

UKBA policy guidance for Tier 2 (skilled workers)



BY ROBERT SPARKS
assistant solicitor,
Magrath LLP

THE POLICY GUIDANCE FOR TIER 2 (SKILLED WORKERS) was published on 5 November 2008 by the UK Border Agency (UKBA). This tier of the points-based system covers the following categories:

- General – for those jobs that cannot be filled by a resident worker or that appear on the shortage occupations list.
- Intra-company transfers (ICTs) – for multinational companies to transfer an overseas employee to a skilled job in the UK branch of the company.
- Sportspeople – for elite sportspeople and coaches whose employment will make a significant contribution to their chosen sport at the highest level.
- Ministers of religion – for coming to the UK as a minister of religion, missionary or member of a religious order.

Before applicants are able to apply under Tier 2 their sponsor must have issued a certificate of sponsorship. To be able to issue a certificate of sponsorship, sponsors will need to have registered as a licensed sponsor. The certificate of sponsorship acts as an assurance that the applicant is able and intends to undertake a particular role. The sponsor also has a duty to:

- keep records, including keeping a copy of the applicant's passport and contact details; and
- report, for example, if the applicant fails to turn up to work on their first day or is absent from work for more than ten working days without the sponsor's permission.

Tier 2 skilled workers must score points in order to qualify. Applicants will be awarded points for certain attributes and will require a minimum of 50 points to qualify. Applicants will also need to attain a mandatory ten points for English language ability and a mandatory ten points for maintenance. It should be noted that where an applicant is applying for an ICT under Tier 2 or seeking to extend their permission to stay, the English language requirement does not need to be met, provided the total length of stay in the UK is not more than three years.

Points will be awarded for Tier 2 (general) and Tier 2 (ICT) applications as set out in the table below. When an application for an extension is made, points will be awarded as set out in the table opposite.

In both tables, an 'appropriate sub-degree level qualification' means:

- one or more passes at GCE A level;

TIER 2 (GENERAL) AND (ICT)						
SECTION	SPONSORSHIP		ACADEMIC QUALIFICATIONS (OR EQUIVALENT VOCATIONAL OR PROFESSIONAL QUALIFICATIONS)		PROSPECTIVE EARNINGS (£)	
A Attributes (50 points needed)	Job in shortage occupation	50	None, or below an appropriate sub-degree level qualification	0	Under 17,000	0
	Offer of job that passes resident labour market test	30	Appropriate sub-degree level qualification	5	17,000-19,999.99	5
	Switching from a post-study category	30	Bachelors or Masters degree	10	20,000-21,999.99	10
	ICT	30	PhD	15	22,000-23,999.99	15
					Over 24,000	20
B	English language skills (the exception to this is where the applicant is applying for entry clearance as a Tier 2 (ICT))					10
C	Maintenance (funds)					10

- a qualification obtained in the UK that is deemed by the appropriate qualifications framework in the part of the UK in which it was obtained to be equivalent to, or higher than, GCE A level but below degree level; or
- a qualification obtained outside the UK, where the applicant provides the specified evidence to show that it is equivalent to, or higher than, GCE A level but below degree level.

ATTRIBUTES

Shortage occupations will appear on a list drawn up by the Migration Advisory Committee. This can be found in full on the official UKBA website at: www.ukba.homeoffice.gov.uk.

The resident labour market test will need to be satisfied to demonstrate that there is no suitable resident worker to undertake the role. Codes of practice for particular occupations have been drawn up. These need to be consulted and followed prior to

issuing a certificate of sponsorship. This information will be included on the certificate of sponsorship issued by the employer.

Switching from a post-study category allows applicants to switch into Tier 2 (general) or (ICT) from Tier 1 (post-study work) or existing schemes such as the International Graduate Scheme. To be able to switch, applicants must have been in their present role for at least six months and intend to continue in that role. Where applicants have not been in the role for six months, the sponsor will have to undertake a resident labour market test.

