

HSMP Forum's submission to Home Affairs Committee

1. "HSMP Forum" is a not-for-profit organisation. HSMP Forum took its name from the UK's Highly Skilled Migrant Programme which was introduced in 2002. It was formed after the 2006 decision by Government to apply new qualifying criteria for existing Highly Skilled Migrants. "HSMP Forum" has been lobbying the legislature, executive and judiciary by challenging unfair policies, to allow existing legal Skilled Migrants to settle in the 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. The following is our submission on the issues concerned with the proposed permanent immigration cap.
2. *The impact a cap on non-EU economic migration would have on the ability of UK business and industries to recruit the skills and staff they require;*

We believe a cap on non-EU economic migration will tie down the businesses by preventing them from recruiting skilled staff when required. Businesses cannot wait for months if they urgently need specific skills. In addition, cap will threaten economic performance and recovery from current economic problems. Organisations unable to fill certain positions may find the need to outsource such requirements overseas¹. They may find it more economical to outsource in a larger spectrum than continue with such posts and departments in the UK. Many companies in London rely on Tier 1 and Tier 2 migrants with some employing a large number of non-European migrants. Many Tier 1 immigrants hold key and senior positions and are involved in high value-added work. The proposed and potential cap on extension would not only make it more difficult to recruit new staff but will add unnecessary uncertainty to businesses and their staff on Tier 1 (and Tier 2) visas. It would be unfair to businesses to lose workers who engaged in high value-added work and it is irrational to expect the companies to replace their existing non-EU staff with EU nationals, especially when there is a specific language requirement or skills requirements that cannot be fulfilled by the EU nationals.

¹ <http://www.guardian.co.uk/uk/2010/aug/22/immigration-cap-business-jo>

HSMP Forum's submission to Home Affairs Committee

There are also legal consequences and costs of cap on extensions for example when a company needs to immediately terminate a migrant's employment due to the cap and has to pay for 3-6 months as per notice period obligations (a 6-month notice is common for senior workers and managers).

At a time the economy desperately relies on an injection of skills and talent to show a consistent upward trend, shortcomings like these should not be allowed to thwart the commercial progress. Such a cap only heightens a sense of instability in a volatile economic environment. Also there are many trainees in the NHS who are due to complete medical training in the next future. The cap will not only force them to abandon their education but will also mean a waste of time for the NHS who has made a considerable investment to turn them into a potential skilled workforce. We believe skilled immigration should be a market driven response rather than a political one.

3. The numbers of skilled and non-skilled migrants likely to be affected by a cap on Tiers 1 and 2;

Government has set an ambitious target 'to reduce immigration to the levels of 1990s tens of thousands rather than hundreds of thousands'. In addition, it wants to continue to attract the 'brightest and the best' to the UK. It is unrealistic to reduce immigration on such a scale without having to forego the best and the brightest. Especially, since the target group for such a cap is intended to be that of Tier 1 and Tier 2 migrants. According to our estimate a cap might affect around 50% of highly skilled migrants². Immigrants arriving under Tier 1 (previously HSMP) formed 3% of total immigration in 2008 (15,515 Tier 1 migrants of total inflow of 590,000 migrants). However their contribution to the economy and the growth is significantly bigger than their size. Frequent changes in immigration policies and uncertainty about future cannot attract highly skilled migrants. Countries such as Australia, New Zealand and Canada attract highly skilled migrants by providing

² Estimations made based on analysis of IPPR's analysis (Limits to limits, 2010) and Control of Immigration Statistics, Home Office, 2010

HSMP Forum's submission to Home Affairs Committee

them a much better provision of permanent residency comparatively in the UK where no such assurance is given and the Citizenship and Immigration Act will make the process of settlement even more difficult and delayed.

We oppose any retrospective changes and believe that immigration cap should not be applied on extensions of existing migrants. We have received many responses from Tier 1 migrants expressing concern regarding the possible cap on extensions. They feel that applying a cap on extensions is unfair and will expose them to enormous uncertainty. The prospect of being sent to their countries of origin after spending years and investing in the UK would cause major damage to their personal life and career prospects. Migrants that came under Tier 1 have developed a reasonable expectation that they would be able to extend their stay under the same conditions based on various judicial outcomes which confirmed Tier 1 extensions are based on the same rules as applicable during their initial applications. Some Tier 1 migrants were disappointed to see the Migration Advisory Committee's consultation which is considering applying cap on extensions. Such uncertainty can cause migrants to immigrate to countries with immigration friendly policies.

Another group that would be affected by the potential cap on extensions are HSMP migrants – some HSMP migrants need to apply for second extension and face uncertainty despite spending almost five years in the UK and making it their 'main home' as per the HSMP visa requirement. These migrants could not predict that they would be subject to the cap despite their efforts and contribution.

Frequent immigration changes and uncertainty will send negative message to new potential Tier 1 migrants and lead to significant decrease in applications. The damage to UK's reputation might be irreversible and it might deter foreign entrepreneurs and potential investors: the consistent change in policy can create lot of uncertainty and unpredictability for migrants to plan their lives. If there are retrospective changes towards Tier 1 (general) then in the future there is a possibility of retrospective change towards entrepreneurs and investors as well.

