

Editorial:
Understanding the
UK marriage rules
Page 2

Special focus:
Sponsor licence
reporting
Page 4

Latest news:
'Right to Work'
measures
Page 9

Focus:
Immigration
Act 2014
Page 10

**SMITH
STONE
WALTERS**

UK Immigration Practice

INSIGHT

UK IMMIGRATION NEWS & VIEWS
FROM SMITH STONE WALTERS
AUTUMN 2014

UK marriage
visa law
a clearer view



SPONTANEOUS MARRIAGE PLANS DON'T ALWAYS END HAPPILY EVER AFTER

For many overseas nationals, the opportunity to take their marriage vows in the United Kingdom would be a dream come true. However, all too often, many prospective brides and grooms are turned away by UK immigration at the airport for neglecting to secure the correct visa clearance.

Paul, a British citizen, recently sought professional advice from Smith Stone Walters after his fiancée, Chloe, a national of Cambodia, had been refused entry as a visitor to the UK and placed on the next flight home. Their intended trip of a lifetime ended before it began merely because the couple spoke of the possibility of arranging a wedding during their visit to London to the Immigration Officer at Heathrow's UK Border Control.

Paul had moved to Cambodia three years previously, before meeting Chloe. The couple had been together for two years and had undertaken a local ceremony in Cambodia to affirm their relationship. Whilst the pair had no intention of moving permanently to the UK, Paul was keen to introduce Chloe to friends and family he had left behind in London. So a six-week visit to London was planned, booked and paid for.

Since Cambodian nationals require a visa to enter the United Kingdom, Chloe duly obtained a UK visa to enter the United Kingdom as a visitor. By awarding this temporary visa clearance, the UK visa issuing authorities were satisfied that Chloe would not seek to remain in the United Kingdom beyond her proposed visit.

As the trip to London drew closer, the couple considered conducting a small civil wedding ceremony whilst in London for friends and family to attend and to celebrate their union. Whilst it was never the couple's intention to reside permanently in the United Kingdom and no firm wedding plans had been set, the mere mention of the possibility of taking their wedding vows to the Heathrow immigration officer had opened the proverbial can of worms and given grounds for the officer to refuse entry to Chloe.



RETURNED HOME

Unbeknownst to Chloe or Paul, visitors to the United Kingdom should not seek to marry in the United Kingdom. Because they had innocently revealed the possibility of organising a wedding during their stay, the immigration officer consequently acted within the letter of the law and denied Chloe entry before booking her on the next flight home.

On their return to Cambodia, Paul contacted a Smith Stone Walters office for advice. We informed him that a specific visa category existed for those foreign nationals seeking to marry in the United Kingdom during a visit. Since Chloe had not been in possession of this 'marriage visit' visa upon arrival in the UK and had conveyed the possibility of marrying during her stay in London, the immigration officer had been within his rights to refuse her entry.

Whilst Paul and Chloe plan to return to the United Kingdom in the near future, they will only do so having secured the correct visa for entry. Chloe now fully understands the UK immigration rules pertaining to marriage and does not intend to be caught out again. Unfortunately, the same cannot be said for the next unsuspecting bride-to-be who arrives in the UK without the correct visa and excitedly shares the big news of her wedding day with the vigilant immigration officer.

AUTUMN INSIGHT

Our Autumn edition of Insight is packed with news of some major UK immigration changes. These include the new rules being introduced by the Immigration Act 2014 as well as some fundamental changes to the 'Right to Work' procedures, of which every responsible employer should take notice. We hope you enjoy the read.

SPONSOR LICENCE REPORTING – DON'T OVERLOOK THESE SEVEN DUTIES

Whilst most registered sponsors understand they are duty-bound to inform the Home Office of any changes in their migrants' employment conditions, many businesses still leave themselves open to prosecution for failing to inform the authorities of significant changes in their own company's circumstances.

The current Tier 2 and 5 Points Based System Guidance for Sponsors sets out in detail the specific information or events all licence holders must report to the Home Office via the Sponsor Management System (SMS). The guide also makes clear that failure to report relevant changes can lead to the authorities taking action against the business and the sponsor licence being revoked, suspended, or downgraded.

