

Overview of UK Immigration

Introduction

In November 2008, the UK Government introduced the Points-Based System ("PBS") for immigration. The PBS represents the main route for migrants from outside the European Economic Area (the "EEA") and Switzerland to work, study and live in the UK.

Under the PBS, most migrants must pass a points assessment before they receive permission to enter the UK (known as "entry clearance" or a "visa") or "leave to remain" in the UK.

There are five tiers and each tier has different requirements – the number of points the migrants needs and the way the points are awarded will depend on the tier but generally points are awarded for: (1) attributes such as ability, experience and age; (2) English language; and (3) maintenance i.e. the ability to maintain himself/herself and dependants in the UK without recourse to public funds.

The Five Tiers

Migrants in any tier except Tier 1 must be sponsored before that can apply to enter the UK. If a UK organisation wants to sponsor a migrant under Tier 2, Tier 4 or Tier 5, they must first apply to UK Visas and Immigration ("UKVI") for a Sponsor Licence. Tier 2 and Tier 5 are the most important categories for employers.

The five tiers are as follows:

Tier 1 – for "high-value migrants" such as entrepreneurs, investors and a very small number of exceptionally talented people who can apply to enter or stay in the UK without needing a job offer but will still need to pass a points-based assessment.

Tier 2 – for "skilled workers" with a job offer from a UK employer that holds a Sponsor Licence. This category includes those workers who are transferred to the UK by an international company, sportspeople, ministers of religion and those workers that fill jobs that are in short supply in the UK.

Tier 3 – for "low skilled workers" filling specific temporary labour shortages. This category has been suspended since the PBS was introduced and is unlikely to be available in the near future.

Tier 4 – for students who have a place at a registered UK educational establishment.

Tier 5 – this category contains six sub-tiers for temporary workers including Creative and Sporting people; Charity Workers; Religious Workers; Government Authorised Exchange Workers; and participants in an International Agreement or the Youth Mobility Scheme.

Tier 1

Tier 1 (Exceptional Talent) category is for exceptionally talented individuals in the field of science, humanities, engineering and the arts, who wish to work in the UK. These individuals are those who are already internationally recognised at the highest level as world leaders in their particular field or who have already developed exceptional promise in their field. Every initial application must be endorsed by a "designated competent body" and the number of endorsements available each year is limited.

Tier 1 (Entrepreneur) category is for those investing in the UK by setting up or taking over, and being actively involved in the running of one or more business in the UK. Generally, an applicant must have access to not less than £200,000 and the funds must be held in a regulated financial institution which is disposable in the UK. Specific requirements must be satisfied upon entry to the UK.

Tier 1 (Investor) category is for high-net worth individuals who want to make a substantial investment in the UK. Generally, an applicant must have £1,000,000 or more of their own money for investment in the UK or have £2,000,000 or more in personal assets, plus a loan of £1,000,000 or more for investment in the UK. Specific requirements must be satisfied upon entry to the UK.

Tier 1 (Graduate Entrepreneur) category allows non-EEA MBA and other graduates to extend their stay after graduation to establish one or more businesses in the UK. It is also for overseas graduates who have been identified by UK Trade and Investment as elite global graduate entrepreneurs who intend on establishing one or more businesses in the UK. There is a limited number of places open for this route each year.

Sponsorship and Tier 2

Under the PBS, an employer in the UK is required to obtain a Sponsor Licence so as to be able to bring in skilled workers from outside the EEA or Switzerland and extend existing work permits. A Sponsor Licence is valid for four years and enables a UK employer to recruit and retain the best talent regardless of nationality.

Prior to a Sponsor Licence being granted an employer must: (1) satisfy the UKVI that it is a genuine employer based and operating lawfully in the UK; (2) is able to comply with employment and immigration law and good practice; (3) provide original documents to support the application for the relevant tier; and (4) accept certain responsibilities to help with immigration control – failure to comply with these obligations could lead to the Sponsor Licence being withdrawn (and any sponsored migrants having to leave the UK).

Tier 2 concerns those who are in possession of a job offer from a UK employer with a Sponsor Licence. Licensed Sponsors are issued with a Certificate of Sponsorship ("CoS") annual allocation to use throughout the year at its' own discretion. A CoS is a virtual document assigned to a migrant to enable them to apply for permission to enter or remain in the UK. A CoS certifies that the migrant will fill a genuine vacancy in the UK that cannot be filled with a suitably qualified or skilled settled worker and that the migrant will be paid the appropriate market rate.

