

IMMIGRATION RULE CHANGES – NOVEMBER 2016

On 3 November 2016, the UK Government announced changes to the UK Immigration Rules, the majority of which are due to come into effect on 24 November 2016. These new Rules will mainly affect the Tier 2 immigration category and the Family and Private Life immigration routes. They will also have an impact on in-country extension applications in all visa categories, in that, if a migrant submits an application which is incomplete and / or is filed after their UK immigration status has expired, this could have serious, irreversible consequences on the migrant's current and any future UK immigration applications.

In addition to the Immigration Rule changes, the Home Office has launched a new priority service for Tier 2 and Tier 5 sponsors and has introduced online application forms for certain in-country applications under the Family and Private Life routes.

We set out below details of the main changes that are most relevant to employers and individuals.

TIER 2

Tier 2 of the Points Based System is the category that allows UK companies to sponsor non-EEA nationals to undertake a skilled job in the UK. The two subcategories of Tier 2 which are most frequently used by UK employers are Tier 2 (Intra-Company Transfer) (ICT), which allows companies temporarily to transfer employees who work for the company overseas to the UK, and Tier 2 (General), which enables companies to employ non-EEA nationals in the UK in permanent roles.

The UK Government announced on 24 March 2015 proposed changes to the Tier 2 category, which would take effect in two stages. The first stage is being implemented by these new changes to the Immigration Rules.

The main changes being made to Tier 2 are:

- ♦ increasing the Tier 2 (General) salary threshold for experienced workers to £25,000 from £20,800. Nurses, medical radiographers, paramedics and secondary school teachers in mathematics, physics, chemistry, computer science and Mandarin are exempt from this increase until July 2019. There is a transitional arrangement in which the increase will not apply to workers extending their stay in the category provided they were sponsored under Tier 2 (General) before 24 November 2016;
- ♦ increasing the Tier 2 (ICT) salary threshold for short term staff to £30,000. This only applies to new applicants under this category;

- ♦ closing the Tier 2 (ICT) skills transfer sub-category to new applicants; and
- ♦ reducing the Tier 2 (ICT) graduate trainee salary threshold from £24,800 to £23,000 and increasing the number of places a sponsor can use from five to 20 per year.

Furthermore, the UK Government has confirmed that Tier 2 (ICT) migrants will no longer be excluded from paying the immigration health surcharge. However, the date that this requirement will come into effect has yet to be announced.

English language requirement

A new provision has been inserted into the Immigration Rules regarding the English language requirements under the Points Based System. This change makes it clear that, where an individual is relying on a degree taught in English outside the UK to satisfy the relevant English language requirement, they must provide original documentation produced by UK NARIC confirming that the qualification is at the appropriate level.

New priority service for Tiers 2 and 5 sponsors

On 7 November, the Home Office launched a new priority service which allows eligible sponsors to pay a fee of £200 per request for an expedited service of five working days when processing requests for:

- ♦ changing the authorising officer;
- ♦ adding a new level one user; and
- ♦ adding or renewing the allocation of Certificates of Sponsorship.

It is important to note that the normal service standard for processing these requests is 18 weeks.

FAMILY AND PRIVATE LIFE

The main change to the Family and Private Life immigration routes is a retrospective amendment to the English language requirement.

From 24 November, non-EEA partners and parents of British citizens or those with no time limit on their stay in the UK will have to demonstrate that they possess ability in the English language at or above Level A2 of the Common European Framework of Reference for Languages (CEFR) when extending their stay in the UK having spent two and a half years in the UK on a five-year route to settlement under these categories. This will apply to all extension applications submitted on or after 1 May 2017. This

means that individuals who are already in the UK under these routes, if they are due to submit their extension on or after 1 May 2017, will have to satisfy this requirement, even though it was not in place at the time they initially applied to enter the UK.

Therefore, if an applicant is not a national of a majority English-speaking country or does not hold a degree taught or researched in English, they will need to pass a speaking and listening test at level A2 or above from Trinity College London or IELTS SELT Consortium.

