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Annual quotas set to curb immigration

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Annual quotas set to curb immigration

A HOT TOPIC IN THE UK IMMIGRATION world is the introduction of an annual quota in respect of migrant workers who enter the UK under either Tiers 1 or 2 of the points-based system (PBS). The government's stated aim is to 'reduce net migration to tens rather than hundreds of thousands'. This was a key element of the Conservative Party's immigration manifesto in the run up to the general election and was arguably a response to growing public concern in the UK surrounding immigration during the recession.

CHANGES TO IMMIGRATION IN THE UK

At present, the suggested annual limit will only apply to the two most commonly used economic migration categories. The coalition government has set an interim limit before it introduces a formal, long-term limit on 31 March 2011. This means that the Tier 1 (General) visa application limit is set to the same volume as the equivalent period in 2009. Tier 2 sponsors have been contacted by the UK Border Agency (UKBA) with their allocation of certificates of sponsorship between now and 31 March 2011. It is highly likely that sponsoring employers will find themselves already over committed, not having enough certificates of sponsorship available to accommodate the migrant workers they wish to employ within the UK at the present time, let alone in the months from now until March 2011.

The current proposals will have a direct effect on UK trade and business. It is clear from the coalition government's consultation that, to achieve public reassurance from a proposed decrease in net migration, the government can only do so by implementing a limit on the revenue-generating economic migration categories, such as Tier 1 and Tier 2. It is important to remember that migration from the European Economic Area (EEA) is outside of the government's control (with the exception of the new member states of Bulgaria and Romania), and asylum

and refugee migration is governed by international convention.

CONSEQUENCES

The question to be asked is whether introducing an annual cap primarily on PBS categories will solve the public concerns surrounding immigration into the UK. The PBS accounts for a relatively small proportion of current immigration flow. Net migration is dependent on various external factors. In previous years it has been affected by the economic downturn and changes to the numbers of EEA nationals remaining in the UK after the initial influx of new member state nationals in 2004. It is worth considering whether these highly skilled workers being admitted to the UK are even viewed in the public perception as those who are placing a drain on the country's public resources, such as the health service and schools.

When PBS was introduced it was designed to flexibly respond to changes within the economy and the availability of labour within the UK. This has been demonstrated by the fact that Tier 3 for low-skilled workers has never actually been introduced and by changes made to Tiers 1 and 2 in April 2010 with regard to the attributes criteria following recommendations by the Migration Advisory Committee (MAC). Most recently, in addition to the introduction of interim quotas, the points required to meet the attributes criteria for Tier 1 (General) highly skilled was raised to 80 points. The effect of this increase is that an applicant who cannot score points for age or UK experience and possesses only a bachelor's degree will need minimum annual gross earnings of £150,000 to qualify. An applicant who is 35 years of age and has a master's degree would need to earn over £75,000 to meet the criteria. Is this increase in the minimum points sufficient to reduce the numbers of migrants eligible to apply for Tier 1?

With regard to Tier 2 (General) certificates, a limit had effectively already been set



'Will the introduction of an annual cap, primarily on points-based system categories, solve the public concerns surrounding immigration into the UK?'

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'Individuals who already have permission to work in the UK have now become more attractive to employers, who are exhausting all possible routes to employment permission before using one of their precious allocated certificates.'

by the PBS whereby employers looking to recruit from outside their international organisation had already requested an allocation of certificates and a process had been put in place for additional certificates to be requested if necessary. It therefore appears to be a complete turnaround for an allocation to be granted to which consideration had presumably already been made as to the total number allocated to all sponsors for these, then for it to be taken away without any prior consultation with individual sponsors.

The limits are currently set to cover the period until March 2011, when a new infrastructure of quotas will be introduced once the government has considered responses from both their own consultation and from MAC.

SO WHAT DOES THIS MEAN FOR A UK-BASED EMPLOYER LOOKING TO RECRUIT A NON-EEA NATIONAL?

It is important to note that quotas do not apply to those employees who qualify under the intra-company transfer route. Those who have been employed by an international organisation outside of the UK for a minimum of 12 months will be able to transfer to the UK for a maximum initial period of three years to be followed by a two-year extension if their services are still required in the UK. However, from April 2010, those whose route of entry to the UK is as an intra-company transfer or established staff migrant no longer become eligible to apply for permanent residence after five years' employment in the UK. Should the individual wish to qualify for this status they will either need to be sponsored by their employer under the Tier 2 (General) route or apply for the self-sponsored Tier 1 (General) category. Any time spent in the UK under the established staff category cannot be aggregated with future time spent within Tier 1, so the requisite time

period to qualify for permanent residence would begin again from the point that they switched immigration status to Tier 1.

