

Impact of immigration policy on integration



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To what extent will recent and proposed changes to the immigration system assist in successful integration of new immigrants?

Over the past 12 months, UK Immigration has seen a metamorphic transition, which reflects the gripping need that has been felt for legislative change. The new Immigration Rules are now in full swing, some of which have already hit the front line and others that are still presently under construction. It is inevitable that any system that is introduced for the first time will either be very beneficial in the successful integration of new immigrants or will have devastating consequences.

Following the Australia and Canada model, the most revolutionary change in the legal process is the introduction of the Points Based System (hereafter referred to as PBS) for new immigrants seeking to work, train or study in the UK. It replaces the approximate 80 routes of doing either of the above under the present regime. These short term or long term Immigration categories have been streamlined into one single immigration system. The PBS is classified under tiers and sets out clearly how an immigrant can successfully meet the criteria for admission through each of the various ways.

The benefit of adopting the single system provides clarity in the law and secures a carefully controlled integration of new immigrants. The new system is much more simple in form and straightforward in application. The advantage that new immigrants will have will be that they will be able to ascertain whether they meet the necessary criteria for a particular visa, which will save them time and prevent wastage of costs.

Looking at the new system in more depth, the PBS is divided into 5 Tiers.

Tiers 1 (General) was introduced on 29th February 2008 and took effect from 30th June 2008. ^[1] Tiers 2 & 5 have been in force since 27th November 2008. Tier 3 has been temporarily suspended and Tier 4, which applies to students aims to be incorporated by March 2009. Under each Tier, any prospective immigrant would need to score points in order to attain entry clearance, The points have been set by an independent body referred to as the Migration Advisory Committee. Instrumental to the PBS is the involvement of sponsorship ^[2]. Another change for new immigrants to consider is the requirement of the entry clearance and the knowledge of the English Language as a prerequisite.

The objective of Tier 1, which came into force in February 2008 is aimed at, Highly Skilled Workers (hereafter referred to as HSW) and the Post Study Work (PSW) schemes, which replaces the former Highly Skilled Migrant Programme, (HSMP) the International Graduates Scheme, (IGS) The Fresh Talent Working in Scotland Scheme and the rules for business-people and innovators, investors, writers, composers and artists ^[3].

This Tier has been formed in line with bringing in the, “ brightest and the best” ^[4]. On the face of it, the law appears to be complicated but the writer suggests that upon close examination, this is not the case. Instead, this is good news for some workers, particularly those that do wish to enter on the PSW. The PSW allows a new worker to remain in the country for a period of 2 years and will benefit from good quality training. The original IGS scheme lacked consistency as employers were reluctant to invest in resource training

of new recruits who were required to leave the country after 12 months. Eventhough the visa does not constitute a settlement visa, a new immigrant will still be able enter into long term agreements such as leases for accommodation purposes.

The process under the old HSMP scheme and the new HSW scheme is very different. A new immigrant must score a number of points in relation to each item. The criteria for awarding points are given on a sliding scale against requirements of a degree qualification, whether the new immigrant has studied in the UK and if the prospective applicant is applying under the Scheme from within our outside of the UK. The new immigrant needs a score of 75 points or more in order to qualify on the scheme and additional 10 points for the knowledge of English. There is also requirement for those that apply outside the UK; that they must have a bank balance of £2, 800 and those within the UK must have £800.

The purpose is to ensure that the new immigrant is able to support him/herself up until the first salary is received and not be dependant upon Government resources. This minimum financial requirement may appear to be a hindrance for those who are residing outside the UK. It means that there may be a section of society who are highly qualified but do not have the financial standing and therefore are excluded from meeting the criteria.

Tier 1 and the new law has already been brought into question where the case of foreign Doctors are concerned. In the BAPIO ^[5] case, the House of Lords delivered judgement solely on the issue of lawfulness of the Department of Health Guidance. It was held that the guidance defeated a

legitimate expectation held by Doctors in training on the previous HSMP that they would not be prevented from undertaking work. Tier 1 (General) states that a doctor will *not* be able to undertake employment as a doctor in training up until entry clearance is granted. This is therefore, another procedural obstacle for a UK Immigrant.

Tier 2 applies to skilled workers with a job offer and has been in existence since November 2008. This Tier replaces the concept of work permits completely which were traditionally created via a 2 stage process. (an approval letter was required prior to applying for a visa) It must be noted that the notion of the name work permit has been completely phased out since legislation that was passed in 2007 ^[6]

The aim of the Tier is to help the UK Labour market. All prospective immigrants need entry clearance and there will be no work permit or visa but a single decision made by the UK Border Agency. To qualify, a skilled foreign worker will have to obtain 50 ^[7] points under the system and this will depend upon factors such as the person already being in skilled work and speaks a good standard English (save for those that are intra-company transferees and stay in the UK for less than 2 years) as well as having an earning capacity of £24, 000 or having a recognised qualification.

One way for an immigrant to earn 50 points immediately will be if the employer in the UK can show that they cannot fill the required skilled post with a British worker and that the job vacancy has been advertised in the UK. This leads onto the employer passing the Resident Labour Market Test (RLMT) which refers to the job being in shortage occupation.

