Immigration briefing from Magrath LLP published in the June 2011 issue of The In-House Lawyer:

Changes to Tier 1 of the points-based system

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TIER 1 (GENERAL) IS NOW CLOSED. UK Border Agency (UKBA) has introduced a newly restructured Tier 1 programme.

Tier 1 is divided into three sub-categories:

1) entrepreneurs – for those investing in the UK by setting up or taking over, and being actively involved in the running of a business;

2) investors – for high-net-worth individuals making a substantial financial investment in the UK; and

3) 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 (PBS) migrants. Those investing less than £5m qualify for settlement after five years. However, their absences may be up to 180 days in any 12-month period.

ENTREPRENEURS

A new 'prospective entrepreneur' visit visa has been introduced outside the PBS to enable business entrepreneurs to enter the UK to secure financial backing and to switch to a Tier 1 visa without leaving the UK.

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 12 months; or

b) the company has generated a total turnover of £5m over a three-year period.

Otherwise entrepreneurs become eligible after five 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 12-month period.

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

a) access to at least £200,000 held in a regulated financial institution; or

b) access to £50k held in a regulated financial institution that has been funded by:

- a Financial Services Authority registered venture capitalist firm;
- a UK government department; or
- an entrepreneurial seeding competition recognised by UK Trade & Investment.

EXCEPTIONAL TALENT

The government has introduced a new route for exceptionally talented migrants in the fields of science, arts and humanities who

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wish to work and eventually settle in the UK. There is a limit of 1,000 places in the first year of operation, to be reviewed after 12 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 an 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. To qualify for settlement the talented individual must reside in the UK for a five-year period and be economically active in their field of expertise.

CHANGES TO STUDENT VISA SYSTEM

The home secretary has implemented several 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 PBS, will be able to stay to work following the closure.

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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 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 20 hours a week during term time and full time during vacations.

DEPENDANT FAMILY MEMBERS

Only postgraduate 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 dependent 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.

CLOSURE OF WORKER REGISTRATION SCHEME

The Worker Registration Scheme (WRS) closed on 30 April 2011. WRS was a transitional scheme that was introduced in 2004 when eight countries joined the EU. Known as 'A8 countries' they are:

- Czech Republic;
- Estonia;
- Hungary;
- Latvia;
- Lithuania;
- Poland;
- Slovakia; and
- Slovenia.

Individuals from these countries were required to register under the scheme if they commenced employment in the UK. Under the terms of the Treaty of Accession 2005, the UK cannot apply transitional restrictions on A8 nationals' access to the labour market for more than seven years.

Since the end of April 2011, A8 nationals are able to access the labour market on the same terms as other EU citizens. Work seekers will also enjoy the same entitlements to out-of-work benefits as other EU nationals. It should be noted that the restrictions that apply to Bulgarians and Romanians (who joined the EU later) still apply and citizens from these countries must obtain work authorisation and follow the correct registration procedures.

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