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**SMITH
STONE
WALTERS**

UK Immigration Practice

INSIGHT

UK IMMIGRATION NEWS & VIEWS
FROM SMITH STONE WALTERS
WINTER 2015

Tier 2 visas
for tech
professionals
prioritised...
for now



FEELING THE PINCH?

THE WORST IS YET TO COME.

During the recent Conservative Party conference in Manchester, Home Secretary Theresa May delivered a powerful speech on why the party will continue to pursue deep cuts in immigration and reverse the upward trend in UK net migration. As the longest serving home secretary for over 50 years, her vow to significantly reduce economic migration from outside the EU has certainly made an impact.

This has left a growing number of UK employers and public services with little or no prospect of an increase in the available number of Tier 2 skilled worker visas. With many of them beginning to feel the pinch, some industry leaders

have felt compelled to publicly voice their concerns at being left powerless to recruit skilled staff.

A recent raft of changes to the immigration rules, however, may lead some to believe that the government has finally acknowledged that businesses are suffering as a result of the reduction in the number of skilled migrant workers being allowed to enter the UK from outside Europe.

But these concessions, and any resulting optimism, are likely to pale into insignificance by the time the next set of immigration changes are announced.

INCREASE RULED OUT

In July, the former CBI Director-General John Cridland raised concerns that the annual limit of 20,700 Tier 2 employment visas was too low to support a growing economy. His voice carried far enough for some minor adjustments to be made to the way that the monthly Tier 2 visa allocation is distributed. However, Immigration Minister James Brokenshire remained deaf to the criticism, continuing to rule out the idea of increasing the number of visas available.

A similar public cry for government help was made by the heads of 10 leading NHS trusts and the NHS Employers organisation, who wrote to the Home Secretary warning that patients were being put at risk due to a severe shortage of nurses. With 1,000 nurses required in the short-term, the letter called on the government to officially list nursing as an occupation in extreme shortage.

TEMPORARY LIFT IN RULES

Despite the Migration Advisory Committee (MAC) advising against adding nurses to the shortage occupation list in February this year, nursing vacancy rates have since reached a high of 10% across health and social care sectors. The rising need for skilled nurses combined with the approaching winter weather has left the government with little choice but to act. On 15 October, the rules restricting the flow of nurses into Britain were 'temporarily' lifted and the profession was finally added to the Shortage Occupation List.

This interim measure will run until January 2016 and will allow Tier 2 visa applications from non-EEA nurses to

be prioritised within the confines of the 'migrant cap'. In the meantime, the government has commissioned the MAC to re-examine whether specific nursing job titles should be classed as 'shortage occupations' on a long-term basis.

TECH SECTOR CONCESSION

At the same time as rejecting the inclusion of nurses on the shortage occupation list, the MAC conversely recommended the inclusion of four specific graduate occupations in the digital technology sector, with the intention of making it easier for tech companies to recruit international talent.

The UK government endorsed this recommendation seven months later by adding these four roles to the shortage occupations list. Tellingly, this news broke just after some of the UK's most high profile digital entrepreneurs sent an open letter (signed by 230 tech firm founders and investors) to the Prime Minister, warning that cracking down on skilled immigration would "hurt the UK's digital economy".

Possibly in a move to prevent any further criticism, additional concessions were then made to the Tier 1 Exceptional Talent visa route so as to better enable the recruitment of those applicants most likely to add value to the UK's digital technology sector.

A WORD OF WARNING

Whilst certain businesses might welcome the recent changes to the immigration rules, a clear drive remains to significantly reduce the number of migrants using the Tier 2 route as a way of entering the United Kingdom, regardless of the potential negative

impact this would have on a growing UK economy and its public services.

As a result, future changes to the immigration system look set to make it harder, not easier, to recruit skilled labour from overseas.

At the government's request, the MAC is already reviewing how the scheme can be revised to specifically focus on areas where genuine skills shortages lie and how to tighten up the intra-company transfer route.

Their evaluation will also study the value of introducing additional charges, such as a Tier 2 skills levy and further health surcharges, as a means of deterring UK employers from hiring migrant staff in the future.

Following this review, employers engaging migrant workers via the Tier 2 scheme should be warned to expect not only more stringent immigration rules, but also markedly higher government charges.

