

GHERSON

THE IMMIGRATION UPDATE

Summer 2008

New UK Points Based System is far from 'Australian'



Naomi Hanslow,
Paralegal,
explains how the
UK's immigration
laws are about
to radically
change

In February 2008, the Government introduced the most significant changes to the UK's immigration laws in 45 years, saying it wanted to "place British values at the heart of the system" and "encourage people... with the right commitment to take up British citizenship" ('The Path To Citizenship: Next Steps in Reforming the Immigration System'). Why on earth then is the Government branding the UK's new PBS as Australian?

Whilst both approaches rely on points scoring, describing the UK's system in this way is insulting to the UK Border Agency who worked tirelessly to create and implement it to a strict, some say unworkable, time-table.

Confusion

Many highly skilled and affluent migrants, whom the Government hopes to entice to the UK are understandably confused by the Australian label. They deliberately opt for destination UK because of its uniquely British blend of economic potential and cultural diversity, some hoping eventually to obtain British citizenship. Yet rather than designing a distinctively British system to accommodate them, the Government has chosen to hide behind an "Australian-styled" immigration

system designed to deal with Australian problems some 10,000 miles away.

Differentiating between individuals who bring economic and cultural benefit to the UK as opposed to those who are intent on exploitation and illegal activity requires a bespoke approach. It should be tough but fair towards global immigration, respected by migrants the Government wishes to attract, feared by those who may otherwise attempt to exploit the UK and envied by global competitors.



Not only has the Government missed the opportunity to market the UK as a global destination, it has also, only four months in, been forced to concede that some aspects, most notably, the general grounds of refusal and mandatory re-entry bans contained in HC 321, are simply unworkable. The Minister has announced significant concessions to the scheme, much to the embarrassment of the UK Border Agency who repeatedly requested a more accommodating time-table to consider it thoroughly.

Isn't it Ironic?

One of the ironies of the "Australian-style" label is that the Government has chosen PBS to bring an end to the Working Holidaymaker route, that for

decades provided young Australians and other Commonwealth citizens with an opportunity to experience life in the UK. It is also looking to bring an end to the Ancestry route, which accommodates Australian and Commonwealth citizens.

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Unfortunately, the Government has so far failed to consult properly with the Immigration Law Practitioners' Association and law firms such as Gherson on the fundamental aspects of PBS. The Government has implemented phase one of the five-tiered system with a further roll-out planned through stages this and next year. However there is still time for proper consultation, to re-schedule the time-table and to reshape the PBS into the sophisticated system the UK deserves and can proudly identify as its own.

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Sponsor Licensing - Employers Be Warned



Nichola Carter,
Partner,
unravels
rules regarding
sponsorship
licensing

The UK Border Agency opened the Register of Licensed Sponsors to employers on the 29 February 2008, for those wishing to issue Certificates of Sponsorship to migrants.

Certificates of Sponsorship will replace the current work permit system when Tier 2 of the Points Based System goes live in Autumn 2008. Employers not licensed at that time will be unable to sponsor migrant workers.

The Register is now on the Agency's website but of the 60,000 or so employing entities only a handful have been accepted. The Agency is understandably concerned about potential delays as the Register will soon open to other types of Sponsors (educational establishments etc) and that may lead to a rush of applications before the work permit scheme closes.

Certificates of Sponsorship will replace the current work permit system when Tier 2 of the Points Based System goes live in Autumn 2008

Application requirements can be found at:

www.bia.homeoffice.gov.uk/employers/points

They include the Authorised Officer signing a declaration agreeing to comply with the rules, failure of which could result in their losing the licence, being removed from the Register and no longer being able to employ overseas nationals (other than those of the EEA).

