

UK Government Confirms Tighter Restrictions to Be Placed on Foreign Workers

8 September 2009

On September 7, the UK government announced the implementation of new measures designed to ensure that British workers have every opportunity to apply for British jobs before the jobs are offered to overseas workers. These measures are stated to be in response to rising unemployment in the UK and are meant to ensure that lower paid foreign workers are not hired at the expense of British workers' employment.

In August, the UK Migration Advisory Committee (MAC) published its report into the workings of Tier 2 of the UK's points-based immigration system. The report was commissioned by the UK government to assess skills shortages in the UK economy and, in particular, to consider specific questions that could have a serious impact on the future ability of UK employers to bring migrant workers to the UK.

Following a period of consultation with key stakeholders, the MAC concluded—to the great relief of multinational organizations that rely heavily on the ability to transfer their staff freely among global locations—that there is not an economic case for restricting Tier 2 solely to shortage occupations (ones for which there are not enough available resident workers to fill).

More specifically, the MAC found that:

- (1) Tier 2 (Resident Labour Market Test (RLMT)), under which a UK employer can sponsor a foreign worker to fill a UK vacancy that cannot be filled by a worker from either the UK or any country making up the European Economic Area (EEA), following a search of the resident labor market, should be retained
- (2) Tier 2 (Intra-Company Transfer), which enables established employees of multi-national companies to be transferred to a skilled job in a UK-based related entity, should also be retained as a key component of the points-based immigration system

Notwithstanding the MAC's overall findings that Tier 2 should not be substantially altered, the MAC did make 16 recommendations for how the government may wish to "vary" application of Tier 2. On September 7, the government accepted all 16 recommendations.

The recommendations fall into four broad categories:

- (1) The points awarded under Tier 2
- (2) The duration and the enforcement of the RLMT
- (3) The qualifying period, and its duration and the enforcement of Intra-Company Transfers
- (4) How allowances for Tier 2 migrants should be considered

More specifically, from an unknown date next year, employers wishing to hire workers from outside of the EEA must adhere to the following rules:

- All jobs falling within Tier 2 RLMT must be advertised in Jobcentre Plus for at least 4 weeks
- All Tier 2 workers must be employed in positions paying at least £20,000 (current minimum is £17,000)

- Under Tier 2 Intra-Company Transfer, the qualifying period working for the overseas entity will be extended from 6 months to 12 months

The proposed timing for introduction of the new measures is as yet unknown. However, it is anticipated that the government will work with business and key public service organizations to develop a timetable for implementing the measures.

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

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