

Changes to Tiers 1 and 2 of the UK Immigration Points Based System

19 March 2010

The way in which skilled migrant workers will qualify for permission to work in the United Kingdom will change with effect from 6 April 2010, following an announcement from the UK government on 18 March 2010. The proposed new measures will affect skilled workers seeking entry to the UK under both Tier 1 (for highly skilled individuals) and Tier 2 (for skilled workers with a job offer from a UK employer) after 6 April 2010. Although detailed guidance concerning the changes will not be published until 6 April 2010, this LawFlash provides a summary of the new measures.

Tier 1 (General)

Tier 1 (General) of the Points Based System is designed to attract the “brightest and best” individuals to the UK, the people most likely to make the greatest contribution to the UK economy. From 6 April 2010, an individual seeking initial entry into the UK under Tier 1 will be able to do so for an initial period of two years, provided he or she satisfies a revised points scoring system. Currently, initial entry clearance may be granted for a three year period, however it has been decided that this period should be reduced, to allow the UK Border Agency (UKBA) to verify at an early stage that the relevant individual is in fact engaged in highly skilled work. After two years, a Tier 1 migrant may apply to extend his or her leave for a further three years.

Under the revised points scoring system, an applicant can score the required points for attributes, if he or she has had previous earnings of at least £150,000 per year. This is the case even if the applicant has no formal qualifications. Under the current regime, a Tier 1 migrant must have obtained at least the equivalent of a Masters degree, a particularly high threshold, especially for US applicants, whose Masters degrees only qualify for points if their subject was the same as the relevant undergraduate course studied. This change will undoubtedly provide businesses with extra flexibility to transfer senior hires to the UK (including lawyers) without the need for sponsorship.

Tier 2

Tier 2 of the Points Based System enables skilled migrants with a job offer from a UK employer to be sponsored by that employer to work in the UK. The changes announced in relation to Tier 2 will affect both Tier 2 (Intra Company Transfer), which allows multinational companies to transfer established staff to a skilled job in a UK branch of the company or a group company entity, and Tier 2 (General), in which sponsorship is strictly conditional on having first made the position available to resident workers.

A revised points scoring system will also apply to initial Tier 2 entry clearance applications from 6 April 2010. In particular, points awarded for prospective earnings in the UK will be updated to more accurately reflect the salaries of skilled resident workers. The points adjustments mean that all applicants (save for those applying to shortage occupations) will need to be able to demonstrate prospective earnings of at least £20,000 per year to qualify under Tier 2.

With regards specifically to Tier 2 (Intra Company Transfer), which currently only applies to employees with at least six months' experience working for the related overseas entity immediately prior to the application, this category will be split into three sub-categories from 6 April 2010 as follows:

Established Staff – This sub-category largely mirrors the current Tier 2 (Intra Company Transfer) immigration route, save that from 6 April 2010, individuals seeking initial entry to the UK via this route must have a minimum of 12 months' experience working for the overseas related entity, as opposed to the current six month requirement. This change seeks to ensure that applicants have sufficient company-specific knowledge prior to their transfer to the UK. Importantly, and so as to reflect the intended temporary nature of intra company transfers, the "established staff" category will not lead to eventual settlement in the UK.

Graduate Trainee – This new sub-category will allow companies to transfer recent graduates (with at least three months' employment for the overseas business), to the UK branch for training or career development purposes. The training must be part of a structured graduate training scheme which will lead to a managerial or specialist role. To ensure that the graduate does not displace a resident worker, the maximum permitted length of UK stay under this sub-category will be 12 months.

Skills Transfer – This sub-category is designed to enable newly recruited employees of multinational companies to transfer temporarily to the UK to acquire or impart skills and knowledge relevant to their role. No minimum period of prior employment will be required under the skills transfer route, however it will be strictly limited to certain prescribed "highly skilled" occupations. The maximum length of UK stay under this sub-category will be six months.

Further information about these changes will be provided when the detailed guidance is published by the UKBA on 6 April 2010.

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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