

Jamaican Businesses and the UK's New Immigration Regime



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The United Kingdom's Home Office is currently in the process of implementing what it has labelled "the biggest shake up of the immigration system in 45 years". The regulations and procedural requirements which constitute the UK's new immigration regime are extensive and complex. It is important for Jamaican businesses with interests in the UK to ensure that their UK entities are fully prepared for the introduction of the new regime which is scheduled for the end of November 2008. It is equally important that Jamaicans seeking access to the UK labour market properly understand the new rules under which they will be assessed.

The essence of the UK's immigration reform is the introduction of an Australian style points-based system of assessment for individuals seeking permission to enter the UK from outside of the European Economic Area ('EEA') for the purposes of pursuing employment opportunities within the UK. A notable feature of the UK's new immigration regime is that it imposes greater responsibilities on UK employers with respect to the management of UK immigration. In addition to new procedural requirements, the Home Office has prescribed a number of obligations which will attach to UK employers who employ non-EEA workers. Failure to honour these obligations will result in the imposition of heavy penalties on the offending employer.

EMPLOYERS: Jamaican Businesses with UK Entities

There are a substantial number of Jamaican businesses operating in the UK through the medium of UK incorporated entities. Such entities are UK employers for the purposes of UK immigration regulations. These entities regularly recruit Jamaican workers and/or transfer such workers into the UK from their headquarters in Jamaica. In order to avoid the impairment of their recruitment/transfer capabilities, Jamaican affiliated UK entities must prepare their organisations to operate within the framework of the new immigration regime.

The first preparatory step is the application for a 'Sponsor's Licence'. Once a Sponsor's Licence has been procured, the sponsor will need to review its HR functions in order to maintain compliance with the new immigration requirements. Jamaican affiliated UK employers should take care not to overlook the introduction of the UK's new immigration regime as such an oversight is likely to have a disruptive impact on their UK operations.

(a) Applying for a Sponsor's Licence

After November 2008, in order to recruit non-EEA workers (including Jamaican nationals) into the UK or to extend the work permits of current non-EEA employees, a UK employer must hold a valid Sponsor's Licence from the UK Home Office. The Home Office has embarked upon an extensive advertising campaign encouraging UK employers to apply for a Sponsors Licence as soon possible in order to avoid disruption to their HR activities when the new regime is introduced. Once a UK employer has obtained a Sponsors Licence it becomes capable of issuing Certificates of Sponsorship to non-EEA workers whom it wishes to recruit (subject to Home Office approval). The application for a Sponsor's Licence is processed by the Home Office's UK Border Agency. The applicant must specify the *Tiers* and *Categories* of the new points-based system under which it wishes to be licensed.

The applicant employer must submit to the UK Border Agency the specified supporting documents and appropriate fee within 10 working days of submission of the application. Generally, acceptable supporting documents include, but are not limited to, corporate bank statements; evidence of PAYE and National Insurance registration with HM Revenue & Customs; and the most current audited annual accounts. The cost of the licence will depend on the size of the organisation and ranges from £300.00 to £1,000.00. In addition to the licensing fee, a licensed sponsor must pay a fee for each Certificate of Sponsorship it issues. The Certificate of Sponsorship issue fee is currently £170.00 (payable at time of issue).

Provided that the application for a Sponsor's Licence is successful, the UK Border Agency will allocate to the employer an 'A' or 'B' rating. This rating reflects the Home Office's assessment of the risk posed by the applicant to the UK's border security. The criteria applied by the UK Border Agency when allocating an A or B rating generally include the adequacy of the applicant's human resource systems; previous civil penalties for immigration offences; and evidence of previous non compliance with immigration rules. B rated sponsors must comply with a time limited action plan designed to help them achieve an A rating. The failure of a B rated sponsor to comply with the action plan is likely to result in the revocation of the sponsor's licence. Where the Home Office takes the view that an A rated sponsor is neglecting its duties, the sponsor may be downgraded to a B rating.

