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**SMITH
STONE
WALTERS**

UK Immigration Practice

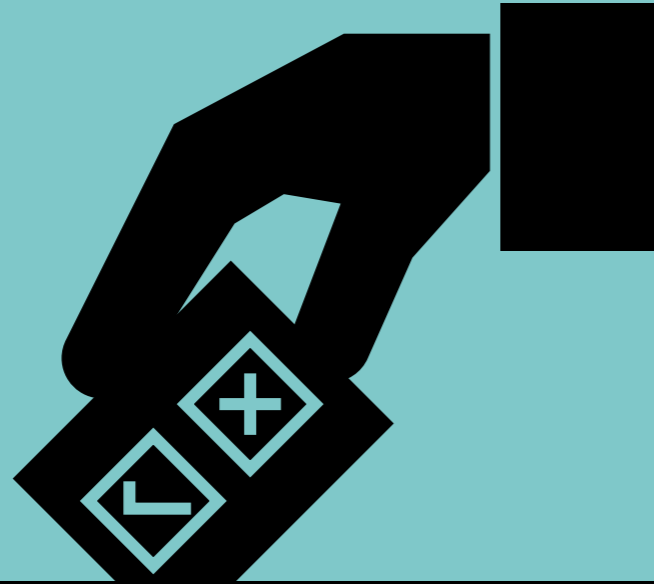
INSIGHT

UK IMMIGRATION NEWS & VIEWS
FROM SMITH STONE WALTERS
WINTER 2014

Can the
government
convince the public
that it can control
our borders?



THE IMMIGRATION ACT 2014



Between now and the next general election in June 2015, the current government will be busy pushing through additional measures laid down in The Immigration Act 2014, which it hopes will win over voters by substantiating its ability to reduce net migration and tackle abuse of the current immigration system.

Starting this month, private landlords across Birmingham and the West Midlands will face fines of up to £3,000 if they fail to check on the immigration status of their new tenants. The Home Office is expected to continue with the phased introduction of these checks across the UK next year.

Another key strategic move will introduce a new immigration health surcharge. The signs are that all migrants (with the exception of Tier 2 Intra-company Transfer applicants) applying for a visa of more than six months' duration will be required to pay the surcharge with their visa application fee from April 2015.

This surcharge is expected to be £200 per year for all affected migrants, except students who will be subject to a lesser annual charge of £150. The proposal is for the surcharge to be fully payable upfront at the visa application stage to cover the duration of the visa. This will be a hefty sum for many migrants. For example, a Tier 2 General migrant applying for the maximum five-year visa will need to pay £1,000 for the surcharge.

Whilst the Conservative Party may claim that the introduction of 'immigration health surcharge' and 'right to rent' schemes is a clear sign of its ability to manage migration, it will probably be less inclined to mention the fact that the perennial problem of reintroducing border control 'exit' checks remains unresolved under its watch.

THE QUESTION IS AS FOLLOWS:

Can the government convince the general public that it can control our borders when overseas nationals are still not being counted in and counted out of the UK?

Paper-based 'exit' controls for passengers departing from the UK were phased out in two stages during the nineties. Initially, checks on persons travelling from seaports and small airports to the European Union were abolished in 1994, with all remaining checks abolished in 1998. The Minister of Immigration at the time considered the arrangements to be "an inefficient use of resources" which would be replaced by a "targeted, intelligence-led approach".

As it seems with many large scale government

projects, the e-Borders programme, heralded for being the technological solution to controlling the UK's borders, has since been beset with delays and difficulties including a costly dispute with the private sector contractor.

TWENTY YEARS ON, WHERE ARE WE NOW?

Despite over 100 million passengers travelling out of the UK each year through airports, seaports and international rail terminals, the current government is still committed to reintroducing exit checks by the end of this Parliament. However, given only around 65% of all passenger movements into and out of the UK are currently covered by the e-Borders programme, the reintroduction of exit checks will involve the need for many to be undertaken manually.

