



***US companies who are considering transferring US personnel to establish or work in their UK branch or subsidiary need to take into account the immigration implications well in advance. Generally non EU foreign nationals are not entitled to establish themselves in business in the UK or indeed work for any UK company without having the appropriate immigration permission.***

**Immigration Categories**

The relevant immigration categories are as follows:

**Business Visitors**

American nationals generally do not require entry clearance (a visa) to enter the UK and will usually be admitted as visitors without a problem subject to some basic questioning by the immigration officers at the port of entry which normally will be the airport.

The immigration officer may need to be satisfied that the individual is not going to engage in any business activity in breach of the immigration rules and therefore it is important for the individuals travelling to the UK on behalf of the US business to understand the restrictions of this category.

New guidelines have recently issued by the UK Border Agency regarding this category.

As was the case previously, the maximum length of stay will be six months and one must be able to show that they can maintain and accommodate themselves during their stay without working.

As a business visitor one is only able to transact business directly linked to your US employment. A business visitor must normally live and work abroad and have no intention of transferring their base to the UK even temporarily.

A business visitor, whilst in the UK, must receive any salary from abroad although may recover reasonable expenses from the UK business they are visiting to cover travel and subsistence during the visit.

A business visitor must now show that they intend to do one of a schedule of permitted activities, which include but are not limited to: attending meetings, carrying out fact finding missions, negotiating or signing trade agreements or contracts, and board level Directors attending board meetings, provided they are not employed by the UK company.

Employees of overseas firms whose involvement with the UK subsidiary amounts to employment here and consultants who are self employed (other than those contracted abroad by an overseas firm with the UK subsidiary) will not fall into the category of business visitors and will therefore need to have obtained entry clearance in a different immigration category.

## **The Points Based System**

This system is currently being implemented in the UK and abroad as an integral part of major changes being made by the UK authorities to its Immigration policy and procedures and substantially affects most, if not all, business immigration categories.

The Points Based System ("PBS") is based on 5 tiers with Tier 1 covering the existing Highly Skilled Migrant programme, Businesspersons and Investors and Tier 2 has now replaced the Work Permit scheme.

### **Tier 1 – General – Highly Skilled Worker**

This is based on the Highly Skilled Programme but with a number of fundamental changes, principally that the application is now a combined immigration application for status as a Tier 1 general Highly Skilled Worker and either an entry clearance or Further Leave to Remain application as such.

This means that the applicant has to lodge their passport when submitting their application, which if the applicant is outside the UK (or inside the UK but unable to switch their status in country) will be made at the nearest British Diplomatic post dealing with such applications in the applicant's country of residence.

It also means that if the application is refused this will amount to a refusal which will appear on the applicant's immigration history and may therefore affect any subsequent applications.

There are also changes to the English Language requirements with American nationals becoming deemed to automatically meet the English Language requirement, like those of other specified majority English speaking countries.

**Maintenance Requirements** - There is now a new specific maintenance requirement for the applicant to demonstrate, when applying from outside the UK, that they have had a minimum balance equivalent to at least £2800 personal savings for the whole of the 3 month period immediately before they make the application.

### **Tier 2 of the Points Based System**

Tier 2 has replaced the existing Work Permit Scheme.

Under Tier 2, any UK employer who wishes to extend an existing work permit for one of their employees or apply for a new work permit must now be licensed as a sponsor.

Those applying will receive a visit from the Sponsor Licensing Unit of the UK Border Agency or from an approved assessed provider, (of which Steeles Law are one) and will need to ensure that they have the relevant HR systems in place to meet the new requirements of the scheme.

Under Tier 2, for the first time a basic English language requirement is being imposed on all applicants with the exception of those transferring under an intra-company transfer for less than three years. There are also maintenance requirements imposed upon those applying.

The scheme is administered by way of a web-based management system operated by specified individuals appointed by the employer. The employer needs to undertake that the individual meets the requirements of the scheme before applying using that web-based system for a Certificate of Sponsorship.

The applicant will then use that electronic certificate of sponsorship to make their application for further leave to remain or entry clearance.

Employers subject to the scheme will be reviewed regularly and are able to issue a specified number of certificates each year although they will be able to apply for an increase in that number from time to time.

There are also onerous duties on the employer to report various matters to the UK Border Agency regarding employees on an ongoing basis.

### **Civil Penalties**

In February 2008, civil penalties were introduced in the UK and these can be imposed by UK Border Agency officials, when visiting UK employers, if they find that individuals are working for the employers who require, but do not have, the relevant permission to work and these penalties can be up to £10,000 per illegal employee. The UK Border Agency are also now prosecuting employers found to have been employing individuals without the relevant permission.

### **Investor / Entrepreneur Applications**

There are other “business” categories which have now been incorporated in Tier 1 of the Points Based system, known as the Investor and Entrepreneur applications, the former involving an investment of one million pounds, of which £250,000 can be held in UK property and the latter an investment of £200,000 although there are certain restrictions on the individual which make the businessman category generally unattractive and consequently these applications are made less frequently than those set out above.

### **Indefinite Leave**

Those who have accumulated five years residence in the UK in a business category such as work permit holders, sole representatives or Highly Skilled Migrant/Tier 1 General migrants are entitled to apply under the current rules, for Indefinite Leave to Remain in the UK, subject to their periods of absence from the UK in the 5 year period. Applicants for Indefinite Leave to Remain have to have successfully completed the Life in the UK Test prior to making their application.

Following the grant of Indefinite Leave to Remain the individual will be entitled to remain in the UK and work here without restriction or having to apply for any further permission.

### **British Nationality**

Under the current rules, after twelve months from the date of obtaining indefinite leave to remain an individual is then eligible to apply for British nationality unless they are already married to a UK national, in which case they are entitled to apply immediately after the grant of the indefinite leave to remain, provided they meet the residence requirements.

The basic residence requirements when making an application for British nationality apply to either the 3 or 5 year period immediately before making the application, depending on whether the applicant

is married to a British national. Applicants also have to have successfully completed the “Life in the UK Test”.

### **Spouses, Unmarried or Civil Partners of UK Nationals**

Persons in this category are entitled to apply for entry clearance to enter the UK. They will be initially granted two years leave to remain if they qualify under the rules.

To qualify as an unmarried partner one of the requirements is they need to show that they have been living together with their partner for a period of not less than two years and in either case the UK national must either be intending to immediately settle in the UK or already be settled in the UK.

At the end of the two year period provided the relationship subsists and the parties are still living together the individual is then entitled to apply for Indefinite Leave to Remain.

More details are available upon request.

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