The energetic and prosperous city of Boston is renowned for its cultural facilities, world-class educational establishments, and its place at the forefront of American history. As New England’s social and commercial hub, home to a number of major national and international businesses, and one of the oldest operational sea ports in the western hemisphere, Boston is a fitting and inspiring setting for the International Bar Association’s 2013 Annual Conference.

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KEYNOTE SPEAKERS INCLUDE:

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Justice Stephen Breyer  Associate Justice, US Supreme Court
Paul Volcker  American Economist and former Chairman of the Federal Reserve

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Contributions to this newsletter are always welcome. If you wish to be a contributor for your country or region and can provide updates twice a year, please contact the Newsletter Editor using the address below:
Corrado Scivoletto
Studio Legale Associato Simonetti Persico Scivoletto, Rome
Tel: +39 (06) 455 09 150
Fax: +39 (06) 455 09 151
c.scivoletto@spslex.com

International Bar Association
4th floor, 10 St Bride Street
London EC4A 4AD
Tel: +44 (0)20 7849 0090
Fax: +44 (0)20 7849 0091
www.ibanet.org
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This newsletter is intended to provide general information regarding recent developments in immigration and nationality law. The views expressed are not necessarily those of the International Bar Association.

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From the Chair

Welcome to the newsletter

I am delighted and privileged to have been entrusted by our past Chair, Committee and Members of the IBA Immigration and Nationality Law Committee with the task of heading the work of the Committee for the next two years.

Firstly, I would like to thank our past Chair, Enrique J Arellano, who had done an excellent job and will be a very hard act to follow. To match up to his excellence, I am equally delighted to have superb committee members in place, all of whom have great enthusiasm and dedication, and are brimming with ideas on how to engage the Committee in exciting projects for the years ahead. Thank you Gunther (Senior Vice-Chair), Jelle (Secretary), Corrado (Newsletter Editor), Catherine (Website Officer), Anne (Membership Officer) and Karl (Corporate Council Forum Liaison Officer) for your perseverance and unyielding commitment, not only over the past few months but, in advance, for the months of hard work ahead.

The Committee has some interesting projects lined up this year; not only will the IBA Annual Conference in Boston provide an exciting platform for interesting debate, our bi-annual Global Immigration Conference is also scheduled for November. Additionally, the Committee is actively involved in the work of the Global Employment Institute (IBA GEI), and reviewing the possibility and impact of a ‘Global Relocation Treaty’. This engagement will help elevate the importance of corporate immigration amongst the human resource community.

One key objective and initiative for the Committee this year, is to raise its profile and membership and reach out to fellow members of the IBA, who may engage in global mobility but may not have actively followed our Committee. All current members can assist in this endeavor, by steering new entrants to our Committee. Our promise is to remain open, involved, engaged and engaging – to work together with our members to serve as their voice-piece within the IBA.

I look forward to the year ahead. Please do reach out to any of us on the Committee to share your thoughts, ideas and suggestions. See you all, at the latest, at the IBA Annual Conference in Boston.
Committee officers

Chair
Shalini Agarwal
Clasis Law, London
Tel: +44 (0)20 7876 4848
shalini.agarwal@clasislaw.com

Senior Vice-Chair
Gunther Mävers
Mütze Korsch
Rechtsanwaltsgeellschaft mbH, Cologne
Tel: +49 (221) 5000 3610
Fax: +49 (221) 5000 3636
maevers@mkrg.com

Secretary
Jelle Kroes
Kroes Advocaten Immigration Lawyers, Amsterdam
Tel: +31 (20) 520 6821
Fax: +31 (20) 520 6878
kroes@kroesadvocaten.nl

Corporate Counsel Forum Liaison Officer
Karl Waheed
Karl Waheed Avocats, Paris
Tel: +33 (1) 4366 9427
karl.waheed@karlwaheed.fr

Membership Officer
Anne O’Donoghue
Immigration Solutions Lawyers, Sydney
Tel: +61 (2) 9264 6432
Fax: +61 (2) 9264 6437
anne@immigrationsolutions.com.au

Newsletter Editor
Corrado Scivoletto
Studio Legale Associato Simonetti Persico Scivoletto, Rome
Tel: +39 (06) 455 09 150
Fax: +39 (06) 455 09 151
c.scivoletto@spslex.com

Website Officer
Catherine Sas QC
Miller Thomson, Vancouver
Tel: +1 (604) 643 1282
Fax: +1 (604) 643 1200
csas@millerthomson.com

LPD Administrator
Charlotte Evans
charlotte.evans@int-bar.org
Tuesday 0930 – 1230
Practical problems for lawyers and law firms in cross-border activities in other countries
Presented by the BIC International Trade in Legal Services Committee, the Immigration and Nationality Law Committee and the Regulation of Lawyers’ Compliance Committee

This session will deal with common problems that arise in cross-border trade in legal services. It will be divided into two parts:

Part I, joint with the Immigration and Nationality Law Committee, will be on fly-in, fly-out issues for lawyers, including visa problems, given that visas are sometimes very hard to obtain, and dealing with Bar concerns over disciplinary issues relating to visiting lawyers.

Part II, joint with the Regulation of Lawyers’ Compliance Committee, will focus on issues relating to foreign law firm establishment and compliance with rules in the country of establishment.

Tuesday 1430 – 1730
Illegal immigration: causes and impact, immigration policies and public opinion across the globe. Is there a realistic solution?
Presented by the Immigration and Nationality Law Committee

This session will analyse the causes of illegal immigration, the legal issues, the impact and the implications of this irregular movement across borders. Discussion will include topics related to legal treatment of undocumented workers and immigration policies in different countries. What do they contribute to the country in relation to unexploited and inexpensive labour? Are they victims or criminals? We will examine public opinion, the controversies and realistic solutions.

Wednesday 0930 – 1230
Entrepreneurs and investor immigration schemes
Presented by the Immigration and Nationality Law Committee and the North American Regional Forum

The session zooms in on general trends in policy developments worldwide. How are the world economies competing to attract entrepreneurs and investors to their jurisdictions? Do they use minimum capital thresholds, or offer easy access to permanent residence and other perks?

