



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

AIJA – London, September 2015 - Immigration Sub-Commission

“New job - yes, new country - yes, new visa – wait, new what?”

Workshop F

National Report of the United Kingdom

Clare Hedges

Birketts LLP

Thirty Station Road

Cambridge

CB1 2RE

E-mail: clare-hedges@birketts.co.uk

Telephone: +44 (0)1223 326605



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

1. Does your jurisdiction permit the direct sponsorship of workers by employers?

Yes, the UK Home Office allows employers to directly sponsor workers, so long as the employer holds a sponsor licence and complies with all of its sponsorship duties. These arrangements fall within the UK Points Based System.

2. If yes, please briefly outline the options for a company to sponsor workers with timings.

2.1 Skilled Workers - Tier 2

Most sponsorship of workers by employers falls within Tier 2 of the Points Based System. The employer is responsible for issuing the worker with a Certificate of Sponsorship (“CoS”), which the worker uses to support their visa application.

Workers can only be sponsored to fill roles that are skilled to National Qualification Framework level 6 (degree level), or which have been designated by the government as a “shortage occupation”.

Minimum salary requirements apply. These are set out in Codes of Practice which are regularly updated. There are different rates for new entrants and experienced staff.

The worker must normally meet a minimum English language requirement, either by being the national of a majority English speaking country, passing an approved English test, or by holding a degree which the Home Office recognises as having been taught in English.

The worker must provide evidence that they hold sufficient funds to maintain themselves (£945 must have been held for at least 90 days), Alternatively, if the sponsoring employer is A rated by the Home Office, they can certify maintenance for the worker, by undertaking to maintain and accommodate them if necessary for up to one month to the value of at least £945.

There are several different types of Tier 2 visa, the sponsoring employer must hold a licence for the specific type in question.

2.1.1 Tier 2 General

Tier 2 General is used by employers who are struggling to fill a skilled role from within the UK or the EU and who therefore wish to sponsor a migrant worker. The employer must complete a Resident Labour Market Test (“RLMT”), to prove there is no settled worker who can fill the role. The role must be advertised for at least 28 days on the government’s



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

Jobcentre Plus website and in at least one other place. This timescale needs to be factored in to any visa application process. There are however exemptions for workers earning over £155,300, recognised shortage occupations and for post-study work.

If the worker is outside the UK, then a restricted CoS is required. The government has implemented a quota of 20,700 restricted CoS per annum for the whole of the UK. There is a monthly allocation process for sponsors to apply for a restricted CoS. If the sponsor misses a monthly allocation round, it will be another month before they can obtain a restricted CoS for their worker, unless compelling circumstances apply, which is very rare.

If the worker is already in the UK and is switching immigration category, or is simply extending their existing Tier 2 leave, then the sponsoring employer will assign an unrestricted CoS to them.

Sponsors can choose whether to sponsor the worker for a three year visa, which is renewable to take the worker to a total stay of up to 6 years, or to sponsor them straight away for a 5 year visa, following which the worker will hopefully be eligible for settlement, or "indefinite leave to remain".

2.1.2 Tier 2 Intra-Company Transfer

Tier 2 Intra-Company Transfer ("ICT") is used by multinational organisations, who wish to transfer staff from an overseas employer to a related UK company, which is in common ownership or control. Salary may be paid in the UK, or abroad. There is no requirement to complete an RLMT and there is no English language requirement. There are four subcategories, none of which lead to settlement:

| Sub category | Requirements | Duration of visa |
|---------------------|---|-------------------------|
| Short term staff | Employed by organisation for at least 12 months | 12 months |
| Long term staff | Employed by organisation for at least 12 months | 60 months |
| Graduate Trainee | Employed by organisation for at least 3 months. Recent graduate, coming to UK as part of a structured graduate training programme with progression towards managerial/specialist role. Limited to 5 per financial year, only the best graduates, not all. | 12 months |
| Skills Transfer | No minimum employment. Role must be supernumerary, in UK to either acquire skills and knowledge needed to do job overseas, or to provide their specialist skills to UK workforce. | 6 months |

2.1.3 Tier 2 Minister of Religion



Tier 2 Minister of Religion is specifically for workers who will be carrying out religious duties and whose sponsor is a religious organisation. There is no minimum salary requirement. However, the migrant must receive pay and conditions at least equal to those given to settled workers in the same role.

If the role is supernumerary, or if the migrant will live within and be a member of a religious order, then no RLMT is required. Otherwise an RLMT is required, but the advertising requirements are less onerous than for Tier 2 General. Alternatively, if the employer can prove that their own national records of all available individuals show that no settled worker is available to fill the role, then this will be sufficient.

2.1.4 Tier 2 Sports person

Tier 2 Sports person is for elite sports people and coaches who are internationally established at the highest level and who will make a significant contribution to the development of their sport at the highest level in the UK. Their sponsoring employer must be a sporting body, sports club, events organiser or other organiser operating in the sporting sector. There is no requirement for an RLMT, but the migrant must be approved by the governing body for the sport in question. Before assigning a CoS the sponsoring employer must obtain an endorsement reference number from the governing body.

2.2 Temporary Workers - Tier 5

Employers can also sponsor skilled temporary workers under Tier 5 of the Points Based System. There is no English language requirement. There are different sub categories, none of which lead to settlement:

| Sub category | RLMT required? | Duration of visa |
|---------------------|-------------------------|--|
| Religious Worker | Yes | 24 months |
| Charity Worker | No | 12 months |
| Creative & Sporting | Follow Code of Practice | 12 months Creative can extend further 12 months |

At the end of their visa the worker will be required to leave the UK, they cannot switch into another immigration category.