Indications are that the task of collecting this data and conducting basic checks on departing travellers is set to be imposed on 'designated' port and transport providers who, like the aforementioned private landlords, will be asked to conduct checks previously carried out by immigration officers. Whilst we await

further details as to how this system would operate, it seems there is no end to the government's desire to make anyone and everyone a quasi-immigration officer.

SETTLING FOR SECOND BEST

Given the obvious constraints of the e-Borders programme, perhaps we should be grateful that any form of exit control is introduced before June 2015, even if it is manual and likely to be carried out by non-immigration staff. It will, at the very least, be the first stage of knowing who has left the country and allow for greater accuracy in compiling migration and population statistics as well as in planning the provision of public services.

From a political point of view, it is likely to be a vote winner too.

SMITH STONE WALTERS

In this edition of Insight, you will find news and updates on key UK immigration issues as well as a special focus on Europe and the rules relating to EEA nationals and their right of entry and residence in the UK.

UK IMMIGRATION STATISTICS 2014

*Here we examine
key motives for
travelling to the UK.*

*All the data referred
to here relates to
the calendar year
ending June 2014.*

Journeys



110

MILLION

There were just over 110 million journeys to the UK. Whilst the vast majority of passengers were either British or EEA nationals, 14.3 million journeys were made by non-EEA nationals.

Work



10%

PERCENT

In the year ending June 2014, there were 10% more work-related visas granted (up 14,799 to 159,302).

This increase was largely accounted for by higher numbers of skilled workers (Tier 2, +11,744), and Youth mobility and temporary workers (Tier 5, +3,992).

Study



7%

PERCENT

The number of study-related visas (excluding student visitors) granted has risen 7% (to 218,295).

The 13,885 increase includes higher numbers of Chinese (+3,979), Brazilian (+2,649) and Malaysian (+1,852) nationals entering the UK.

Visitors



8.7

MILLION

The vast majority of non-EEA nationals arrived at the UK border as visitors i.e., as tourists. Latest figures show 8.7 million passengers arrived in this capacity during 2013.

There were 1.91 million visitor visas granted. This 5% increase in visa issuance was largely due to higher numbers of Chinese nationals visiting the UK.

Family



6%

PERCENT

There were 6% more family visas granted in the year ending June 2014. Family-related visa grants to stay permanently fell by 32% to 41,022 continuing the overall downward trend noted since 2010 (75,852).

RIGHT TO RENT CHECKS

With effect from 1 December 2014, landlords, including those who take in lodgers or sub-let property, will need to check the right of prospective tenants to be in the UK before letting a property to them, or face a fine of up to £3,000.

As part of ongoing efforts to reform and streamline immigration processes, the Minister for Security and Immigration, James Brokenshire, has announced the pilot scheme which restricts illegal immigrants' access to rented housing.

The scheme requires that Landlords perform a 'right to rent check' upon prospective tenants, lodgers and sub-letters before letting a property to them, so as to ensure that they have the right to live in the UK. If landlords are found to be letting a property to someone who does not have the right to rent, they run the risk of being fined up to £3,000.



In most cases, it will be possible to carry out the checks without contacting the Home Office and landlords will merely need to ask for evidence of a person's identity and citizenship, for example, a passport or biometric residence permit.

The scheme will have a phased implementation, being put into practise first in Birmingham, Wolverhampton, Dudley, Walsall and Sandwell. The checks will apply to all adults aged 18 or over living at the property and to any new tenancy agreements starting on or after 1 December 2014.

"The checks will apply to all adults aged 18 or over living at the property..."

MIGRANT HEALTH SURCHARGE EXPECTED APRIL 2015

A migrant health surcharge provisioned in the Immigration Act of May 2014 will take the shape of a payment made as part of the UK visa application process and is expected to be implemented in April 2015. The annual health surcharge will be applicable to all non-EEA citizens who are applying for a Tier 1, Tier 2 (excluding Intra-Company Transfers), Tier 4 or Tier 5 visa of more than six months' duration. The amount will be payable in full with the visa application fee.

The surcharge, which will affect all new out-of-country and in-country applications, is expected to be £200 per year.

