

GHERSON

THE IMMIGRATION UPDATE

Summer 2009

Tier 1 Update - Avoiding the Pitfalls



Elena Rosa Brunet
alerts migrants
to new
strict
maintenance
requirements

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The Tier 1 General Scheme has been championed as a flexible tool able to adapt to the needs of the UK's economy, including its recent downturn. Thus, on 22 February 2009 in a rather astute response to the outcry of "British jobs for British workers", the UK Border Agency (UKBA) significantly tightened the requirements under the Tier 1 General Scheme.

New Requirements

From 1 April 2009, only applicants who have a Master's degree and a minimum salary of £20,000 will be able to apply under the Tier 1 General Scheme, both in and out of country.

Applicants will still need to meet the 75 points benchmark and 10 points each under English and maintenance requirements. Unfortunately, the lack of adequate forewarning has left many migrants confused and in great danger.

"However, we urge everyone to seek professional legal advice..."

The good news is that individuals who are already here as Tier 1 General Scheme holders or HSMP holders will not be affected by these changes.

However, we urge everyone to seek professional legal advice to enable them to make an informed decision as to their short and long term options.



Maintenance

The Tier 1 General and Post Study work categories seem to be causing many problems for those applying, particularly the maintenance requirement.

You should be aware that the requirement to have a minimum balance of £800 (in country) or £2,800 (Entry Clearance applications made outside of the UK) for three months is an absolute requirement.

The Home Office is refusing applications that do not meet this criterion. For an in country applicant this may be resolved by appealing the decision but only if you can show that you have the required funds on the date the application was made. There is no appeal for applications made out of country.

National ID cards



Currently, the plan is to require all foreign nationals from outside the EEA to have an ID card within the next 3 years if they're coming to the UK for more than 6 months or extending their stay here.

At present, only foreign nationals applying for an extension of leave in the UK in certain categories are required to apply for an ID card (e.g. students, spouses).

However, the UK Border Agency is reviewing the roll-out to see how it can be accelerated.

The ID card scheme is all part of the Government's attempts to tackle illegal working in the UK, although it remains to be seen if it will have any impact.

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Success for “Highly Skilled Migrant Programme” Holders



Liliya Scott explains how the Court has ruled in favour of HSMP holders

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In another landmark decision for the HSMP Forum, on 6 April 2009 the Administrative Court ruled in favour of HSMP holders and determined that the Home Office’s decision to increase the requirement for Indefinite Leave to Remain (ILR) from 4 to 5 years continuous residence was unjust.

Policy and procedures for all those affected by the judgment were published by the UK Border Agency on 20 May 2009 and can be found at:

www.bia.homeoffice.gov.uk/sitecontent/newsarticles/hsmppforum-09-arrangements

Please note that this only affects those who entered onto the HSMP scheme prior to 3 April 2006.

The main requirements for ILR for a person qualifying under this policy are:

1. You have spent a continuous period of 4 years lawfully in the UK, of which the most recent period must have been spent with leave as a highly skilled migrant;
2. Throughout the 4 years spent in the UK you have been able to maintain and accommodate yourself and any dependants adequately without recourse to public funds; and
3. You are lawfully economically active in the UK in employment and/or self-employment.

One-off payment

If you gained an initial grant of one year’s leave under the HSMP requirements, then extended your

initial year grant by a further 3 years, and were subsequently required to make a second extension application in order to have completed 5 years continuous residence in the UK, you will be allowed, by 20 May 2010, to apply for a one-off payment to cover the cost of the second extension application which would not otherwise have been required.



When am I eligible for British citizenship?

You will be considered to have obtained ILR from when you had completed 4 years qualifying residence for the purposes of any subsequent British citizenship application.

Important Changes to Tier 2



Lisa Amos advises businesses to watch out for new fees and advertising requirements

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There have been a few changes to Tier 2 of the Points Based System since its introduction in November 2008.

Tier 2 (General)

One such change is the UK Border Agency’s (UKBA) strengthening of the

resident labour market test, which requires skilled jobs to be advertised. An employer can no longer sponsor a migrant to do a job under Tier 2 (General) unless the job has been:

- advertised to settled workers in Jobcentre plus; and
- advertised using one other method permitted by the relevant code of practice for that position.

The Shortage Occupation list has also revised with a number of jobs being removed.

Work Permit Holders

Employers should be aware that UKBA must be advised of changes to the conditions of a work permit holder’s employment in the UK - there are severe consequences for not informing the UKBA of such changes.

On 29 June 2009 a fee of £20 was introduced for the acceptance of technical change of employment notifications for work permit holders.

Employers must complete a notification of technical change of employment form to update the personal details of employees, or make minor changes to information contained in the work permit application submitted such as:

- a change of name upon marriage
- change of business address
- where both the employee and the specific job they were approved for move location

Significant changes to the conditions of a work permit holder’s employment will result in an application having to be made under Tier 2 of the Points-Based System.

Future Path to British Citizenship



Jackie Penlington takes a closer look at the new Citizenship legislation

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“Someone who has been made redundant from their job would find it difficult to meet this requirement...”

Continuous Employment

Another requirement is to have been in continuous employment, throughout probationary citizenship leave, granted for the purpose of taking employment to qualify for citizenship. Someone who has been made redundant from their job would find it difficult to meet this requirement, a worrying requirement given the current economic climate.