SMITH STONE WALTERS

This winter, the final 2015 edition of Insight looks at a whole range of different UK immigration issues, from the latest UK migration statistics to the most recent updates to the UK Immigration Rules.

For the Tier 2 sponsors out there, our Focus section looks in detail at the process of recruiting an overseas national via the Tier 2 (General) route.

For regular updates on all UK immigration matters, sign up to our free news service! www.smithstonewalters.com/signup

UK MIGRATION STATISTICS 2014 – 2015

Here we explore the main reasons why people travelled to the UK during the year ending June 2015.

All data presented here is as published by the Office for National Statistics in November and relates to the year ending June 2015, unless otherwise stated.

NET MIGRATION

Over the past year, net migration to the UK reached **336,000**. This is an increase of 82,000 on the previous year and continues to digress ever further from the government's annual migration target of 100,000.

336,000



EMPLOYERS

There are now 29,579 UK organisations listed as registered sponsors of Tier 2 migrant employees. This is almost **2% fewer** than this time last year.



2% ↓

WORK

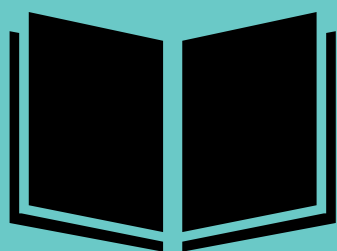
294,000 people immigrated to the UK for work purposes. This is a significant rise of 18% from last year's figure of 241,000 and is overwhelmingly made up of EU citizens (58%). The figures show that most work visas went to applicants working in the professional, information, communication, financial, scientific and technical sectors.

294,000

STUDY

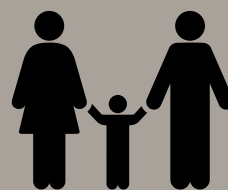
192,000 people came to the UK to study. This is an increase of only 17,000 from last year and an overwhelming majority (71%) of these migrants came from outside the EU. Chinese nationals made up the majority of non-EU student numbers, closely followed by US and Indian nationals.

192,000



FAMILY

36,724 family route visas were granted in the year ending September 2015. This is 6% more than during the year ending September 2014.



36,724

SETTLEMENT

98,506 people were awarded the right to remain in the UK on a permanent basis over the year ending September 2015. This is a *drop of 12%* on the previous year's figures.

12% ↓



EU MIGRATION

Around 265,000 EU citizens immigrated to the UK this year and around 162,000 of these came for work purposes. This represents a significant *rise of 16%* in EU migration since the year ending June 2014.

↑ 16%

VISITORS

9.15 million visit visas were granted in 2014 which is a 6 % increase on 2013. Geographic areas leading the visitor visa tables are the US and East Asia.



9.15 MILLION

**Long-term migration is considered to be any stay longer than 12 months.*



IMMIGRATION CHANGE ACROSS THE BOARD

The most recent batch of changes to the UK Immigration Rules have been announced, many of which came into effect on 19 November 2015.

The changes leave no stone unturned, affecting almost all immigration routes into the UK.

SETTLEMENT

- From 6 April 2016 anyone wishing to settle in the UK must earn a minimum of £35,000 in order to be eligible to apply. This will apply to most applications but there are some exceptions, such as for occupations on the shortage occupation list or certain PhD level jobs.

TIER 1 OF THE POINTS-BASED SYSTEM

- The Tier 1 (Exceptional Talent) entry route has been revised in order to plug the recruitment gap in the UK tech sector. By amending the endorsement criteria used by Tech City UK, it is hoped that a greater number of high-quality applicants will qualify for consideration under this UK visa route.
- Minor and technical changes have been made to the evidential requirements for Tier 1 (Entrepreneur) applicants. These include changes to the evidence required for continuous trading if an applicant is applying for leave to remain under this category.
- The rule changes now make clear that Tier 1 Investors are not allowed to invest by way of share or loan capital in syndicates.

FAMILY

- A new rule has been included which enables the UK authorities to refuse the entry of a non-EEA child if they have reason to believe that coming to the UK poses a risk to the child.

TIERS 2 & 5 OF THE POINTS-BASED SYSTEM

- Nurses and four specific digital technology roles have been added to the Tier 2 shortage occupations list, allowing such visa applications to be prioritised within the Tier 2 monthly visa allocation.
- The period of time for which Tier 2 visa holders may be absent from work without pay has been amended to a maximum of 4 weeks per year.
- 2016 Youth Mobility Scheme annual allocations for participating countries have been confirmed. These include 45,500 places to Australian nationals and 12,000 places to New Zealand nationals.
- Tier 5 (Temporary Worker - Charity Worker) rules have been clarified to prevent permanent vacancies being filled by temporary charity workers on a recurring basis.

