

labour and employment lawflash

31 October 2014

Changes to the UK Immigration Rules

The changes relate to amendments being made to the Tier 2 category, business visitors, and several Tier 1 categories and will affect employers in the UK.

The Home Office recently announced changes to the UK Immigration Rules, summarised below, which will take effect on 6 November 2014.

Tier 2—Assessment of Genuine Vacancy

Entry Clearance Officers and caseworkers will be able to refuse applications where there are reasonable grounds to believe that a job does not genuinely exist or has been exaggerated to meet the Tier 2 skills threshold or that the resident labour market test has been conducted with the intention to exclude local workers. Entry Clearance Officers and caseworkers may also refuse an application if they feel the applicant is not qualified to do the role on offer in the UK. Both Tier 2 (General) and Tier 2 (Intra-Company Transfer) applicants may be required to prove that the vacancy (as stated on the Certificate of Sponsorship) is genuine and the resident labour market test has been conducted properly.

Business Visitor Route Expanded

Scientists and researchers entering the UK as business visitors will be permitted to share knowledge, expertise, and advice on any UK-led international project, provided that the visitor does not carry out research that should be undertaken on a Tier 5 (Temporary Worker) or Tier 2 (Skilled Worker) visa.

The permitted business visitor activities will also be expanded to allow overseas lawyers of international law firms that have offices in the UK to provide direct advice to UK clients on litigation or international transactions.

Graduates of overseas nursing schools will now be permitted entry to the UK as business visitors to take the Objective Structured Clinical Examination. This exam is required before an overseas nurse is eligible to apply for entry clearance as a Tier 2 migrant.

Tier 1 (General) Route

The Tier 1 (General) route will close to extension applications on 6 April 2015 and to indefinite leave to remain (“settlement”) applications on 6 April 2018. Tier 1 (General) migrants who apply to extend their visas on or after 6 November 2014 will be eligible to extend their stay for three years (or the period needed to take their total leave under the Tier 1 (General) scheme to five years).

This will allow applicants to accrue five years in the category before the closing date, even if their original grants were delayed because of a refusal and appeal.

Tier 1 (Investor) Route

The minimum investment threshold required under the Tier 1 (Investor) route will be increased from £1 million to £2 million for any applications made as of 6 November 2014.

The full investment of £2 million will need to be invested in prescribed forms of investments. The current Immigration Rules provide that up to 75% of £1 million must be invested in prescribed forms of investment and the remaining 25% can be held in a UK bank account or used to purchase property.

Tier 1 (Investor) migrants who apply on or after 6 November will no longer be required to “top up” their investments if their market values fall. Provided that migrants can demonstrate that the qualifying investments met the required threshold at the time that they were purchased, migrants will only be required to purchase new qualifying investments if they sell part of their portfolios and need to replace those investments to maintain the investment threshold.

The current provision under which the required investment sum can be sourced as a loan will be removed.

Transitional arrangements will be applied so that migrants who have already applied for Tier 1 (Investor) status or before 5 November 2014 will not be subject to these changes when they apply for extensions or for indefinite leave to remain.

Tier 1 (Entrepreneur) Route

Migrants who apply for this category while in the UK will have to hold the required funds to be invested in the business in the UK to assist the Home Office in verifying that the funds are genuine.

Tier 1 (Exceptional Talent) Route

Applicants will be able to apply for immigration permission for five years (the current rules permit only three years of leave). The Home Office is also removing the English language requirement for extension applications, although this will remain for those who apply for indefinite leave to remain on the basis of this category.

English Language Tests Must Be Taken at an SELT Centre

Tests administered by Trinity College London on or after 6 November 2014 must display “SELT Centre” on the test certificate. Additionally, the test must be verified via the college’s online verification tool.

View the *Statement of Changes in Immigration Rules* as presented to Parliament on 16 October 2014 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364371/hc-693.pdf.

British-Irish Visa Scheme Introduced

The Home Office has introduced the British-Irish visa scheme. The scheme, which will be introduced in China by the end of October and in India soon after, will enable Chinese and Indian nationals to travel to the UK and Ireland using a single visa.

The scheme will be available to those who apply for single, short stay general, and business visitor visas.

Those who have been issued a visa under the British-Irish visa scheme must first travel to the country that issued the visa. For example, if they applied for an Irish visitor visa, they must first travel to Ireland before travelling to the UK. The only exception to this is if they transit via the UK to Ireland. In this situation, they will not need to apply for a UK transit visa prior to travel, but they must travel to Ireland within 24 hours of landing in the UK. Once they have activated their visa in Ireland, they can then travel to the UK.

Starting October 2014, UK visa application centres in China and Hong Kong will also process Irish visa applications. This will also be rolled out into UK Visa Application Centres in India in the near future.

Only Chinese and Indian nationals who apply in China and India will be eligible to use the British-Irish visa scheme. Applicants of all other nationalities who require a visa to visit the UK and Ireland will be required to

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obtain separate visas.

Read the full details of the British-Irish visa scheme at <https://www.gov.uk/government/publications/british-irish-visa-scheme/british-irish-visa-scheme>.

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