



9 July 2009

Phil Woolas MP  
Minister of State for Borders and Immigration  
2 Marsham Street  
London SW1P 4DF

Email: [privateoffice.external@homeoffice.gsi.gov.uk](mailto:privateoffice.external@homeoffice.gsi.gov.uk)

Dear Minister

### **Changes to the Points-Based System under consideration**

ILPA is a professional association with some 1000 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through teaching, provision of resources and information. ILPA is represented on a wide range of government and other public body stakeholder and advisory groups.

The Government has asked the Migration Advisory Committee to address the following three questions in relation to the Points Based System (Points-Based System):

1. What further changes to the Tier 1 of the Points-Based System should there be in 2010/11, given the changing economic circumstances?
2. Is there an economic case for restricting Tier 2 to shortage occupations only?  
And
3. What is your assessment of the economic contribution made by the dependants of the Points-Based System immigrants and their role in the labour market?

The Migration Advisory Committee has repeatedly made it clear that it wishes to consider economic evidence backed up through statistical data. In this regard we requested that our members advise their clients of the possibility of submitting evidence, directly or through the CBI or where applicable submit such evidence in their own capacity as employers. We did not consider that ILPA as an organisation was in a position to collate such evidence in a way that would produce a sample useful for statistical analysis. We did however wish to make points on the related legal and policy questions and it seemed more appropriate to write directly to you on these matters.

### **Dependants of Points-Based System migrants and their role in the labour market.**

ILPA Lindsey House, 40/42 Charterhouse Street London EC1M 6JN Tel: 020 7251 8383 Fax: 020 7251 8384  
email: [info@ilpa.org.uk](mailto:info@ilpa.org.uk) website: [www.ilpa.org.uk](http://www.ilpa.org.uk)

The assessment of the economic contribution of dependants of Points-Based System migrants is one aspect of this question. It cannot be considered in isolation from the wider questions of the contribution of the Points-Based System migrant, and whether that person would come to the UK if their dependants could not work, nor in isolation from the broader question of the life of the family once they arrive in the UK.

In general, there is a lack of Governmental statistical data on this subject on which policy decisions could be based. There have been a number of international surveys in which the ability for a partner to be able to take employment has been shown to be a driving factor in whether individuals accept international assignments and this also reflects the experience of ILPA members in their discussions with their clients.

The available data indicates that allowing dependants of Points-Based System migrants to work is an advantage to the economy of the State in which they are living. They are often highly educated, proficient in foreign languages and have a desire to work.<sup>1</sup> Where they find work, the UK economy benefits through increases in tax revenue. In any event they are unable to have recourse to public funds.

As detailed by UK Trade and Investment, one of the main reasons to relocate to the UK is its flexible labour market and the ease in which to set up and run a business in Europe.<sup>2</sup> This reflects the experience of ILPA members in discussion with their clients. A total of 1,573 foreign direct investment (FDI) projects from 48 countries were recorded in the UK during 2007-8.<sup>3</sup> The ability of a spouse or partner to work is, in members' experience, a factor influencing the decision of workers to come to the UK where their presence helps to maintain UK competitiveness in relation to sourcing the best international talent in a global market.

The data available suggests that more accompanying spouses and partners are women than men. Thus proposals to restrict the access of spouses and partners to the labour market would affect more women more than men<sup>4</sup>. This raises the prospect that to deny spouses and partners access to the labour market would entail discrimination against women. The attitudes taken to dependants working have repercussions across government, including in areas quite other than migration because they involve grappling with questions of division of labour within the family and of the potential of different family members to make economic contributions. Where a government policy affects women's access to the labour market in particular, this has implications for all government policy addressing women's access to the labour market.

The government has emphasised its desire to see migrants integrate into UK society, for example in arguing for its 'earned citizenship' proposals as designed to promote integration. ILPA members' experience, from across all areas of our work, from asylum to family and economic migration, is that it is very often by children going to

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<sup>1</sup> [http://permitsfoundation.com/docs/permits\\_survey\\_summary.pdf](http://permitsfoundation.com/docs/permits_survey_summary.pdf)

<sup>2</sup> <http://www.ukinvest.gov.uk/Key-advantages/en-GB-list.html?nav>

<sup>3</sup> UK Inward Investment 2007/2008 Report p3

<sup>4</sup> [http://permitsfoundation.com/docs/permits\\_survey\\_summary.pdf](http://permitsfoundation.com/docs/permits_survey_summary.pdf)

school and adults going to work that people get involved with those around them and with things going on in their area.

The EU 'Blue Card' for migrants<sup>5</sup> will allow dependants the right to work. While the UK has an opt-out on the proposal, it is an important element of considering the international environment. Individuals and companies do, in the experience of ILPA members, take account of the immigration systems of countries in choosing in which country to establish and work. Individuals are influenced by whether their dependants can work and this in turn influences employers wishing to attract the right workers. The Commission's paper accompanying the proposed directive stated  
*"Favourable conditions for family reunification and for access to work for spouses should be a fundamental element of this Directive which aims to attract highly qualified third-country workers"*<sup>6</sup>

## **Tier 2**

Where a job is not in a shortage occupation, it is necessary for the employer to satisfy a prescribed resident labour market test, attempting to recruit first in the resident labour market. If it works properly this is a more sophisticated tool than a shortage occupation list; it should determine that there is no one in the resident labour market who can perform this particular job. As ILPA understands it, the Migrant Advisory Committee is being asked to count the costs of these posts going unfilled, including consideration of what steps employers might take if they could not recruit to the post as advertised (training, splitting the task between different jobs etc.)