Thursday 0930 – 1230
The growing importance of corporate immigration and international employment law in corporate transactions: getting it right when moving personnel between entities, in-country or across borders
Presented by the Corporate and M&A Law Committee, the Employment and Industrial Relations Law Committee and the Immigration and Nationality Law Committee

In today’s world of increasing global mobility, transactions do frequently have an impact on employees that are assigned to a company that is either the target of a proposed acquisition or a purchasing entity. Moreover, moving personnel across international borders often complicates situations for counsel involved. The session will explore and investigate some of the most crucial questions that arise in such transactions, from the perspectives of the transactional lawyer, employment counsel and corporate immigration experts. Questions and issues to be dealt with will include:
• What does a transactional lawyer, organising a due diligence with regard to the purchase of a target company that employs assignees from third countries, need to know to duly carry out the diligence from an employment law and a corporate immigration law perspective?
• What happens to the temporary residence permit of an employee when his employer changes as a result of a merger or acquisition? Does the position change if the acquisition is by way of share sale or asset sale? Is this any different for a permanent permit?
• What happens to the temporary residence permit of an employee when their employer changes as a result of an internal group reorganisation, e.g., employee moves company within the Group to same or a different position? Is this any different for a permanent permit?
• What are the risks of being non-compliant with the employment and immigration laws that apply to employees assigned to the target company from abroad, for both the seller and the purchaser? How can these be reflected or covered in the transactional documentation?
• Do corporate, employment and immigration lawyers cooperate closely enough, in good time, and to mutual benefit when addressing such issues? If not, how can we improve best practices within each of these disciplines to ensure the highest level of client satisfaction?

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Employers must be proactive in work permit process

Is an employer under a duty to obtain the necessary documents for the renewal of a work permit held by a foreign worker? Can an employer terminate a foreign worker who fails to obtain a work permit when the employer should have assisted them with the process? These questions arose in the recent decision of Lee v Anglo-Eastern Ship Management Ltd, as a result of a complaint of unjust dismissal by a foreign worker. In that case, an adjudicator of the Canada Labour Arbitration Division (‘CLAD’), held that the employer had to reinstate a foreign worker who was in the process of renewing a work permit with retroactive compensation. The decision implies that the employer was under a positive duty to assist the foreign worker in obtaining a work permit based on prior conduct and expectations.

In Lee, a long-time employee of the company was transferred to Canada from Hong Kong to assume the position of technical officer. The position was referred to in the offer of employment as ‘a permanent position’. The employee commenced his duties in 1997 and was employed as a temporary foreign worker and held a work permit which was renewed from time to time by Citizenship and Immigration Canada, with the assistance of the employer. As business increased, the employer hired another technical officer, who was a Canadian citizen. This situation continued until the employer experienced a business slowdown due to the economy. After carefully evaluating its options, the employer decided to give notice of termination of employment to the Canadian citizen employee, in consideration that Mr Lee, the foreign worker, had 21 years of service with the company. Around the same time, the general manager of the employer was requested by the foreign worker to ‘sign a document relating to the renewal of his Work Permit’. The general manager drafted a letter in support of the work permit renewal, which was sent by the foreign worker directly to Citizenship and Immigration Canada. It appears that neither the foreign worker nor the general manager requested any legal advice or assistance from anyone else in the company as to what was necessary in order for Mr Lee to obtain a work permit, nor was there any inquiry made as to how previous work permits were obtained.

The evidence showed that while the foreign worker always requested his own work permit, the company obtained a Labour Market Opinion (‘LMO’) which was part of the documentation submitted to Citizenship and Immigration Canada. However, in this particular instance, such LMO was not obtained. The decision is somewhat obscure as to why that was not done but it discloses that Mr Lee had applied for permanent residence. It is reasonable to conclude that he thought he would receive it prior to the expiry of his work permit and that, therefore, he did not take the necessary steps to obtain a LMO from the company. In any event, his application for a work permit was rejected by Citizenship and Immigration Canada.

The reasons for the refusal were essentially that a LMO was not obtained by the employer and that Mr Lee’s work permit had already expired. Mr Lee was then obligated to apply for restoration within 90 days of the refusal. Mr Lee never informed the general manager of the refusal because he expected the restoration to be granted. However, the fact that Mr Lee did not have a work permit was discovered by the employer who terminated Mr Lee’s services on the basis that he was not entitled to work in Canada.

The company found itself in a precarious situation due to the fact that Mr Lee was the only technical officer and he could not legally work in Canada. In order to address this situation, the company turned to the second technical officer, a Canadian citizen, whose services were about to be terminated and requested him to remain in the job. Essentially, the company had to rehire him. The Canadian citizen insisted that he be hired on a ‘permanent basis’, to which the company agreed.

In the meantime, the employer assisted Mr Lee in obtaining the necessary LMO and work permit. Eventually, Mr Lee’s work permit was in fact reinstated.

There was some evidence that the employer’s general manager made regular
enquiries from Mr Lee as of his status. The adjudicator concluded that it was clear from the evidence that obtaining a work permit was primarily the responsibility of the employer, bearing in mind that Mr Lee had always been involved in the procedure as the most interested party. In addition, the adjudicator noted that the general manager was aware that Mr Lee’s work permit would expire and that the foreign worker had applied for renewal and for permanent residency. Further, the adjudicator found that the general manager was aware that Mr Lee could rectify the situation within 90 days after the refusal of his permit and that at the time of rehiring the Canadian citizen, the general manager was himself involved in assisting Mr Lee with that process. It was then reasonable to conclude that the Canadian citizen could have worked as technical officer until such time as Mr Lee was again entitled to work in Canada, and that there was no reason for the Canadian citizen to have been hired on a permanent basis. The employer had a duty to accommodate the foreign worker and could have made other arrangements rather than replace him on a permanent basis.

In the end, the company was obligated to reinstate the foreign worker with pay retroactive to the date of dismissal, save and except for the period in which he did not have a valid work permit.

This case highlights the need for employers to be proactive in the work permit process for their foreign workers. It also emphasises the need for employers to be vigilant and to obtain regular updates concerning the process of a work permit application both from the foreign worker and from anyone representing the employer. On a further note, the case also implies that employers may be held liable for damages if they do not take the necessary steps to ensure that foreign workers have the required documentation in place to work in Canada on a timely basis, and that there are no gaps between the time of expiry of a work permit and its renewal date. Employers should endeavour to obtain the appropriate legal advice and take control of the work permit renewal process as it is unwise to leave it up to the foreign workers to do it on their own.