Especially noteworthy is that this declaration authorises the Agency to:-

- enter into the employer's premises unannounced to conduct compliance visits; and
- share any information provided by the employer with other government departments.

the BBC reported a dramatic increase in the number of employers being prosecuted for hiring illegal immigrants

Whilst the Guide to Sponsor Licensing has been published, detailed guidance on how to issue a Certificate of Sponsorship has not been so employers cannot really know if they can fully comply with the rules. Additionally, the Guide states that the Agency will conduct checks on HR systems to assess if the employer can comply with the rules, including the requirement to report to the Agency within 10 working days any migrant who:

- fails to turn up for work.
- is absent for more than 10 working days without the Sponsor's reasonably granted permission.
- has a significant change in job or salary.
- ceases to be sponsored.
- causes the employer to suspect that s/he is breaching the conditions attached to their leave.

The downgrading to a 'B' ranking or removal from the Register and the associated stigma may have severe consequences for the company not only in terms of share value and damage to reputation but also in its ability to attract the best employees from around the world.

In addition, the perfectly innocent sponsored employees of any company that loses its licence may have their leave curtailed. If this happens and the migrant fails to depart from the UK within a specified time-frame, (perhaps because children are sitting exams), the migrant will be subject to a mandatory ban from returning to

the UK of at least 12 months under the General Grounds of Refusal (see General grounds for refusal - changes in the immigration rules HC321) and other articles on our website www.gherson.com/all-articles.

Employers are struggling to persuade senior managers to accept the role of Authorised Officer with responsibility for the scheme because of personal liability concerns and risks of prosecution for illegal employment. Senior staff fear that no matter how good a company's HR function is, they cannot guarantee that innocent mistakes will not occur and they do not want to be responsible if the company incurs a civil penalty fine of up to £10,000 per illegal employee or if the company loses its licence to sponsor migrants.



In May, the BBC reported a dramatic increase in the number of employers being prosecuted for hiring illegal immigrants and we are warning employers that 137 firms have been caught employing staff illegally and notices of civil penalty fines approximating £500,000 have already been issued.

Gherson is currently assisting clients with their Sponsor Licence applications and provides services including:

- employee screening
- reviews of HR compliance
- HR policy drafting
- advice on Sponsor roles
- bespoke training
- in-house seminars

Should you be interested in discussing your business's requirements or in attending one of our seminars, please contact us.

Making Sense of New Tier 2 and Tier 5 Applications



Lisa Amos,
Immigration
Consultant,
explains the new
skilled and
temporary worker
categories



Under the new PBS, all non EEA nationals relocating to the UK - except those qualifying under Tier 1 - need a Sponsor who can issue them with a Certificate of Sponsorship (COS). See *Nichola's article page 2*.

Tier 2 Skilled Worker

Tier 2 Skilled Worker will replace several categories including:

- Work permit applications - excluding sportspersons and entertainers
- Training and Work Experience Scheme - may be abolished
- Ministers of religion
- Airport-based operational ground staff
- Overseas qualified nurse or midwife
- Sabbatical posts
- Seafarers
- Named researchers
- Overseas representatives - news media
- Jewish agency employees

Applicants must score at least 70 points including the mandatory 20 points for maintenance and English language

Sponsors must show that the position is genuine, that they have tried and failed to recruit a resident worker and

that the remuneration is equal to that which a British or EEA national would receive in the position. The job's duties must also be at or above the National Vocation Qualification ("NVQ") level 3. Sponsors may still transfer workers from their international offices under the Intra Company Transfer scheme providing the worker has been employed by the entity abroad for at least six months and the post is at least NVQ level 3.

Applicants must score at least 70 points - including the mandatory 20 points for maintenance and English language.

Although this may still change prior to implementation in Autumn 2008, subject to the necessary qualifying period and criteria, being granted leave to enter or remain in the UK pursuant to Tier 2 can eventually lead to settlement.

