



Immigration - The Points Based System

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Introduction

The UK government has rolled out its new Points Based System ('PBS').

The PBS is an overhaul of most routes by which immigrants may come to the UK to work.

The issuing of work permits ceased in November 2008.

Who qualifies for Tier 1?

Individuals who have 'Tier 1' visas do not need to be sponsored by a UK employer. They have earned enough points, through qualifications, previous earnings, English language ability, and ability to maintain themselves, to be granted permission to live and work in the UK.

Most applicants apply for a subsection of Tier 1 visas, called a 'Tier 1 – General' visa. There is no restriction as to the type of employment these people can undertake, except that they cannot work as a 'doctor in training'. Individuals who are granted a 'Tier 1 – General' visa will initially be granted permission to stay for 3 years. They will be able to apply for a two year extension and eventually probationary citizenship, permanent residency or citizenship.

It is important to note that the way in which the points are allocated for 'Tier 1 – general' visas has recently changed. This means that an applicant must now have at least a Masters degree to qualify for a 'Tier 1 – General' visa.

People who previously came to the UK under the Highly Skilled Migrant Programme can now apply to extend their visas into a 'Tier 1 – General' visa. They are not, as of yet, affected by the recent change to the points allocation for a 'Tier 1- General' visa.

Tier 1 also includes people who previously had permission to live and work in the UK under the International Graduate Scheme. They can now apply for permission to work in the UK under a different subsection of Tier 1, "Tier 1 – Post Study". Eligible applicants must have a UK degree, post graduate diploma or a Higher National Diploma from a Scottish institution. They will only be given permission to stay in the UK for two years. Then they should either apply under 'Tier 1 – General' or find an employer to sponsor them.

How do we sponsor an employee under Tier 2?

In order to sponsor an employee under Tier 2, your organisation must obtain a 'sponsorship licence' from the UK Border Agency. With a sponsorship licence, you will have access to an online system, through which you can issue 'Certificates of Sponsorship' to overseas workers. The workers will

then use their 'Certificates of Sponsorship' to apply for their visas to the UK.

The UK Border Agency is careful about which organisations they allow to hold licences. Once an organisation has a licence it will effectively be issuing its own work permits.

When your organisation applies for its licence it must demonstrate that it has the necessary HR and management systems in place to meet a list of duties and responsibilities that the UK Border Agency will expect your organisation to adhere to. The UK Border Agency might send a representative to your premises to check that these systems are in place before it will grant your licence.

How do I obtain a sponsorship licence for my organisation?

Lewis Silkin's Immigration Team would be happy to provide you with a list of the HR and management systems your organisation needs to have in place.

The most important system is one to ensure that you do not and will not have any illegal workers. You should undertake an audit of your current employees to make sure that you have the correct evidence of each employee's permission to work in the UK. You also need to check every employee's right to work before they commence employment. For people with temporary visas, you need to re-check their permission to work at least once every 12 months.

If you are in any doubt whether an employee's visa stamp means that he or she is working legally, then we recommend that you seek further advice. The UK Border Agency's employer helpline number is 0845 010 6677. Alternatively, Lewis Silkin can assist you in identifying any visa stamps.

Once you have the systems in place, you can then start preparing your licence application.

The first step will be to gather the required documents in support of your application. If your organisation is a limited liability company, then these documents will include its latest Audited Annual Accounts/Report with the name of its accountants clearly shown.

If your organisation is obliged to be

registered with a governing or accrediting body then you will also need to provide evidence of your organisation's registration with that body/bodies.

Other required documents include evidence that your organisation has at least £5 million of Employer's Liability Insurance from an authorised insurer. You can check precisely what documents you need on the 'Sponsorship Under the Points Based System' pages of the UK Border Agency website www.ukba.homeoffice.gov.uk.

Finally, you should decide who, within your organisation, will have the responsibility of managing its use of the online sponsorship system. The three roles you need to fill are as follows:

- > Authorising Officer – He or she will be responsible for ensuring that your organisation uses its licence in accordance with its duties and responsibilities. Therefore, this is a role with significant responsibility. We recommend that you appoint a senior member of your organisation to be your Authorising Officer.
- > Key Contact – He or she will be the person the UK Border Agency contacts whilst considering your application. The Key Contact can be same person as the Authorising Officer.
- > Level 1 User – He or she will be the person who has access to the online system and is able to issue the 'Certificates of Sponsorship' to overseas workers. This is also a role of considerable responsibility and should only be filled by someone who is familiar with the duties and responsibilities involved in using the licence, and when it is permissible to issue a Certificate of Sponsorship. The Level 1 User can be the same person as the Key Contact and/or the Authorising Officer.

Once you have your documents together, your systems in place, and have decided who will fill the above roles, you can complete your online application form. This form can be

found at www.ukba.homeoffice.gov.uk/employers/points/applying/applyonline/.

You can save the form whilst you are completing it, to come back to later. This can be helpful as some of the questions require a little research. For example, you will need to know the dates of birth, and nationality/ies of your Authorising Officer, Key Contact and Level 1 User. You will also need to know exactly how many non-EU/EEA citizens your organisation is currently employing.

You will note, when completing the online application form, that it refers to the duties and responsibilities involved in holding a licence. Your Authorising Officer will have to sign up to these duties and responsibilities.

Once you have completed your online application form, you must send your supporting documents and your application fee to the UK Border Agency. The application fee is £300 if your organisation is a 'small employer' or £1000 if your organisation is a 'large employer'. Your organisation is likely to be considered a large employer if it has over 50 employees.

What happens once I have submitted the application?

