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THE IMMIGRATION UPDATE

Issue 14

Since the last issue...

On 1 April the UKBA was split into two separate bodies, UK Visas and Immigration and Immigration Enforcement. The Home Secretary stated that its performance "was not good enough", identifying four main problems: size, lack of transparency and accountability, inadequate IT and an inadequate policy and legal framework within which it operated. The organisation lost its "Agency" status, reverting to the Home Office and reporting direct to Ministers.

By **11 June**, the Head of UK Visas and Immigration told the Home Affairs Select Committee that 190,000 cases were being processed and that they may "never finish the job", astonishing Keith Vaz, who commented "you realise you are giving us totally new figures we didn't know about".

> **"On 2 May... UKIP overtook the Lib Dems in numbers of votes cast, causing a flurry of anxiety about immigration..."**

On **2 May** in the local council elections, UKIP overtook the Lib Dems in numbers of votes cast, causing a flurry of anxiety about immigration, with all parties talking tougher on the issue.

A week later, the Queen's Speech trailed the forthcoming legislative programme, majoring on immigration. The aim was to ensure that the UK "attracts those who contribute and deter those who don't". Legislation would prevent short-term migrants receiving free NHS care, make landlords check the immigration credentials of tenants and prevent illegal immigrants receiving driving licences. New measures would also facilitate the deportation of foreign criminals. The detail has yet to emerge.

The Abu Qatada saga has finally ended with his deportation on 7 July. This followed approval and ratification of a new extradition treaty by both Jordan and the UK. The cost to the tax payer of the legal battle to deport him was revealed as £1.7 million. The Jordanians first sought his return in 2001.

The All-Party Parliamentary Group on Migration reported on the impact of last year's new family migration rules on **10 June**. It recommended that the government commission an independent review of the minimum income requirement (for spouses); that the permissible sources of income be reviewed; that the evidential requirements of Appendix FM-SE be reviewed in order to ensure that they were clear and easy to understand; and that the rules ensure that children were supported to live with their parents in the UK where their best interests required it.

> **"The All-Party Parliamentary Group on Migration reported on the impact of last year's new family migration rules..."**

The report also noted that the adult dependent relative category had effectively been closed by the new rules and recommended a review of the rules to allow those who had the income to support their relatives to do so, and to allow relatives access before they became fully dependent.

There have been two recent changes to the Immigration Rules: the first, effective **10 April,** concerned TB screening; the second, effective **1 July,** made 'small' adjustments to the PBS and family migration routes and further changes to the rules concerning the requirement for TB screening.

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Tier 2 – revisions to the Codes of Practice – what they mean

Davina Fernandes reviews changes made by government that will affect Tier 2 job applicants

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When making an application under Tier 2 (General) or Tier 2 (Intra Company Transfer), the starting point in assessing the viability and the prospects of success of an application should be to consult the Codes of Practice. If a job is not skilled to NQF Level 6, as set out in the codes, there is little possibility that an application will succeed. This is because a sponsoring employer cannot usually assign a Certificate of Sponsorship if the job is not to the requisite level of qualification and if it does not pay the minimum amount identified in the code, or indeed if the job tasks cannot be matched to one in the code.

The Home Office uses the Codes of Practice to set out both the jobs which they consider to be skilled to the necessary level so as to allow migrant workers to fill those roles and the minimum appropriate rates of pay which are needed to qualify.

On **6 April 2013** revisions were made to the Codes of Practice. The changes were made in order to update the coding system to take into account the inflation of salaries to reflect the current market. With the new code came changes to the classification of jobs and the removal/downgrading of jobs which were previously skilled to NQF Level 6 but which are now rated as lower. There has also been a split in some codes, such as the code for marketing and sales managers, which now gives prospective employers and applicants two choices: marketing and sales directors or sales accounts and business development managers. The difference is of course in the salary expectation. Gone also are the hourly rates in favour of a fixed annual salary, dependent now on whether the person could be considered a "new entrant" or an "experienced worker".

Also absent from the new codes is a list of acceptable advertising mediums for each job. The Home Office has opted instead for a blanket approach to all jobs with the intention of giving sponsoring employers more flexibility in where they choose to advertise so that it meets their own business needs. With exception, jobs must be advertised using the relevant government website hosting jobs advertised through the Jobcentre Plus Universal Jobmatch service. The codes no longer specify which sites may be used, saying instead that a website of a prominent or professional recruitment organisation can be used. A question of what would constitute such an organisation may cause some difficulties.