The total amount payable will depend on the length of the requested visa: for example, a Tier 2 (General) migrant making a five-year visa application would need to pay the annual amount five times, equalling £1,000 in total. This would also apply to any dependent applications, but students will be subject to a lesser charge of £150 for each year they expect to stay in the UK.

Tier 2 (Intra-Company Transfer) migrants will be exempt from the surcharge and will continue to access NHS care free of charge. As a part of this new incentive, all EU migrants and visitors will be required to show a European Health Insurance Card in order to avoid being charged. GP services and nurse consultations at the primary care level will remain free of charge for all.

TIER 1 INVESTOR THRESHOLD DOUBLES

Following the recommendations of the Migration Advisory Committee earlier this year, the Home Office has reformed the Tier 1 (Investor) route of entry by raising the minimum investment threshold to £2 million. This is double the previous figure of £1 million and the provision that allowed these funds to be provided via loans will no longer be an option for applicants. This change applies to applications made on or after 6 November 2014.

This alteration comes as part of an effort to strengthen the UK Immigration Rules against abuse while enhancing the image that Britain 'is open for business'.

WHAT THE NEW GENUINE VACANCY ASSESSMENTS REALLY MEAN...

This year has seen many changes to the UK's visa application process and these changes will affect Tier 2, Business Visitor and Tier 1 (Investor) applicants, to name but a few. Most recently, new policy guidance has been issued which affects the way Tier 2 applications must be approached, including the provision that applications may be refused should they fail to satisfy new genuineness tests.

These tests evaluate whether the position the overseas national is moving to the UK to fill is in fact genuine in its existence, relevant to the applicant and has not been tailored to the applicant in a way which would exclude resident workers. That the applicant genuinely intends to take the job once in the UK is also assessed.

These new guidelines for assessment of genuine vacancy mean that much more information and evidence may be asked of UK visa applicants during the process; however, genuine applicants have nothing to fear. Relying on a professional immigration consultant here at Smith Stone Walters ensures a stress-free process with all the complexity managed for you.

CHANGES TO THE IMMIGRATION RULES



With a Statement of Changes in Immigration Rules presented to Parliament on 16 October 2014, the UK immigration rules have changed. Here we take a glimpse at some of the changes which could soon be affecting you.

- Sponsors are now only allowed to employ Tier 2 Intra Company Transfer (ICT) and General migrants for a genuine vacancy. This may involve sponsors facing 2014 requests for additional information to help in assessing the vacancy's genuineness.
- Tier 1 applicants must invest £2million in the UK, double the previous entry requirement of £1million. Provisions concerning the sourcing of these funds have also changed.
- English language tests must now be taken at an approved SELT centre and authorities have been granted new powers to deal with test fraud.
- Tier 4 student visa holders no longer have a right to appeal against deportation should they be refused further leave to remain in the UK. An administrative review will be offered instead.

"Tier 1 applicants must invest £2million in the UK"



HAPPY 6TH ANNIVERSARY SSW NYC!

Many happy returns to our New York office, which turned 6 years old on 16 of November this year!

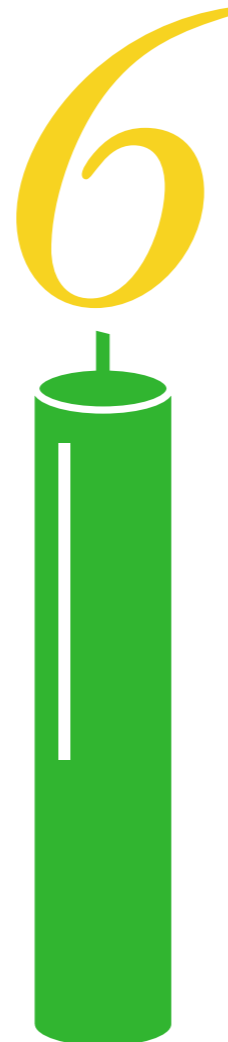
Moving people to the UK is our business and that is exactly what our fantastic team in New York has been doing since 2008. Our staff excel in providing friendly, comprehensive and up to date UK immigration support from their Manhattan location. To date, they have supported over 5,000 individuals to successfully acquire their UK visas and transfer to the United Kingdom without complication.