Notes

* Sergio R Karas, is a Certified Specialist in Canadian Citizenship and Immigration Law by the Law Society of Upper Canada. He is Past Chair of the Ontario Bar Association Citizenship and Immigration Section, Past Chair of the International Bar Association Immigration and Nationality Committee, and Editor of the Global Business Immigration Handbook. His comments and opinions are personal and do not necessarily reflect the position of any organisation.


The past year has seen dramatic changes across the board to Canada’s immigration programme. Canada’s Minister of Immigration has suspended the Skilled Worker Program, the Entrepreneur, and Investor Program, as well as the sponsorship of parents and grandparents. We have seen the creation of the new Skilled Trades Program and the Start-Up Visa Program for Entrepreneurs. Virtually every aspect of Canada’s immigration programme has undergone some form of modification. Here is a brief synopsis of these comprehensive changes.

**Skilled Worker Program revived**

On 19 December 2012, Minister Kenney announced the reopening of Canada’s Skilled Worker Program effective 4 May 2013. The Skilled Worker Program has been the cornerstone of Canada’s economic immigration programme for decades. It remains a points-based system whereby applicants must score at least 67 out of a possible 100 points. The new Skilled Worker Program shifts the emphases on points available for various selection criteria. Of key significance is that language proficiency is the new focus of the Skilled Worker Program.

**Canada’s immigration programme turned inside out**

The past year has seen dramatic changes across the board to Canada’s immigration programme. Canada’s Minister of Immigration has suspended the Skilled Worker Program, the Entrepreneur, and Investor Program, as well as the sponsorship of parents and grandparents. We have seen the creation of the new Skilled Trades Program and the Start-Up Visa Program for Entrepreneurs. Virtually every aspect of Canada’s immigration programme has undergone some form of modification. Here is a brief synopsis of these comprehensive changes.
Maximum potential language points have increased from 16 to 24 making language the single most significant selection factor under the Program.

This new programme also shifts the emphasis on age towards younger applicants. Previously the old system gave ten points for anyone between the ages of 21-49. Applicants over 49 or under the age of 21 lost a point for each year beyond that range. The new selection criteria will favour younger applicants by awarding a maximum of 12 points for applicants between the ages of 18 and 35. Applicants over the age of 35 will lose one point per year with no points being eligible for anybody beyond the age of 47. Education remains at a maximum of 25 points, however all applicants will need to submit a credential evaluation which identifies the equivalency of their educational qualification to Canadian standards.

The programme will also have proscribed occupational categories as well as caps on the number of application to be accepted annually.

**Canadian Experience Class**

On 2 January 2013 a significant change to the Canadian Experience Class (CEC) came into effect. Individuals working in Canada on a valid work permit are now eligible to apply for permanent residence under the CEC class after completing one year of full-time paid work experience in Canada. Previously, applicants needed a minimum of two years of full-time work experience to be eligible to apply under the CEC class. This change is consistent with Minister Kenney’s overall recognition of the significance of Canadian work experience for new immigrants to be able to integrate effectively into the Canadian economy as quickly as possible.

In addition to the 12 months of full-time paid work experience, applicants must also demonstrate proof of language ability from one of the recognised English language testing programmes such as the International English Language Testing System (IELTS) or the Canadian English Language Proficiency Index Program (CELPIP).

**Federal Skilled Trades Class**

The 2 January 2013 also saw the creation of a brand new programme for skilled trades people. The creation of the Federal Skilled Trades Class is to facilitate applications for permanent residence in certain identified trades. Eligible applicants must show a minimum of 24 months of full-time paid work experience within the last five years in one of the eligible skilled trade occupations identified in either group A or group B.

- **Group A occupations** identify 17 occupational categories from the National Occupational Classification (NOC) and allow up to 100 applications per occupation per year.
- **Group B occupations** have no cap to the number of applications per year other than the general limit of up to 3,000 applications a year for the Federal Skilled Trade Class. Group B occupations are listed on the government website and represent 26 specific trades that are eligible under this programme.

Skilled trade applicants must also meet specific language threshold requirements demonstrating language proficiency in each of speaking, reading, writing, and oral comprehension.

**Start-Up Visa for business immigrants**

On 24 January 2013, Minister Kenney awakened the sleeping Business Immigrant Program with the introduction of the new Start-Up Visa, the first of its kind in the world. The start-up visa programme seeks to connect immigrant entrepreneurs with private sector organisations who will provide the business and financial support necessary to enhance the chances of success of the new start-up business venture.

Applicants will require the support of a Canadian Angel Investor Group or Venture Capital fund before they are able to apply for the start-up visa. Initial active partners in the programme include the Canada’s Venture Capital & Private Equity Association (CVCA) and National Angel Capital Organization (NACO). CIC is also working with the Canadian Association of Business Incubation (CABI) and hopes to have their body participating in the programme soon.

These approved industry partners will work with CIC to recommend suitable applicants for the start-up visa programme. Expert peer review panels will be established to assist visa officers in assessing applications for the New Start-Up Visa.

This programme is the first of its kind in that it will grant immediate permanent residence for applicants selected through the Start-Up Visa Program. Many countries have business immigration programmes which are generally conditional upon the applicant either making
an investment or establishing a business. The government acknowledges that not all start-up businesses will succeed but is counting on the partnership with private sector business organisations to enhance an applicant’s likelihood of success. This new Start-Up Visa program seeks to recruit innovative immigrant entrepreneurs who will create new jobs and spur Canadian economic growth.

In order to apply, applicants will first need the support of one of the approved industry financial organisations mentioned above who will provide the applicant with both the financial resources to back their proposed venture as well as on-going business support. This new business immigrant programme is the first of its kind in the world in that it will grant immediate permanent residence to Start-Up Visa applicants who are selected by the expert peer review panels. In addition to being matched with an approved industry sector partner, applicants must also meet the following basic criteria:

- language proficiency at an intermediate language benchmark of five; and
- at least one year of post-secondary education.

