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# Visabytes

Your quarterly immigration newsletter by Fernandes Vaz

## The Immigration Cap Declared Unlawful By The Courts

On Friday finally after months of concerns by businesses and the CBI the matter reached to a head when the High Court declared unlawful the interim cap introduced on the 28th June 2010 an announced on the Home Office website rather than in Parliament. The judges expressed concern that the Secretary of State had made no secret of her intentions and in doing so acted unlawfully for attempting to "side step Parliamentary scrutiny". The judges emphasised that the provisions were substantive changes and should have been laid before Parliament. This is the second case this year which has been thrown out after concerns were expressed about abandoning constitutional principles which have "stood for four centuries as the pillar of democracy." The Government were warned that their decision was hasty and ill thought out. However they pressed on regardless. The public purse will pay for the legal costs and the cost of administering the changes that will need to be put in place.

The result of this decision is that all those who lost the certificates of sponsorship which had previously been issued will have the right to be granted them. The Government have indicated that they may appeal against the decision.

The Minister stated today that the UKBA lost on a technicality. This is not true. The judges expressed concern that a fundamental principle of parliamentary scrutiny in a democracy had been ignored. This can hardly be described as a technicality. Furthermore now that the interim cap has been declared unlawful the UKBA will need to implement this. They have instead stated that the plan is to introduce new rules. Watch this space for further developments



*Maria Fernandes*

## Graduate level or not: Consultation by Migration Advisory Committee(MAC)

MAC are currently consulting as requested by the Government on 2 questions:

1. What codes should be considered to be graduate level occupations for Tier 2 applications
2. How should the current list be revised to remove jobs below graduate level.

Graduate level refers to NVQ level 4. MAC will be able to specify job titles within particular industries even if the broader occupations are not skilled. Interestingly they have identified factors that will be considered to include:

Whether there is a requirement to hold a formal qualification

If formal qualifications are less relevant what level of on the job training is required

Whether there is a degree of innate ability required to do the job.

This call for evidence is critically important for restaurants and care homes in particular where formal qualifications are less important than skills.

The deadline for submissions is 21st January 2011.