Whilst many companies may not prefer to divulge information regarding internal changes within the organisation, they may well need to do so if they hold a sponsorship licence. By way of reminder, we therefore thought it useful to set out the key 'company events' of which all sponsor licence holders must notify the Home Office:

DID YOU KNOW?

Employers in London and the South East were fined a total of £526,500 for offences related to illegal working during the last quarter of 2013.

01 A CHANGE IN YOUR BUSINESS ADDRESS



When making an unannounced visit on a business address, UK Visas & Immigration Visiting Officers do not take too kindly to finding the company has moved premises without informing them.

02 A CHANGE IN YOUR COMPANY NAME



Regardless of the reason for changing your company name, it is essential that the authorities are made aware of any alteration.

03 A CHANGE TO YOUR EXISTING KEY CONTACT OR AUTHORISING OFFICER



If your company fails to have an authorising officer in place who meets the Home Office requirements, or fails to tell them of a change in authorising officer, the authorities will seek to take action against the organisation.

04 CHANGES TO YOUR COMPANY'S STRUCTURE, SUCH AS MORE BRANCHES OR SITES, OR NEW LINKED ENTITIES IN THE UK OR OVERSEAS



This is particularly relevant if you are licensed under Tier 2 (ICT).

05 ANY CONVICTIONS RECEIVED BY THOSE REGISTERED KEY PERSONNEL LISTED WITH THE HOME OFFICE



Such as key contact, authorising officer or level 1 user.

06 A CHANGE IN THE STATUS OF ANY REGISTRATION BY A GOVERNING BODY THAT YOU NEED TO HOLD



For example, where a finance house has its registration with the FSA withdrawn.

07 A CHANGE IN YOUR ORGANISATION'S OWNERSHIP, SUCH AS A TAKEOVER OR A MERGER



Changes of this nature can result in the need for your business to re-apply for a new license.

MERGERS & ACQUISITIONS

A recent report from the Office for National Statistics indicated that there were 72 domestic and cross-border acquisitions involving UK companies in the first quarter of 2014. Many of the organisations involved in these transactions would have held a sponsorship licence and would therefore have a duty to report on the change in ownership. Given that a sponsorship licence is not transferrable, in the event of your company effecting a merger, takeover, de-merger or change of ownership, there is a distinct possibility that your existing licence will no longer be valid. This decision depends on a number of factors, including whether:

- A) you sell all or part of, or the controlling number of shares in your business or organisation;
- B) you are being taken over completely or in part by another organisation;
- C) you are splitting out to form new organisations.

'WE WILL TAKE ACTION AGAINST YOU'

It is therefore imperative that those staff with responsibility over the upkeep of their organisation's sponsorship licence do ensure they fulfil their associated reporting duties. The phrase 'We will take action against you' appears 24 separate times in the current Tier 2 & 5 guidance. This gives some indication as to how determined the Home Office is to punish licence holders for failing to advise them of key changes in their circumstances. If the Home Office believes a licence holder has not complied with its duties, been dishonest or posed a threat to immigration control, they will take action against the company. You have been warned!

For a free copy of our compliance guide entitled *Tier 2 Sponsorship Duties – Your Guide to Doing It Right*, please call a Smith Stone Walters office today.

SSW RUNNERS & GOLFERS RAISE EXTRA FUNDS FOR THE RAINBOW TRUST

WHOPPING RAINBOW RUN

Twelve Smith Stone Walters staff members started (and finished!) the Whopping Rainbow Run on the 3rd July 2014 in aid of the children's charity.

On a beautiful summer's evening and with many friendly faces cheering them on, the runners embarked on an interesting route through Wapping and the local area.

Perhaps spurred on by the thought of being beaten to the line by one of the charity's mascots (George, Bungle, and Zippy from Rainbow!) each of our runners was focused from the start and managed to complete the course in a very respectable time. There was even talk of some PBs being broken on the night.

Congratulations Team SSW and well done for raising additional funds for The Rainbow Trust!

