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Visabytes

Your quarterly immigration newsletter by Fernandes Vaz

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Student Changes

From the 4th July 2011 new immigration rules took effect for Tier 4 applications and their dependants. It is important to emphasise that these new rules will not affect those currently in the UK on existing leave. The changes are: -

- Work will only be permitted if the student is studying at either a higher education institution or a publicly funded further education college.
- Dependants can only join the student, if the student is studying a post-graduate course of 12 months or more at a higher education institution, or
- The student is a government sponsored student on a course lasting 6 months or more, or
- The student is applying, within 3 months of the date he/she had last had leave as a student, for courses 6 months or longer and the dependant is applying at the same time.

Student regulations have changed in stages and therefore when assessing their status it is necessary to consider when applications were made and what the restrictions were during that period.

From April 2012

All Tier 4 Sponsors will have to be inspected, audited or reviewed by specified bodies and all must become Highly Trusted Sponsors.



Maria Fernandes

The family way: new changes

Wholesale changes are being proposed to this category which extends from children to parents and even to family visitors. The press reports recently suggested that the plan was to reduce the accessibility of benefits to those coming to the UK. It is apparent that this is to be achieved by reducing the applicants right to settlement. However there are other fundamental changes being proposed. In brief:

Increase Probationary Period: Spouses

Currently a foreign national who marries has to fulfil a 2 year probationary period before being granted settlement. The proposal is to increase this to 5 years. This will also apply to Points Based spouses.

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End of settlement rights for long term married

Those currently abroad and married for 4 years and over and entering the UK qualify for immediate settlement. The plan is to scrap this concession and require them to complete a 5 year probationary period. (Imagine those married for 25 years having to undergo a 5 year period!)

Income

At present there is no set income level that must be met, the only requirement is that the level must be at or above income support levels. The plan is to introduce a specific threshold and the Migration Advisory Committee have been asked to set the level.

End of settlement rights for elderly dependants

Currently parents get settlement rights immediately. The proposal is to require them to complete 5 years to qualify for settlement.

Dependants nearing 18

There is a plan is to consider changing the length of leave to those getting close to 18. At present how this will be introduced is not clear.

Appeals

There is a proposal to end appeals for family visitors. The justification is that “new evidence” is provided at the appeal which results in a successful decision. What actually happens in a lot of cases is that cases are refused without a proper consideration of the issues. Interviews very rarely take place and therefore where information is misunderstood it results in a refusal. Removing rights off appeal appears to feature prominently in every area. It is of concern as decisions wrongly made will have to end up in the Administrative Court as has been the case in other areas of immigration where there are no other rights of appeal.

Criminality

Those with criminal conviction including driving convictions will not be able to apply for settlement until the conviction is “spent”.

For fines the period is 5 years.

Introduction of “everyday English” requirement

The level of English is to rise to B1 for settlement and A1 for some dependants for entry or leave to remain.

Permission to marry

The Certificate of Approval procedure requiring permission to marry from the UK Border Agency was abolished after the Courts ruled that this was an unlawful restriction on the right to marry. Now proposals are being considered for combining the role of the Registrar and UK Border Agency trained officers. It is not clear how this will work but watch this space.

Restrict ability to bring second spouses

Those who are sponsored as spouses themselves will not be able to sponsor another spouse for 5 years.

There are also a number of proposals to target sham and forced marriages which in reality may result in affecting genuine couples.

No work permits for takeaway or buffet services

It is now clear that all restaurants that provide a takeaway service (even if it is a small proportion of the total business) or who provide buffet services regularly are excluded from bringing Chefs from abroad although they can continue to employ staff already in the UK under either work permits or Tier 2 certificates.

Tier 2 (Work Permits)

Proposals for the Highly Trusted Sponsorship Status

There are proposals to create a highly trusted category for Tier 2. The features will be:

- Application process easier
- Designated phone/email helpline
- To qualify sponsors will have had to issue 40 CoS, have a low refusal rate and no civil penalties
- This would only cover 1 – 1.5% of sponsors but these sponsors issues half of all CoS's
- Looking to introduce in September/October 2011

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