



## Boarder Control

What does the future hold for university recruitment of non-EU students and staff?

Gordon Barr, employment solicitor for Dundas & Wilson LLP, navigates foreign waters.

There has been considerable concern for a while in higher education circles about how changes to the UK's immigration system could affect the recruitment of sought-after staff and students in the future. With a new Coalition Government proposing an annual cap on non-EU economic migrants and a further tightening of the points-based visa system already in place, universities need to be mindful of the legal issues surrounding immigration.

## The Background

In 2008, the Government introduced a new 'five tier' points-based immigration system for non European Economic Area (EEA) nationals. The aim was to simplify the previous immigration system which had some 80 available routes for working or studying in the UK.

The new 'five tier' system imposed an initial regulatory and administrative burden upon universities which had to apply for a sponsorship license before they could sponsor migrants who wished to enter the UK to work (under Tier 2 for skilled workers with a job offer and Tier 5 for youth mobility and temporary workers), or to study (under Tier 4).

## Student Recruitment

In terms of student visas, this new system was designed to prevent economic migrants entering the UK via bogus educational establishments.

As a result universities are now vetted and made to act as 'sponsors' for students and skilled foreign migrants. However, the then Labour Government remained concerned that migrants were still abusing the student visa system to remain in the UK illegally so, on 3 March 2010, further requirements were implemented for Tier 4 Student applications. The Home Secretary Alan Johnson said the changes were necessary because 30 per cent of migrants to the UK had student visas and a number of them were adults taking short courses rather than degrees.

One of the new requirements was that applicants had to show a higher standard of English language skills than the 'beginner level' that was previously necessary.

At the time Nicola Dandridge, Chief Executive of Universities UK, expressed her reservations saying there was a 'real risk that restrictions on reputable education institutions will make the UK less attractive to international students.'

In that same month two further changes were made. Students taking courses below degree level could now work for only 10 hours a week rather than the previously allowed 20 hours, while those studying for courses lasting less than six months would not be allowed to bring dependants into the country.

Non-EEA students provide an important source of income to the HE sector.

There are some 350,000 international students being educated in the UK and in 2007-08, £1,880 million of the UK universities income came from non-EEA students. The new Coalition Government's decision to reduce higher education expenditure by £200m for the next academic year may well make the option of recruiting additional higher fee-paying foreign students even more attractive to universities.

Yet the further tightening of student visa controls is a potentially worrying development, fuelling concerns that foreign students will now be dissuaded from applying to UK universities thereby making them a less attractive proposition in a competitive market place.

### Staff Recruitment

It is clearly important for UK universities to be able to attract talented academic staff from outside the EEA. However, the rigidity and inflexibility of the points-based system often causes practical difficulties in processing such applications because of the strict timescales and criteria it imposes.

For example, a university may seek to support an academic applicant to make a Tier 1 'highly skilled worker' visa application. The applicant may have extensive skills, experience and qualifications. However, a Tier 1 application also requires the applicant to meet a maintenance fund requirement. The academic must provide funds totalling £2,800 (or the equivalent in local currency) over a full three month period immediately prior to his or her application. Proof of a further £1,600 is required for each accompanying dependant. Irrespective of the applicant's academic value to the university, this requirement can prove onerous and can significantly delay a Tier 1 application being made.

Alternatively, a university may sponsor an academic under Tier 2. Here the university must assign a certificate of sponsorship (COS) to the academic no more than six months after the role is advertised. Thereafter, the academic must apply to enter the UK within three months of the date that the COS was issued.

In many sectors such timescales will not be problematic. However, the process of employing a foreign academic can be lengthy. Senior academics often work long notice periods and negotiating their working arrangements can be complex especially if they want to relocate their team (e.g researchers, PhD students) in addition to their family.

Also, all such academic vacancies have to be advertised for four weeks at Job Centre Plus. This creates a time consuming burden for employers to sift applications that often do not meet any of the criteria.

Processing an immigration application within these rigid and inflexible timescales can often prove frustrating to the affected academic and the university. As with the students, there is a concern that such complexities and delays will discourage foreign academics from seeking to work in the UK.

### Closed-Door Policy?

It may be that the strong reputation of UK universities in the global higher education market is sufficiently robust to protect them from these issues but there is no guarantee.

The new Coalition Government's 'programme for government' states that it 'will introduce an annual limit on the number of non-EU economic migrants admitted into the UK to live and work'. It is unlikely that this 'cap' will affect student visas however it certainly has potential implications for staff recruitment in the HE sector. Importantly, neither the mechanism for implementing the limit nor the figure for the cap has yet been set out but it is designed to limit rather than expand the number of migrant workers entering the UK. If this limit is set too low then there is a real concern that it may result in the UK (HE sector included) being deprived of valuable migrant workers and shortages not being able to be met if for example, the quota is met early in the calendar year.

If the immigration cap is operated in this way it would likely cause considerable disruption to recruitment in the HE sector. Importantly, it would significantly add to the perception amongst foreign academic staff that the UK is seeking to operate a 'closed door' immigration policy.

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