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Tier 4 student visas: tough new rules for foreign students



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ON 10 FEBRUARY 2010 THE SECRETARY of State for the Home Department, Alan Johnson, announced that foreign students from outside Europe wishing to come and study in the UK would be required to meet stricter entry criteria. The announcement follows the Prime Minister's announcement of a review of the Tier 4 route under the points-based system (PBS) on 12 November 2009. Johnson said:

'The points-based system was introduced to provide a rigorous system to manage legitimate access to the UK to work and study, with the ability to respond to changing circumstances. We want foreign students to come here to study, not work illegally, and today we have set out necessary steps which will maintain the robustness of the system introduced last year. I make no apologies for that.'

The aim of the measures is to target abuse by adult students coming to the UK to study courses below degree level. The review was prompted by concerns about the sudden rise in student applications after the introduction of Tier 4. The review team comprised officials from the UK Border Agency (UKBA) and the Department for Business, Innovation and Skills. They were asked to assess whether the current Tier 4 policy strikes the appropriate balance between facilitating the access of genuine students to education in the UK and preventing abuse by economic migrants. The review highlighted concerns about some individuals who were using Tier 4 primarily as a route to work.

CHANGES TO THE IMMIGRATION RULES

Since March 2009 any college or university bringing in international students is required to be a licensed sponsor with the UKBA and all foreign students must be sponsored by a college or university licensed by the UKBA. Students must also be able to demonstrate that they can support themselves once they arrive in the UK to be granted a visa. The introduction of these new rules reduced the number of institutions able to bring students to the UK from over 4,000 to approximately 2,000. The following changes were made to the Immigration Rules (IR) on 3 March 2010 as a

result of recommendations stemming from the review of Tier 4 (all Tier 4 applications submitted on or after this date will be subject to the new arrangements):

- Students undertaking a course of study below foundation degree level will not be permitted to work more than ten hours per week during term time, but will still be allowed to work full-time during vacations. Students on foundation or degree-level courses will still be permitted to work up to 20 hours per week during the term and full-time during vacations.
- The Tier 4 (Child) Student category will also be amended to permit a student aged 16 or over to work ten hours per week during term and full-time during vacations.
- Family members of Tier 4 migrants on a course lasting less than six months will not be permitted to accompany them to the UK as their dependents.
- Family members of Tier 4 migrants on a course below foundation level will not be permitted to take up employment in the UK unless they qualify in their own right under Tier 1 (General), Tier 2 (General), Tier 2 (Minister of Religion) or Tier 2 (Sportsperson) of the PBS.
- The minimum level of English language course that can be studied under Tier 4 will be raised from A2 of the Common European Framework of Reference for Languages (CEFR) to B2, which is roughly the equivalent of GCSE standard. However, students sponsored by overseas governments or those on pre-sessional English language courses to prepare them for full degree courses will be exempt from this requirement.

Transitional measures will be put into place so that applications made before 3 March 2010 will be decided in accordance with the rules in place before the changes take effect. Other new measures under the IR include:

- From 6 April 2010 only those with 'highly trusted sponsor' status will be able to offer courses at National Qualifications Framework Level 3 (and its equivalents)

'Students undertaking a course of study below foundation degree level will not be permitted to work more than ten hours per week during term time, but will still be allowed to work full-time during holidays.'

and courses with work placements below degree level. Publicly funded institutions will be treated as 'highly trusted', but will be removed from this category if the UKBA judges that they do not meet set criteria. Privately funded institutions will need to apply to become highly trusted sponsors.

- There is now a requirement for students to demonstrate their English language ability by passing an approved secure test. This will apply to all students studying below foundation degree level, including those studying English language. The UKBA is currently reviewing the criteria that approved providers will be required to meet. The new arrangements are likely to be introduced by early summer.

The announcement of these changes comes hot on the heels of the UKBA's decision to suspend new applications under Tier 4 after 1 February 2010 in North India (New Delhi,

Jalandhar, Chandigarh), Bangladesh (Dhaka, Sylhet, Chittagong) and Nepal (Kathmandu). The decision appears to be a result of routine monitoring and a large increase in applications subject to investigation to ensure that they are genuine.

