

HSMP Forum's submission for Migration Advisory Committee

This is in reference to the recommendation the committee is supposed to make to the Home Office in terms of the question below. We are making a submission in this matter and we hope the committee will take this into consideration when making its recommendations;

What further changes to Tier 1 of the PBS should there be in 2010/11, given the changing economic circumstances?

"HSMP Forum" is a not-for-profit organisation. It was formed after the 2006 decision by Government to apply new qualifying criteria for Highly Skilled Migrant Programme (HSMP) for permanent residency (ILR) and for visa extensions of existing Highly Skilled Migrant residents. "HSMP Forum" has been lobbying the Government and courts by challenging unfair policies, to allow existing legal Skilled Migrants to settle in UK. The organisation's aim is to support and assist migrants under the world-renowned British principles of fair play, equality and justice and believes in challenging any unfair policies which undermines migrants' interests.

We have serious concerns about the continuous changes which are implemented for existing migrants on tier 1 visas. The tier 1 visas intended to attract Highly Skilled Migrants globally need a serious makeover. Highly Skilled Migrants who wind up their careers, establishments and uproot their families in their home countries to come and work in Britain need certain motivation and assurance in order to make the sacrifices they do. It is important before designing policies and rules the Ministers and Policy Makers place themselves in the migrants' position.

Relaxation of extension criteria

Recession

Skilled Migrants on Tier 1 visas and particularly those who need to obtain a points-based extension, are finding it extremely difficult to obtain their further extensions due to the present stringent rules which do not take into consideration the current economic downturn and the resulting difficulties faced by hardworking migrants. To avoid penalizing the migrants further, it will be only fair if the immigration rules are relaxed by acknowledging the difficulties faced by migrants in the present economic climate. The credit crunch affects everyone from natural born citizen to immigrants. We have been receiving various cases of hardships from migrants who were and are working in many industries hit by the recession. We have received concerns from a large number of migrants within the tier 1 category who are finding it difficult to obtain their further extensions due to the hostile economic climate. Some of them have been let down by the appeal processes.

Some of the examples for relaxing the extension criteria would be; awarding grace points until further notice during the recession or by giving grace period of time where evidence is present (to prove points) for those who lost their employment due to the recession.

Discrimination of Foreign Nationals

In addition, majority of the permanent jobs require a person to be a permanent resident or EU national, for e.g. banks like Abbey National etc.¹ Migrants on tier 1 are mostly restricted to contract and temporary jobs which do not help them in achieving a high earning level which is expected of them during extension. Migrants on Tier 1 face many such hurdles in obtaining salary structures required during tier 1 extensions.

We believe that the Government should ensure existence of a Conducive environment for migrants and also create awareness among employers to ensure they do not discriminate non-EU migrants due to their nationality. The Home Office should ensure that those on tier 1 visas are given equal opportunity at par with permanent residents or EU nationals so that migrants full potential is utilised to meet the Home Office's ambitious extension requirements.

Issues concerned with Equality

It was acknowledged widely by the Equality and Human Rights Commission and its predecessor, Commission for Racial Equality that ethnic minorities find it difficult in obtaining senior or management level employment with high salaries which is an important requisite for those under tier 1. In our 2008 High Court judgement concerning the HSMP extension criteria for those admitted under HSMP prior to 7th November 2006, the High Court recognized the issue concerned with employment of ethnic minorities.

Sir George Newman in the High Court Judgment stated "I have to say that having regard to the number of migrants of ethnic minorities which it must have been contemplated would enter the programme and, as history tells, did, the value of the original scheme was that it could take account of the difficulties faced by such persons on the labour market, which cause them, despite reasonable efforts to obtain employment, to suffer periods of unemployment or employment in less highly skilled positions. The robust character of the new scheme is less apt to accommodate these realities. The Commission (Commission for Racial Equality / Equality and Human Rights Commission) highlights the failure of the assessment to take account of "the ethnic penalty in the workplace".²

We believe the ethnic minorities who come from Asian and African countries suffer more in this present recession; therefore it is important that the extension criteria are relaxed.

Maintenance Funds

We have found that many migrants who are to fulfill the maintenance funds requirement were not aware that they had to show certain amount of balance for a period of three months as this requirement was not applicable when they joined the HSMP / tier 1 scheme. Therefore, those who checked on the application form just few days before making their application found it extremely difficult to provide this

evidence of three months of maintenance funds. This included even professionals drawing high end salaries who have been allocating funds for their other investment plans such as mortgages or business investments. We found the maintenance funds requirement erroneous at times. For e.g. a doctor who is drawing reasonably good salary, twice as much as the earning requirement on tier 1, has been falling short of maintenance funds just because the person was not aware about it beforehand and only came to know about it at the time of the application. We believe the maintenance funds requirement for those who joined the tier 1 scheme before its applicability should be exempted from the same.

Government responsibility

It is the duty of the government of a country to ensure the migrants who come here to contribute to UK economy are given a fair chance to do so. The fair chance cannot be established without a fair environment. Ensuring a fair environment with opportunities is the responsibility of the government.

The rigorous anti-immigrant climate presently adopted by the Home Office has not been helpful. We have earlier raised our concerns with UK Border Agency on various issues such as a misleading advertising campaign that shows that all Non EU migrants in UK need work authorization before taking employment without clarifying that such requirement is applicable only to tier 2 category migrants.

In this current economic climate we believe it is important for the government to acknowledge that the economic climate has affected the UK immigrants in the same way as the citizens. The principle of fair play becomes even more important in these troubling times and the UK Government has a greater responsibility to show that UK cares for its immigrants the same way that it cares for its citizens and intends to uphold the British principles of fair-play, equality and justice.

References:

- 1) <http://www.personneltoday.com/articles/2007/04/27/40348/doubts-cast-on-highly-skilled-migrant-programme-as-abbey-bank-rejects-worker-for-being-on-the.html>
- 2) Paragraph 62, <http://www.bailii.org/ew/cases/EWHC/Admin/2008/664.html>

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