

Business immigration – new sponsor licensing for migrant workers

From the end of November 2008, Work Permits will be abolished and an entirely new, Australian style points-based system of work-related migration introduced. This will require every employer who intends to recruit someone from outside the European Economic Area (EEA) to register with the UK Border Agency – or UKBA – and obtain a Sponsor Licence. You may have noticed adverts on TV showing an athlete jumping over hurdles, as the Government publicises the changes. An increasing number of employers are looking to recruit from overseas, as they find that the UK labour market does not provide all the skills they need to compete in a global economy.

Please note that all references to foreign workers in this briefing refer to people whose country of origin is outside the EEA.

What is the new system?

Any migrant coming to the UK to work from outside the EEA will have to fit within one of the following five tiers, or categories of immigration routes.

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| Tier 1
(from February 2008) | For highly skilled applicants. This is an entry route for investors, entrepreneurs and (in limited cases) post study work. It replaces the Highly Skilled Migrant Programme |
| Tier 2
(from November 2008) | Most employers will be interested in Tier 2 as it's a direct replacement of Work Permits. It is aimed at skilled workers who have an offer of a job from a UK Company. |
| Tier 3
(suspended) | This is for low skilled workers who fill temporary labour shortages. This Tier has not yet commenced and is likely to remain unavailable for some time. |
| Tier 4
(from Spring 2009) | Students (a limited and restricted Tier) |
| Tier 5 | User mobility and temporary workers, who satisfy non-economic |

(from November 2008) objectives with programmes like working holidays and voluntary exchanges.

Most employers will be concerned with Tier 2 and how to bring over new foreign workers.

What does it involve?

Employers will be required to apply to UKBA for a sponsor licence. A sponsor licence will be valid for four years. Sponsors will be able to issue Certificates of Sponsorship to new foreign hires. A Certificate of Sponsorship is actually a number issued to a migrant employee and directly replaces a Work Permit paper certificate. Sponsors will be required to operate a web based piece of software – the Sponsorship Management System (the SMS) - through which they will have to comply with a number of reporting and monitoring obligations.

Applying for a sponsor licence

When applying for a sponsor licence, a potential sponsor employer must show that:

- they have an effective human resources system in place that is sound and robust
- they do not have any previous record of non-compliance with the Immigration Authorities
- their key contact (called an authorising officer) has no criminal convictions

Employers will be assessed against these criteria and issued with an A or B rating. B ratings are designed to be temporary. If UKBA issues an employer with a B rating, it will also set out an action plan the employer will have to follow to secure an A rating. Certificates of Sponsorship are unlikely to be issued to employers with a B rating.

When looking at how robust an HR system is, UKBA will examine its ability to prevent illegal employment and monitor the activities of the employer's foreign workers. Employers will need to have a system for maintaining contact details, tracking and monitoring any changes in those details and keeping accurate, up-to-date records about its staff. This is so that the sponsor will be able to comply with its reporting obligations.

Sponsors are required to report to UKBA on a range of information about their foreign employees. This includes information that is job related, for example, if the individual is absent without leave, and extends to more personal details about the employee's domestic arrangements, such as moving house or getting divorced. A sponsor is required to report any significant changes in the circumstances of their foreign employees.

Certificate of Sponsorship

When applying for a sponsor licence, an employer should estimate how many Certificates of Sponsorship it anticipates it will need in the coming 12 months. When making an application for a sponsor licence, it needs to request a specified number of Certificates of Sponsorship. So if an employer plans to recruit five employees from outside the EEA within the coming year, it should apply for five Certificates of Sponsorships. More Certificates can be issued by UKBA, however, if the Sponsor finds that it needs more than originally predicted.

Once a sponsor licence is issued, it should make it easier for an employer to bring over foreign hires. However, employers will have a great deal of new responsibility, as they will self-certify via the SMS that they are able to bring into the UK a foreign worker. There are three routes:

■ The Resident Labour Market Test

This requires that the job in question has been advertised in the most appropriate way that will reach the maximum number of resident workers. It must have been advertised within the six months prior to the

issue of a Certificate of Sponsorship. The job advert must state the role, responsibilities, location, closing date, salary or salary band and the employer's name and address. Reasons why any resident applicant was not selected must be recorded and kept. It is possible to use a head-hunter or an agency, but you need to have on record and available in the event of an inspection the recruitment methods used, plus your contract of engagement and the agency's invoice.

