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Visabytes

July 2016

Your immigration newsletter by Fernandes Vaz

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- Skills Charge – 12th July 2016
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Immigration Act 2016 – New Powers

The powers coming in force on the 12th July 2016 include the offence of illegal working as well as extensive new powers for immigration officers to search properties without warrant. There are new official information gateways which are extremely broad, detention provisions including limitation on detention of pregnant women, new powers to make changes to passport fees together with new duties for other government departments to supply nationality documents to the Secretary of State.

Skills Charge – 12th July 2016

The Immigration Skills Charge will also come into effect on the same day. This will be experienced by the employers subject to it as a fee increase as there is no correlation between those who pay into it and what you get out of it. At the Business User Forum it was mentioned that the revenue would be spent on existing projects aimed at job creation but no details were provided.

English language requirement for spouses

A2 Language Requirement for Spouses will come in from October 2016. There are no transitional provisions as yet to indicate whether this will only come in for people who make their first application after October or whether it will also apply to those applying for an extension; the latter is expected.



Maria Fernandes

Application of the good character test

Naturalisation: The good character test is a statutory test which simply refers to whether the person is a person of good character at the time of the decision. If the Home Office want to argue that a breach of immigration law years back is grounds for refusal, they have to illustrate that that breach impinges on your good character now. This is a very different test from the requirements of the immigration rules and the ILR stage.

End of temporary admission as we know it

The concepts of temporary admission and release from detention are being replaced by the concept of immigration bail. This provision has not yet come into force.

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Call Fernandes Vaz on 020 8733 0123

What can EEA nationals do now?

Brexit and the steps that can be taken now

EEA nationals worried about their future can take steps to try and mitigate against the possible effects of Brexit.

The first would be to consider applying for a residence card or a document certifying permanent residence in the UK. None of these documents are compulsory for an EEA national living and working in the UK as they simply confirm rights already held by the EEA national. But they are a simple way for an EEA national to prove that he/she was exercising his/her free movement rights in the UK before any UK withdrawal from the Union.

There is a lot of uncertainty about what will happen once the UK actually leaves the Union. There are likely to be transitional provisions protecting EEA nationals already living and working in the UK at the time the withdrawal takes place. What these will look like is difficult to predict as no country has left the EU in recent times. Greenland left the European Community in 1985 after a national referendum. In that case, transitional provisions were negotiated to allow EEA nationals living and working in Greenland to continue to benefit from free movement. Being able to evidence your position at the relevant time may therefore prove important.

The other option is for EEA nationals to consider naturalising as British citizens. There are various requirements for naturalisation, one of which is the applicant's length of residence in the UK. EEA nationals will have to prove that they have acquired permanent residence in the UK, which is achieved after five years' continuous residence in the UK as a qualified person. A further twelve months residence is then required before an application for naturalisation as a British citizen can be contemplated (unless he EEA national is married to a British citizen when different rules apply).

Working in the UK: new guidance issued

Employers should be warned that the Home Office are increasingly imposing civil penalties for technical breaches despite the fact that the employer maintain robust systems for checking the status of employees.

It is important for employers to read the following link.

<https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>

The issues to remember are as follows:

For foreign nationals without settlement rights and EEA citizens (at least until we leave the EEA) employers must only accept the documents which are contained in List B however persuasive an employee may be.

Secondly, when the employee's leave expires, there is a grace period of 28 days when you can accept evidence provide by the employee that an extension has been made. Thereafter the employer MUST apply to the checking service for confirmation of that person's right to work, unless by then the person has evidence from original documents of the right to work. If the checking service confirms the right to work, this provides what is called a "statutory excuse" which basically protects the employer from any action for a period of 6 months. Thereafter you either need evidence of the right to work or a further check.

If employing students, there are additional obligations to check their status and right to work.

The link for the checking service is as follows:

<https://www.gov.uk/employee-immigration-employment-status>

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We offer assistance with the following:

- Sponsorship Licences
- Certificate of Sponsorship (Formerly Work Permit)
- Pre Licencing audits and advice
- Management of your Sponsorship Management System
- Assistance with Licence Downgrading, Suspension and Revocation
- Judicial Review applications
- Civil Penalties (Objections and Appeals)
- Tier 1 Visas (including Investors and Entrepreneurs)
- Extensions for all categories
- Tier 4 Students

- Human Rights applications
- UK or Entry Clearance applications for all categories
- Rights of Residence under EU Law
- Transfer of Conditions
- 10 years Long Residence / 20 years Long Residence
- Domestic Worker applications
- Immigration Appeals
- Indefinite Leave to Remain
- Naturalisation and Registration as a British Citizen

We also submit fast track applications by post or in person at the Home Office for some of the above categories in which a decision is made on the same day.