(b) Sponsorship Duties

As a condition of retaining its Sponsor's Licence, the sponsor must comply with a number of prescribed 'sponsorship duties'. These sponsorship duties consist of record keeping and reporting obligations. Generally, the sponsor is required to maintain records of each sponsored migrant's current contact details together with copies of his/her passport or UK immigration status document. Reporting obligations require the sponsor to promptly report to the Home Office occurrences such as the early termination of a sponsored migrant's employment or a sponsored migrant's absence from work for more than 10 working days without the sponsor's reasonably granted permission.

In addition to these generic sponsorship duties, sponsors must comply with *Tier* specific duties which effectively require the sponsor to assess whether a non-EEA candidate is likely to meet the points-based criteria of the relevant *Tier* before issuing a Certificate of Sponsorship to the individual. The failure of a licensed sponsor to comply with its duties may ultimately result in the withdrawal of its Sponsor's Licence and the attendant restriction of its ability to recruit or to continue to employ non-EEA workers.

(c) Sponsoring a non-EEA worker

Under the current work permit arrangements UK employers are required to advertise a job vacancy within the EEA before offering the position to a non-EEA worker. Once the vacancy has been properly advertised and no suitable EEA candidate has been located, the UK employer may offer the vacancy to a non-EEA worker and proceed to apply for a work permit for such worker.

Tier 2 of the points-based sponsorship system will replace the current work permit arrangements as of November 2008. In order to recruit a non-EEA worker under the new regime, the UK employer will be required to conduct a '*resident labour market test*' before offering the position to a non-EEA worker. The resident labour market test is similar to the advertising requirements of the current work permit arrangements and requires the UK employer to advertise the vacancy within the EEA in strict compliance with Home Office guidelines. If after conducting the resident labour market test no suitable candidate has been located, the UK employer may seek to sponsor a non-EEA worker for the position.

As part of the sponsorship process the UK employer (who must be a licensed sponsor) will, instead of applying for a work permit, issue a Certificate of Sponsorship to the non-EEA worker. The Home Office will only approve the issue of a Certificate of Sponsorship to a non-EEA worker who has demonstrably passed the points-based assessment. Under the assessment, points are awarded for attributes including age, qualifications, prospective earnings and savings. If the non-EEA worker does not meet the points-based criteria, the UK employer will be unable to recruit the individual for employment in the UK. Accordingly, it will be important for UK employers to seek advice in respect of a prospective non-EEA candidate's eligibility under the points-based system prior to extending a job offer.

INDIVIDUALS: Jamaicans with a Job Offer from a UK Employer

Jamaican nationals receiving a job offer from a UK employer after November 2008 should ensure that the UK employer provides them with a properly issued Certificate of Sponsorship in respect of the offer. The onus will be on the employer to issue the Certificate of Sponsorship. The individual should note that he/she will be required to present a Certificate of Sponsorship when applying to the UK High Commission for entry clearance to travel to the UK to commence work. A Jamaican worker who enters the UK under sponsorship will have a vested interest in his/her sponsor's continued compliance with its sponsorship duties as the sponsor will be unable to continue employing non-EEA nationals in the event that its Sponsor's Licence is revoked.

There are *Tiers* of the UK's new immigration regime which will facilitate access to the UK for categories of individuals including investors, entrepreneurs, athletes, students and ministers of religion. These, however, are beyond the scope of this article.

CONCLUSION

The UK's new points-based system of immigration control represents a significant shift from the qualitative to quantitative assessment of non-EEA workers seeking access to the UK labour market. While it is generally accepted that the new regime will be more challenging for applicants, the quantitative definition of the eligibility criteria should reduce the ambiguity associated with current eligibility requirements. The prudent UK employer will carefully assess a prospective non-EEA candidate's eligibility against the points-based criteria prior to extending an offer of employment to the candidate thereby minimising the risk of an unsuccessful application. Conversely, the prudent Jamaican worker who receives a job offer from a UK employer will seek to verify that his/her prospective employer is a licensed sponsor and capable of maintaining its status as such.

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