NURSES PRIORITISED BY UK IMMIGRATION CHANGE



The extreme shortage of nurses in the NHS has been accommodated for by a temporary change in the immigration rules.

“The hiring of foreign nurses is currently being prioritised within the Tier 2 migrant cap system”



The government has added nursing to the shortage occupation list on a temporary basis in order to help the health sector with its current plight. This means that the hiring of foreign nurses is currently being prioritised within the Tier 2 migrant cap system.

In addition, all new and retrospective nursing hires will be exempt from the minimum pay threshold of £35,000 which will be coming into force in April 2016 for settlement applications.

Both changes are significant in enabling the UK health sector to hire and retain much-needed nursing staff, in which the UK is severely lacking.

How long nurses will stay on the shortage occupations list remains to be seen, but for the time being their exemption from the minimum salary requirement for settlement applications looks to be set in stone.

The situation is to be reviewed in February 2016 by the government-commissioned Migration Advisory Committee.

NEW TECH NATION VISA SCHEME

The Tech Nation Visa Scheme is an evolution of the Tier 1 (Exceptional Talent) entry route and became part of this visa category on 12 November 2015.

Previously, Tech City was only able to endorse applicants under the Tier 1 (Exceptional Talent) route for 'world leaders' in the field. Since this severely limited its scope, the scheme's uptake to date has been extremely low. The intention of these latest changes is to widen the remit of the Tech City endorsement to also include 'potential world leaders' in technology.

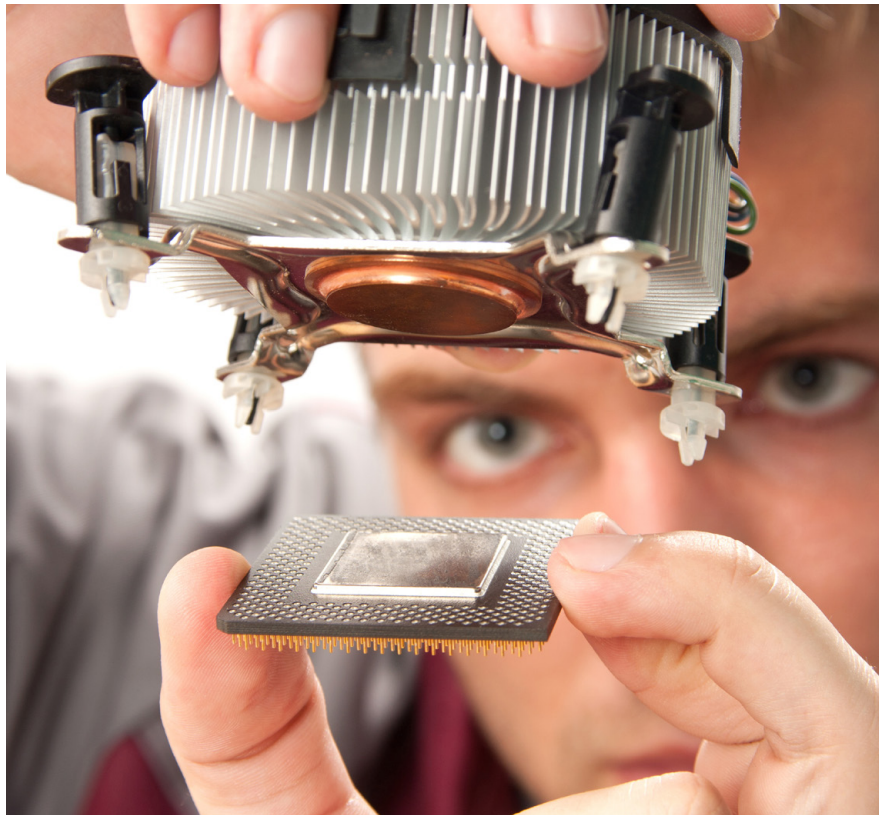
To secure endorsement from Tech City UK, applicants must meet one of the mandatory criteria and two of the qualifying criteria set out in the Immigration Rules ahead of applying for entry to the UK in this category.

