



# IMMIGRATION

“ The Tides of Change: Immigration Law ”

- (c) By Lester Kan and Rekha Husbands (lkan@lesterdominic.com / rhusbands@lesterdominic.com) -



**T**he UK Immigration framework is continuously developing and the government has introduced a number of changes in recent years in an attempt to ‘strengthen its borders’.

In February 2005, the government published a five-year strategy entitled *Controlling our borders: Making migration work for Britain* with a clear aim of cracking down on illegal entry and working and toughening its various policies in relation to Immigration, Nationality and Asylum.

At the very core of the proposed changes is the introduction of a Points Based System, repackaging a number of existing economic migration categories and placing them into 5 main Tiers.

The Immigration Minister for the UK, Liam Byrne, claims that the new Points Based System will be ‘simpler, cleaner and easier to enforce’.

However, the proposal to abolish out-of-country right of appeals for those who have been refused entry clearance, and replacing the right of appeal with an administrative

review undertaken at the same diplomatic post where the refusal also took place already raises serious questions as to just how transparent the new system will be.

In a climate where Immigration issues are constantly on the political agenda, the beginning of 2008 has finally seen the introduction of the first phase of the Points Based System, Tier 1 General, which is set to replace the Highly Skilled Migrant Programme in its entirety in the summer of this year.

Applications for Tier 1 General can now be made and is similar in many respects to the Highly Skilled Migrant Programme.

The most notable changes however include a mandatory maintenance requirement, which will also be introduced under other economic categories, the removal of the MBA provision and a single application process.

The next wave of change being rolled into Tier 1 of the Points Based System, will include the repackaged Business, Innovator and Investor categories.

The International Graduate Scheme, Science and Engineering Graduate Scheme and Fresh Talent: Working in Scotland Scheme will be scrapped and replaced with a Post Study Work category, enabling graduates to work in the UK for a maximum of two years after which time they will be expected to switch into another economic category such as Tier 1 General or leave the UK.

A mandatory English language requirement will need to be met for the Tier 1 categories, although this is not required for Investors.

We will continue to see these tides of change over the next couple of years, the next being the introduction of Tier 2 of the Points Based System in the autumn of 2008.

This category will replace the current Work Permit scheme and the proposed changes are leaving employers uncertain about the future of their businesses, which heavily rely on the skills of migrant workers.

An English language requirement will be compulsory and points will need to be earned for prospective earnings, which may be difficult for small sized employers to satisfy.

There are also points available for qualifications, which will in large be unobtainable and irrelevant for positions such as Chefs who do not require a degree in order to carry out the job.

Under Tier 2 of the Points Based System, employers will have to be registered as Sponsors with the UK Border Agency, and employers can now apply for a licence to be on the Sponsor Register in anticipation

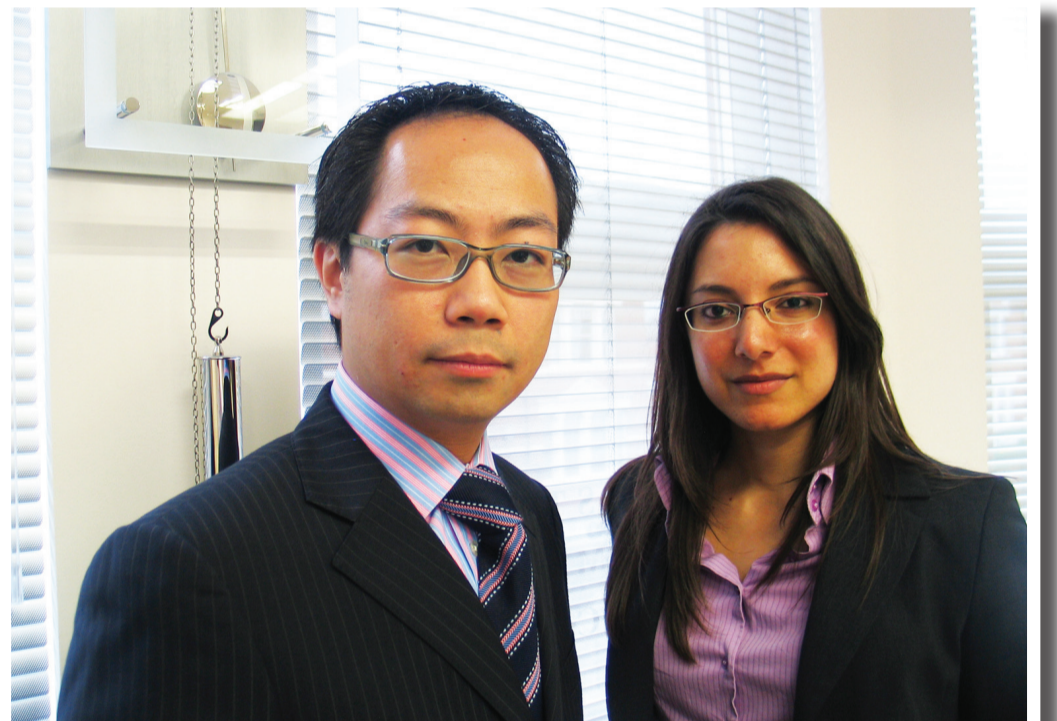
of the introduction of Tier 2.

Employers will be placed with more obligations to report changes to the UK Border Agency.

However, this looks set to become an unavoidable part of the process to employ migrant workers.

Whilst it is clear that there is no stopping the government in rolling out the Tiers of the Points Based System, it will be interesting to see how the changes will affect the business community and whether it will force this government to introduce concessions and re-think their policies.

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