The transitional arrangements have catered relatively well and the list at the start of the codes, which details what the job code was under the previous Code of Practice and its equivalent now is a useful tool. Sponsoring employers and applicants should, however, consult the codes as soon as possible to ensure no fundamental changes have been made to the code relating to their role which may affect their approach to the application.

New bond system for visitors

In late June several UK newspapers broke the news that the Home Secretary was planning to introduce a bond scheme, making it necessary for visitors from selected countries wishing to come to the UK to post a bond of £3,000 as security before travelling to the UK. If they failed to leave by the time their visa expired, they would forfeit the bond.

The idea was first proposed in March by the Liberal Democrats. The Home Secretary has now evidently embraced it, although there are differences between what was originally proposed and what is now under consideration.

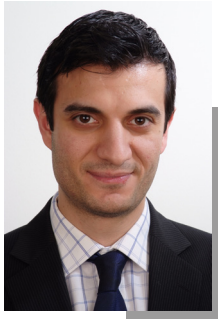
A similar scheme has been operating in Australia since the 1990s, but Canada has considered a bond scheme and rejected it. The trial bond scheme will be targeting six commonwealth countries: India, Pakistan, Bangladesh, Nigeria, Sri Lanka and Ghana, selected both because of the high volume of applicants and high levels of overstaying.

Whilst both parties to the UK's coalition government support a bond scheme, there may yet be a row about the level at which the bond is set (£1,000 was the figure initially proposed). Immigrant support groups are already lobbying for a reduction in the sum and also questioning the rationale on which the trial scheme countries have been selected. There has also been significant adverse reaction abroad, especially in India.

This is not the first time a bond scheme has been mooted. Keith Vaz, who considered and rejected such a scheme under Labour was scathing when the idea was mooted in March, calling it "unworkable, impractical and discriminatory".

The target date for implementation is November 2013.

Report of the inquiry into new family migration rules



Abel Manukyan praises a report about family migration and its advice to government

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"Without a family, man, alone in the world, trembles with cold."
Andre Maurois

The All-Party Parliamentary Group on Migration report on the new family migration rules was published on **10 June 2013**. It is balanced, well-constructed and supported by all members of the Inquiry Committee drawn from all three parties (although not necessarily by all members of the All-Party Parliamentary Group on Migration). The main recommendations have been mentioned on page 1, but the foreword of the report is also instructive:

> ***"The UK Government properly recognises family life to be the bedrock of a strong and stable society. Where families are formed across borders, wider concerns about immigration management and any costs to the public purse are also considerations".***

> ***"This inquiry arose out of cross-party concern that the introduction of a new minimum income requirement for those seeking to sponsor a non-EEA partner and any children, and of new rules affecting sponsorship of adult dependents may have led to family members being unnecessarily and unfairly separated from another".***

And finally the last paragraph of the foreword:

> ***"We urge Government to consider the emerging evidence about what must be the unintended consequences of these rules, and hope they will agree the need fully to review whether, one year on from their introduction, these rules have struck the right balance between different interests."***

The report therefore raises a number of issues:

Firstly, there is the question of joined-up government. If family life is acknowledged as being at the heart of a stable society, why was this particular spear thrown at it?

Secondly, the new rules may have had unnecessary and unfair results (the "may" is the committee's wording – our experience is that the rules have certainly had this effect).

Thirdly, the rules have had unintended consequences and may, according to the report, have even generated additional costs to the public purse. No-one doubts that the rules were introduced to tighten the rules on routes to the UK that had seen significant abuse in the past.

However, the main effect seems to have been to oppress the ordinary, innocent citizen. The report uses the word "unfair". This is significant. If we want a fair society we must give it rules which do not operate unfairly. The new rules did not strike the right balance.

Perhaps one of the reasons for this was because of flaws in the consultative process conducted before the changes were introduced. The changes came suddenly, as a bolt out of the blue. The new rules were not widely foreseen. This raises the question of whether there was appropriate consultation beforehand. It is often a trait of government when introducing new rules that they think will be unpopular, to work in isolation, so as to avoid unwelcome lobbying. The problem with such an approach is that it often marginalises the true subject matter experts, who are not consulted. Policy is then made without a complete picture or consideration of all the relevant factors. We saw similar obtuse decision-making over Tier 1 (Investor) visas in the New Year.

