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Changes to the PBS

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ON 18 MARCH 2010 THE UK BORDER Agency (UKBA) announced changes to Tier 1 (General), Tier 2 (General) and Tier 2 (Intra-Company Transfer) of the points-based system (PBS). These changes came into effect on 6 April 2010.

These changes will give employers food for thought, particularly when transferring employees from overseas branches to the UK.

TIER 1 (GENERAL)

Migrants must still be able to score 75 points for their age, qualifications, previous earnings and UK experience, and a further 20 points for their English language ability and maintenance ability. However, the points have been recalibrated (see table on p31).

The most notable change to the points spread under Tier 1 (General) is that the minimum academic qualification needed to score points is now a bachelor's degree, rather than a master's degree. Since 1 April 2009, migrants who have not held a master's degree have been prevented from applying under Tier 1 (General).

In addition, migrants who are earning a minimum of £150,000 may be eligible under Tier 1 (General) without the need for any academic qualification.

Migrants will also be able to score points for a higher age threshold – up to 39 years old. Previously, migrants were unable to score points for age if they were 32 years old or over.

Applicants will initially be granted leave under Tier 1 (General) for two years, rather than the current three years. After two years, Tier 1 (General) migrants will be able to apply to extend their leave for a further three years, taking them up to the five years required for indefinite leave to remain (or, as it will be known then, probationary citizenship).

TIER 2 (GENERAL) AND TIER 2 (INTRA-COMPANY TRANSFER)

The points have also been recalibrated under Tier 2. Migrants must still be able to score 50 points for their sponsorship, qualifications and prospective earnings, and a further 20 points for their English language ability and maintenance ability (see table on p32).

Guidance issued by the UKBA on 6 April 2010 provided clarification on when a change of employment application is required for a Tier 2 migrant whose job within a company is changing. The UKBA has confirmed that a change of employment application will not be required if the migrant's new role remains within the Standard Occupational Classification (SOC) code that their original certificate of sponsorship was issued under. Exceptions to this will be if the migrant's salary is reduced to below the salary stated on their original certificate of sponsorship, other than acceptable reductions (eg company-wide reductions or reductions due to maternity or adoption leave). Additionally, if the migrant changes from a job that is on the shortage occupation list to a job that is not on the shortage occupation list, a new certificate of sponsorship may be required.

Importantly, the UKBA is introducing three new subcategories to Tier 2 (Intra-Company Transfer):

- 1) Tier 2 (Intra-Company Transfer) Established Staff;
- 2) Tier 2 (Intra-Company Transfer) Graduate Trainees; and
- 3) Tier 2 (Intra-Company Transfer) Skills Transfers.

Established Staff

This replaces the previous Tier 2 (Intra-Company Transfer) category for current employees of multinational companies with company-specific knowledge who are being transferred from abroad to the UK. Under the Established Staff category the following changes will apply:

- migrants must now have worked abroad for at least 12 months, rather than the previous six months; and
- this route will not now lead to settlement (also known as indefinite leave to remain or permanent residency).

This change to the rules regarding settlement is believed to be particularly short-sighted. Migrants will be less inclined to invest in the UK if they will not be eligible to apply to remain permanently. For example, a long-term effect may be on the UK's housing market.

'If employees intend to settle in the UK permanently, they must change their immigration category from Tier 2 (Intra-Company Transfer) as soon as possible.'

As a result of this change to the rule for settlement for Tier 2 (Intra-Company Transfer) migrants, it is important that employers make it clear to employees transferring from abroad that, if it becomes their intention to settle in the UK permanently, they must change their immigration category from Tier 2 (Intra-Company Transfer) as soon as possible. Given the relaxing of the requirements for Tier 1 (General), it may be a better option if they were to come to the UK as a Tier 1 migrant. This has benefits for both the employee and the employer, as Tier 1 does not require resident labour market testing or sponsor reporting duties.