ICTs allow transferees to come to the UK where they have worked for the overseas branch for at least the last six months. Evidence must be produced to support this.

QUALIFICATIONS

The level of qualification held by an applicant will determine how many points are awarded, up to a

TIER 2 (APPLICATION FOR EXTENSION)						
SECTION	SPONSORSHIP		ACADEMIC QUALIFICATIONS (OR EQUIVALENT VOCATIONAL OR PROFESSIONAL QUALIFICATIONS)		PROSPECTIVE EARNINGS (£)	
A Attributes (50 points needed)	Certificate of sponsorship assigned under the transitional arrangements	50	None, or below an appropriate sub-degree level qualification	0	Under 17,000	0
	Applicant was awarded points when last granted leave because the job was in a shortage occupation	50	Appropriate sub-degree level qualification	5	17,000-19,999.99	5
	Other cases in which the applicant has a certificate of sponsorship	30	Bachelors or Masters	10	20,000-21,999.99	10
			PhD	15	22,000-23,999.99	15
					Over 24,000	20
B	English language skills (the exception to this is where the applicant is a Tier 2 (ICT) extending their leave to remain in the UK where that extension will not take their total leave under Tier 2 to longer than three years)					10
C	Maintenance (funds)					10

maximum of 15 for a PhD. The qualification will be assessed using information held by the National Recognition Information Centre for the United Kingdom (UK NARIC), the body responsible for checking the UK equivalent of an applicant's qualification.

PROSPECTIVE EARNINGS

These are assessed before tax and on a yearly basis. Points are awarded in salary bands. Earnings under £17,000 are awarded no points, while those who are to earn £24,000 or more attract the maximum 20 points. Allowances that are part of the guaranteed salary package can be included. Salaries to be paid for Tier 2 (general) applications must be paid in the UK. Where an application is made under Tier 2 (ICT), the salary can be paid in the UK or abroad.

It should be noted that where an accommodation allowance is paid as part of an ICT salary package, it must not account for more than 30% of the total gross salary package. Also, where an assignment is due to last for less than 12 months, the salary should be calculated on the projected yearly earnings.

ENGLISH LANGUAGE REQUIREMENT

Applicants can demonstrate that they meet the English language requirement in one of three ways:

- as a national of a majority English-speaking country;
- by passing an English language test; or
- by holding a degree that was taught in English and is equivalent to a UK bachelors degree or above.

Ministers of religion have to attain a higher standard than the other categories due to their need to be able to communicate with worshippers. This is equivalent to level B2 of the Council of Europe's Common European Framework of Reference.

MAINTENANCE

Applicants must show that they have at least £800 of available funds, either:

- held as personal savings for at least three months prior to the date of application; or
- by having a written undertaking from the sponsor confirming that should it become necessary the sponsor will maintain and accommodate the applicant during the first month of employment. It should be noted that only 'A'-rated sponsors will be permitted to provide this undertaking, which does not extend to dependants of the applicant, whose maintenance must still be met from the applicant's own funds.

For four months after the introduction of Tier 2 the Home Office will accept evidence of maintenance where it can be shown that the applicant had the specified amount available immediately prior to the application. Failure to demonstrate this will result in the application being refused. After this time, the requirements as detailed above will apply and will be mandatory.

It should be noted that the documentation requirements are strict. Failure to produce the specified documents will most likely result in the application being refused. Caseworkers from the Home Office will not contact applicants to request missing documents. In most cases original documents are insisted upon.

Tier 2 will come into effect at the end of November 2008. This means that employers who have up until now used the work permit route will have to consider whether they have a continued need for migrant workers. In the event that they do, steps must be taken to apply for a sponsorship licence. This will then allow sponsors to sponsor migrant workers to come to the UK. The requirements are strict and the guidance detailed. The points-based system also imposes duties on sponsors, such as the duty to keep records and to report in certain circumstances.

*By Robert Sparks, assistant solicitor, Magrath LLP.
E-mail: robert.sparks@magrath.co.uk.*