



VISA BYTES

Maria Fernandes

maria@abplgroup.com

Last week I explained how the temporary cap would work. This week I am looking at the long term proposals for a cap.

PERMANENT CAP

A consultation has been announced to consider a number of options. The deadline for responses is the 17th September 2010. There are in fact 2 elements to this :-

1. The UKBA will look at how the limit should be applied (UKBA).
2. The Migrant Advisory Committee then will look at what level the Government should set its limit.

UKBA Consultation

The options offered are the following :-

Pool

This adopts the system in New Zealand. Applicants who pass the points test would apply under Tier 1 or 2 and would be entered into a pool of candidates. The UKBA would then select the best candidates. It is not clear how 'best' candidates will be selected. If someone was in the pool for over 6 months without being invited to come over they would be removed from the pool.

First come first served

This adopts the Australian and US system. Under this method, applications for permission would be dealt with in the order in which the UK Border Agency receives them. When the limit is reached no more applications would be accepted.

It is not clear whether each country would specific limits if there was just one number. In theory applicants in New York for example whose applications are decided within a matter of days and weeks would use up the limit. This would mean that applicants from other countries would not be able to qualify.

Auction

For this method the UK Border Agency would invite employers on a quarterly basis to bid for allocations of Certificates of Sponsorship (formerly work permits). A limited number of certificates would be available and these would be given to the employers who bid to pay the highest fee. This method would be highly advantageous to large multi national companies who have unlimited funds.

Other Conditions

In addition to the above proposals there are also other plans such as:

- Raising standards of English language qualifications.
- Introducing a requirement that the employer must hold health insurance for employees.
- Wider responsibilities for employers to make a practical commitment to upskilling British workers for example by supporting national or local apprenticeship and other similar schemes.
- Requiring employers to work with local providers and job centres and contribute towards investment for training.
- By requiring all shortage jobs to be advertised before recruiting overseas staff (this was the situation before the shortage was in place following rec-

ommendations by Mac advertising requirements were lifted. It is difficult to understand and why a job that is accepted to be in acute short supply would need to be advertised and what benefits this would bring to the process.

Highly Trusted Status

A little mentioned change is the plan to introduce highly trusted status for employers under Tier 2. This is already in force for Tier 4 (students) and is planned for introduction in April 2011.

The MAC consultation

MAC has been responsible for taking very detailed evidence on national shortages and as a result Chefs were placed on a shortage list for the first time in years. The deadline is 07/09/2010 that responses are sent. It will be necessary for all hospitality industry to look specifically at the likely impact of these changes to their businesses.

They have now been asked to prepare a report taking account of the impact of migration on economic, social and public services. The deadline is 07/09/2010. MAC recognised that they will need to take into account the following:

- The time, cost and policy implications of accelerating any required upskilling of UK workers.
- Feasibility of other alternatives to migrant labour including paying higher wages and increased mechanisation and the use of new technology.

MAC have commented that there may be a small reduction to begin with followed by smaller or larger reductions in successive years and acknowledges that Tiers 1 & 2 can only reduce net migration up to a point.

MAC have highlighted the fact that there are complex issues which require specific data. For example they would need information on how many migrants leave the UK having previously entered via Tier 1 or 2. This will to a certain extent require them to estimate the impact of policies particularly where the data is in short supply or only partly available.

The intention of the cap is to reduce migration in Tiers 1 and 2 by 5%. The regulations indicate that there will be very strict controls over the grants of CoS. Those who did not use their CoS are at a disadvantage as this is forming the basis of the calculation for this year. The temporary cap is done on a month to month basis and so there is also likely to be a backlog. Expect major changes ahead.

Business leaders have expressed concern about the intervention of quotas. It is important for everyone to consider the proposal and to respond to the consultation.

For expressing your view on

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/mac-consultation-annual-limit/>

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 02087530123, by email on info@fernandesvaz.com.