It remains to be seen how much protection will be given to those who, through no fault of their own, cannot work during the whole of their probationary citizenship leave.



Will the Changes Apply to Those Already in the UK?

The Act will affect those already en route to nationality, although some transitional provisions have been introduced for those with ILR. Please ask a member of the Gherson team for more details. It does not necessarily mean that people will no longer be eligible for British nationality but it may delay the submission of the naturalisation application for various reasons.

Think Ahead

Royal Assent was granted on 21 July 2009 but as yet, there is no definite implementation date for the new law.

The Government has introduced a new Act, which will dramatically overhaul the current framework for Indefinite Leave to Remain (ILR) and British citizenship. One of the main elements is to support the concept of “earned citizenship” - setting out the eligibility requirements for UK citizenship.

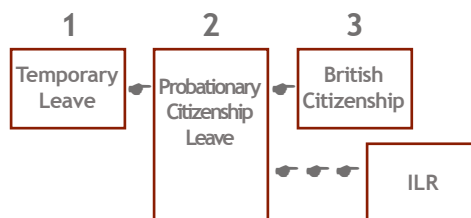
The Major Changes - A New Concept of Probationary Citizenship

The current path to citizenship consists of 3 stages:

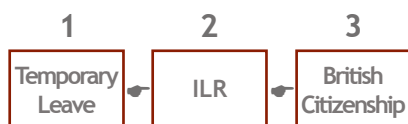
Firstly spending a qualifying period of time in the UK in a temporary immigration category (e.g. spouse, Points Based migrant - Tier 1 General, Tier 2 etc).

Secondly applying for ILR in the UK. Thirdly (subject to meeting the requirements), applying for naturalisation to become a fully-fledged British citizen (often a year after having obtained ILR).

Probationary citizenship leave would mean that rather than applying for ILR at the second stage, you would need to apply for ‘probationary citizenship’ leave, essentially another form of temporary leave. After a period of 1-5 years (length depends on the particular route to nationality and whether you are an ‘active’ citizen), the migrant may be able to apply for British citizenship. Whilst ILR remains, it would be an alternative to citizenship and take longer to obtain.



As outlined above, the exact period of time required as a probationary citizen will depend upon how active a citizen you are. For example, volunteering in the community could speed up the process whereas criminal conduct could slow down or even prevent you from obtaining British citizenship. This all ties in with the Government’s concept of migrants earning their entitlement to citizenship and contributing to the UK as a whole.



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Students and Tier 4 Explained

Tier 4 is the new student category and latest addition to the new points based system adopted by the UK.

New rules for students and UK education providers

Since 31 March 2009 students from outside the EEA must pass a points-based assessment before qualifying to enter the UK to study. In turn, it is also mandatory for UK education providers intending to admit or 'sponsor' non-EEA international students to hold a sponsor licence prior to their student recruitment.

“The current new list of registered educational institutions only stands at 1,500 an incredible drop of 90%”

UK education providers in addition will face rigorous inspection and be expected to undertake duties to ensure student's compliance with their visa conditions as well as shoulder the responsibility of record keeping duties.



Progress so far

Latest statistics have already seen the consequences of these strict regulations under Tier 4 with a dramatic drop of approved institutions able to sponsor UK student visas from 15,000 to only 13,000.

Alarmingly a quarter of the institutions applying to be registered on the UK Border Agency new approved list have already been rejected. The current new list of registered educational institutions only stands at 1,500 - an incredible drop of 90%!

The future

There is still more to expect under Tier 4 in Autumn 2009 when sponsors start to replace the "visa letters" issued to students with unique reference numbers. The target is to have full implementation of Tier 4 by February 2010.

US Student and Graduate Intern Work

From 1966 to 2008, the British Universities North America Club (BUNAC) operated a program allowing thousands of US students to take temporary jobs in the UK.

BUNAC and the Working Holiday Maker Scheme were replaced by Tier 5 of the PBS, leaving significantly fewer opportunities for young people to gain experience of life and work in the UK. After protracted negotiations with the government, BUNAC is now operating the *Blue Card Internship Program UK*, giving US students and recent graduates the opportunity to work as an intern in the UK for up to 6 months.

Participants must first arrange a position, BUNAC issues a Certificate of Sponsorship and then candidates apply for a visa before entering Britain.

The Legal Stuff

Gherson is regulated by the Solicitors Regulation Authority.

This update is correct to the best of our knowledge and belief at the time of going to press. It is, however, written as a general guide, so we recommend that specific advice be sought before any action is taken.

Are You Up-To-Date

March 2009

Changes to the rules covering several categories of business visitors have been implemented.

Changes to the initial Tier 1 General scheme are in now in force - new minimum of a Masters degree and a salary of £20,000.

Tier 2 (General) sponsors are now required to advertise in Job Centre Plus and at least one other prescribed method.



April 2009

Tier 4 of the Points-based system launched, covering students and UK educational institutions.

Worker Registration Scheme to operate for at least a further 2 years.

May 2009

All former Gurkhas who have served in the British Army for at least four years will now be eligible for settlement in the United Kingdom.

July 2009

Visitors from South Africa, Lesotho and Swaziland now require a visa to enter the UK.

Borders, Citizenship and Immigration Bill received Royal Assent on 21 July 2009.

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