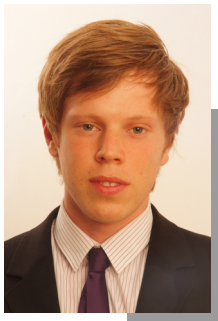
So let us hope that the government will act on the Committee's advice. Let us also hope that the rule-makers will look themselves in the mirror and ask whether the process for introducing new rules is adequate.

"It is currently much more difficult for a British citizen living in the UK to bring his foreign non-EEA spouse or dependant into the UK than it is for... any other EEA member to do so."

There is also one more issue which is raised by the new rules. It is not dealt with in the recommendations of the report, but it nevertheless goes to the heart of a fair society and needs resolving if people are not to be actively driven into the arms of extremists. This is the fact that it is currently much more difficult for a British citizen living in the UK to bring his foreign non-EEA spouse or dependant into the UK than it is for a Frenchman or any other EEA member to do so. This is nothing short of barking mad and discriminates against British citizens.

Can the review of the rules take the opportunity to tidy this up so that we have one rule for all?

Removal of full right of appeal for family visitors



Frederick Allen comments on UKBA's plan to curb appeals on family visit visa refusals
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The government's long-term ambition to remove the full right of appeal for family visitors was realised in June. The Home Secretary announced to Parliament her intention to curb the right of appeal of applicants whose family visit visas had been refused on **11 May 2012**. On **9 July 2012** those visiting uncles, aunts, nephews, nieces, first cousins, or relatives who do not have settled, refugee or humanitarian protection status in the UK lost their full right to appeal.

On **25 April 2013** royal assent was given to a clause in the Crime and Courts Bill removing the full right of appeal for all other applicants refused entry clearance to the UK as a family visitor. The changes came into effect on **25 June 2013**.

> **"If the UKBA improved initial decision-making then there would be far fewer family visit appeals in the first place."**

The government has promoted the idea as a cost-cutting exercise, claiming that the changes will save millions. Litigation is a costly process for those involved but a fairer way to save money in this area is to avoid it, rather than prohibit it. If the UKBA improved initial decision-making then there would be far fewer family visit appeals in the first place.

The UKBA have also argued that negative effects on applicants will be minimal; they will all have a chance to submit a fresh visitor application. In our experience however, it can be very difficult to persuade Entry Clearance Officers to change their minds. If the decision relates to a complex or contentious area of law, recourse to appeal is necessary so all the relevant facts and arguments can be brought to an open hearing and examined by a judge.

The abolition of the right of appeal will undoubtedly cause extended distress for some of those wishing to visit loved ones in the UK. However, alternative legal remedies may develop in a manner that allows them some redress. Those who are planning to submit family visit applications or who have had their applications refused should seek professional advice.

You can find more information on immigration law and all the latest news on our website:

www.gherson.com

Follow us on @uk_immigration on Twitter or "like" Gherson Solicitors on Facebook.

Statistics

"Statistics are often used as a drunk uses a lamp post, more for support than illumination"
variously attributed

The latest quarterly report on migration was released on 23 May 2013. The headline figure was that net long-term immigration to the UK during the period October 2011 to September 2012 was 153,000; a figure arrived at by taking the total immigration figure during the period of 500,000 and subtracting from it the long-term emigration figure of 347,000 for those leaving the UK. The government was pleased and stated that it was on target to reduce net migration to 100,000 a year by 2015.

The make-up of the figures is also interesting. In 2011, of those coming to the UK as long-term migrants (as opposed to temporary visitors), 12% came from India, 8% from China, 8% from Pakistan and 6% from Poland. Of those emigrating, 15% went to Australia, 7% to India, 7% to USA, 6% to Poland and 6% to France.

The most popular long-term reason for coming to the UK since December 2009 has been for study; in the year to September 2012 190,000 arrived to study, significantly down on the 246,000 in the previous 12 months. 175,000 migrants arrived for work-related reasons in the year to September 2012.

Further figures are available online from the Office of National Statistics.

The Legal Stuff

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