

Family Migration – The Next Target

The Government continues to look at ways of reducing net migration to the tens of thousands per annum rather than the hundreds of thousands that have been admitted annually over the last decade.

Having removed the highly skilled route under Tier 1 (General) and imposed a rigorous system of caps and quotas to sponsored migration under Tier 2, the Government is turning its attention to routes to settlement and family migration.

The UK Border Agency (UKBA) has recently closed its consultation on settlement and will announce its findings in November. Amongst the suggestions includes creating a system that provides greater “clarity” between temporary migration and permanent migration. Amongst the more worrying possible outcomes is the potential removal of settlement rights to all sponsored migrants under the Tier 2 route with only those deemed to be “exceptional”



(currently an undefined term) being permitted to switch into a permanent migration route.

At the same time, the Government has initiated a consultation on family migration. Ostensibly the purpose is to “reform family migration to promote better integration”.

In a speech at the Centre for Policy Studies on the 15 September, the Immigration Minister Damian Green highlighted research that he says supports the Governments proposals on family migration. These proposals will prevent the family route being used to bypass immigration laws, while welcoming those who want to make a life here with their family and contribute to their community.

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immigration

Recent reports on family migration to the UK suggest:-

- Two thirds of a sample of those granted a marriage visa in 2009 had never visited the UK before deciding to move here permanently;-
- The proportion of people entering on family visas who settle here permanently varies hugely by nationality – of the family migrants granted a visa in 2004, eight out of ten from Bangladesh and Pakistan had settled here permanently within five years, compared with just ten percent of Australians;-
- Twenty percent of a sample of sponsors of marriage visa applicants were either unemployed or had an income below the national minimum wage;
- Thirty-seven percent of sponsors from the sample were living with family members or friends; and
- In 2009/10, the Department for Work and Pensions spent £2.6million on telephone interpreting services and nearly £400,000 on document translation.

In his speech, the Minister said:-
“these are sensitive issues which have been ignored for far too long but ones which we are determined to tackle.

We want a system that lets everyone know where they stand and what their responsibilities are. If your



marriage is not genuine, if you have no interest in this country and its way of life, if you are coming here to live off benefits, don't come in the first place.

That is why our focus is on delivering better family immigration – better for migrants, for communities and for the UK as a whole”.

The consultation on family migration includes a number of significant proposals including:-

1. Defining more clearly what constitutes a genuine marriage for the purposes of the immigration rules to help identify sham and forced marriages;
2. Introducing a minimum income threshold for those sponsoring family migrants to ensure they are supported at a level that helps integration;
3. Extending the probationary period before spouses and partners can apply for settlement in the UK

from two years to five years to test the genuineness of relationships and to encourage integration into British life before settlement is granted; and

4. Requiring spouses, partners and adult dependants aged under 65 applying for settlement to be able to demonstrate that they can understand every day English.

In 2010, family migration accounted for around eighteen percent of all non-EU migration to the UK. In 2010, 48,900 visas were granted to spouses, partners and dependants of British Citizens and those with permanent residence in the UK.

The UK Border Agency has indicated that early findings from the consultation show broad public support for many of these new changes. We are told that the great majority back the requirement that spouses and partners must have to understand everyday English before being allowed to settle here permanently.

Tier 1 (Exceptional Talent)

The UK Border Agency (UKBA) has announced that the Tier 1 (Exceptional Talent) category of the UK's points-based system is now open for applications.

This route is for exceptionally talented individuals in the fields of science, humanities, engineering and the arts, who wish to work in the UK.

This new scheme will not only allow those who are already recognised as leaders in their field, but also those who potentially may become leaders in their field to emigrate to the UK. The scheme will be limited to 1,000 places during the first year of operation. 500 places will be available between 9 August and 30 November 2011, and a further 500 places will be allocated from 1 December 2011 to 31 March 2012. A review will take place on the number of places that should come under the scheme in future at the end of March 2012.

The UKBA has appointed four world-renowned "Designated Competent Bodies" who will oversee who is eligible for a Tier 1 (Exceptional Talent) visa. The following bodies can nominate a certain number of places:

1. The Royal Society, a fellowship of the world's most eminent scientists, will be able to nominate up to 300 places.
2. Arts Council England, the national development agency for the arts, will also be able to nominate up



to 300 places.

3. The Royal Academy of Engineering, Britain's national academy for engineering, will have up to 200 places to nominate.
4. The British Academy, the national academy for the humanities and social sciences will be able to nominate up to 200 places.

Those wishing to come into the UK under this route will **not** need to be sponsored by an employer and/or have a job offer. However, recommendation by one of the competent bodies listed above is required.

If admitted under the Tier 1 (Exceptional Talent) category the individual will initially be granted permission to stay for 3 years and 4 months. They may be able to extend their stay for a further 2 years, and settlement may be available after 5 years' residence in the UK.

Alan Davey, Chief Executive of Arts Council England, welcomes "this special visa scheme" and the President of the Royal Academy of Engineering, Sir John Parker FREng has expressed his support for "this new visa route, which will help to encourage global excellence to come to the UK".

It remains to be seen how the new category of Tier 1 (Exceptional Talent) will play out during its initial period from 9 August 2011 to 5 April 2012. UK Immigration Minister, Damien Green, confirms that it is part of the Government's major reform to "help to bring net migration back down to the tens of thousands, tackle abuses and make sure that the immigration system meets the needs of the country."

Carers of British Citizens

The Court of Justice of the European Union (ECJ) recently handed down judgement in the case of Ruiz Zambrano (C-34/09).

The judgment creates a right to reside and work for the sole carer of a dependant British Citizen when that carer has no other right of residence in the UK and removing the carer from the UK would mean the British Citizen would have to leave the European Union. The UK Border Agency (UKBA) has considered the effect of this judgement and whether any changes are required to policy or law as a result. Until now, UKBA has not accepted applications made on this basis as there is no provision within the immigration (European Economic Area) Regulations 2006 (the regulations) to issue documentation on this basis.

On 21 September 2011 UKBA announced that they would amend the regulations in due course to enable a person to be issued with a document confirming that they have a right to live in the UK as a result of the Ruiz Zambrano judgement. In the meantime, they will issue a Certificate of Application to those who are able to show:-

- Evidence that the dependant national is a British Citizen;
- Evidence of the relationship between the applicant and the British Citizen; and
- Adequate evidence of dependency between the applicant and the British Citizen.

This certificate will enable a person to work in the UK while their application is outstanding. Once changes to the regulations are made, the application will be given full consideration and documentation will be issued under the regulations to those who meet the final agreed policy.

Employers will be permitted to accept this certification, in combination with a positive verification from the employer checking service, as proof of right to work in the UK for up to twelve months. This document combination comes under entry 5 of list B within the “comprehensive guidance for employers on preventing illegal working” and will provide an employer with a statutory excuse against payment of a civil penalty for up to twelve months.