Under the old system, all the advertising criteria was checked by UKBA when an application for a work permit was made. The new regime does place a considerable onus on an employer to ensure that they have complied with the advertising criteria. This is one area where we always recommend clients take advice.

■ **Inter-company transfer**

It is possible for multi-national companies to transfer employees to a skilled post in a UK branch of the same organisation. There must be proof of common ownership and the person transferring must have six months' minimum experience with the overseas company. An employer needs to show that the post requires specific company experience and knowledge that is not available generally within the resident labour market and that the person transferring has this specific expertise.

■ **Shortage occupation**

There is a specific list of shortage occupations and the Government has very recently published its latest list – see:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/macreport2008>.

The list is very specific and covers scientific roles, teachers, healthcare workers and some very narrowly defined construction roles.

It is also incumbent upon employers to ensure that Certificate numbers are only issued to migrants who meet Tier specific criteria and who are likely to comply with the conditions of their sponsorship. Sponsor licences can be downgraded to a B rating or withdrawn if UKBA's compliance team carry out an inspection and find that Certificates are being issued where the job does not satisfy a skill requirement (eg the job is not at NVQ Skills Level 3 or above), or the sponsor fails to pay the salary specified on a Certificate of Sponsorship.

Points-based system

Once a potential migrant has a valid Certificate of Sponsorship number, they next need to apply for entry clearance at the British Embassy in their country of origin. A migrant must achieve a minimum number of points and these are set according to the following criteria:

- prospective earnings (the higher the pay, the more points secured)
- the skills level possessed by the migrant. NVQ level 3 holders get five points, Bachelors or Masters degree 10 and migrants with a PhD 15
- points are also awarded according to whether the migrant comes in via the Resident Labour Market Test, an inter-company transfer or into a shortage occupation role (the latter awarding the highest points).

Migrants also need to demonstrate:

- a certain competency in English, either through coming from a country where the main language is English, or through taking a test at an appointed centre, and
- a specified level of funds in their bank account, for a continuous period of three months prior to the date of their application. This is currently £800 for the applicant plus an additional £533 for each dependent. For the first four months of the new programme, ie until 26 March 2009 the maintenance requirement will

be satisfied if the funds are in the applicant's bank account immediately prior to the date of their application.

An alternative is that a sponsor can provide written confirmation that it will maintain and accommodate the migrant in the first month of employment, however, it cannot underwrite the costs of a migrant's family dependants.

Implications

Applying to register as a sponsor and being granted a sponsor licence is a time consuming process. However, once an employer is registered as a sponsor, it should be easier to bring foreign hires into the UK to work, as there will be no need to go through a separate and full application for each individual Work Permit.

It is important that employers remember that the issue of a Certificate of Sponsorship is only the first hurdle in the new points based system. Once a potential hire has got a Certificate of Sponsorship number, they still have to apply for entry clearance into the UK, achieving a certain number of points for this purpose. The difficulty is that the British Embassies do not revert to applicants and request further documentation. They simply refuse entry clearance if the individual applicant does not have a sufficient number of points based on the initial information provided and there is no appeal process. Therefore, beware of issuing a Certificate of Sponsorship to a desired migrant who would not achieve enough points to get entry clearance.

What to do next

Contact Blake Laphorn for specific advice, guidance and help with an application for a sponsor licence. We offer a comprehensive service for a fixed fee for employers wanting to register with UKBA as Sponsors and this includes an audit of your HR systems to ensure they are sufficiently robust. This is important as many employers are visited by UKBA and have their HR systems checked as part of the application process. We also offer a service acting as a Level 1 or Level 2 user of the Sponsorship Management System. We price this either on a monthly fixed fee retainer, or on a fixed price for each Certificate of Sponsorship issued.

Contact

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