The programme officially opened 1 April 2013. For now this new Start-Up Visa kick-starts Canadian business immigration programme while the Investor and Entrepreneur programmes remain on ‘snooze’.

Changes to address marriage fraud

In the autumn of 2012, Canada’s Immigration Minister implemented new legislation aimed at targeting marriage fraud. The new spousal sponsorship provisions provide that couples who have been in a spousal relationship for less than two years or that do not have children together, will be given conditional permanent residence that requires the couple to live together as spouses for a two-year period from when the sponsored spouse arrives in Canada as a Permanent Resident. These recent changes are in addition to those introduced earlier in the year that provide for a five-year sponsorship ban for a new permanent resident who was sponsored to Canada themselves. In March 2012 the Minister made changes to the spousal sponsorship criteria stipulating that when a sponsored spouse is granted permanent residence on arrival in Canada, this new resident will be prohibited from sponsoring a future spouse for a period of five years.

The Minister has stated that these measures are meant to address situations where a person abroad enters into a marital relationship with a Canadian citizen or permanent resident, and when they arrive in Canada, they soon divorce the Canadian sponsoring spouse, return to their country of origin, re-marry, and sponsor their new foreign spouse. These changes target this abuse by requiring couples to maintain a marital relationship in Canada for at least two years as well as by prohibiting newly sponsored Canadians from submitting a subsequent further spousal sponsorship of their own for a five-year period. The new provisions are meant to protect Canadians from being victims of marriage fraud as well to make it more difficult for individuals to sponsor immigrants for financial gain.

The new two-year conditional residency provision has drawn criticism from many that this will compel persons in abusive relationships to maintain their marital relationship in order to preserve their permanent resident status. The Minister has given assurances that people who are in genuine marital relationships and who are suffering from abuse will have their permanent resident status maintained. However, in situations of abuse the new permanent resident will have to advise Canada Immigration of their circumstances such that they can be investigated and acted on. The Minister has also confirmed that this process will be complaint driven. Individuals will have to advise Canada Immigration of impropriety or abuse, ‘CBSA is not going to be going to people’s bedrooms’.

The Minister has implemented these new provisions to protect Canadian citizens and permanent residents as an attempt minimise the potential for abuse by foreigners who are entering in marital relationships with Canadians solely for the purpose of gaining the benefit of permanent residence to Canada.

Emphasis on language

There has been a considerable focus on language proficiency in all aspects of Canadian citizenship and immigration programmes. As of 1 November 2012, all applicants for Canadian citizenship are now required to provide proof of language ability in one of Canada’s two official languages. Proof of language ability can be established through third party test results, evidence of secondary or post-secondary education, or completion of government funded language training at an adequate level.
The recent regulatory changes for citizenship do not increase the language proficiency level required but changes the way that applicants for citizenship between the ages of 18 and 54 are able to demonstrate their language ability objectively and allow for officers to process their applications more expeditiously.

In a similar vein, revisions to Canada’s federal skilled worker programme, which features a points based selection system, increased the points for language proficiency and decreased the points for work experience. These proposed changes will also award additional points for a spouse’s language proficiency rather than a spouse’s education.

An increased emphasis on language proficiency has been significant over the past few years. Mandatory language testing was implemented on 26 June 2010 for all Skilled Worker and Canadian Experience Class applicants. On 16 March 2011, further regulations were introduced requiring all Business Applicants such as Investors or Self-employed Applicants to also provide test results when claiming points for language proficiency. And as of 1 June 2012, language test results are required for semi-skilled Provincial Nominee applicants.

Why this increasing emphasis on language in Canada’s Immigration and Citizenship Program? Minister Kenney has stated his case for the emphasis on language ability, ‘Extensive research has consistently shown that the ability to communicate effectively in either French or English is a key factor in the success of new citizens in Canada… We believe that it is important that new citizens be able to participate fully in our economy and in our society.’

Simply put, language proficiency has been demonstrated to enhance new immigrants and citizens to more fully integrate into Canadian society.

In 2012, there was a major change in political orientation with the Socialist Party winning the presidential election and obtaining a majority in the parliament. However, we are yet to see any major change in immigration regulations applicable in the corporate environment. We have outlined below the significant changes we have observed over the last 12 months.

**Update**

**Change of status from student to working category eased**

The Circular of 31 May 2012 provides the most recent guidelines to be followed by the officers processing the change of status sought by graduating foreign students who wish to work in France.

The period during which the employer must advertise to find the skills in France has been reduced from two months to three weeks.

Students graduating with a ‘Master 2’ degree may apply for a provisional authorisation to stay (‘APS’) four months prior to the expiry of their student status, in order to seek an employment which would be their first professional experience in France. The student under an APS may start working immediately upon the signature of the employment contract, and apply for a change of status within 15 days of signature.

Since the publication of the Circular, the processing authorities have become less rigid than under the previous government. The authorities continue to verify that the employment sought is appropriate for the degree and that the employer has a specific interest in hiring a foreign graduate.

**Increase in minimum salary and related thresholds for certain immigration procedures**

Increasing the minimum salary (‘SMIC’) and the wage index (minimum garanti) on 1 July 2012 resulted in changes to the salary thresholds applicable to the intra-company transferees and other foreign workers seeking
to be accompanied by family members.

The SMIC has been raised to €1,425.27 per month for a 35 hour working week. The *minimum garanti* is now €3.49.

Intra-company transferees must meet the salary threshold of 150 per cent of SMIC, which will now amount to €2,137.90 per month. Foreign workers, other than intra-company transferees, will be allowed to be accompanied by family members when they meet the salary threshold of 1,300 times the *minimum garanti*, or €4,537 per month.

**Registration for national health insurance has become more cumbersome**

Since May 2012, the national Health Insurance Centre requires that vital foreign records (such as birth and marriage certificates) bear the apostille or be legalised to complete registration. It is now necessary to check for each foreign national, according to the country which issued the act, if it should be legalised or apostilled. Some countries are exempted from this formality.

It should be noted that the foreign consulates in France are not always entitled to proceed with the legalisation or apostille of vital records issued by their country. In this case, the foreign national must apply to the Ministry of Foreign Affairs of the country which issued the act. The act of civil status and the apostille stamp or legalisation must be translated by a sworn translator registered with the Courts of Appeal and Cassation in France.