Graduate trainees

The Tier 2 (Intra-Company Transfer) Graduate Trainee sub-category allows multinational companies to transfer graduate recruits to the UK branch for training and career development. The recruits must be sent as part of a structured graduate training programme, with clearly defined progression towards a managerial or specialist role. The applicant must have been employed by the company overseas for at least three months before coming to the UK and it is only open to migrants who are working in specific graduate occupations.

The Graduate Trainee sub-category is for migrants who are coming to the UK for training and career development only, and will therefore be issued with a visa for a maximum of 12 months, with no option to extend. At this stage, the UKBA is limiting this sub-category to a maximum of five places per employer per year. The UKBA is expected to review this five-per-year limit once the sub-category has been tested.

Skills transfer

The Tier 2 (Intra-Company Transfer) Skills Transfer sub-category will enable migrants who have been recently recruited overseas by a multinational company to transfer temporarily to the UK to acquire or impart skills and knowledge relevant to their new role. Unlike, the Established Staff and Graduate Trainee sub-categories, no previous company experience is needed and it is only open to migrants who are working in specific graduate occupations.

A visa will be issued for a maximum of six months with no option to extend.

TIER 1 (GENERAL): REVISED POINTS	
Age	Points
29 years old or under	20
30 to 34 years old	10
35 to 39 years old	5
Over 40 years old	-
Qualifications	Points
Bachelor's degree	30
Master's degree	35
PhD	45
Previous earnings	Points
Under £25,000	-
£25,000 to £29,999	5
£30,000 to £34,999	15
£35,000 to £39,999	20
£40,000 to £49,999	25
£50,000 to £54,999	30
£55,000 to £64,999	35
£65,000 to £74,999	40
£75,000 to £149,999	45
£150,000 or above	75
UK experience	Points
If previous earnings of £25,000 or higher were earned in the UK or if qualification was obtained in the UK	5
English language	Points
A migrant must be able to prove their English language ability	10
Maintenance	Points
A migrant must show that they have held at least £2,800 (if they are applying from outside of the UK) or £800 (if they are applying from within the UK) in a bank account for three months leading up to the date of application (more is required if the migrant has dependants)	10

TIER 2 (GENERAL) AND TIER 2 (INTRA-COMPANY TRANSFER): REVISED POINTS	
Sponsorship	Points
Job offer in a shortage occupation	50
Transitional arrangements	50
Job offer that passes a resident labour market test	30
Switching from a post-study work category	30
Intra-company transfer	25
Extension in the same job and the same (or higher) salary (resident labour market test not required)	50
Qualifications	Points
No qualification	-
GCE A-level or SNVQ 3	5
Bachelor's degree	10
Master's degree or PhD	15
Prospective earnings	Points
Below £20,000	-
£20,000 to £23,999	10
£24,000 to £27,999	15
£28,000 to £31,999	20
£32,000 or above	25
English language	Points
A migrant must be able to prove their English language ability	10
Maintenance	Points
A migrant must show that they have held at least £800 in a bank account for three months leading up to the date of application, or that their A-rated sponsor has confirmed that they will maintain and accommodate the migrant for the first month of their employment in the UK (more is required if the migrant has dependants)	10

While this sub-category appears to go some way to bridging the gap between the old training and work experience work permit and the current Tier 2 system, the UKBA has emphasised that, although the migrant is transferring temporarily to the UK, their role is still based abroad. If it were not for the need for skills transfer, the role in the UK would not exist.

In addition, the restriction to graduate occupations means that the possibility of a period spent in the UK for skills transfer is still not available to a new recruit hired at a senior level.

COMMENT

With these changes it can be predicted that there will be a trend towards more employer-sanctioned applications under Tier 1 and less applications under Tier 2. It is unknown whether this was the intention of the UKBA when they implemented these changes, but as always with the constantly shifting PBS, employers are encouraged not to become too comfortable with the easing of requirements under Tier 1.

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