

Further Restrictions to Be Placed on Foreign Nationals Seeking Work in the UK

March 3, 2009

Coming just a few months after the introduction of the UK's new points-based immigration system (PBS) (which aimed to simplify the immigration system by creating five separate tiers, each with its own conditions, entitlements, and entry requirements), the UK government last week announced measures that will affect two of the new tiers. The measures will significantly tighten the rules pertaining to the admission of foreign nationals (i.e., foreign nationals who are not from one of the countries that make up the European Economic Area, or "non-EEA foreign nationals") into the UK by raising the threshold by which such workers may work in the UK.

The changes will undoubtedly be of considerable concern to UK employers, for whom it is critical to have the ability to fill vacant positions with the most highly and appropriately skilled workers, especially during the current economic downturn. For details of the changes, please see our Immigration Alert of November 7, 2008, at http://www.morganlewis.com/pubs/ImmigrationAlert_UKWorkPermits_07nov08.pdf.

Tier 1

Tier 1 (General) of the PBS is the highly skilled worker category, which replaced (among other immigration routes) the Highly Skilled Migrant Programme, in a phased approach over the course of 2008. Under this category applicants do not need a job offer before they come to the UK.

Currently, non-EEA foreign nationals coming to the UK under Tier 1 (General) have to hold at least a bachelor's degree to satisfy the "qualifications" requirements of this category. However, beginning March 31, 2009, this requirement will change, so that non-EEA foreign nationals must hold at least a master's degree. Accordingly, from this date, no points will be awarded for a bachelor's degree. In addition, though possibly of less concern to many UK employers, the current "earnings" requirement of Tier 1 (General) is that the foreign national seeking entry in this category must have earned his or her local currency equivalent of at least £16,000 over a prior 12-month period. In the future, this earnings threshold will be increased to £20,000.

Tier 2

Tier 2 replaced the UK work-permit scheme in its entirety as of the end of November 2008. To employ skilled non-EEA foreign nationals, UK employers must now apply for a sponsorship licence, which enables them to issue certificates of sponsorship either to individuals it wishes to transfer from group companies ("Tier 2 (Intra Company Transfers)") or alternatively, to recruit fresh talent from outside the EEA for its UK operations, providing it can prove that it could not fill the position with a worker from within the EEA Tier 2 (General).

The changes announced last week affect Tier 2 (General) to the extent that from March 31, 2009, a UK employer seeking to recruit talent from outside the EEA (as part of its efforts to show that it cannot fill the position with a worker from within the EEA) must advertise the vacant position through JobCentre Plus. At present, JobCentre Plus is just one of the places where employers **may** advertise for UK positions. To provide some background on this, JobCentre Plus is a UK government agency that supports people of working age who are transitioning from **welfare into work**, as well as helping employers to fill vacancies. Typically, it is more closely associated with finding work for low-skilled or manual-skilled workers rather than the skilled workers with which Tier 2 is more associated. The concern for UK employers is that this new requirement will lead to UK employers unnecessarily

spending valuable time and effort considering applications received from JobCentre Plus from candidates who are clearly unqualified for the position. There is also concern that the requirement may deter employers from carrying out supplementary advertising in more appropriate forums, the result of which may be that it restricts employers' search for the best candidate.

The announced changes are part of a new drive by the UK government to make use of the flexibility of the new PBS. In this case, the intention appears to be to ensure that the vast majority of jobs are offered to resident workers in the first instance, possibly as a result of the harsh economic climate that the UK businesses find themselves operating in today.

How This Affects You

Tier 1 – It is critical that any Tier 1 (General) application under which points are being claimed for a bachelor's degree is submitted no later than March 31, 2009.

Tier 2 – If employers are to avoid the mandatory requirement of placing job advertisements in JobCentre Plus as part of the Tier 2 (General) application process, job advertisements should be placed in other advertising forums before March 31, 2009 to satisfy the Tier 2 scheme requirements.

Morgan Lewis will continue to monitor this situation and will update you with any new information. If you have any questions about any of the issues raised in this Morgan Lewis Alert, please contact any of the following Morgan Lewis attorneys:

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