

No more transfers of staff between overseas group companies and the UK?



The Migration Advisory Committee (MAC), which advises the UK government on matters relating to immigration, is considering possible changes to Tier 2 (skilled workers with a job offer) of the points-based system. One of the matters being considered is whether there is an economic case for restricting Tier 2 to the list of shortage occupations only.

If this happened, there would be a suspension or abolition of the current intra-company transfer and the resident labour market routes of entry into the UK for non-EEA nationals. The consequence of this would be that multinational companies would not be able to transfer their overseas skilled employees to a UK group company and/or if a UK company was unable to find a suitably qualified UK employee to fulfil a role, they would not be able to look beyond the EEA to recruit such a candidate.

In our view, this would have a serious and detrimental effect on the ability of UK companies to recruit suitably qualified staff and may discourage investment in the UK by overseas businesses.

The MAC is currently inviting submissions by 11 June 2009 and Burges Salmon will be responding, but if you have any concerns about this new proposal or would like to discuss this issue, please contact a member of the Burges Salmon Business Immigration Team.

While we would be surprised if the intra-company route was scrapped, there may be tightening up of the requirements and we would recommend that employers who anticipate needing to bring overseas nationals into the UK in the immediate future consider acting sooner rather than later to avoid being caught out by any changes that may take place later this year.

Extension to Worker Registration Scheme (WRS)

Although the WRS, which was introduced on 1 May 2004 following the accession of eight eastern bloc countries (known as A8 states) into the EEA, was intended to end on 30 April 2009, the government has announced that the WRS will continue to comply with the requirements of the WRS. Therefore, employers must ensure that they continue to carry out proper checks under the WRS in relation to A8 workers for the immediate future.

It is worth noting that Romanians and Bulgarians are not part of the WRS and have no automatic right to work in the UK. As with all prospective employees, employers should check that nationals from these countries have the right to work in the UK before employing them.

continued overleaf

Higher threshold for the highly skilled

When the points-based immigration system came into effect in November 2008, many businesses wishing to recruit skilled overseas nationals took the view that they could satisfy their needs using Tier 1 (highly skilled workers) rather than obtaining a sponsor's licence and issuing certificates of sponsorship under Tier 2 (skilled workers with a job offer). The burden of obtaining a sponsor's licence as well as the associated compliance issues meant that Tier 2 was not an attractive option particularly for those employers with a demand for a relatively low number of skilled overseas nationals.

However, employers may now wish to re-visit that decision given changes introduced on 1 April 2009. Since that date first time Tier 1 (highly skilled) applicants (and those seeking to switch into that category) will need to hold a minimum of a masters degree in order to obtain sufficient points for a

successful application. Points will no longer be awarded for an undergraduate degree.

There is no guidance from the UK Border Agency as to whether this increased threshold is permanent, but our advice is that businesses should now look at their requirements for overseas nationals and consider whether they need to obtain a sponsor's licence.

As we have advised in previous briefings, obtaining a sponsor's licence is not simply a form filling exercise and it requires employers to audit existing overseas nationals within their organisation. Employers must also ensure that they have appropriate HR and recruitment systems in place, identify appropriate individuals within the organisation to be responsible for the company's sponsorship obligations and train managers and other personnel to ensure that the business can comply with its obligations as a sponsor.

Clarity on business visitors?

From 1 April 2009, the rules applicable to business visitors (i.e. a person who is employed abroad but intends to visit the UK for a short period in order to undertake certain business-related activities) have changed particularly in relation to secondees, advisors, consultants, trainers and trainees. These changes are designed to make it clearer what some visitors can do. While not significantly

changing the business visitor route, these provisions may help individuals travelling on business visitor visas to understand whether the business visitor route is potentially applicable to them.

For further information on this subject go to the website: www.ukba.homeoffice.gov.uk/visitingtheuk/businessandspecialvisitors/businessvisitors/.

For further information on anything in this briefing or any other related issues, please contact one of the Burges Salmon Business Immigration team below:



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