The UK Border Agency will investigate whether your organisation is fit to be granted a licence. It might verify the supporting documents submitted. A representative may visit your premises to ensure you have the systems in place to adhere to the duties and responsibilities of holding a licence. The representative might ask to see how you check your employees' right to work before employment commences and how you have diarised to re-check those employees on temporary visas at least once every 12 months.

Once the UK Border Agency has made its decision, it will write to you to confirm its findings and whether it has granted your organisation a licence. It will also tell you how many Certificates of Sponsorship your organisation may issue over the first 12 months.

If the UK Border Agency approves your application, then your organisation will either be granted an 'A' licence or a 'B' licence. An 'A' licence is likely to be valid for 4 years. A 'B' licence may only be valid for less than 4 years, and

your organisation may be subject to additional checks and visits to ensure that your organisation is meeting its duties and responsibilities.

How will it work, once my organisation has its licence?

The first thing to remember is that if your organisation doesn't meet the duties and responsibilities of holding a licence, then it may lose its licence. This will mean that any employees you have ever sponsored will have to leave the UK within a matter of days. Therefore, the challenge is not just in obtaining your organisation's licence, but in keeping it.

It is very important that your organisation only issues Certificates of Sponsorship in the correct circumstances. You will only be permitted to issue Certificates of Sponsorship in the following circumstances:

- > The role is one that is deemed to be at National Vocational Qualification ('NVQ') Level 3 or above. The UK Border Agency has published 'Codes of Practice' indicating which roles are considered to be at NVQ Level 3 or above.
- > The overseas national will be paid the market rate for the role. The relevant market rates are included in the Home Office's 'Codes of Practice'.

In addition your organisation will only be permitted to issue Certificates of Sponsorship where it has either undertaken a 'Resident Labour Market Test', the overseas worker is being employed by way of an 'Intra-Company Transfer', or the overseas worker is coming to fill a 'Shortage Occupation'.

- > A 'Resident Labour Market Test' means that your organisation has advertised the role at Job Centre Plus and by using a method set out in the relevant 'Code of Practice'. If, despite this advertising, your organisation is still unable to find a suitable UK or EU/EEA worker to fill the role, then you may issue a Certificate of Sponsorship to an overseas worker.
- > An 'Intra-Company Transfer' means that the overseas worker has been employed by an

overseas entity that has a direct link to your organisation, through common ownership or control, for at least 6 months before you issue him or her with a Certificate of Sponsorship.

- > A 'Shortage Occupation' is one that is included on a list published by the UK Border Agency's Migration Advisory Committee. The list can be found at www.bia.homeoffice.gov.uk

There are additional requirements that you need to meet before issuing a 'Certificate of Sponsorship' to an overseas worker, such as being satisfied that he or she has the ability to carry out the role in question. These additional requirements are covered in the duties and responsibilities inherent in holding a licence.

Your organisation will have to pay a fee every time it issues a Certificate of Sponsorship. This is £170.

What happens once we have issued the Certificate of Sponsorship?

The employee and his or her family members will then apply for their visas or passport stamps.

The employee's visa application will be considered by way of a 'points assessment'. He or she must qualify for 70 points in order to be issued with his or her visa.

Fifty of those points must be awarded on the basis of his or her 'Attributes', as follows:

- > If the overseas worker has been issued a Certificate of Sponsorship to fill a 'Shortage Occupation' he or she will automatically earn the necessary 50 points.

- > If the overseas worker has been issued a Certificate of Sponsorship under an 'Intra-Company Transfer' arrangement or following a 'Resident Labour Market Test', then he or she will be awarded 30 points.
- > The overseas worker will be issued up to 15 points for a qualification, depending on the level of qualification.
- > The overseas worker will be issued 20 points for a proposed salary of £24,000 or more.

The overseas worker must then demonstrate that they qualify for 10 points for English language ability. An Intra-Company Transferee is excused from the English language requirement in that he or she will not need to demonstrate speaking English to a minimum level until he or she has been in the UK for almost 3 years.

Tier 2 applicants who need to prove the ability to speak English must do so by one of the following three ways:

- > Proving that they are a citizen of a country that the UK Border Agency has deemed to be majority English speaking;
- > Proving that they have completed a degree taught in English that has been verified by the UK's National Academic Recognition Information Centre ('NARIC'); or
- > Proving that they have passed a test in English that establishes their ability to speak English to A1 Council of Europe scale.

The overseas worker must demonstrate that he has sufficient funds to maintain himself and his family upon arrival into the UK. In

order to earn the last 10 of the 70 points, every applicant will need to demonstrate that he or she has at least £800 available to him or her before entering the UK. Alternatively, an A-rated employer can supply the overseas worker with a letter undertaking to maintain and accommodate the overseas worker.

If the overseas worker wishes to bring family to the UK, he or she will have to show that there is an additional £533 available, per family member.

If the overseas worker is granted a visa, it will be valid for up to three years. Towards the end of those three years, he or she and any dependants will need to apply for an extension. Your organisation will need to issue the overseas worker with a new Certificate of Sponsorship. Once the overseas worker has completed five continuous years in the UK, he or she may be eligible to apply for probationary citizenship, or permanent residency.

Any applicant who is found to have 'withheld material facts' or used 'deception' in a visa application will be refused a visa, and banned from entering the UK for ten years. We recommend that you make this very clear to any overseas workers to whom you issue a Certificate of Sponsorship.

In summary

If your organisation sponsors overseas workers, it is very important that you start taking practical steps towards applying for your licence.

The first step is to make sure that your organisation has the HR and management systems in place to ensure eligibility for a licence and the ability to keep that licence going forward. In