"The intention of these latest changes is to widen the remit of the Tech City endorsement"

The mandatory criteria are:

- a proven track record of innovation in the digital technology sector; and
- recognition for work outside the applicant's immediate occupation that has contributed to the advancement of their sector

The recent changes to the Immigration Rules have introduced a new scheme within the Tier 1 (Exceptional Talent) entry category for the digital technology sector.



The qualifying criteria are:

- significant technical, commercial or entrepreneurial contributions in the digital technology sector as either a director, founder, or employee of a digital technology sector company;
- recognition as a world leader;
- continuous learning; and
- exceptional ability through academic research.

In addition to meeting the mandatory and qualifying criteria, applicants can now benefit from new criteria, which have come into force and allow for applications to be fast-tracked. Once endorsement is granted, the applicant is then able to apply for a Tier 1 (Exceptional Talent) visa from the UK immigration authorities.

For further guidance on applying via the Tech Nation Visa Scheme, contact Smith Stone Walters today.

EXTENDED VISITOR VISAS FOR CHINESE TOURISTS

From January 2016, new visit visas for Chinese nationals will be valid for two years instead of the usual six months

This is four times the length of a current visit visa and as such, increases the number of times the visa holder can visit the UK within the visa's extended validity.

It is important for Chinese visitors to note, however, that visitors to the UK will still only be able to visit the UK for a maximum period of six months within each 12 month period for which their visa is valid.

“This is four times the length of a current visit visa”

Not only does this give Chinese visitors to the UK better value for money, but it has instigated other changes which will better facilitate any consequential increase in visit visa applications, such as the introduction of new Visa Application Centres in China.

It is hoped these changes will encourage more Chinese tourism to the UK and increase the already noteworthy economic contribution of £500 million a year, which Chinese tourists currently bring to the UK.

HAPPY 7TH ANNIVERSARY SSW NYC!

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

Moving people to the UK is our business and this is exactly what our fantastic team in NYC has been doing since 2008. From their Manhattan location, our US team excels in providing clients with a friendly, comprehensive and up to date UK immigration service. To date the team's entry clearance expertise has supported over 6,000 individuals to successfully acquire their UK visas and transfer to the United Kingdom without complication.



*Happy Anniversary team and
keep up the good work!*

HOME OFFICE AND MAC AT SSW SEMINAR

With top-level Home Office and Migration Advisory Committee (MAC) speakers in attendance, representatives from over 30 sponsor organisations gathered at our UK Immigration Seminar this autumn to hear industry updates straight from the horse's mouth.

Hot topics included recent changes to compliance for UK employers, the government-commissioned review of the Tier 2 system and the subsequent effects on UK employers. Attendees were encouraged to voice their views on the MAC's considerations and have their say on future UK immigration policy.

We would like to thank the speakers and our guests for helping to make the afternoon both informative and enjoyable.

*We look forward to seeing you all at
our next UK immigration event!*

WE TAKE COMPLIANCE SERIOUSLY



As an OISC-regulated body we take our compliance seriously. Over the last couple of years, SSW has worked hard to contribute towards an extensive two-part government consultation regarding the publication of a new OISC (Office of the Immigration Services Commissioner) Code of Standards for all regulated UK immigration advisors.

All members of SSW's advisory staff are registered with and regulated by the OISC and, as such, we felt it our duty to have our say regarding how the existing Code of Standards could be improved.

Happily, many of our comments were taken on board and have since been reflected in the OISC's newly issued Code of Standards and accompanying Guidance Notes, both of which come into effect on 1 April 2016.

If you would like to have your UK immigration needs handled by a regulated professional body, contact Smith Stone Walters today.

CAROLS FOR A CAUSE



In the run up to Christmas, SSW always endeavours to increase its efforts to help those for whom Christmas can be a difficult time of the year.

To this end, December saw SSW staff and clients once again attending the London Carol Concert in aid of the Rainbow Trust Children's Charity.

Infused with heart-warming traditional carols and taking place at the beautiful St Paul's Church in Knightsbridge, the atmosphere was at once magical and contemplative. The congregation relished the candlelit evening and were treated to special guest readers and uplifting musical performances.

The much-enjoyed concert helped to raise vital funds for Rainbow Trust Children's Charity which provides support to families who have a child with a life threatening or terminal illness.

