

Tier 2 Limits for 2012/13

The Migration Advisory Committee (MAC) has received responses from various stakeholders, including major multinational organisations, in respect of the call for evidence on the level of the 2012/13 annual limit on Tier 2.

The MAC is due to report at the end of January 2012. The Government has a history of accepting recommendations made by the MAC and so the report will be of major interest to immigration practitioners and licensed sponsors under Tier 2 Points Based System.

It is difficult to determine the precise economic effect of the introduction of an annual limit on the UK economy. Over the first year of the limit, multinational organisations competing in the global market place have still been able to recruit workers of the



highest calibre, regardless of nationality, to skilled positions in the UK. However the imposition of the limit has created a message from central government that employers should act with caution before offering permanent roles to individuals from outside the European Economic Area (EEA). It has reinforced the overall political message that it is necessary to reduce net migration. Employers must be in a position to recruit the “brightest and the best” regardless of nationality. Many employers are now concerned that the limit for 2012/13 will be set at a lower level than for the current year.

Uptake 2011

The uptake of Tier 2 (General) visas has consistently been below the implied monthly

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immigration

limit throughout 2011. We suggest that there are two possible reasons why the uptake of Tier 2 (General) has been below the limit:-

- A) The overall UK economy and labour market (as opposed to individual sectors) is going through a period of relative stagnation. Many employers have frozen their headcount and a significant number have created redundancies. The lack of new job creation has inevitably resulted in a decreased demand for the recruitment of foreign nationals.
- B) Through the imposition of complex criteria, additional administrative and compliance burdens as well as the monthly limit, a message has been sent out to employers that the system of sponsoring foreign nationals is time consuming and burdensome. In this way UKBA has succeeded in encouraging businesses to concentrate their recruitment efforts on the resident labour market.

As the economy grows, it is likely that the uptake of such visas will increase in an incremental fashion. Rather than being a negative factor, the recruitment of skilled personnel from overseas should be seen as an indicator of economic success and growth. Employers have responded to the Tier 2 (General) limit by putting stringent recruitment practices in place to attract talent from the resident labour market, including national advertising and recruitment through Job Centre Plus. Many employers are

also committed to retaining talent through career opportunities within the business and have implemented significant training and career development schemes to retain staff. At the same time however, employers must retain the ability to sponsor the best global talent.

Intra Company Transfers

Many employers are concerned that the intra company transfer (ICT) route is under threat. Numerous consultations have established the huge significance of the ICT route of entry to UK employers. The introduction of the "long term" and "short term" intra company transfer schemes has already imposed restrictions on the route of entry. The fact that the ICT scheme no longer leads to indefinite leave to remain makes it less attractive to foreign nationals. Employers seem to strongly resist the suggestion that further restrictions may be needed. One of the suggestions being considered is to limit ICT's to the GATS definition of senior managers and specialists. The suggestion is also made that £40,000 per year could be a reasonable minimum pay threshold for such jobs.

We suggest that there is no benefit in reducing ICT numbers given that this category of migrant cannot claim permanent residence. ICT migrants are required to pay UK taxes whilst here and in doing so they continue to contribute to the economy and facilitate a smooth running of global business without becoming a burden on the state. Intra company transferees are therefore considered to be

temporary economic migrants and their impact on UK immigration numbers is therefore limited. This should not form part of the calculation of "net migration" given their temporary status.

Resident Labour Market Test

One of the questions currently considered by the MAC is what would be the impact on employers and the economy of lowering the threshold for exemption from the Resident Labour Market Test (RLMT) from the current level of £150,000 per year to somewhere in the range of £70,000 to £100,000 per year. MAC has consistently identified salary as a key measure of skill throughout its previous reports. However, the £150,000 threshold only facilitates sponsorship of very senior business leaders. It does not allow employers to act quickly in recruiting the very best foreign nationals to highly skilled positions. The length of time that it currently takes to advertise a role, request a restricted certificate of sponsorship and then obtain entry clearance is a disincentive to foreign nationals and employers to participate in the Tier 2 (General) scheme. If the UK sincerely wishes to attract the most highly skilled foreign nationals without creating a negative economic impact on the resident labour market, we suggest that the salary threshold should be reduced.

Independent Chief Inspector of the UK Border Agency Publishes Global Review of Entry Clearance Decision Making

The Independent Chief Inspector of the UK Border Agency, John Vine CBE QPM, has published a global review of entry clearance decision making.

The report is based on an inspection that took place between December 2010 and June 2011. The inspection included an examination of almost 1,500 visa cases from 84 entry clearance posts around the world.

The report provides a mixed picture of entry clearance service delivery.

Amongst the positives, the Chief Inspector notes that:-

- The agency has been meeting its customer service targets in the vast majority of cases;
- There are examples where entry clearance officers have used their discretion to make additional checks in order to support their decision making;
- More action was being taken to verify information that had been provided by applicants; and
- The quality of refusal notices is good and refusal grounds are generally well communicated to applicants.

However, the Chief Inspector also reports some highly worrying trends including:-

- The overall quality of decision making left considerable room for improvement;



- In a third of visa cases sampled, errors were found in the way evidence was assessed by entry clearance officers;
- Visa case reviews undertaken by entry clearance managers were not always effective; and
- Applicants were refused entry clearance for failing to provide information which they could not have been aware of at the time of submitting their applications.

The inspector has made three key recommendations:-

- That the UK Border Agency ensures that when applicants have followed published guidance, but entry clearance officers require further information to make a decision,

applicants are given an opportunity to provide this.

- That the UK Border Agency acts immediately to ensure that supporting documents that are relevant to entry clearance decisions are retained on file, to provide a transparent decision making process.
- The UKBA strengthens the quality assurance methods currently used by entry clearance managers, to create a more effective and robust decision making process.

Biometric Residence Permits (BRPs)

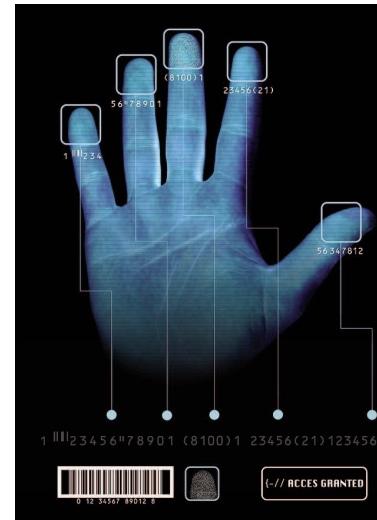
Regulations have been laid in Parliament which, once approved, will see more foreign nationals being issued with Biometric Residence Permits (BRP) from 29th February 2012.

From the end of February, all foreign nationals who are applying to remain in the UK for a further period of six months or more will be required to register their Biometrics (fingerprints and digital facial image). If successful, the UK Border Agency will then issue a BRP as evidence of immigration status and entitlements in the UK.

The BRP is a credit card size document that contains the information previously endorsed within an Applicant's passport in the form of a residence permit.

Applicants for indefinite leave to remain will also be required to register their Biometrics as part of the application process with effect from 6th April 2012.

The UK Border Agency has contracted with Post Office Limited to provide 100 Biometric centres around the UK at which Applicants may attend. However, this additional step in the process will inevitably require considerable forward planning for



each individual Applicant as previously they were not required to attend in person.