**Single desk and streamlined processing for three categories of foreign workers**

The Bureau of Professional Immigration is instructing (by Circular of 3 August 2012) certain regional authorities to create a single desk (*guichet unique*) to follow the immigration process for new foreign workers arriving in France in the following categories:

- Intra-company Transferees;
- Skills and Talents; and
- European Union Blue Card.

The prefectures concerned are Haute-Garonne (31), Hauts-de-Seine (92), Isère (38), Nord (59), Paris (75), Puy-de-Dôme (63), Rhône (69), and Yvelines (78).

The single desk will be created by the *Office Français de l’Immigration et de l’Intégration* (‘OFII’) located in each of the prefectures, with the objective of processing the applications faster. The government is aiming to process work permits for intra-company transferees and EU Blue Card applicants within four to six weeks.

The efficiency of this government incentive is uncertain. The single desk process is already in place in the Paris area for the intra-company transferees where we have seen the overall processing time increase. That being said, the medical examination and delivery of the residency permit are occurring at the same appearance at the OFII and this is a definite improvement from the past.

**New enforcement plan against illegal work**

A press release of 27 November from the Prime Minister, on the occasion of the opening of the National Commission for the fight against illegal work, declares a new enforcement plan against illegal work. Before the Commission, the Prime Minister reiterated the need for joint action by the state and the labour unions to effectively fight against illegal work, accused of distorting competition between companies and causing harm to the state through evasion of tax and social security. The plan is to address the most common forms of illegal work and focuses more specifically on organised fraud based on complex arrangements with multiple and international stakeholders.

** Longer understaffed occupations reinstated**

With the decree of 11 August 2011, the previous government had halved the understaffed occupations where the labour market test is not applicable to foreign nationals of third countries in the European Union. In a judgment of 26 December 2012, the Council of State annulled the decree notably based on the irregularity of the procedure of consultation with trade unions.

The cancellation of the decree of 11 August 2011 implies that the list is returned to its state before such decree. That is to say as it prevailed under the decree of 18 January 2008, containing 30 understaffed occupations designated by regions. The government could take this occasion to revise this list of understaffed occupations, as it did recently for Romanian and Bulgarian nationals (Order of 1 October 2012). This latter order greatly expanded the list of occupations open to Bulgarian and Romanian nationals without labour market testing.
Right to be accompanied by family to be allowed to fewer immigration categories

The implementation of OFII as the ‘single desk’ OFII was an opportunity for the administration to clarify the ‘Accompanying Family’ scheme. The ‘Accompanying Family’ category is now available for only the following categories of work permits: ‘Intra-company Transfer’, ‘Skills and Talents’ and ‘EU Blue Card’.

In particular, foreign employees seconded on client sites in the framework of the provision of international services may no longer benefit from the ‘Accompanying Family’ scheme. Their family members wishing to come to France must apply for a visitor visa at the French consulate having jurisdiction over their place of residence abroad or make an application under the cumbersome family reunification rules.

Outlook

In the above press release of 27 November 2012, the Prime Minister underlined the government’s intent to fight illegal work dissimulated by ‘organised fraud based on complex structures with complex parties and numerous and international players’. This statement leads us to anticipate a higher degree of scrutiny in the current work permit process applicable to foreign workers seconded to France in the framework of international service agreements.

The government has also stated on several occasions that it is considering adopting a more scientific approach to professional immigration, and it is studying the various existing models in other countries, such as the quotas by categories and the points system.

If any major changes are to come, they will come in the second half of this year if the government is able to maintain its current agenda of priorities which appear to have been written before several new events, such as French military engagement in Mali and the increased criticism of the government’s approach to redress the French economy.

Note

* Karl Waheed is a member of the New York and Paris bars.
Tables of Immigration Control and Refugee Recognition Act

Table 1

| Diplomat, 1 Official, 1 Professor, Artist, Religious Activities, Journalist, Investor/Business Manager, Legal/Accounting Services, Medical Services, Researcher, Instructor, Engineer, Specialist in Humanities/International Services, Intra-company Transferee, Entertainer, Skilled Labour, Technical Intern Training, 2 Cultural Activities, Temporary Visitor, 2 Student, Trainee, 2 Dependent, 2 Designated Activities. 3 |

Notes
1 Spouses of foreign nationals with these SOR are also granted ‘Diplomat’ or ‘Official’ instead of ‘Dependent’.
2 Spouses of foreign nationals with these SOR are not eligible for ‘Dependent’.
3 Spouses of foreign nationals with this SOR are also granted ‘Designated Activities’.

Table 2

Permanent Resident, Spouse or Child of Japanese National, Spouse or Child of Permanent Resident, Long-Term Resident.

The SOR of the foreign spouse of a Japanese or foreign national is granted depending on the nationality of the spouse, the type of SOR and their intention to work.

Spouse of a Japanese national

Spouses of Japanese nationals are granted residency as the ‘Spouse or Child of a Japanese National’. The foreign national must be legally married. The spouse in a de-facto marriage or same-sex marriage is not eligible for this category of SOR.

As the SOR is listed in Table 2 and granted on the basis of the foreign national’s position as a spouse of a Japanese national, the foreign national has the right to unrestricted access to work. This will allow the foreign national to be involved in unskilled or part-time work even where no work SOR categories are provided in Table 1. As the SOR does not require the Japanese national’s spouse to be the income provider, the foreign spouse can provide for a household if the Japanese spouse has no source of income or assets.

If the couple is legally married but cease to live as a married couple, such as in a separation or the marriage is legally terminated by the death of or divorce from the Japanese national, the foreign national is no longer qualified for the SOR. This, however, does not mean the SOR automatically becomes invalid. Thus, there have been cases in which a widowed/divorced foreign spouse stayed in Japan for the full period of validity of the SOR. As a result of changes to the Immigration Act in July 2012, the foreign national is now required to report the termination of marriage by death or divorce to the immigration authorities within 14 days of the event. Moreover, the immigration authorities can now cancel the SOR if the separation lasts for six months without reasonable grounds. Due to these changes, foreign nationals are now required to apply for another SOR, such as a work-related SOR or leave the country within six months. For a widowed/divorced foreign national, applying for residency as a ‘Long-Term Resident’ is another option, particularly if the foreign national has a child with Japanese nationality from the marriage and is currently taking actual care of the child. As an SOR listed in Table 2, residency as a ‘Long Term Resident’ also allows the foreign national to unlimited access to work and this makes raising the child easier for a foreign national parent who may have limited skills or time.