"The event was a huge success and enjoyed by all those participating"



ANNUAL GOLF DAY

Smith Stone Walters was delighted to support the Rainbow Trust at its annual golf day held at Hever Castle Golf club on 15th August 2014.

Captained admirably by James Walters, David Hugkulstone, Gary Baker and Alastair Mason, each of our company's four teams comprised both SSW staff and invited guests. With the weather set fair, over 30 teams tee'd off with one eye on the prize of being crowned champions. The event was a huge success and enjoyed by all those participating, especially James Walters and his team who did brilliantly to secure 2nd place overall. Well done! Most importantly, the event enabled thousands of pounds of much needed funds to be raised for the charity.

Smith Stone Walters' fund raising efforts are directed from within, by our staff. Guided by company consensus, we collectively choose charities to support and engage in a wide range of fundraising activities throughout the year, and the company operates a gift-matching scheme to maximise fundraising. We are proud to support The Rainbow Trust – a children's charity which provides emotional and practical support to families who have a child with a life threatening or terminal illness.



WHAT OUR CLIENTS SAY ABOUT US

Here are just some of the words chosen by clients to describe the service they received from Smith Stone Walters in the last month:



STRESS FREE
PROFESSIONAL
RESPONSIVE
IMPRESSIVE
PAINLESS
PRECISE
EXCELLENT
TERRIFIC
SUCCESSFUL



Madhuri Patil (SSW India) was very efficient, very prompt and informative during the entire process. It was a pleasure to work with her on my UK Tier 2 ICT case.
S.T., investment bank.

Kaming (SSW UK) did a fantastic job in being extremely thorough and very diligent. He made a stressful situation into a smooth successful process. Great work.
R.M., technology corporation.

Many thanks. I got my visa very quickly, in less than 2 weeks!
E.S., investment bank

Adele (SSW Hong Kong) was extremely helpful throughout the whole process and she was pleasant to deal with. She answered my queries quickly and was very knowledgeable and experienced in the process. I wish her all the best.
I.W., international law firm.

The service I have received from SSW has been second-to-none. Carole (SSWUK) dealt with my case with urgency and sensitivity through some stresses. Overall, she made the experience painless and kept me informed and at ease. Absolutely brilliant service.
R.B., investment bank.

It was a good experience overall. My circumstances required some urgency and I found the contacts, both Jack (SSW USA) and Naho (SSW UK) to be very responsive and most importantly sympathetic to my situation. Well done.
R.R., chartered accountants.



CLAMPDOWN ON THE ENTREPRENEUR ROUTE

New restrictions on the entrepreneur visa route have been introduced by the Home Office in response to apparent scams from individuals and organised criminal groups.

The Tier 1 (Entrepreneur) route allows migrants with access to at least £50,000 investment funds to set up businesses in the UK. The popularity of this scheme, especially among recent graduates, has risen rapidly since the closure of the post-study work visa route.

Despite caseworkers' conducting a 'genuineness' test ahead of issuing the visa under this category, the UKV&I still believe that this visa route is open to abuse by migrants with little or no intention of establishing a business here.

Therefore, in a recent Statement of Changes in Immigration Rules (HC532) laid before Parliament, new restrictions were placed on the ability of those already present in the UK as a Tier 4 (Student) migrant to make an in-country application for an extension of stay as a Tier 1 (Entrepreneur).

In future, applicants who are in the UK in a study category are now able to apply to switch into Tier 1 (Entrepreneur) only if they have access to £50,000 funding to invest in business from a government-approved source. The provision for venture capitalist funding has also been removed.

These restrictions are set to result in a reduction in the number of applications received by the UKV&I and, perhaps, fewer refusals. Currently, around two-thirds of applications under this category are refused in the UK because the authorities are not satisfied that the applicant is a genuine entrepreneur.



INCOME THRESHOLDS – COURT RULES IN FAVOUR OF HOME OFFICE



The Court of Appeal has upheld the lawfulness of the income threshold introduced by the Home Office in July 2012 under the family migration rules.

Described as “unjustified” by the High Court last year, the government’s family migration policy sets a minimum income threshold of £18,600 on those seeking to sponsor a spouse or partner to enter the United Kingdom. This figure rises to £22,400 for families with a child and a further £2,400 for each extra child. Since the introduction of this policy,

campaigners have argued vehemently that the minimum income rules impose a shocking infringement on the right to family life.