The Government controls what employers are required to do to demonstrate that they cannot recruit from the resident labour market, and how they are required to evidence this. ILPA and others have drawn attention to the views of many employers that Job Centre plus, in its current form, is unlikely to be a method of advertising that will reach members of the resident labour market who might apply for the vacancies required to be advertised there under the current procedures. It is open to the Government to examine the way in which it requires employers to satisfy the resident labour market test.

It is ILPA's understanding that one of the triggers for examining restrictions on Tier 2 of the Points-Based System is anecdotal evidence about the way in which the Tier 2 Intra-Company Transfer route is used and whether in practice, in certain cases in certain sectors, it is being used to undercut the resident labour market. Should further research back up such anecdotes, ILPA considers that the government have ample measures in place that can be used to take such action as is deemed necessary: the immigration rules, the sponsor-licensing system, and the existing

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<sup>5</sup> Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment 17426/08 MIGR 130 SOC 800, Brussels 18 March 2009, adopted by the Council 7 May 2009, see doc 9057/09, MIGR 50

SOC 276, Interinstitutional Files: 2007/0228 (C\_S)

<sup>6</sup> 17426/08 MIGR 130 SOC 800, Brussels 18 March 2009

obligations on employers. Many of our members have reported that their clients have requested compliance visits, only to be told by the UK Border Agency that this is not a priority.

Although compliance may be increased through shortening the allocation of periods of leave, this may act as a disincentive to employers being able to plan international assignments in advance. Given the current processing times for Points-Based System applications and the implementation of Biometric Identity Documents, any shortening of leave periods would exacerbate delays in a system that is currently unable to cope with demand. There is currently a two-month waiting period for a same day appointments with the UK Border Agency and the “fast track” postal facility is not meeting its current service standards.

Any change in leave entitlements, would impact disproportionately on those migrants with dependants. Furthermore, with the introduction of prescribed forms, documentation and the increase in fee levels, this could lead to migrants inadvertently becoming overstayers with the possibility of exclusion periods under the general grounds for refusal in the immigration rules.

Students form a considerable proportion of migrants that come to the United Kingdom every year. 309,000 non-EEA students entered the UK in 2006.<sup>7</sup> They contribute £2.5 Billion to the UK economy in tuition fees and it is estimated that their value to the economy is £6.5 billion.<sup>8</sup> Any further changes would, in our view impact on the attractiveness of the UK in the global student market.

## **Tier I**

Since the introduction of Tier I on 30 June 2008, Tiers 2 and 5 on 27<sup>th</sup> November 2008 and Tier 4 on 31 March 2009, there have been considerable changes to the immigration rules and guidance. The overall effect of prescriptive guidance, lengthy, confused and confusing form and guidance, ill-thought out maintenance requirements, and the uncertainty created by ever-changing rules and practices, including refusals on technicalities, many of which have fallen to challenges on appeal, has been to make the UK a less attractive destination for migrant workers, and to place difficulties in the way of employers and educational institutions needing to attract candidates from abroad.

An employer benefited from having an employee enter the UK on a work permit, as opposed to as a highly skilled migrant, because the employee was more closely tied to the employer, who had incurred the costs of relocation and recruitment. Under the Points-Based System, employers must set the disadvantages to them of the employee entering under Tier I (ability to change employers freely and to set up his/her own business) against the risks to them of becoming part of the sponsor-licensing system. It is unsurprising that the highly skilled migrant route, now Tier I, which was in many cases likely to be the employee’s preferred option, is now the preferred option of many employers.

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<sup>7</sup> Students Under the Points Based System (Tier 4)-Statement of Intent-UKBA

<sup>8</sup> Global Value: The value of UK education and training exports to the UK economy:an update:Pamela Lenton, Dr of Economics, University of Sheffield, August 2007, commissioned by the British Council

ILPA has repeatedly drawn attention to the risks that the maintenance requirements of Tier 1 discriminate against migrants from non-OECD countries. The way in which the maintenance requirements are applied also causes concern in that for the most part it appears to be bureaucracy without purpose. That an individual with adequate funds is refused because for a couple of days during a three month period his/her bank balance dropped below a required level has led ILPA to question what mischief the maintenance requirements are designed to address and whether they are indeed crafted to address that mischief or just to put a hurdle in the way of all, in a way that does not distinguish between those whose skills the UK needs and who are well-placed to make a success of their time here, and others, the need for whose skills is less pressing. Similarly with requirements that an applicant possess a degree certificate at the time of application, rather than proof that it has been awarded. It may be administratively convenient for the UK Border Agency to seek to reduce matters to a tick box system; it is not convenient for migrants or those who need their skills. Too much of the Points-Based System is bureaucracy without purpose.

The pressing need is to look at what the requirements placed on Tier 1 applicants are designed to achieve and then to look at the extent to which the rules, and the guidance on how fulfilling the rule is evidenced, gives effect to these objectives. If the desire is to ensure that the UK is able to recruit from abroad those people who can fill gaps in the resident labour market and thus support the growth of the economy and the survival or re/generation of businesses then it is necessary to have rules that will not put those people off even applying to the UK or, where they do apply, will not result in the refusal of those best placed to make that contribution.

ILPA would be happy to discuss these matters further or to provide further information should that be considered helpful.

Yours faithfully

Alasdair Mackenzie  
Acting Chair of the  
Immigration Law Practitioners Association (ILPA)

c.c. Professor David Metcalf CBE  
Chair, Migration Advisory Committee  
6th Floor  
Advance House  
15 Wellesley Road  
Croydon  
CR0 2AG

Email: [mac@homeoffice.gsi.gov.uk](mailto:mac@homeoffice.gsi.gov.uk)