Conditions for a spouse of a Japanese national to obtain permanent residency are considerably relaxed; that is, three years residence which is considerably shorter than those on a work-related SOR who have to wait five to ten years. The residency requirements can be as short as one year if the couple has been married for three years and if they have been married and lived together for two years prior to entry to Japan.

Spouse of a foreign national

The legal status of a foreign national who is married to a foreign national with an SOR varies according to the spouse’s SOR.
Dependent (Table 1)

A spouse of a foreign national with a work-related or, generally speaking, any other activity-based SOR (Table 1) will be granted residency as a ‘Dependent’. Unlike residency as a ‘Spouse or Child of a Japanese National’, the foreign national must, in addition to having a marital relationship, be financially dependent on the spouse. The foreign national on this SOR can only work part-time, generally up to 28 hours per week, upon obtaining such permission.

Designated Activities (Table 1)

Both highly skilled workers under a points based system and their spouse can be granted residency under ‘Designated Activities’. The SOR for the spouse has two subcategories – one of which allows full-time work, whereas the other does not.

Spouse or Child of a Permanent Resident (Table 2)

This SOR is very similar to the ‘Spouse or Child of Japanese a National’ in that it allows unlimited access to work regardless of the type of job and provides relaxed requirements to permanent residency.

Long-Term Resident (Table 2)

This SOR is granted by the Ministry of Justice after consideration of the particular reasons a foreign national, who does not fall into any other SOR category, presents for wanting to be in Japan. Some cases, such as a grandchild of a Japanese national, are classified and set forth by the Ministry of Justice, while others are granted on case-by-case basis. A foreign spouse who is separated from a Japanese national but is taking actual care of a Japanese national child from the marriage may be granted residency under this category.

Other work-related SOR (Table 1)

A foreign national spouse of a Japanese or foreign national must obtain a work-related SOR if the purpose of their residence in Japan is not based on their position as a spouse.

Conclusion

The SOR category for a foreign national spouse is decided almost automatically depending on the nationality of the spouse and their SOR, but in cases in which the foreign national is yet to decide to take on a full-time job, one should carefully choose an SOR category which is most appropriate for the spouse.

General introduction to local immigration schemes for business or work purposes

Throughout its history, the Grand Duchy of Luxembourg has always been a land of immigration, due first to the steel industry and then to the major development of its financial market. Luxembourg is a beautiful landlocked independent country situated in Western Europe surrounded by France, Germany and Belgium. This strategic location in Europe and its multilingual population makes Luxembourg a natural and welcoming destination for immigration.

The internationally recognised financial centre and the high standard of living attract a huge number of European and non-European citizens so that in 2012, 43 per cent of the population was not native to Luxembourg, including 17 per cent non-Europeans. This gives Luxembourg in percentage terms the highest number of non-natives of any European country.

As a result of this substantial influx of foreign nationals, regulations were created to govern their entry, length of stay and right to work by means of a law of 29 August 2008. Luxembourg encourages legal immigration and for that reason, at the beginning of 2013, the government granted an exceptional...
Exemption period in which illegal immigrants could regularise their situation. This exceptional measure has allowed more than 600 people to ask for regularisation. On the other hand, it was decided to strengthen the criminal sanctions against employers who employ workers without any authorisation.

Furthermore, the legal framework provides specific conditions and formalities for non-EU nationals carrying out a salaried activity, which are dependent on the duration of the stay:

- for a period under three months;
- for a period over three months; and
- the immigrant’s professional qualifications (notably for highly-qualified workers).

**Entry, residence and work conditions for a stay of less than three months**

To enter Luxembourg territory lawfully, non-EU nationals must hold a passport valid for at least three months after the beginning of the entry, together with a visa, if required, and fulfil certain specific conditions.

Several documents must also be presented when a non-EU national enters the territory, such as proof of health insurance and documents that could prove, should there be a police check at the airport, the reason for the travel and that the person has sufficient resources for the duration of their stay and for their return (ie, cash, traveller’s cheques, credit cards or credit letters issued by a financial institution).

Upon their arrival and within a period of three working days, non-EU nationals must submit a declaration of arrival at the municipality of their chosen place of residence. If the person stays at a hotel, the form filled out by the landlord will be used as the declaration of arrival.

For a stay under three months, a non-EU national does not in principle have the possibility to work, unless they produce an authorisation. In order to do so, they must apply for a work permit for which the procedure and the conditions are the same as for a stay of over three months.

The law provides an exception for non-EU nationals who come to Luxembourg for a business trip, to visit business partners, to conduct research and develop professional contacts, to negotiate and sign contracts or to take part in administrative councils and general assemblies of companies. In such cases the visitor does not need to apply for a work permit if their stay is less than three months.

Apart from the above specific cases, the procedure for a non-EU national to obtain a work permit is a long and tedious process.

**Entry, residence and work conditions for a stay of more than three months**

Non-EU nationals who wish to stay for more than three months must fulfil the several conditions for entry and work. In addition, they must provide a proof of health insurance and a proof of sufficient resources. They must also follow a specific procedure in two steps:

- request a temporary authorisation to stay before entering Luxembourg; and
- follow a procedure upon arrival in order to obtain a residence permit.

Concerning the temporary authorisation, the application must be submitted and approved before the entry into Luxembourg. This authorisation is required for a variety of different activities such as for salaried workers, for freelancers or for students.

If the non-EU national wishes to work, they must apply for a work permit before starting to work. But before they can apply, their ‘future’ employer must declare the post concerned as vacant at the Luxembourg Employment Agency in order to verify if the post can be filled with a local or European person. If the agency has not found a candidate within three weeks, the employer can ask for a certificate authorising the employer to employ a non-EU national.

Afterwards, non-EU nationals and their employer may sign an employment contract, which can only start once the work permit is granted. Non-EU nationals must enclose with their application the original of the certificate and a copy of the work contract.