Well done team! Happy birthday!



Left: Downtown NYC, near our John Street SSW office.

“...they have supported over 5,000 individuals to successfully acquire their UK visas and transfer to the United Kingdom...”



SMITH STONE WALTERS' CHARITY BAKE-OFF

We passionately believe in giving back. That is why Smith Stone Walters is proud to be supporting Rainbow Trust Children's Charity.

The charity provides practical and emotional support for the families of children with life-threatening illnesses and The Big Hour Cake Sale is one of their largest annual fundraising and awareness events.

Last month, SSW staff got out their aprons and rolled up their sleeves to produce a dazzling array of sweet and savoury creations for our own in-house bake-off.

With no shortage of eager customers, the scrumptious choice of dainties was soon demolished, resulting in valuable funds being raised for the Rainbow Trust.

Congratulations team!



WHAT OUR CLIENTS SAY ABOUT US

Naho (SSWUK) was pleasant and efficient to work with. She was superbly organised and made the process completely stress-free. I can't thank her enough :-)
S.S., international brand design agency

Antonia (SSWUK) was extremely helpful, knowledgeable and professional with my application. Would definitely recommend SSW as you provided a 5 service. Thanks a lot.*
U.U., investment bank

Very satisfied with the service provided. Was an unusually quick and easy application process thanks to SSW.
L.M., IT platform provider

Kiran was efficient, professional, fast and clear throughout the process. It was a pleasure to work with her, and I would definitely recommend Smith Stone Walters.
A.S., mobile advertising

I worked with Ms Ming Peng (SSWHK) twice. I was very impressed with her professionalism and high level of service. Thank you!
L.C., investment management solutions provider

Both Phill and Susan were nothing short of excellent. Highly diligent, responsive and overall great to work with.
R.S., global bank

It was one of the best services I had till now!
E.S., IT solution provider

This was a good and comfortable experience for me, with help being provided at every stage of the procedure in a very prompt manner. Great service and I am glad that my firm has opted Smith Stone Walters to provide such services. Thank you very much. Cheers!!!
R.S., investment bank

Nice work, Impressive.
A.O., investment bank

Paula Bird (SSWUK) was fantastic! Many thanks for her attention to detail, accuracy and timeliness. It's been a pleasure to deal with Paula and with SSW. I will definitely recommend the services to friends and will use them again when applying for citizenship.
S.R., investment bank



This month's focus is on the key issues affecting non-EEA national dependants seeking to accompany or join a Points-Based System (relevant PBS*) migrant in the United Kingdom and includes a case study from the perspective of an SSW immigration advisor.

Which 'partners' qualify as relevant PBS dependants?

Spouses, civil partners and unmarried partners may be eligible to obtain entry clearance in order to accompany or join their main applicant family member in the UK. Unmarried partners are required to have cohabited with the main applicant for two years prior to the application and they must be able to evidence this. The age restriction stipulates that both parties must be aged 18 or over, either at the date the partner arrives in the UK, or at the date the partner is granted further leave to remain or a variation of leave to remain as the partner of a relevant PBS migrant.

What type of cohabitation evidence is required from unmarried partners?

When applying as unmarried and same-sex partners, the applicant will be required to provide original evidence covering the full two-year period of cohabitation. This can include utility bills, bank or credit card statements, mortgage or tenancy documents and letters/documentation from government authorities or doctors. It is important that the information provided covers the full period of cohabitation, not just the last few months.

Up to what age can a child apply as a relevant PBS dependant?

A child of a relevant PBS migrant must be under 18 at the time of the initial application, although they will be able to extend their stay and, if relevant, apply for indefinite leave to remain (ILR) having turned 18 in due course (provided they are still dependent). A child who subsequently reaches the age of 18 in the UK may find it difficult to extend their stay in this category if they were to marry/form a civil partnership and/or start 'living an independent life'.

Are there any concessions for children aged over 18?

Unfortunately not. There was previously a concession which allowed certain over-age children of work permit holders in the Intra-Company Transfer (ICT) category to accompany or join the main applicant, but this was not carried forward to Tier 2 (ICT).

