A FORTHCOMING REVOLUTION IN UK IMMIGRATION LAW

By Graeme Kirk

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The British Government published a Command Paper on 7th March 2006 entitled "A Points-Based System; Making Migration Work for Britain", setting out its proposals for a new approach to U.K. immigration for work or study.

According to Charles Clarke, the Home Secretary "The UK needs a world class migration system to attract the brightest and the best across the world, while at the same time being more robust against abuse. That is why I am so pleased to be able to publish this points-based system. It will revolutionize the way in which migration into this country works".

The basis of the Points-system will be a five Tier framework. Points will be scored for attributes which predict a migrants likely success in the labour market, and/or control factors, which are issues relating to whether someone is likely to comply with the conditions of their leave. For Tiers 1 and 2, an applicant would need to pass both the attributes test and the control test, but for Tiers 3-5 the control test would be the only requirement. Only Tiers 1 and 2 will have the potential to lead to permanent residence.

The Tiers will be constituted as follows:-

1. Tier 1 will be for Highly Skilled individuals and will cover those individuals who come within the current HSMP Scheme.

There will be a separate category under Tier 1 for individuals bringing substantial funds and/or business ideas to the UK, which will cover many people who currently use the investor, business or innovator category, and also a Tier 1 – Post Study category offering a transitional route for overseas students from U.K. universities.

2. Tier 2 will be for skilled workers with a job offer who are coming to fill gaps in the UK labour force. This category will be used by many individuals who would currently come under the Work Permit Scheme which will be abolished when the new system comes in to effect.

3. Tier 3 will be for limited numbers of low-skilled workers needed to fill specific temporary labour shortages.

4. Tier 4 will be for students.

Unlike the present system, students will obtain permission to attend a particular course of study at a specific institution, and their permission to remain in the UK will depend on their continued study at this institution.

5. Tier 5 will be for Youth mobility and temporary workers to allow applicants to work in the United Kingdom for a limited period of time to satisfy primarily non-economic objectives. This category will include the present working

holidaymaker scheme, and permits will be limited to a maximum period of two years and no switching will be possible.

Only Tier 1 applicants will be entitled to proceed without a Certificate of Sponsorship and, if successful, will be granted an initial period of residence of two years. Some successful Tier 1 candidates may be granted permanent residence after two years of temporary residence. For other Tier 1 and Tier 2 candidates, permanent residence will be potentially available after five years.

All applicants in Tiers 2 to 5 will need to provide a Certificate of Sponsorship from an approved sponsor when making their application for entry clearance. In Tier 2 cases, the Certificate will need to be obtained from the prospective employer. In Tier 3 it will be from the operator of a particular low skilled scheme. Under Tier 4 it will be the University or College where the migrant is intending to study.

In the case of Tier 5, it will be the home Government of the potential applicant ie. the Indian Government will be required to provide Certificates for young Indians who wish to come to the UK. Details of this Scheme have not as yet been worked out.

Under Tier 2, two types of Certificate will be issued to employers. "A" Certificates will be issued to those employers or educational institutions who have the best track record with the Home Office, and "B" Certificates to employers and educational institutions with less established track records. Once an employer or educational

institution has been granted its Certificate under “A” or “B”, it will be entitled to issue its own certificates to applicants.

Applicants who have Certificates from A-listed companies or institutions will score more points than applicants with B-listed Certificates. This proposal will inevitably favour large corporations, and small businesses, and in particular those applying for Certificates for the first time, will find the process more onerous.

Under the new system, it is intended that there will be a one-stop procedure with the Indian applicant applying directly to the British High Commission in his own capacity, providing the required Certificate as part of the papers for the application.

Time will tell whether the new Tier 2 system is quicker than the current work permit scheme. It is likely to be so for major corporations, but the position may well be different for small and new businesses.

The Government is hoping that, under the new points system, there will be little scope for errors in decision-making. As a result of this, it has maintained its decision to remove appeals in respect of failed visa applications for employment or study. A system of administrative review of decisions will be established, but little detail has been provided so far. It is to be hoped that the Government will take into account the real concerns expressed by many people and will put in place a proper system of administrative review. If this is not done, then the only likely outcome will be a very substantial increase in judicial review cases going to the High Court.

The Government hopes to bring in the new system by February 2008 or shortly thereafter. It is possible that some of the individual Tiers, such as Tier 1 may be brought in earlier, although no announcement will be made about the possible timings of partial implementation until later this summer.

Much work will need to be done, before the new system can be brought into effect, and there are likely to be further changes from the current proposals as a result of on-going consultation.

Only time will tell as to whether it is an improvement on the present system.

Watch this space for further announcements!

Graeme Kirk

For further information please contact Graeme Kirk of Gross & Co, Solicitors,

gdk@gross.co.uk

http://www.gross.co.uk/