From its inception, Tier 2 was divided into two key sub-categories: Tier 2 (General) and Tier 2 (Intra-Company Transfer). For both sub-categories, migrants must meet the minimum salary thresholds and skills level:

- Tier 2 (General) is the primary route for UK Sponsors to employ non-EEA nationals to fill a vacancy that cannot be filled by a resident worker. Sponsors can either conduct a Resident Labour Market Test ("RLMT") in relation to the vacancy or alternatively if the vacancy is on the Shortage Occupation List or the annual remuneration amounts to more than £153,500, the Sponsor can issue a CoS without the need to advertise the position. If the migrant is applying from overseas, the Sponsor must go through the additional step of requesting a "Restricted CoS" from UKVI as it will fall under the annual cap.
- Tier 2 (ICT) is the route best used for an employee of a multi-national company when the employee is being transferred to a UK based branch of the same organisation either on a long term basis or for frequent short visits. There are four further sub-categories under Tier 2 (ICT).

Sponsorship and Tier 5

The purpose of Tier 5 category is to attract certain temporary workers to allow them to experience the cultural and social aspects of living and working in the UK. Like Tier 2, all applicants under Tier 5 also require a Sponsor and a CoS unless they are visiting the UK under the Youth Mobility Scheme.

The Youth Mobility Scheme was established between the UK and participating countries for young people aged between 18 and 30 who wish to visit and experience life in the UK. There are a restricted number of places each year depending on the country of exchange.

Categories outside the PBS

- Employees of overseas companies with no branch, subsidiary or other representative in the UK may qualify to enter the UK as a Sole Representative in order to set up a legal entity in the UK. To come to the UK as an overseas parent company's Sole Representative, the migrant must be a senior employee with sufficient authority (but not a majority shareholder in the company) who intends to establish a commercial presence for the company in the UK concerned with the same type of business activity as the parent company.

- Turkish workers and business people can benefit from a European agreement with Turkey to continue working legally in the UK and establish themselves in business in the UK provided that they meet the relevant requirements.
- Commonwealth citizens with UK ancestry may qualify to live and work in the UK.
- A foreign national who is a spouse, partner, child (aged under 18) or adult dependant of a British citizen (or settled person) can apply for a visa to come and work in the UK.
- Non-EEA nationals who are family members of EEA nationals can apply for an EEA family permit or residence card allowing them to come to the UK to live and work.
- Those under Tier 1 and Tier 2 may be eligible to apply for Indefinite Leave to Remain (also known as permanent residence or settlement) after a continuous period of five years in the UK provided they meet very specific criteria at the time of their application (which varies depending on the migrant's immigration category). Settlement is not the same as naturalisation as a British citizen and may, in specific circumstances, be ceased or invalidated.
- A foreign national who has held Indefinite Leave to Remain in the UK for at least the last twelve months may apply to naturalise as a British citizen provided specific criteria can be satisfied.

Business Visitors

The business visitor route is to allow for short business trips to the UK where the applicant is completing "permissible activities" and not undertaking productive work in the UK. It is at the discretion of the Immigration Officer at the port of entry as to whether and for how long an individual may gain entry to the UK as a business visitor.

However, business visitors are usually granted six months leave to remain in the UK. The total time in any 12 months period should not be more than 180 days; however, short business trips are recommended. Generally, a business visitor can attend meetings and conferences; attend trade fairs for promotional work only; arrange deals or negotiate or sign trade agreements or contracts; and conduct site visits.

Partners and Families

In most cases, spouses and civil partners, unmarried partners of at least two years' duration and children under 18 are allowed to come to the UK with the main applicant. Spouses, civil partners and unmarried partners are usually allowed to work. The length of the dependant's leave to enter/remain in the UK will be granted in line with the main applicant.

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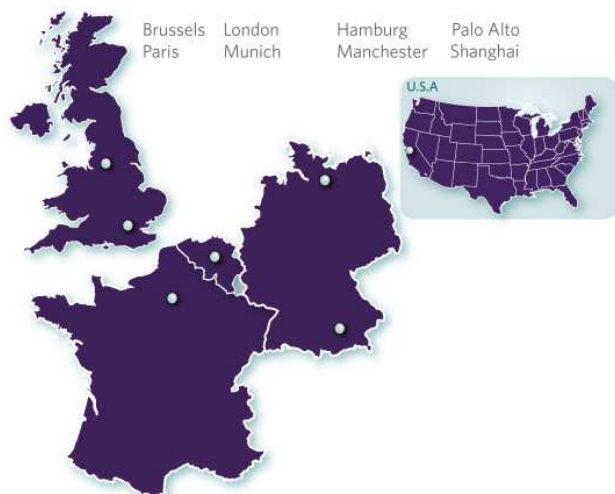
Word of Warning

The UK Government is committed to reducing net migration. As such, the PBS is an objective and transparent system which operates a zero tolerance approach to any abuse of the system. Therefore, any breaches of the relevant Immigration Rules can have potentially very serious and long term repercussions on migrants and the companies found in breach of these Rules. The Immigration Rules can change frequently with little or sometimes no notice so it is recommend that legal advice is sought before taking steps to enter or remain in the UK.

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