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The rules are extremely detailed and there are four sub categories under the Tier 2 ^[8]. However, it would be worth mentioning those specified occupations, which were previously under this Tier but have now will be excluded as per the new law. The Tier does not include overseas qualified nurses and midwives, ground staff of overseas owned airlines, exchange teachers, and language assistants The list goes on. The writer considers these occupations to be a wide range of professionals in the cross section of society, which does not help with the integration of new immigrants with these qualifications.

There is a recent case of R(on the application of HSMP Forum Ltd v SSHD) ^[9] the Judge in this case has raised a concern with the new law regarding highly skilled migrants. The Judge has found that upon applying the new rules, there is a breach of legitimate expectation for those immigrants who have already obtained entry clearance because the immigrant will have not secured work associated with their skills and ability and that there will be an element of racial discrimination. . The Home Office has had to act fast following this Judgement and consequently, have issued a policy to incorporate the judgement. The previous rules (prior to November 2006) will apply to those UK immigrants who have been adversely affected by the change in law. This is good news for those immigrants that fall under this category.

Alongside Tier 2 is the requirement of the certificate of sponsorship which has to be issued to the prospective employer. Prior to this, the Company will have to firstly be registered with the UK Border Agency so that it can obtain a sponsorship license. Additionally, the procedural requirements for a <https://assignbuster.com/impact-of-immigration-policy-on-integration/>

company would be to demonstrate that it has effective HR systems in place to manage its workforce.

The writer is of the view that skilled workers will be discouraged from coming to the UK because the law is incredibly water tight. Additionally, if an organisation is called into question, if faces losing its license and any immigrant working would be required to leave the country within a period of 28 or 60 days. The law goes even further as from the 29th February 2008, which states that if a Company knowingly employs an individual who is not legitimately working, it faces prosecution and fine of up to £10, 000 and any businesses that do the same face an unlimited fine or imprisonment.

The procedure of carrying out this process is set to cause serious delay to the recruitment of key immigrants and employers will risk losing access to a pool of talent on an international level.

Tier 4, which applies to students is set to come into force in March 2009. From July 2008, colleges and universities have been open to apply to the UK Border Agency to become registered sponsors. Under the Tier, only those overseas adults with a proven track record in studying will be permitted to apply and the student concerned will have to enrol on an English course. They will also have to pass a maintenance test and produce supporting documents such as educational qualifications. The long term plan for Autumn 2009 is the emergence of the an IT system to support the student visa route. It appears that the student visa rules are similar to old ones save for the fact that the new visa rules will only apply to overseas ' adults'; whether this will cut out a section of new immigrants is yet to be known.

Finally, Tier 5 applies to Youth Mobility and temporary workers. Tier 5 of the PBS is currently in existence where temporarily workers wish to come to the UK for primarily non-economic reasons, such as sportspeople and charity workers. The new law still dictates that the new UK Immigrant is awarded 30 points and savings of at least £800. This again may be difficult for some workers who only essentially work on a 'temporary' basis. Those that wish to come to the UK as an entertainer will still be assessed outside of the PBS under visitor visa rules. The Government is due to publish details of the new visitor visa category in the near future.

There will be some aspects of the law which will create successful integration as the new law creates transparency and clarity. The fact is that the actual criteria to meet has not considerably changed but what has reformed is the legal process. This will have a negative affect on those immigrants that will want to appeal against the decisions and the Asylum Immigration Tribunal (AIT) may be faced with a number of claims. The Government has produced a consultation paper ^[10], which proposes to change the process of Immigration and Asylum appeals. There will be an additional hurdle to cross if the scope for Judicial Review is revised; which will have the prevent the applicant's right to appeal to the High Court, following a decision of the AIT.

To conclude, the recent law has potential implications and has the possibility of deterring new immigrants from applying and discriminate against particularly highly skilled individuals who hold the qualifications but not the job to go with it or those that simply will not have the financial standing . The new law regarding the integration of immigrants is to some extent a cause for concern as the law has already been under question and has

subsequently been 'tweaked' in its initial stages. This without doubt, will open up the floodgates for UK immigrants to question other areas of the new law.

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Footnotes

[1] Application and requirement methods set out HC321

[2] Tier 1 is exempt from this requirement. Under Tier 5, Youth Mobility, the Government will take the role of a sponsor.

[3] Rule HC 607

[4] Home Office Border & Immigration Agency, The Path to Citizenship: next steps in reforming the Immigration System, February 2008

[5] R (on the application of BAPIO Action Ltd & another) v SSHD and another [2008] UKHL 27

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[6] Border & Immigration Agency 2007

[7] Appendix A of the Immigration Rules

[8] General, Intra Company Transfer-like before, Ministers Of Religion, ‘ elite’
Sportsperson

[9] R(on the application of HSMP Forum Ltd v SSHD [2008] EWHC 004 (Admin)

[10] Home Office UK Border Agency, Consultation: Immigration Appeals, Fair
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