



The Government has recently released its statement of intent about how non-EEA students will be able to study in the UK under Tier 4 of the new points-based immigration system which is due to go live in February/March 2009. This briefing highlights the key issues for higher and further education establishments and independent schools who have non-EEA students.

## The different student categories

Tier 4 allows for two categories of students to study in the UK: (1) **general students** (post-16 education); and (2) **child students** (children aged 4-16 attending fee-paying schools). Students, in both categories, must be attending a full time course (separate provisions are made for students who undertake work placements as part of their course) and be able to demonstrate they have appropriate funds to support themselves and any dependants in the UK.

**Please note:** general students must attend courses that will lead to a qualification recognised by the UK Border Agency (UKBA) and must be able to demonstrate a proven track record in studying before they enter the UK. Any courses for child students must be taught in line with the National Curriculum, the National Qualifications Framework or be approved by Ofsted.

There are two further categories of student, student visitors and prospective students (those who intend to study in the UK for up to 6 months or, in respect of the latter, are coming to the UK to finalise their study plans) to whom the points based system does not apply. However, other restrictions will apply to them.

## The UKBA licence

All education providers will need an UKBA licence if they want to teach students from outside the EEA. The UKBA licence will replace the current Register of Education and Training Providers. In order to obtain a licence, an education provider must be accredited by an approved body. In most cases, this will be Ofsted, the Quality Assurance Agency (QAA) or the Independent Schools Inspectorate. In addition to the UKBA licence education providers will also require a sponsor's licence – see below.

## Education providers must obtain a sponsor's licence

All students will require a sponsor to be able to study in the UK. Education providers can be the sponsor. Accordingly,

any education provider in the UK wanting to teach non-EEA students and therefore, be a sponsor must obtain a sponsor's licence by applying to the UKBA. Applying for a sponsor's licence is not simply a form-filling exercise – it requires education providers to have in place robust, transparent and effective internal processes to demonstrate that they are genuine, accredited organisations that are suitable to sponsor overseas students.

The application for a sponsor's licence can only be made online. The proposed application fee is £400. In granting a sponsor's licence UKBA will issue an education provider with either an "A" or "B" rating, the latter indicating that the UKBA is not entirely satisfied with the education provider's current processes (see sponsor's obligations below). Details of the ratings will be listed on a public register.

The obligations imposed by UKBA on the education provider in relation to its students are new. A failure to comply can result in the sponsor's licence being revoked. The obligations are listed in the box below.

### Sponsor's obligations to non-EEA students

A sponsor must have processes in place to ensure record keeping and reporting requirements are met including ensuring that:

- copies of passports are taken showing entitlement to study in the UK (non-EEA students); and
- student contact details are up to date.

A sponsor is required to report the following to UKBA within a set timescale:

- any unauthorised student absence;
- any student who fails to enrol on a course or discontinues a course;
- any student who defers their studies; and
- any significant change in a student's circumstances.

## Once a licence has been granted

Only once a sponsor's licence has been granted can an education provider issue a CAS to a student with a '**Confirmation of Acceptance for Studies**' (CAS). The sponsor will need to pay a fee to UKBA for each CAS it issues – around £10 per student.

Once the student has received a CAS from the education provider, the student can apply for entry clearance or a visa to enter the UK. UKBA will check the student's documents including education certificates (looking for forgeries) and, in particular, evidence of sufficient funds for the student and any dependants.

The student will be "locked into" the education provider/sponsor. This means that the student will not be able to change education provider after arriving in the UK without a new CAS from the new education provider. The student will also have to apply to UKBA for a new visa to include details of the new education provider.

Once satisfied UKBA will grant leave as follows:

- for the length of the course up to a maximum of 4 years in the case of general students; or
- for child students the length of the studies – this is split into: (1) education up to age 11, (2) GCSE education (age 11-16) and (3) A level education (age 16-18).

Extensions can be obtained in appropriate circumstances.

## A points based system

Both general and child students will need 40 points to be granted entry clearance or a visa. This will be made up of 30 points for a CAS (see above) and 10 points for the maintenance and funds test.

## Existing students

Students currently in the UK will have been granted leave to allow

them to complete their course. Any students who wish to extend their stay as a student beyond that date will have to show they can comply with all the requirements set for students under Tier 4.

## Ongoing compliance

The UKBA will carry out ongoing checks to ensure the education provider/sponsor complies with its duties. Failure to do so could mean that the education provider loses its sponsor's licence and, therefore, would no longer be able to recruit international students or to support any extension applications made by existing students.

### What should you be doing?

- Review internal processes and decide whether they are sufficient to comply with the sponsor's obligations.
- Document those processes in order to satisfy UKBA that robust and transparent systems are in place.
- Identify who will have responsibility for ensuring the processes are in place and work. This should be someone senior in the organisation with sufficient administrative support to cover busy peak periods.
- Provide training for teachers, lecturers and administrative staff in those processes and their role in the processes.
- Identify how many students the education provider wishes to sponsor in the future.
- Develop a good relationship with your local UKBA office.
- If you do not have processes in place you should start to work on those immediately.

**Please note:** it is anticipated that there will be a rush of sponsorship applications which will result in a backlog, so don't put it off, start to think about the application and process now. The Burges Salmon business immigration team, who are also employment law specialists, can help you with that.

For further information on immigration or employment law issues, please contact:



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