All employers who, on 19 July 2010, had an allocation of Tier 2 (General) certificates saw a reduction in their allocation of certificates between then and 31 March 2011. Their allocation was calculated by looking at the period from 21 July 2009 to 31 March 2010, the number of Tier 2 (General) certificates issued and reducing this number by 15%. A specific number of these certificates were then put aside for current and new sponsors to make an exceptional request to be issued with a first certificate or an additional certificate, and the remainder were withdrawn to ensure a reduction in the numbers of migrants coming to the UK. The difficulty for employers is that the period used to calculate the limit was when the country was in deep recession and there had already been a natural reduction in the numbers of certificates being issued. Therefore, in July 2010, as the financial markets gained some momentum, employers were starting to recruit again and sent offers out to candidates, but they were then faced with a reduction in certificates of sponsorship. The result for certain sponsors is that they had already made offers to candidates that had been accepted and therefore had to proceed with the issue of such certificates. These employers have now been left with none or few certificates until March 2011.

Prospective sponsors who already made a licence application (as they had already identified a candidate from outside the EEA that they wished to recruit), were given the option to withdraw their licence application and receive a refund of their application fee or to proceed with the licence application knowing that their quota of Tier 2 (General) certificates would automatically be zero. A new process has been introduced whereby

current or prospective licence holders have to make an exceptional request for a certificate that will be considered once a month by ranked criteria, against which the UKBA states that 'most requests will be unsuccessful'. If the employer's exceptional request is refused, they could be left with a licence for which they have paid a fee of up to £1,000 but no usable certificates (if they are not part of an international organisation or have no intention of transferring employees between locations). Should a prospective employer have made a licence application around the time that the limits were introduced, they will have also experienced a delay in the processing of their application as these are taking a minimum of eight weeks to handle instead of the published service standard of four weeks.

For existing licence holders with a limited number of certificates, decisions must be made as to whether these are allocated to a senior grade of employee, on a first come first served basis, or on potential added value to the business. Individuals who already have permission to work in the UK have therefore become more attractive to employers. Otherwise it appears that employers are exhausting all possible routes to employment permission before using one of their precious allocated certificates.

CONCLUSIONS

It is too early to confirm whether the interim cap will allow for enough migrant workers to cover job needs in the UK, but it is fair to say that the limits have produced great uncertainty for employers and prospective employees. Where a recruit is required to apply for Tier 1 to join a new employer, they are reticent to resign their current employment before they have approval of their visa. If the application is to be made outside the UK, the time frame will depend on whether their application falls within the quota for that month and the processing time of the receiving consular post, which can vary from three days to six weeks. Within the UK, processing times can vary from one day to eight weeks, depending on whether the applicant obtains a same-day appointment or whether the application has to be submitted by post. Other logistical issues involve the collation of the appropriate documentation. As more employers move toward internet-based payslips, which are

not acceptable for Tier 1 purposes without an employer's confirmation of authenticity, this creates a difficulty for employees to obtain such evidence without a current employer asking awkward questions. In addition, where a migrant receives online bank statements, which again are not acceptable to the UKBA, certain banks refuse to verify online bank statements in the format required, resulting in a delay while duplicate bank statements are generated. Such logistical issues mean that it is not unusual for the time frame to total approximately six months from identification of candidate to commencement of employment.

It would appear that a common sense approach would be for the UKBA to better engage with existing sponsors to set reasonable limits in line with the sponsor's previous history of issuing certificates and with the knowledge of the sponsor's strategic objectives for the coming year. There is a need to balance flexibility with certainty so that businesses can continue to meet their economic needs and operate profitably within the UK. Having the right person to undertake a certain role could be crucial to their operations. When the highly skilled migrant programme was first introduced in the UK in 2002 it was heralded by Lord Rooker, the incumbent Minister

for Citizenship and Immigration, as representing a:

'A further step in developing our immigration system to maximise the benefits to the UK of highly skilled workers who have the qualifications and skills required by UK business to compete in the global market place.'

Perhaps it has been too successful and the UK has attracted too many highly skilled migrants at the expense of British workers.

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