HSMP Forum's submission to Home Affairs Committee

4. *The impact and effectiveness of a 'first come, first served' or a pool system for highly skilled migrants under Tier 1; and of a 'first come, first served', a pool, or an auction, system for skilled migrants under Tier 2;*

A pool system will ensure that the candidates with highest skills would be allowed to come to the UK. However it also means increasing the requirements of PBS (for example if a person meets PBS requirements but if other applicants hold higher degree (MSc or PhD) or earn higher salary then the applicant would be refused). The existing PBS requirements are high enough. There are also issues concerning delays in the time interval of applications selection in a pool system, transparency of such a system and whether there would be any appeal rights which will create many uncertainties for migrants intending to come to UK. Under the 'Auction' method small firms would be potential losers since it would be impossible for them to compete with big corporations. We believe such methods should not be applied to existing migrants in the UK.

5. *Whether and how intra-company transfers should be included in a cap;*

Applying a cap only on Tier 1 and Tier 2 might lead to the situation that big corporations will use intra-company transfer route as alternative way to bring in skilled workers. That would lead to surge in intra-company transfer visas and consequently the Tier system limits would be reached earlier. That would be unfair towards small businesses that cannot benefit from intra-company transfers and also for the migrants. We believe the inclusion of intra-company transfers within the cap will lead to further exploitation of migrants since those coming under the current policy of intra-company transfers cannot apply for settlement. These migrants although cannot access public funds like other migrants on tier 1 and 2 and would be paying for the public services they access.

6. *The implications of merging the Resident Labour Market Test and Shortage Occupation Lists;*

HSMP Forum's submission to Home Affairs Committee

Merging the Resident Labour Market Test and Shortage Occupation Lists would hurt companies that require specific skills that are not included in Shortage Occupation list like foreign languages. The shortage occupation list is concerned with an occupation which is in national shortage and it has been acknowledged as such but if there are resident workers available to fill in such occupation then it is arguably cannot be considered as a national shortage. The government's assumption that employers tend to bring in migrants to fill in positions of national shortage irrespective of availability of resident workers seems to be misplaced and if at all then this can be corrected by rather more efficient management of such a list. The shortage occupation list should be used to reduce bureaucracy and make it much easier for businesses to recruit non-European migrants when the skillsets are not available locally. Merging these two can potentially cause further procedural delays and difficulties for businesses urgent needs.

7. *Whether dependents should be included in the cap, and the effect of including them.*

Preventing spouses from accompanying the main applicants based on cap will discourage potential Tier 1 and Tier 2 migrants from coming to the UK. Imposing cap on dependants of Tier 1 and Tier 2 holders already in the UK should be out of the question. Most of the children of current migrants have spent years in the UK and feel that UK is their main home and can speak only in English. It is unfair to expose these families to uncertainty and constant fear that despite their hard efforts they may face deportation. In addition, uprooting families of existing migrants would lead to possible violation of the right to respect for private and family life as per Article 8 ECHR, there can be possible challenges in courts and mounting costs. It will also be wrong and unfair for the government to consider the entry of dependents with working rights as a barrier in limiting migrants as this can lead to possible segregation and biased treatment of migrants who have dependants and those who do not. Migrants who have dependants are likely to be earning more and therefore would be paying more taxes comparatively. In addition not everyone who comes on a dependant visa seeks employment.

HSMP Forum's submission to Home Affairs Committee

8. We recommend as follows;

- We believe the government should not apply any such proposed cap on migrants who are already resident in the UK (including those who are switching internally from other categories). This is of major concern due to the home secretary's repeated claims of her intention to reduce net migration.
- We do not believe a cap is good for UK's economy as it can further cause unnecessary detriment to UK businesses in this ongoing difficult economic crisis. Also the overall image of the UK in attracting highly skilled migrants will be at risk. When the Prime Minister is eager to improve and strengthen relations with major developing countries a cap can have adverse impact on such initiatives, a cap will be considered as a protectionist measure by other countries, for example, India has already expressed its unhappiness over such measures and said that it can impact trade relations between India and the UK³. Therefore, if the government goes ahead with its plans then we believe it needs to at-least ensure that migrants coming on tier 1 visas which constitute a very small proportion of the overall immigration inflow in the country is exempted from such a cap.
- It is also important that the government rather tries to perfect the present processes rather than introducing new procedural rules. In the recent past both employers and migrants have seen a vast number of new procedural changes in the immigration system, therefore the focus can be on improving the present processes rather than reestablishing new ones which can cause further inconvenience and hardships to both employers and migrants.

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³ <http://www.peoplemanagement.co.uk/pm/articles/2010/07/indian-government-to-be-consulted-on-immigration-cap.htm> ;

<http://indiatoday.intoday.in/site/Story/103394/World/developed-nations-cannot-have-protectionist-attitude-sharma.html>