Given that this latest judgement has gone in its favour, the Home Office is now expected to press ahead on the hundreds of cases currently on hold. These pending cases relate to applications in which all requirements apart from the minimum income threshold were met. They all now stand to be considered and refused.

“The government’s family migration policy sets a minimum income threshold of £18,600 on those seeking to sponsor a spouse or partner to enter the United Kingdom.”



EMPLOYERS: ARE YOU AWARE OF THE NEW ‘RIGHT TO WORK’ MEASURES?



Although the recent Immigration Act 2014 included only very minor provisions relating to the prevention of illegal working, two new Orders (in force since 16 May 2014) have been issued under the Immigration, Asylum and Nationality Act 2006 that set out the following key ‘Right to Work’ changes:

- UK employers are no longer required to conduct annual checks following the initial right to work check for employees with temporary permission to be in the UK as a pre-condition to retaining a statutory excuse against payment of a civil penalty—follow-up checks are instead required when the employee’s permission to be in the UK expires;
- Passports other than those held by a British citizen or a national of an EEA country must be current in order to provide the employer with a statutory excuse against a civil penalty for illegal working. *Therefore, if prospective non-EEA national employees maintain a valid endorsement confirming their right of UK residence and right to work in an expired passport, the employer should insist on them obtaining a Biometric Residence Permit (transfer of conditions) prior to the employment starting.*

- Employers are now required to keep a record of the date on which a right to work check is made (this was previously only a recommendation);
- Before a UK employer is able to employ students (with restricted rights to work in the UK), the employer must obtain and retain a copy of evidence from those students’ education sponsors setting out their term and vacation times, which covers the part of their period of study in the UK for which they will be employed;
- The grace period afforded to employers to conduct right to work checks for employees acquired as a result of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) has been extended from 28 to 60 days.

All employers holding a sponsorship licence must ensure they follow these new ‘Right to Work’ provisions and retain an awareness of the duties they must undertake when employing migrant staff. For advice or guidance in this subject matter, please contact your Smith Stone Walters advisor today.



The month's focus is on the Immigration Act 2014, which introduces substantial changes to UK immigration law and marks a significant step in the coalition government's ongoing programme to reform the immigration system.

Having gained royal assent, the Immigration Act 2014 will seek to try and address the government's perceived failings in the current system. New measures include the introduction of new procedures to counter 'sham marriages' and a simplification of the appeals process. Here we look to highlight some of the key changes introduced by the Act that you and your migrant staff need to be aware of:

A substantial reduction in the number of appealable immigration decisions.

Provisions are in place to dramatically reduce the opportunity to appeal against an immigration refusal unless it is made under fundamental rights protected by the UK's international obligations, such as the Human Rights Act. A new administrative review system (based on the system currently in place for 'out of country' entry clearance refusals applications) will be established to enable applicants to challenge clear case-working errors.

Powers to be widened to capture biometric information from a greater number of people.

With a view towards reintroducing embarkation checks, new provisions introduced by the Act will enable the Secretary of State to delegate future exit checks to chosen third parties (i.e. carriers and port operators). A further change will also see future applicants applying for either British citizenship or to remain in the UK as a non-EEA national family member being required to provide biometric information as part of the application process.

Landlords to conduct residential tenancy test to ensure occupants are lawfully resident.

With a pilot scheme set to be launched in October 2014, the government will next year seek to raise formal codes of practice for landlords to follow when verifying whether their tenant is in the UK lawfully. Once this particular provision of the Act comes into effect, landlords can expect to face stiff civil penalties of up to £3,000 per adult if they are subsequently found to be in breach.

New powers introduced to regulate a migrant's access to NHS services.