**RAINBOW
TRUST**
CHILDREN'S CHARITY

WHAT OUR CLIENTS SAY...



We make it our business to deliver each client with a service worth shouting about.

Here are a few of the most inspiring words that clients have used to describe our services this quarter.

PERFECT

UNPARALLELED

EFFICIENT

HIGH-
CLASS

'Camelia (SSW UK) has been a great guide to me during the whole visa process. I couldn't be happier and I appreciate all her help.'

E.A., global electronics firm

*'Ming Peng (SSW Hong Kong) did a very efficient job and I will give her an A*****'*

Y.L., private client

'The character and friendliness of the lawyers at SSW was unparalleled...truly high class work!'

J.C., financial services

'Excellent service, very happy with the overall experience – thanks Madhuri (SSW Mumbai)!'

V.A., global financial services

'Thank you Jack (SSW New York) for handling all our visa needs so perfectly'

B.C., telecommunications

FOCUS

This month we focus on the key steps involved in the recruitment process of an overseas visa national using the Tier 2 (General) entry route of the UK's points-based immigration system.

Case Study: Background

The UK Company*, a leading UK software development company, came to Smith Stone Walters seeking to employ the services of a software engineer to work within its London office. The candidate they had selected for the post was a Turkish national, Mr. Ishnat*, who had no automatic right to work in this country.

Smith Stone Walters advised The UK Company that, if the role could not be filled by a settled worker, Mr Ishnat would need to be sponsored under Tier 2 (General) of the points-based immigration system in order to become its employee here in the UK, and that there were a few steps that it needed to take.