2.3 Unskilled workers - Tier 3

It is not currently possible for an employer to sponsor a worker for unskilled work, as Tier 3 of the Points Based System remains closed.



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

Employers who require unskilled workers from outside the UK are reliant on EU workers, who enjoy free movement rights. (Although this could potentially change following a referendum on the UK's membership of the EU.)

2.4 Timings

Applications made outside the UK are usually decided within 3 weeks, although processing times vary between posts and depending on demand. In country applications take around 8 weeks.

Workers applying from certain countries are required to include a TB test certificate with their visa application. The certificate must come from a provider approved by the Home Office. Workers should apply for their TB test in good time, to avoid this causing delays. In particular if a test x ray is inconclusive, further testing normally takes around 8 weeks.

3. **Is there any way to fast track such applications? If so, how quickly can this be done and is there a cost involved?**

3.1 Overview

It is usually possible to fast track an application subject to paying extra priority fees.

Whether the migrant is applying in or out of the UK, it should be noted that priority services are designed for straight forward applications. They should not normally be used if the migrant has a negative visa history, for example if they have been refused a visa in the past or have a history of breaching visa conditions, for example by overstaying.

3.2 Applications made outside the UK

The standard processing time for applications made outside the UK is 3 weeks. However, in practice processing times vary between countries. The Home Office produces monthly updates on current average processing times, although as ever past performance is no guarantee of future performance!

The priority services available also vary depending on where the migrant is applying.

Most posts offer a “priority service”, which means the migrant’s application will be considered before other applications where a priority fee has not been paid, usually within 3-5 working days. However, in some cases, migrants can only use this service if their sponsor is a “premium sponsor”. For example in the USA all Tier 2 applicants can use this service, but in South Africa it is restricted to those with a premium sponsor.



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

Some posts also offer a “super priority service”, for 24 hour processing. The migrant will be required to enrol their biometrics at a specific visa application centre. For example in the USA, this service is available in New York.

3.3 Applications made in the UK

For Tier 2 applications made in the UK, the standard processing time is 8 weeks. However, migrants and their representatives may request Home Office permission to use the “Tier 2 Priority Service”, which costs an additional £300 and has a guaranteed processing time of 10 working days, with the migrant enrolling their biometrics at a local post office without any prior appointment.

The Home Office also offers a “premium service” for same day processing. This costs an extra £400 and the migrant must book an appointment to attend one of seven premium service centres. If the migrant would prefer to have their biometrics taken at home or at work, then a “super premium service” is available for a further £7,000. Up to 10 people, including 4 main applicants can be covered within this.

4. **Are family members allowed to accompany the migrant?**

Yes, family members are allowed to accompany a migrant who is being sponsored by their employer.

5. **If yes, what applications must be made for any dependant family members?**

Each dependant family member will need to apply for a visa as “Dependant of a PBS migrant”. The family members can submit their applications together with the migrant worker, or each individual may apply at a different time. If successful, they will be granted leave for the duration of the sponsored migrant’s visa (or for 3 years if the sponsored migrant already has indefinite leave to remain in the UK).

As part of their application, the family member must show sufficient funds for maintenance. The current requirement for family members of Tier 2 or Tier 5 migrants is £630 per person. For Tier 2 migrants, if the sponsoring employer holds an A rated sponsor licence, then they can certify maintenance for family members as well as the sponsored migrant, thereby removing the need to produce bank statements.

6. **Who are deemed to come within the description of “family members” in immigration law in your jurisdiction?**

For the purposes of obtaining a Dependant visa, “family member” means:



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

- Spouse;
- Civil partner;
- Unmarried partner living in a relationship akin to marriage/civil partnership for at least 2 years;
- Dependent children.

In the case of spouse/partner, both the migrant and the spouse/partner must be over the age of 18.

Dependent children must be under the age of 18, unless they are already in the UK with a Dependant visa obtained before they were 18, in which case they may renew this.

Children of any age will be considered to be independent (and so not eligible for this type of visa) if they are married or in a civil partnership, have formed an independent family unit, or are living an independent life. This includes situations where they are living with their own partner, have their own children, are living away from home (unless at boarding school), are in full time employment, or are otherwise financially independent.

Children aged 16-17 are required to prove they are still dependent on the sponsored migrant.

7. What rights do family members have to employment, self-employment or other activities in your jurisdiction?

A family member who holds a visa as Dependant of a Tier 2 migrant can work freely in the UK, save that they cannot be employed as a professional sportsperson or sports coach and they are also subject to restrictions on working as a doctor or dentist in training. They may be self-employed. They may also study.

8. What of family members, e.g. children, who are over the age of 18?

Children over the age of 18 are not eligible for a Dependant visa, unless they already have leave as the family member of PBS migrant and need to simply renew this.

Children over the age of 18 will usually need to apply for leave in their own right, for example as a sponsored Tier 4 Student, or as a sponsored worker.

Note



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

The UK Immigration Rules change on a regular basis. The information contained in this report is correct as at 15 May 2015.

Contact details

Clare Hedges
Birketts LLP
Thirty Station Road
Cambridge
CB1 2RE
E-mail: clare-hedges@birketts.co.uk
Telephone: +44 (0)1223 326605