Tier 5 Temporary Workers

Tier 5 Temporary Workers and the Youth Mobility Scheme will replace the following categories:

- Working holidaymaker and au pair
- British Universities North America Club
- Gap year entrants
- Japan - Youth Exchange
- Research assistants to Members of Parliament

The Youth Mobility Scheme will be available to Non-EEA nationals from participating countries aged 18-30. They will be granted leave for up to 24 months but unlike Tier 2, this will not count towards settlement. To be eligible, you must score 50 points based on sponsorship, age and maintenance.

Sponsorship

30 points must be scored by:

- holding a country's passport with "Deemed Sponsorship" status; or
- holding a passport of a country that meets the criteria and a COS issued by that country (any country on the UK's visa list cannot be a Sponsor); or
- being a British overseas citizen, British overseas territories citizen or British national (overseas).

Gherson has filed a Freedom of Information Act request seeking further information as to how the Government assesses which countries may be admitted as Tier 5 sponsors and we are awaiting a response.

Age

10 points must be scored by being 18-30 years old when entry clearance becomes valid.

Maintenance

10 points must be scored by having at least £1600 for support and maintenance while in the UK.

Should you need any advice on any of these applications, please do contact us.

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WWW.GHERSON.COM
for more immigration articles

Security Concerns for Visa Application Process



Kathryn Bradbury, Associate, uncovers data security issues in visa processing

Last year Gherson reported security breaches encountered in Nigeria, India and Russia relating to data held and processed by VFS, the UK Border Agency's (UKBA) outsourcing partner in India. A report published by Linda Costelloe Baker, the Independent Monitor for Entry Clearance, criticised the outsourcing of the UK visa application process to VFS saying, "*I am not satisfied that UK visas exercised adequate governance over the outsourcing process in so far as the security of personal data was concerned*".

It is feared that this complicated process will lead not only to an increase in delays... but also to heightened security risks

Furthermore, in its 2006-2007 annual report, UK Visas announced that it would centralise the visa decision-making process to "improve efficiency and to standardise the quality of decision-making". To accomplish this, the UKBA created a number of regional locations or "processing centres" that

will assume responsibility for the decision-making process for consular posts in various countries. The UKBA is calling this a "hub and spoke" system but it really could be a recipe for disaster.

For example, the British Embassy in Tel Aviv, Israel has outsourced the application process and created "Visa Application Centres" manned by employees of the outsourcing partner. They receive the application (including passports and other highly confidential information) and process the data and biometrics. They then forward the package to the British Embassy in Tel Aviv who in turn send it (we understand by commercial airline) to the British Consulate General in Istanbul, Turkey where a decision is made. The package is then returned to the British Embassy in Tel Aviv who forwards it to the Visa Application Centre where it is finally handed back to the applicant. A similar three-centre process is being rolled out at British posts worldwide.

It is feared that this complicated process will lead not only to an increase in delays already being experienced, but also to heightened security risks such as lost or stolen passports, bank statements, identity cards etc and associated identity fraud and criminal activity. Local knowledge essential to fair and effective decision-making will also be ignored. Additionally, many applicants are feeling extremely vulnerable at the prospect of their highly confidential data being seen by numerous staff in multiple processing facilities sometimes in different countries.

That there is a "widespread problem" and "systemic failings" in relation to the UK Government's handling of personal data is not new and the Government has stated that it is considering measures to toughen up the Data Protection Act. Such proposals may even include a provision that reckless or repeated breaches of data security should become a criminal offence.



We have recently been informed by UKBA that they are taking data protection issues seriously. Furthermore, they advised us that their commercial partners should not be involved in decision making nor informed of application outcomes.

However, against this backdrop, the Government's new "hub and spoke" visa processing system may provide little comfort to applicants and to UK residents who rely on the Government to provide absolute effective and secure border control.

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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Investors can Work!

Tier 1 Investors will be able to work if they wish to, except not as a Doctor in Training. You may switch into the investor category without leaving the UK provided you have leave as one of the following:

- innovator
- highly skilled migrant
- student
- work permit holder
- person intending to establish themselves or remain in business