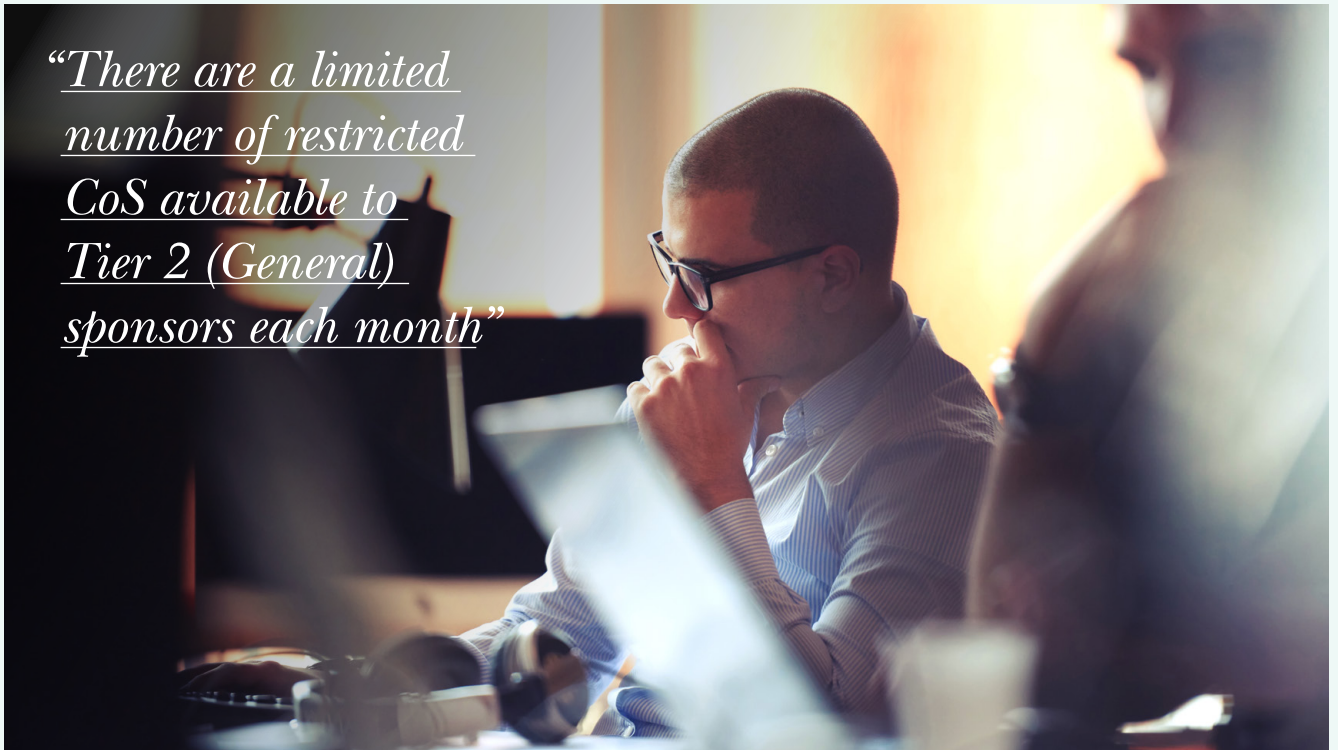
Step 1. Resident labour market test

The resident labour market test (RLMT) enables an employer to bring in a worker from outside the EEA by proving that there is no suitably qualified worker within the UK or the EEA available to fill the specific skilled vacancy.

The UK Company already held a valid Tier 2 (General) sponsor licence to employ migrants. However, since Mr Ishnat's services had been recommended via an existing employee, the company had yet to carry out a full RLMT in an effort to locate a suitably qualified worker from within the UK or EEA.

Under instruction from Smith Stone Walters, The UK Company therefore advertised the relevant vacancy through Jobcentre Plus and one other medium for 28 calendar days, before thoroughly considering each candidate's suitability for the vacant post. As this genuine recruitment campaign did not generate any suitably qualified local workers, Mr Ishnat's application could then be prepared for assessment under Tier 2 (General) of the points-based system.

"There are a limited number of restricted CoS available to Tier 2 (General) sponsors each month"



Step 2. Assessment of applicant under the points-based system

With very few exceptions, migrants sponsored under Tier 2 (General) and Tier 2 (ICT) can only work in a skilled occupation at or above National Qualifications Framework (NQF) level 6.

On assessment, Smith Stone Walters noted that Mr Ishnat's application satisfied all eligibility requirements. He was, for example, an IT graduate with a significant level of experience related to the UK role offered to him, his intended post was at the appropriate skill level according to the sponsor guidance, and his proposed salary met with the minimum requirement as classified under the Standard Occupational Classification (SOC) codes for programmers and software development.

To be eligible for a Tier 2 (General) visa, Mr Ishnat was advised that he must also possess the required level of English. He satisfied this requirement with proof that he had recently passed an approved English language test with at least CEFR level B1 in reading, writing, speaking and listening.

Mr Ishnat now exceeded the scheme's requirements and his application qualified to be considered for a restricted Certificate of Sponsorship under the points-based system.

Step 3. Restricted Certificate of Sponsorship (CoS) application

There are a limited number of restricted CoS available to Tier 2 (General) sponsors each month and applications can be made at any time using the Sponsor Management System.

The restricted CoS application was submitted electronically to the Home Office on behalf of Mr Ishnat and was to be assessed within that month's quota of available certificates.

The application was approved by the authorities on the 14 October and subsequently assigned to Mr Ishnat. With the help of Smith Stone Walters, Mr Ishnat was then able to proceed with the submission of his entry clearance application from his place of residence, Turkey.

Step 4. The entry clearance process

As part of their entry clearance application, the migrant must apply for a Biometric Resident Permit (BRP) which involves the submission of their fingerprint and facial image data at their nearest Visa Application Centre (VAC).

Applying for Mr Ishnat's entry clearance comprised of two main stages:-

- The overseas Smith Stone Walters team prepared and lodged his visa application form online and ensured the payment of associated Home Office filing fees (including the Immigration Health Surcharge).
- Mr Ishnat then attended the VAC in Turkey to submit his passport, supporting documents and biometric data (fingerprints and digital photograph).

Mr Ishnat was advised that the average processing time for cases filed in Turkey was between 10 to 18 working days. Since he had submitted his passport in support of this application, he was warned by Smith Stone Walters not to arrange his travel to the UK until his passport was returned to him.

Step 5. Application considered and approved:

Once a successful decision is made on the entry clearance application, a decision letter will arrive informing the migrant of their success and which UK Post Office they must collect their BRP from upon arrival in the UK.

Mr Ishnat received confirmation of his UK visa being approved 10 working days after submitting his application. An initial entry visa, valid for 30 days, was issued in his passport to enable him to travel to the UK. He also received a letter confirming where he should collect his three-year BRP card upon arrival in the UK.

Mr Ishnat entered the United Kingdom at the beginning of November and commenced employment as a software engineer with his UK sponsor the very next day.