Do both parents need to reside with the child in the UK?

The rules state that both parents must either be already lawfully present in the UK or must be granted entry clearance or leave to remain at the same time as the child. If one of the child's parents does not meet this requirement (and is still alive), or will not be residing in the UK with the child in an appropriate category, the relevant PBS migrant will have to show that he/she has sole responsibility for the child, or that there are sufficient reasons which make exclusion of the child undesirable. Applications for children to join or accompany a parent to the UK are regularly denied on the grounds that both parents do not intend to relocate to the UK at the same time (see case study aside).

How long will the dependant be allowed to reside in the UK?

A partner (or child) of a relevant PBS migrant will be granted entry clearance or leave to remain for the same period as the main applicant, unless they are applying for leave to remain in the category at the same time or after the main applicant is being/has been granted ILR. In that case they will be granted leave to remain for three years.

What are the conditions of a dependant's stay?

Leave in the category is subject to the following conditions:

- no recourse to public funds
- registration with the police for relevant nationals who are granted more than 6 months' leave
- no employment as a doctor or dentist in training unless certain circumstances apply
- no employment as a professional sports person (including as a sports coach)

* Relevant PBS migrants are defined as Tier 1, Tier 2, Tier 4 (General) and Tier 5 (Temporary Worker) migrants. However, the partner of a Tier 4 (General) migrant will only be able to join or accompany the relevant PBS migrant in more restricted circumstances than those which apply to partners of relevant PBS migrants in other tiers.



DEPENDANT CASE STUDY

AN ADVISOR'S PERSPECTIVE



"...the couple's son was able to start school in the UK on the first day of term."

Gaining permission for your dependants to join you in the UK can be trickier than you think, as one family found out prior to engaging Smith Stone Walters as their representative...writes Ming Peng – Immigration Consultant based in Smith Stone Walters' Hong Kong office.

Mrs Cerme*, who works for a Chinese bank, initially transferred to the UK alone, leaving her husband and son behind in Hong Kong. Several months later, after her son secured a place at a leading UK college, the family applied to join her in the UK. Following three UK visa application refusals, the family turned to Smith Stone Walters for assistance.

The family initially applied for a Tier 4 (student) visa in the son's name. Unfortunately, this initial application was refused as the family failed to provide the UK visa authorities with all of the mandatory supporting documents necessary for assessment.

Having paid the non-refundable UK college tuition fees in full, the family decided to re-apply immediately in order to ensure their son could start school in the UK on time. A joint application for both Mrs Cerme's husband and son to enter as her (Tier 2) dependants was filed with the UK authorities. Unfortunately, during the processing of this application, the authorities noted that Mr Cerme still maintained ongoing employment commitments in Hong

Kong. Given that this cast doubt over whether both parents would be residing in the UK (with their dependant son) the joint application was refused.

Having belatedly recognised that they would need to provide evidence that the 'whole' family would be residing in the UK, Mr Cerme re-filed the applications for Tier 2 dependants declaring he would take a career break in order to move to the UK. Unfortunately, success evaded the family once again as Mr Cerme and his company's HR department were tripped up during telephone interviews with the UK visa authorities when it transpired that no concrete date had been agreed upon for Mr Cerme to leave the Hong Kong based company and relocate to the UK.

Since the family home was in Hong Kong, Mr Cerme was ideally placed to seek UK immigration assistance from the Smith Stone Walters team which has been situated in Hong Kong Central since 2011. After the case history had been thoroughly assessed by our team of experts, a fresh application was filed on a priority basis with the Visa Section.

Given the family had already received a number of visa refusals in their name, it was important to ensure we were able to satisfy the authorities of the family's genuine intention to live together in the UK. Having compiled a strong petition for consideration by the UK visa authorities, they accepted this to be the case and issued the visas, allowing both Mr Cerme and his son to journey to the UK together as Tier 2 dependants. Best of all, the couple's son was able to start school in the UK on the first day of term.

*The family name has been changed to protect the individuals' identities.

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