FINAL PHASE OF TIER 4

On 22 February 2010 the UKBA implemented the final phase of Tier 4, which has resulted in two major changes for Tier 4 sponsors. Visa letters are now obsolete and there is mandatory reporting on students who have been assigned a certificate of acceptance for studies (CAS). From 22 February all Tier 4 applicants applying from inside or outside of the UK must use a CAS in their application. Any application submitted without a CAS will be automatically refused. Applicants will also need to have the CAS reference number and the institutions sponsor licence number (SLN). The sponsor will also need to provide applicants with a CAS statement, which may contain the student's name and date

of birth, course title, course start and end date, details of any financial sponsorship and deposits taken, documents that should be included as part of an application to prove qualifications, CAS number and Academic Technology Approval Scheme certificate, where appropriate. Visa letters issued before 22 February 2010 can no longer be used to apply for a Tier 4 student visa unless the student had submitted their application prior to this date. The date of application is the date on which the application fee is paid for out-of-country applicants and the day of posting for in-country applicants. Any students who are in possession of a visa letter but have not yet applied will be required to have this replaced with a CAS before applying. Tier 4 sponsors must report on students who have used a CAS in an application via the sponsor management system (SMS). Before a CAS can be issued to migrants, the sponsor must have performed the transition exercise on the SMS. Further details of this process can be found on the UKBA website.

Biometrics

FROM 6 JANUARY 2010 ALL SPONSORED skilled workers are required to obtain an Identity Card for Foreign Nationals (ICFN) when they apply to extend their stay in the UK under Tier 2 of the points-based system. Tier 2 is the latest category of application to require registry of biometric information. Others include those making applications for leave under UK ancestry, spouses, civil partners, unmarried or same-sex partners and domestic workers in private households, and those simply seeking a transfer of conditions.

This change to the Tier 2 application process means that all applicants and their dependent family members must attend a biometric enrolment centre to provide biometric information, including fingerprints and a photograph. The information is then checked against UK Border Agency (UKBA) records, and is stored on UKBA systems and on a secure electronic chip in the applicant's ICFN.

The ICFN has been introduced to combat illegal working and reduce illegal immigration. It is designed to enable holders to confirm their identity and immigration status, and to access their entitlements more easily. While registered as a UK resident, holders will be

required to show their ICFN and national passport to immigration officials when leaving and entering the UK.

For categories other than Tier 2, premium same-day appointments are generally available in two to three weeks but appointments for Tier 2 applicants are extremely limited. Applicants who are prepared to travel to locations such as Cardiff or Sheffield may be able to secure an appointment within six weeks. The Public Enquiry Office of the UKBA in Croydon has recently announced that they will be allocating ten appointments per day to legal representatives but no more than one per week to any single representative. Consequently, most applications are submitted by post, during which time the passports of the applicant and their dependants are retained by the UKBA.

PRACTICALITIES AND TIMINGS OF THE NEW SYSTEM

Applicants should be made aware of several aspects of the new system:

- Once an initial further leave application has been submitted to the UKBA, it

usually takes one to three weeks for the applicant to be sent a letter inviting them to submit biometric information.

- Once the invitation letter is received, appointments at a biometric enrolment centre are usually available in within a week.
- Applicants living within some postcodes are permitted to use a walk-in service available at certain post offices for an additional fee of £8. However, this service is only available to the main applicant and not to dependants.
- The UKBA states that its aim is to process 75% of applications within four weeks of biometric information being submitted, after which time passports and other documents are returned to applicants.
- The ICFN is issued approximately five working days after the decision is made

and posted to the applicant using secure delivery.

POTENTIAL PROBLEMS

Applicants and employers of ICFN holders should also be aware of three important issues under the new system:

- 1) Tier 2 extension applications could take eight to ten weeks, during which time they and their family members will not be able to travel. Providing the application has been submitted prior to the expiry of their current leave-to-remain, they will be permitted to continue in employment.
- 2) Tier 2 (General) applicants who are changing employers will not be able to start work with their new employer until their ICFN is updated to include approval of their new job.
- 3) The new further leave process will have an impact on recruitment procedures. The resident labour market test was increased to four weeks in

December 2009 and so, combined with the further leave process, the entire Tier 2 process could now take 12-16 weeks.

COMMENT

Under the new system, applicants should consider making an out-of-country application by returning to their home country and applying for a fresh entry visa. They may be accompanied by their family members or, where necessary, family members may remain in the UK and apply for leave once the main applicant returns to the UK. In the latter scenario, the main applicant will be required to submit their passport with their family member's applications. This will restrict their ability to travel but will allow them to begin their new employment in good time.

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