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VISA BYTES

The 2 Immigration Caps

On the 28th June 2010 the Home Secretary announced that the Government intended to introduce an annual immigration cap to take effect in April 2011. However in the meantime in order to prevent the sudden rise in applications, a temporary cap has been introduced which come into effect on 19th July.

INTERIM (TEMPORARY) CAP

This takes effect from 19/07/2010 to 31st March 2011.

Immediate Effect

There will be a reduction in the number of Certificates of Sponsorships (CoS, formerly work permits) granted to licence employers.

The interim limit applies regardless of the sponsor's renewal date.

Sponsorship Action Plan for 'B' Rated Sponsors

Sponsors who are downgraded to or are granted a 'B' rating will not be allowed any CoS allocations until they sign up to (and pay a fee) for a sponsorship action plan. Full details of this are not yet available.

'B' rated sponsors cannot apply for exceptional consideration for CoS whilst they remain 'B' rated.

This means that any CoS granted can no longer be used.

New Sponsors

New Sponsors will not be awarded an automatic number of CoS. They will have to apply on a separate form to request CoS and justify the need. It will be necessary to show why the role is critical to the business.

Additional Certificate of Sponsorship (CoS)

For those who do not have any CoS (or who have had their CoS removed) and want to apply for additional CoS the following conditions must be satisfied:-

- Sponsor must 'A' rated
- The number of CoS requested must take into account any

available CoS remaining in the existing allocation. CoS will then be ranked and granted in the following order :-

- 1) Work Permit or Tier 2 (General) for an existing sponsor.
- 2) Work permit for Tier 2 (General) Extension for new Employer
- 3) A new shortage occupation post for a new sponsor
- 4) A non-shortage occupation post for an existing sponsor
- 5) A non-shortage occupation post for a new sponsor

This means that extensions will take priority over new grants of CoS, and that shortages will take priority over non shortages. Looking at the list, it appears existing sponsors will not have priority where they want new staff even if there is a shortage.

A CoS can only be requested for an extension where the migrant's leave is due to expire within the next 60 days.

Any CoS granted following a request for exceptional consideration must be used for the role for which it was requested.

Process

UKBA Managers will meet on a monthly basis on the 1st working day of each month to consider requests for CoS. Requests must be received before 25th of each month.

Sponsors will be notified within 5 working days of the panel meeting. Where the request has been successful the Sponsor Management System will be updated.

Urgent decisions will be made by the Deputy Director for Sponsorship.

The decision is final. There is no appeal or reconsideration process.

The guidance indicates that

- There will be very few CoS which will be available mainly for new Sponsors. This means that employers who wish to open or expand businesses may not be able to do so.
- That no reasons will be given you refusing applications and no

appeal or review process. This would mean applying to the High Court if there are grounds to do so.

This limit will provide learning for the new permanent cap planned from April 2011. These changes are a blueprint for the future. The Hospitality Industry will need to brace itself for major change.

Tier 4 changes

English tests

From 12th August 2010 all students studying below degree level or foundation degree level (NFQ level 6) will need to pass a secure English test unless they are from a country where English is the language spoken. No country in South Asia qualifies for this. This will affect all students applying or extending their leave from this date.

Change of provider

From October 2009 students who changed providers had to obtain permission before starting the course. This caused difficulties for students as they missed the start of courses. The regulations will now permit students that change courses to Highly Trusted Sponsors to begin their course before permission is granted.

International Baccalaureate students

These students will not receive their results or transcripts until the end of August and to enable them to enter the UK for their degree courses provision is being made for them to make their application by producing a print out from UCAS or IB office online checking service confirming their results.

Maria Fernandes has been in practice exclusively in immigration for the past 25 years and is accredited in Immigration Law by the Solicitors Regulation Authority. Fernandes Vaz is based at 87 Wembley Hill Road Wembley in Wembley and can be contacted by telephone on 02087330123, by email on info@fernandesvaz.com