

Changes to Tier 1 of the Points Based System

Tier 1 (General) is now closed. UK Border Agency has introduced a new restructured Tier 1 programme.

Tier 1 is divided into three sub-categories:-

Entrepreneurs – for those investing in the UK by setting up or taking over, and being actively involved in the running of a business.

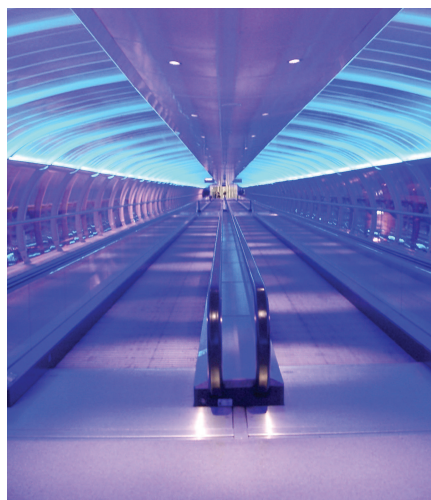
Investors – for high net worth individuals making a substantial financial investment in the UK.

Exception talent – for persons of exceptional talent in the fields of Arts, Science and Humanities.

Investors

The Government is making a pitch to attract more high net worth individuals to come to the UK and invest in the UK economy. The investor route has been made more attractive by enabling investors to achieve settlement more quickly, depending on the level of investment, and to be able to spend longer periods outside the UK without losing their eligibility for settlement. In particular, those investing £10m or more are eligible to apply for settlement after two years, and those investing £5m or more may apply after three years.

Furthermore investors may spend up to a 180 days a year outside the UK, instead of



the current 90, without losing their eligibility for settlement. The financial entry threshold (£1m held in a regulated financial institution and disposable in the UK) has not changed. Nor are investors required to meet the English Language or maintenance requirements that apply to all other points based system migrants. Those investing less than £5m qualify for settlement after 5 years, however their absences may be up to 180 days in any twelve month period.

Entrepreneurs

A new “Prospective Entrepreneur” visit visa has been introduced outside the points based system to enable business entrepreneurs to enter the UK to secure financial backing and to switch to a Tier 1 visa without leaving the UK.

immigration

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Changes to Student Visa System

The Home Secretary has implemented a number of changes in respect of the student visa system.

The changes are designed to refocus the student route as a temporary one, available to the brightest and best students. The emphasis under the new system is to ensure that students come for a limited period, to study rather than work, and to make a positive contribution while they are here.

Tier 1 (Post Study Work)

The Tier 1 (Post Study Work) route which allowed students two years to seek employment after their course ended will be closed in April 2012. Only those graduates who have an offer of a skilled job from a sponsoring employer with a certificate of sponsorship under Tier 2 of the points based system, will be able to stay to work following the closure.

Those foreign nationals residing in the UK on an existing Tier 1 Post Study Work status will be permitted to remain on their current visa. They are able to switch into Tier 2 status as long as the full Tier 2 criteria is met. Post study workers who have been employed by a licensed employer for a period of six months, and who are to remain in the same role, are able to switch into Tier 2 without the employer having to show residence labour market testing.



Highly Trusted Sponsors

From April 2012 all educational institutions wanting to sponsor students will have to be classed as a "highly trusted sponsor" and become accredited by statutory education inspection bodies by the end of 2012.

Those coming to study at degree level will have to speak a higher level of English than is presently the case.

Work Rights

Students at Universities and publicly funded further education colleges retain current work rights but all other students have no right to work. Students in higher education are permitted to work twenty hours a week during term time and full time during vacations.

Dependant Family Members

Only post graduate students at Universities and government

sponsored students are permitted to bring family members with them. At the moment all students on longer courses are able to bring dependant family members.

Time Limits

The overall time that can be spent on a student visa is limited to three years at lower level and five years at higher levels.

Fit for Purpose

The House of Commons Home Affairs Committee has published a report, "the work of the UK Border Agency (November 2010 to March 2011)", which accuses the UKBA of affectively creating an amnesty for hundreds of thousands of asylum seekers whose cases have been delayed for a number of years.

The report concludes that the UKBA's success in clearing a backlog of around 400,000 to 450,000 unresolved asylum cases has been achieved:

"through increasing resort to grants of permission to stay or the parking of cases in a controlled archive, signifying that the applicant cannot

be found and the agency has no idea whether or not the applicant remains in the UK, legally or otherwise".

The committee also state that it is "indefensible" that:

"about 74,500 of the 400-450,000 cases – approximately 1 in 6 – the UK Border Agency has been completely unable to trace what has happened to the applicant".

Finally, the way the backlog has been dealt with effectively amounts to an "amnesty".

On 2nd June 2011, the immigration minister Damien Green responded to the report saying:

"we have known for some time that the asylum system we inherited was chaotic"

"Some of these cases date back more than a decade and the UK Border Agency was always clear that, because of the length of time many of these individuals have been in the country, there would be no alternative to granting them leave to remain. There is no Amnesty".

He further stated:

"we are already radically reforming the points based system and other routes of entry that have been subject to widespread abuse, and we will re-introduce exit checks by 2015".

It remains to be seen whether confidence in the UK Border Agency can, at some further point, be re-established.

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Entrepreneurs may apply for accelerated settlement after three years if they have:

- (a) created ten full time equivalent posts for resident workers for at least twelve months; OR
- (b) the company has generated a total turnover of five million pounds over a three year period.

Otherwise entrepreneurs become eligible after 5 years business activity under Tier 1.

Like investors entrepreneurs are also permitted to be absent from the UK for up to 180 days in any twelve month period.

The initial financial threshold has been rendered more flexible. Entrepreneurs must have:

- (a) access to at least £200k held in a regulated financial institution; OR
- (b) have access to £50k held in a regulated financial institution which has been funded by:-
 - An FSA registered venture capitalist firm;
 - A UK Government department; or
 - An entrepreneurial seeding competition recognised by UK Trade and Investment.

Exceptional Talent

The Government has introduced a new route for exceptionally talented migrants in the fields of science, arts and humanities who wish to work and eventually settle in the UK. There is a limit of 1000 places in the first year of operation, to be reviewed after twelve months.

This route is open to those who are internationally recognised as world leaders in their field as well as to those migrants who show "exceptional promise" and who are likely to become internationally recognised.

Migrants under the Tier 1 exceptional talent category do not need sponsorship but will require endorsement by a designated "Competent Body" who is acknowledged to be expert within the relevant field.

There is no single definition of "exceptional talent" and it is for the competent body to set the criteria to select those who will qualify for endorsement. The list of competent bodies is available on the UKBA website.

For the first year of operation the exceptional talent visa will only be available to those applying from outside the UK. In order to qualify for settlement the talented individual must reside in the UK for a five year period and be economically active in

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