed to supply evidence, but what of those where the Entry Clearance Officer has simply got it wrong, particularly where the decision attracts a ban from the United Kingdom?

Without a right of appeal, many applicants will choose to apply for judicial review, a specialist application in the High Court.

Whatever legislation arises from these proposals, family migration seems about to become yet more complex, and applicants are likely to need specialist legal advice from the outset.

## Affected by the annual limits introduced under Tier 2 (General)?



Chetal Patel helps you to navigate recruitment using restricted CoSs.

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Since the introduction of the Annual limit on the number of Certificates of Sponsorship (CoS) available to Tier 2 sponsors in April 2011, many employers have had to re-evaluate their recruitment procedures.

Under Tier 2 (General), any role that attracts an annual salary of less than £150,000 requires employers to conduct the resident labour market test (the 'RLMT'), unless one of the exemptions applies.

The RLMT involves employers advertising to settled workers for 28 calendar days using the permitted advertising mediums for the specific role.

If no suitable settled worker is identified after the RLMT and short-listing of candidates has been completed, employers can apply to the UK Border Agency for a restricted CoS. Such requests must be received on or before the 5th of each month to be considered by the UK Border Agency panel that month.



### Here are our top tips for employers to make successful restricted CoS requests:

**1** Ensure that advertisements are placed in the appropriate advertising mediums as specified in the Standard Occupational Classification 2000.

**2** Ensure that advertisements contain correct and accurate information when initially placed.

**3** If an element of the role changes, such as the salary, the advertisement must be placed again with the up-to-date information, which means the advertising period starts again.

**4** Only submit a request for a restricted CoS if no suitable settled workers have been identified and once the short-listing process has been completed.

## New limits on PBS appeals

On 19 May 2011 Immigration Minister Damian Green announced that Tribunals would no longer be allowed to consider new evidence submitted after a person had made an application of a specified type.

This section of the UK Borders Act came into force on 23 May 2011.



This applies to all PBS (Tier 1, 2, etc.) applications made in the UK, although there are a number of exceptions, including evidence to prove that a document is genuine or valid where this has been a basis for refusal.

The change is designed to 'stop misuse of the system', end unnecessary appeals and help ensure that applications are right first time round.

One fears the impact this policy will have on applications where the applicant meets all of the requirements of the Immigration Rules, but is nevertheless refused on the basis of a minor error or gap in information or documentation provided. The appeal should surely provide such applicants the opportunity to 'straighten out' any such mistakes or misunderstandings.

The rules change means that they may well be denied the right to do so as they cannot adduce any further evidence. This fear is exacerbated by the UK Border Agency's strict approach when considering applications. The result is the potential for great unfairness and uncertainty in the PBS.

In order to combat this, the UK Border Agency has undertaken to contact PBS applicants to request further correct evidence before making a decision.

### The key question is:

Even if this concession is fully implemented, is it a sufficient safeguard against any potential injustice created by this curtailment in the appeal rights of all PBS migrants?

## UK arts under threat from PBS

The Wu-Tang Clan's much-reported complaint delivered from the Glastonbury stage earlier this summer that they had been 'treated like the Taliban' when they arrived in the UK must have come as a surprise to festival-goers.

The Glastonbury Festival is included on a list of 'permit-free' festivals which the UK Border Agency (UKBA) allows visiting artists to enter the UK to perform at without having to be sponsored under the points-based system. Instead they are issued with visit visas in the Entertainer category.

Artists coming to perform at other events must instead make applications under the points-based system for entry clearance in the creative and sporting subcategory of Tier 5 (Temporary Worker). Like all other sponsored workers they have to be issued with Certificates of Sponsorship by the organisation for which they intend to work.

Their sponsors must guarantee that they do not pose any threat to the UK workforce and that they will leave at the end of their visa. As well as all that, they have to show that they have the necessary funds in their bank account by providing the specified documents.



All of this has proved too much for some artists. An Iranian opera director booked to direct at the English National Opera dutifully made his Tier 5 application in 2009. The application was granted but then withdrawn and the director was required to provide a new set of his fingerprints. He declined to do so and simply did not come. Many similar stories of frustrated artists have featured in the press.

In Australia, which is where the UKBA got the idea of the points-based system from, they have not included artists and performers in the scheme, presumably because they do not think that such people are really likely to pose a threat to their borders.

Unsurprisingly, no artists or performers feature in the examples of successful raids on illegal workers listed in the news section of the UKBA's site.

## Are you up to date?

Below are the results of restricted certificate of sponsorship requests since April 2011. All were issued based on the minimum of 32 points having been obtained.

Month	No. of CoSs granted
April 2011	1,019
May 2011	781
June 2011	845
July 2011	859
August 2011	819

On 6 April the UK Border Agency provided an updated list of approved English language test providers for applications made under Tiers 1, 2 and 4. On 8 July 2011 the list was updated to include the BULATS and TOEFL iBT tests and test scores for other providers were amended.

You can now switch into Tier 1 (Post-Study Work) up to 1 month before completing your programme as a trainee doctor.

Revised EEA1, EEA2, EEA3, EEA4 and BR1 forms have been published for all applications made after 20 June 2011 and the Tier 2 policy guidance was modified in July 2011 in accordance with the corresponding Statement of Changes.

New versions of the application form and policy guidance for Tier 1 (Post-Study Work) have been valid since 9 August 2011.

The new Tier 1 (Exceptional Talent) category opened to migrants on 9 August 2011.



With over 23 years' experience and an outstanding reputation, Gherson has established itself as a veteran in the UK immigration sector.

As always, you can find more information on immigration law and all the latest news on our website.

[www.gherson.com](http://www.gherson.com)

And now you can follow Gherson on twitter too. For all the very latest news and updates, go to @uk\_immigration.

## The Legal Stuff

*Gherson is regulated by the Solicitors Regulation Authority.*

*This update is correct to the best of our knowledge and belief at the time of going to press. It is, however, written as a general guide, so we recommend that specific advice be sought before any action is taken.*

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