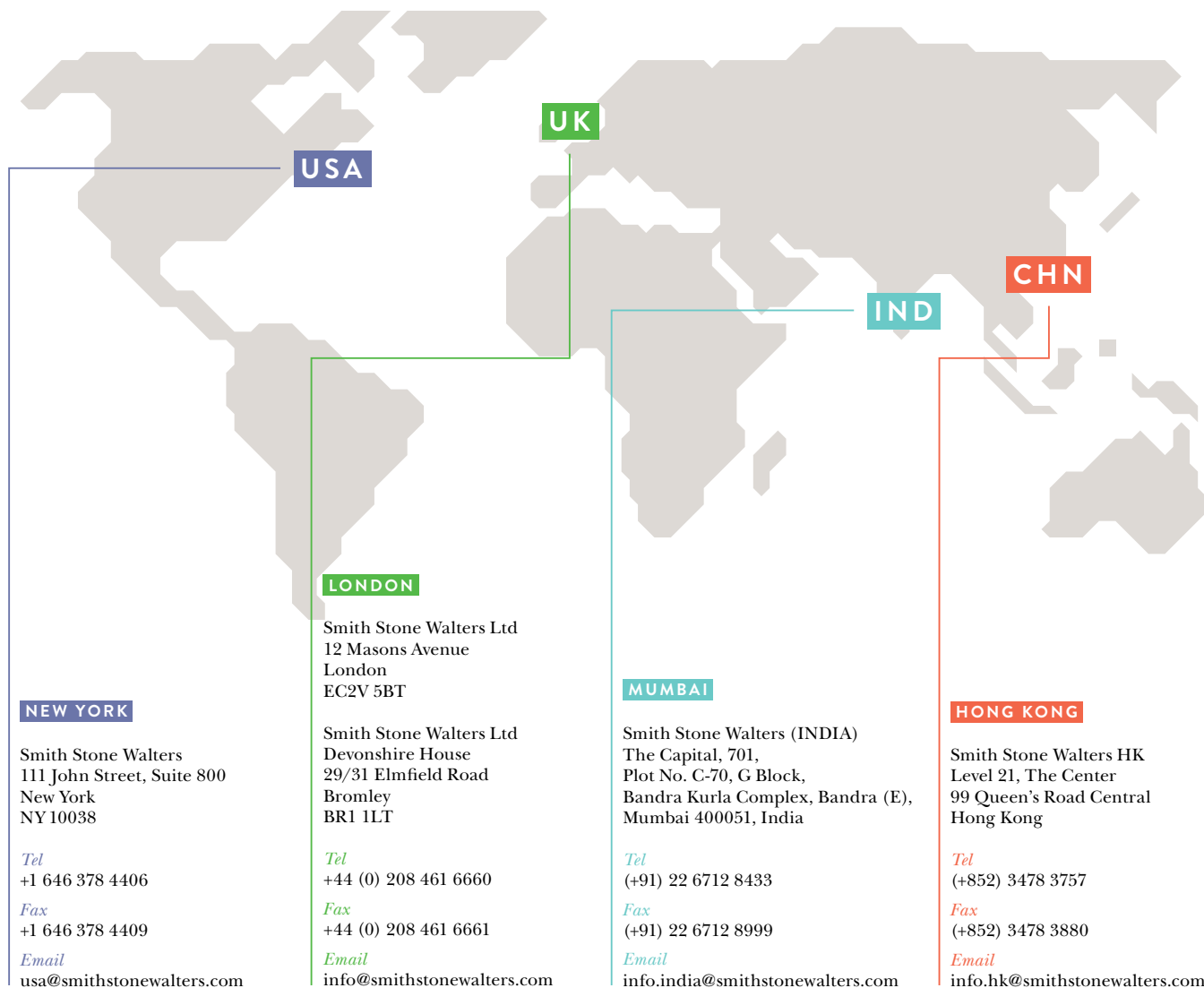
Feedback on Smith Stone Walter's services

'I felt fully supported by SSW (Smith Stone Walters). Ekaterina was assigned as my representative for the entry clearance visa process; she always responded quickly to my questions and processed my application in a timely fashion. I also credit her with removing my doubts surrounding the UK visa process. I really appreciate the efforts of the SSW staff in managing this matter so professionally. Thank you!'

*Fictitious names and places have been used in this article.

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

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