

Management Alert

United Kingdom Abolishes Current Work Permit Scheme, Implements Points System

Recent changes to the United Kingdom's immigration laws will have an impact on employers seeking to obtain work permits for foreign national employees to work in the United Kingdom. The United Kingdom's employer-sponsored work permit scheme in its current form will be abolished, and the new system will take effect, on November 27, 2008. The new system divides the employment-based immigration landscape into five categories, or tiers, of foreign nationals.

Tier 1 and Tier 2 are likely to be of the most interest to employers seeking to employ highly skilled workers, business persons, and highly educated individuals. Tier 1 remains largely the same as the Highly Skilled Migrant Programme to which many employers have become accustomed. Tier 2, however, represents a major change from prior policy. Tier 2 employers must obtain sponsorship licenses, and their sponsored employees must qualify for an entry clearance based on a points system.

Tier 1

The Tier 1 category, for highly skilled workers, took effect in June 2008; it does not require employer sponsorship. One of its sub-tiers replaces the Highly Skilled Migrant Programme. The major change from the current scheme is that Tier 1 applications may only be filed at the U.K. Consulate having jurisdiction over the applicant's place of residence. [In the past, the applicant had to first file an application with the U.K. authorities; upon approval of that application, the applicant made a separate application for an entry clearance.]

The applicant will need to meet education and income requirements and will be required to demonstrate the financial ability to support herself while in the United Kingdom (the so-called "maintenance" requirement). The applicant must also demonstrate acceptable English-language skills.

The maintenance requirement may cause problems for some applicants. The applicant will be required to show that she can support herself and her family members by providing original bank statements covering the three months prior to making the application. The applicant will need to show at least BP 2,800 in available funds for herself and BP 1,600 for each family member if coming from overseas. A family of five, for example, will need to prove that it had funds available in the amount of \$15,000 during the prior three months (based on the current exchange rate).

Tier 2

Tier 2 includes intracompany transferees. The major change to this category from the current system is the requirement for sponsorship. This places a greater burden on employers to monitor immigration compliance.

The new U.K. immigration law will require that employers first register as sponsors and obtain licenses to employ foreign nationals. Once the license is obtained by the employer, the employer may issue a certificate of sponsorship (containing a unique reference number) to the foreign national employee. The employee will then reference the certificate number on her application for an entry clearance, which must be made at the U.K. consulate having jurisdiction over her place of residence. No additional action or work permit application from the employer will be required.

The licensing requirement does not apply retroactively to employees who are already working in the United Kingdom. However, when the work permits for those employees are extended, the licensing requirement must be met.

License Application Procedure

An employer will be required to file an online application for a sponsorship license and must provide documentary evidence that it is a legitimate organization within ten days of submission of the online application. This evidence may include, but is not limited to, the following documentation:

1. Certificate of employer's liability insurance;
2. Most recent audited financial statements; and
3. Evidence of registration with H.M. Revenue & Customs.

Before issuing the license, the U.K. authorities will assess the employer's human resources internal compliance procedures to confirm that the employer can comply with the relevant record-keeping and reporting requirements.

Validity of the License

The sponsorship license will be valid for four years, during which validity period the employer is entitled to issue certificates of sponsorship to foreign nationals who can then, if they meet the relevant criteria, apply for entry clearances.

Processing Times

Since the U.K. authorities expect a processing time of approximately six weeks for processing of the license applications, we recommend that employers file applications for licenses as soon as possible.

Application for Entry Clearance at the U.K. Consulate

Previously, foreign national employees were only required to submit biographical information, evidence regarding employment, and bank statements in order to obtain the U.K. entry clearance. Under the new system, employees will need to score at least 70 points in the areas of qualification, earnings, maintenance, and language skills, as set out below. It is expected that the following points will be allocated:

Points Allocation

Certificate of Sponsorship		30 points
Qualification	Bachelor's/Master's Degree	10 points
	Ph.D.	15 points
Prospective Earnings	BP 17,000 to BP 19,999	5 points
	BP 20,000 to BP 21,999	10 points
	BP 22,000 to BP 23,999	15 points
	BP 24,000+	20 points
Maintenance Requirement		10 points
English Requirement		10 points

Validity of the Entry Clearance

The entry clearance will have a validity period of three years with the possibility to extend it for two additional years.

If you have questions regarding the new U.K. procedures, please contact the Seyfarth Shaw attorney with whom you work, or any Business Immigration attorney listed on our website, www.seyfarth.com/businessimmigration.



Breadth. Depth. Results.

www.seyfarth.com