This authorisation is valid for a maximum of one year, for one profession and for one sector but with any employer.

After entering Luxembourg, non-EU nationals must follow a procedure in order to be granted a residence permit. Upon their entry, they must submit a declaration of arrival to the municipality of the chosen area of residence and take a medical examination. This visit is not reimbursed by Luxembourg social security.

A non-EU national will then be invited to a biometric data capture (photo and fingerprints). A few days after, they will finally receive their residence permit at the Immigration Directorate. Once granted, they must return to the municipality to confirm the declaration of arrival in order to receive a residence certificate.
Luxembourg also gives the possibility to non-EU salaried workers to work in the country via the secondment procedure or a transfer procedure. Both possibilities exist for intergroup workers.

For a transferred worker, the hosting firm must present a motivated and circumstantial application, which must include several documents.

A specific procedure also exists for secondment. In this case, the secondment must be a part of a contract concluded between the sending firm and the recipient of the service provision carrying out its activity in Luxembourg. Then, the sending firm has to request an authorisation of secondment and identify the worker concerned, the nature and the duration of the work and the exceptional circumstances that allow the local labour market not to be affected.

It is also a tedious process but the legislator has taken care to provide a simplified procedure for highly qualified workers in order to attract top talent to Luxembourg.

**Entry, residence and work conditions for the ‘EU Blue Card’**

The ‘EU Blue Card’ is a pass to free movement for highly qualified third-country nationals and the beating heart of the attraction to work in Luxembourg.

Since Directive 2009/50/EC of 25 May 2009 on the condition of entry of third-country nationals for the purpose of highly qualified employment was transposed into Luxembourg immigration law by the law of 8 December 2011, a new path in immigration law has been forged.

In the coming years, Luxembourg is looking to hire more and more workers with a high level of experience and qualification.

Therefore, the conditions to obtain the EU Blue Card are designed to be less onerous and restrictive than for other third-country nationals.

Even if highly qualified workers have to fulfil the same conditions as other third-country nationals before entering Luxembourg, the residence and working conditions are clearly made easier for them. The implementation of the law aims at bringing the working conditions of EU members and of third-country nationals applying for a highly qualified job closer together.

The EU Blue Card can be delivered to any third-country nationals who can prove they have a university diploma of more than three years or experience of at least five years in a specific activity as defined by Luxembourg law.

Moreover, before entering Luxembourg, the highly skilled worker has to establish that he or she has a labour contract of more than one year in the relevant field of activity. Such highly qualified workers have to be paid a minimum salary of between €54,273.60 to €67,842 per year (ie, 1.2 to 1.5 times the average of the minimum annual wage).

The EU Blue Card is given for two years. If the labour contract is signed for less than two years, the Blue Card will be granted for the duration of the labour contract plus an additional three months. Renewal is possible for a period of three years for each highly qualified activity area.

This status offers a real opportunity to highly skilled professionals to be put on the same level as EU members and other local workers.

In addition to these advantages, Luxembourg offers to highly qualified workers tax savings over the operating cost within a period of five years. The employer will have to bear the expenses related to the third-country nationals’ move to Luxembourg such as accommodation cost, scholarship cost and other moving cost. To be granted such tax exemption, the highly qualified worker has to fulfil several conditions listed as follows:

- provide a significant economic contribution to Luxembourg;
- be a tax resident in Luxembourg;
- undertake the local employment as their primary employment and pass on knowledge to local personnel; and
- meet minimum salary requirements and not replace a non-expatriate employee.

In the case of an intra-group secondment, the highly skilled worker has to prove at least five years of continuous employment in the international group.

The EU Blue Card in Luxembourg is clearly one of the elements in place to promote the employment of highly skilled third-country nationals in Luxembourg and is a strong argument to support the attraction of talent.

Due to the crisis, there has been an increase in the unemployment rate other than for highly qualified jobs. The EU Blue Card has therefore become the easiest way for highly skilled workers to enter Luxembourg for reasons of business and work.
Engaging foreign employees in Russia

Introduction

Compliance with local employment and migration laws remains an area of increasing interest to Russian regulatory authorities. Consequently, international companies operating in Russia should pay attention to the employment and migration aspects of their local business activities.

Below we highlight some features of Russian migration laws in the context of the present economic climate. For the purposes of this article, a procedure applicable to employees from CIS countries is not covered.

General

While Russian and non-Russian personnel are to be treated equally from an employment law perspective, a company intending to use foreign personnel in Russia should brace itself for the Russian bureaucratic migration regime. In particular, Russian migration laws require both the company and the foreign employee to obtain special permits from the relevant migration authorities (representative offices and branches of foreign companies are also subject to this requirement).

Under Russian migration laws, there are two procedures for the employment of foreign personnel:

- the standard procedure for employment of foreign personnel; and
- the simplified procedure for employment of a highly qualified specialist (an “HQS”).

The information below describes these two procedures.

Standard procedure

Russia’s migration policy is based on the principle that the employment of Russian citizens should be prioritised. For this reason, the number of foreign citizens who may be employed in Russia at any one time is limited by quotas. The standard procedure is rather time consuming and it can be roughly divided into the following key steps:

- Firstly, a company files an application for a determination as to the number of foreign employees it may employ, or quota, with a competent regional authority. Such application should be filed by 1 May each year for the purposes of determining the quota for the subsequent year. The quotas are finally approved by the Russian government and allocated among the regions.
- Secondly, the company informs the employment centre of job vacancies assigned for foreign employees. An application to employ a foreign employee may be rejected by the employment centre if it finds an adequately qualified Russian citizen available to perform the same job.
- Thirdly, the company applies to the Federal Migration Service or its regional bodies for a permit to engage foreign employees (hiring permission). This document allows a company to employ a particular number of foreign employees and includes, among other things, information about particular jobs and regions where employment of foreign employees is allowed. It is valid for a period of one year and can be reissued upon the company’s application.
- Finally, a company should obtain an individual work permit for each employee. To obtain a work permit, a foreign citizen is required to undergo a medical examination and submit certain documents. An individual work permit is issued for one year.