Certain applicants are exempt from this requirement, such as those aged 65 or over, those who have a disability which prevents them from meeting the requirement or where there are exceptional circumstances which prevent the applicant from being able to meet the requirement.

It is important to note that those who are making an initial application for entry to the UK under these routes are still only required to demonstrate that they are at Level A1 of the CEFR. Furthermore, it remains the case that all applicants for indefinite leave to remain must demonstrate that they are at Level B1 of the CEFR.

New online application forms

Applicants applying in-country under the Partner, Family Life as a Partner and Private Life in the UK routes can now complete and submit their application forms online. This is part of the Home Office's initiative to make more application forms accessible online.

IN-COUNTRY VISA APPLICATIONS

Whilst applicants are expected to submit in-country extension applications before their visa expires, currently, provided the application is submitted within 28 days of the date their visa expires, the application will not be refused on the grounds that the individual is an overstayer. This 28 day "grace period" was originally introduced to ensure that applicants who had made an innocent mistake were not penalised.

The UK Government has now decided to abolish this 28 day "grace period". However, provided the applicant submits the application to extend their stay within 14 days of their visa expiring, the Home Office will accept the application if it is of the view that there was a good reason and the delay was beyond the applicant's or their representative's control.

Furthermore, applicants who have submitted an in-country application which is then refused will now have 14, rather than 28, days to submit a new application. This also applies in

circumstances where a time limit for appeal or administrative review has expired or an appeal or administrative review has concluded.

It is important to note that, in relation to future applications for indefinite leave to remain (also known as settlement and permanent residence), the Home Office will continue to disregard any period of overstaying between periods of valid immigration permission which, at the time the further application was made, fell to be disregarded under the previous 28 day rule. This is provided that the 28 day period was before 24 November 2016.

VALIDITY CRITERIA: PRACTICALITIES OF COMPLETING FORMS AND SUBMITTING APPLICATIONS

The UK Government has also redrafted the Immigration Rules in relation to the validity of in-country extension applications. It now states that an application is only valid when the applicant:

- ◆ completes the mandatory sections of the application form;
- ◆ arranges payments for all applicable fees;
- ◆ provides a valid passport or other acceptable proof of identity;
- ◆ provides passport photographs; and
- ◆ provides biometric information.

Therefore, it is important that applicants ensure that the relevant form is completed correctly prior to submission to ensure that the application is not rejected for being invalid.

CONCLUSION

The changes that are being made to Tier 2 are as expected as they are in line with the announcement that the UK Government made in March of this year. A further set of changes to the Immigration Rules governing the Tier 2 category will also come into effect in April 2017.

These far-reaching changes will drastically increase the cost to UK employers of sponsoring non-EEA nationals to work in the UK under Tier 2 and it remains to be seen whether this increase in cost, and inevitable decrease in the numbers of skilled migrants coming into the UK, will affect the attractiveness of the UK as a place to do business and for inward investment.

In relation to the changes to the English Language requirements for those applying under the Family and Private Life routes, the UK Government has stated that, by increasing the English

language requirement to Level A2 of the CEFR, this will encourage better integration into British society, helping to ensure that those who come to the UK on the Family route with only basic English become more fluent over time. The UK Government is of the view that this is not an onerous requirement as individuals under this category would already have been aware of the need to satisfy Level B1 of the CEFR for any future application for indefinite leave to remain. However, for those who are already in the UK under these categories whose immigration permission is due to expire shortly after 1 May 2017, it will be interesting to see if this provides them with sufficient notice to ensure that their English language ability is at the required level.

The main changes to the Immigration Rules which were not expected were the abolition of the 28 day "grace period" for in-country applications and the tightening of the requirements for submitting a valid application. These changes make it even more important that those with time limited immigration permission to remain in the UK start preparing their extension applications in good time and submit them well in advance of their visa expiry date. It remains to be seen how willing the Home Office will be to exercise its discretion to accept applications which are submitted within 14 days following the expiry of an individual's visa.

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