An immigration health charge is planned for introduction during 2015. Most non-EEA temporary migrants will have to pay this charge when they apply for leave to enter or

remain in the UK. Those who pay the charge are expected to be able to access free NHS care to the same extent as permanent residents during the period of their leave. Details of the amount of the surcharge and how it will be applied will be set out in secondary legislation. However, with a few limited exemptions, the charge is expected to be £150 per year for students and £200 per year for others and will be paid upfront for the duration of the visa. By way of example, a Tier 2 worker seeking permission to undertake a 5-year assignment in the UK could expect to pay £1000 in order to gain access to NHS services for the duration of his or her stay in the UK.

Restriction on a migrant's ability to open a bank account.

Provisions have been introduced to prevent individuals who do not have permission to live in the UK from opening bank accounts. In due course, banks and building societies will be required to check the immigration status check of all individuals seeking to open a current account. The status check will be conducted via an anti-fraud organisation or data-matching authority that has been specified by the Secretary of State for this purpose.

Restriction to be applied to the availability of UK driving licences.

Individuals who do not have a driving licence from an EEA or other designated country will be required to demonstrate that they have at least six months leave to enter or remain in the UK when applying for a UK driving licence. This measure is intended to make it more difficult for individuals who do not have permission to live in the UK to access other services and benefits by virtue of holding this form of identification.

Procedural changes introduced for marriage and civil partnership in the UK.

Regardless of the nationality or immigration status of the parties to the marriage, from April 2015 the standard notice period for marriages and civil partnerships will increase from 15 days to 28 days.

Notices of marriage or civil partnership involving a non-EEA national will also be referred to the Home Office in cases where that person could gain an immigration advantage

from the marriage or civil partnership. This, for example, will apply where the non-EEA national does not have settled status or hold a marriage or civil partnership visa. Following the automatic referral to the Home Office, the Secretary of State will decide whether to investigate the proposed marriage or civil partnership ahead of the marriage taking place. Following this investigation, if it is deemed that the couple are seeking to enter into a 'sham' marriage, they will not be able to derive an immigration advantage from the relationship. The Home Office will also look into taking enforcement action and, where appropriate, prosecute those parties involved.

New powers of deprivation of citizenship in the UK.

The Act permits the UK government to remove citizenship from British nationals in some cases where the result will be statelessness. The powers it contains are now part of UK law but will not be implemented until ordered by the Secretary of State. Whilst a deprivation order may not be made unless there are reasonable grounds for believing that the person is able to acquire another nationality, it remains to be seen if such a provision meets with domestic and international standards.

Where can I gain further advice on the new provisions set out in the Immigration Act 2014?

The staff at Smith Stone Walters are specialists in advising UK businesses and individual migrants in all aspects of UK immigration law. Should you have any further queries regarding this subject, do not hesitate to contact Smith Stone Walters today.

Moving people to the UK is our business. It is what we do best.
www.smithstonewalters.com



CONTACT US

USA

Smith Stone Walters
111 John Street, Suite 800
New York
NY 10038

Tel
+1 646 378 4406

Fax
+1 646 378 4409

Email
usa@smithstonewalters.com

LONDON

Smith Stone Walters Ltd
1-7 King Street
London
EC2V 8AU

Smith Stone Walters Ltd
Title House
33-39 Elmfield Road
Bromley
BR1 1LT

Tel
+44 (0) 208 461 6660

Fax
+44 (0) 208 461 6661

Email
info@smithstonewalters.com

UK

MUMBAI

Smith Stone Walters (INDIA)
The Capital, 701,
Plot No. C-70, G Block,
Bandra Kurla Complex, Bandra (E),
Mumbai 400051, India

Tel
(+91) 22 6712 8433

Fax
(+91) 22 6712 8999

Email
info.india@smithstonewalters.com

IND

HONG KONG

Smith Stone Walters HK
Level 21, The Center
99 Queen's Road Central
Hong Kong

Tel
(+852) 3478 3757

Fax
(+852) 3478 3880

Email
info.hk@smithstonewalters.com

www.smithstonewalters.com

This publication is not meant to be used as a substitute for proper professional advice based on the facts of a particular transaction as it is not intended to be a complete coverage of the subject. Smith Stone Walters Limited accepts no liability for any action taken based on the contents of this publication

Design by Parallel | www.studioparallel.co.uk

**SMITH
STONE
WALTERS**

UK Immigration Practice