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Visabytes

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Your quarterly immigration newsletter by Fernandes Vaz

New criteria for Spouses and fiancés

If they meet the criteria will be granted 5 years leave. An initial period of 30 months will be granted, followed by a further period of 30 months on application and finally an application for indefinite leave. There will be fees payable at every stage.

If an applicant cannot satisfy the criteria under the Immigration Rules but qualifies under Article 8 of the European Convention on Human Right, he/she will have to apply under specific regulations (created for the first time within the Immigration Rules) for 30 month periods for 10 continuous years before qualifying for indefinite leave to remain.

Financial requirements

The existing maintenance requirement for partners will be replaced by a financial requirement based in most cases on the sponsor's earnings from employment (or those of the sponsor and applicant where both are in the UK).

The minimum required is a gross annual income of £18,600 for a couple, plus £3800 for the first child and £2400 for any subsequent children.

The income requirement can be met by :

- Income from employment or self-employment of the sponsor (and/or the applicant if they are in the UK with permission to work).



Maria Fernandes

- Specified non-employment income of the sponsor and/or applicant.
- State (UK or foreign) or private pension of the sponsor and/or applicant.
- Any Maternity Allowance and bereavement benefits received in the UK by the sponsor and/or applicant.
- Cash savings of the sponsor and/or applicant, above £16,000, held by the sponsor and/or applicant for at least six months and under their control.
- Exemption from the financial requirement, where the sponsor is in receipt of a specified disability-related benefit or Carer's Allowance in the UK.

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Points to note

- There will be no flexibility over the level of the financial requirement.
- Previous, current or prospective employment and earnings, or any job offer, of the migrant applicant will not be taken into account when first applying from overseas for a visa to come to the UK.
- Where the sponsor is in the UK and in paid employment, they must be in that employment (at the required salary level) at the point of application and either have been so continuously for the previous six months (at the appropriate salary throughout) or have earned the required amount through salaried employment in the 12 months prior to the application.
- Where the sponsor has been working overseas and is returning to work in the UK, a firm, verifiable job offer or signed contract of employment to start work within three months of their return may be counted. They must also demonstrate that either they are in employment overseas at the required salary level at the point of application and have been so continuously for at least the previous six months or they have earned the required amount through salaried employment in the 12 months prior to the application.
- Promises of support from third parties will not be accepted (although they can continue to offer accommodation).
- PBS applicants are not affected by these changes.

Article 8 claims

The amended Immigration Rules will for the first time set out the requirements that all types of case raising Article 8 must satisfy in order to establish an Article 8 claim. In the past applicants were granted discretionary leave in two 3 year periods. This will no longer be the case. Applicants will be granted 30 months period for 10 continuous years.

Children

The Immigration Rules will deal clearly with how to treat a British citizen child or a foreign national child in cases where the UKBA would otherwise intend to remove their parent(s) and how countervailing factors should weigh in the decision.

There are some circumstances where a child may be allowed to stay on a temporary basis on best interests grounds, e.g. for health or education reasons.

The key test for a non-British citizen child remaining on a permanent basis is the length of residence in the UK of the child – which the Immigration Rules will set at 7 years, subject to countervailing factors.

Long residence

This '14 year rule' will be abolished when the new Immigration Rules come into effect.

In order to be eligible to apply for leave to remain on the basis of private life in the UK, the Immigration Rules will instead require the applicant to have:

- At least 20 years' continuous residence in the UK (lawful or unlawful), discounting any periods of imprisonment, and subject to the criminality thresholds; or
- Be under the age of 18 and have continuously resided in the UK for at least seven years; or
- Be aged 18 or over but under 25, and have spent at least half their life continuously residing in the UK; or
- Be aged 18 or over, have continuously resided in the UK for less than 20 years, but have no social, cultural or family ties with their country of origin.

Those who apply or are granted entry or leave to remain in this category

Applicants (spouses, children or dependants) who have entered the UK in this category already or who apply for entry clearance before 9th July will not be affected except with regard to the requirement to pass the higher English test (ie the Life in the UK test as well as a test at B1) from October 2013