In addition, each foreign employee must receive an employment visa which is granted for up to a period not exceeding the work permit term. The company must notify a number of state authorities of the engagement of a foreign employee. Foreign employees are required to register with Russian migration authorities within seven business days following their arrival in Russia. It should be noted that as a general rule, a foreign employee is not allowed to work outside a particular region. However, foreign employees can be sent on business trips to other regions for up to ten days per year or, if the employment agreement provides for work of an itinerant nature, up to 60 days per year.

This is only a high-level description of the standard procedure and it is worth noting that each of the key steps includes additional obstacles. In practice, the standard procedure generally takes three or four months.
depending on the region. State duty costs for the standard procedure amount to RUB 9,500 (approximately US$300).

Simplified procedure for an HQS

On 1 July 2010, the concept of a 'Highly Qualified Specialist' was introduced into Russian migration laws consistent with a trend towards simplifying the relatively document heavy and bureaucratic standard procedure.

To qualify for the HQS status, a person must be an experienced specialist with skills or achievements in a specific area (which is a more formal requirement), earning at least:

• for scientists or lecturers proposed to be employed by scientific institutions, state academies or higher education institutions and persons proposed to be employed by residents of certain types of special economic zones, RUB 1m (approximately US$32,300) per year;
• for persons proposed to be employed by residents of technology development special economic zones, RUB 700,000 (approximately US$22,600); and
• for anyone else, RUB 2m (approximately US$64,600) per year.

The requirement as to the minimum yearly salary does not apply to people invited to work on the special Skolkovo project approved by the Russian government.

There is a simplified quota-free one-step application procedure for hiring HQSs (with some exceptions (specified below) depending on the nature of the company). Advantages enjoyed by HQSs can be summarised as follows:

• their employers are not required to obtain hiring permissions;
• invitations and work permits issued to an HQS’s family members will not count towards quotas that limit the issue of these documents;
• they enjoy an accelerated procedure for obtaining work permits (14 business days);
• the maximum term for a work permit and employment visa for them is three years (both documents may be extended when their term expires);
• their work permits allow them to work in multiple Russian regions;
• they and members of their families are required to register with Russian migration authorities only after expiration of 90 days following their arrival in Russia;
• they and their families can get a Permanent Residence Permit (вид на жительство) without having to live in Russia for a year (a Permanent Residence Permit will instead be issued for the term of the HQS’s work permit);
• they benefit from a favourable tax rate of 13 per cent, compared to 30 per cent for other non-residents (however, it works only when an HQS earns more than RUB 2m salary per year under their current employment agreement); and
• generally, an HQS can be sent on business trips for up to 30 days per year. If the employment agreement provides for an itinerant nature of the work, the term of business trips is not limited at all.

To employ an HQS, an employer, whether a Russian company or an accredited branch of a foreign company (as opposed to representative offices of foreign companies which are not permitted to use this procedure), has to file an application with the Federal Migration Service or its regional bodies. Permission is usually granted automatically if all formal requirements are met. State duty costs for the simplified procedure amount to RUB 2,500 (approximately US$80).

Liability

Failure to comply with the procedures for employment of foreign personnel may lead to the imposition of an administrative fine on the company in the amount of up to RUB 800,000 (approximately US$25,700). Violations include hiring foreigners without having hiring permission or an individual work permit and failing to notify competent authorities of the employment of a foreign employee.

Summary

To sum up, the Russian government is constantly taking steps to improve current Russian migration laws in recognition that this is a prerequisite for further development of the Russian economy. A good example of this is the simplified procedure for employment of an HQS which is relatively new and is an especially advantageous option for employers. However, despite this change, Russian migration laws still remain a challenge for both employers and foreign employees.
The UK Border Agency enters the ‘Dragon’s Den’

The Tier 1 Entrepreneur visa route was introduced to enable non-European migrants to invest in the UK by setting up or taking over a business. From 31 January 2013, individuals applying to enter the UK on a Tier 1 Entrepreneur visa will face a new test arguably more familiar to contestants on the BBC’s popular TV programme, Dragon’s Den. The UK Border Agency (‘UKBA’) now has the power to assess the merits of an entrepreneur’s investment plan by inspecting their business models, financial viability and overall credibility. UKBA have termed this a ‘Genuine Entrepreneur’ Test and it is being implemented, in theory, to enable UKBA caseworkers to identify ‘suspicious applicants’ and prevent abuse. The government’s rationale for the amendment to the rules was conveyed in a ministerial statement released to accompany the changes. This cited an ‘unprecedented surge’ in the number of applications under the Tier 1 Entrepreneur visa route in the space of a year, from 639 in 2011 to 6,878 in 2012. The suspicion is that many of these new applications are bogus and therefore the new test will ensure that only the genuine applicants are granted visas.

The increase use of the Tier 1 Entrepreneur route is perhaps not surprising in light of the recent closure of two other Tier 1 visa routes: Tier 1 Post-Study Worker and Tier 1 General. These visas enabled individuals to work or set up businesses in the UK without requiring a UK company as a sponsor. Since their closure, the UK remains as popular as ever as a destination for work. Under these circumstances, migrants will naturally look for alternative solutions. The issue they face, of course, is the UKBA’s ever tightening remit of the available routes of migration.

One of the changes to the rules for entrepreneurs introduced from January appears to be grounded in good sense. The purpose behind the Tier 1 Entrepreneur route is to allow migrants to come to the UK in order to establish new, or invest in current British businesses. Previously, an applicant need only show that they held £200,000 (or £50,000 depending on the circumstances) available to them at the point of application to be granted a three-year visa. This potentially invited abuse, as there was no obligation to invest or even retain the money once the migrant was in the UK. Applicants will now have to demonstrate that they have the funds until they make their investment in UK business. If they fail to do this, the visa can be revoked.

The Genuine Entrepreneur Test is more problematic. This test dictates that a decision maker, such as Entry Clearance Officer or UKBA caseworker, has to be satisfied that the applicant genuinely intends to establish or take over a UK business before they can grant a visa to them. Decision makers are afforded an extraordinary level of discretion when making this decision. They can have regard to the applicant’s employment and immigration history as well as any other information they think is relevant. This appears to be a distinct step away from the ‘objective’ and ‘transparent’ processes heralded by the UKBA as the fundamental basis for the Points Based System.

At the same time, applicants are not being given clear guidance about the evidence they need to submit in order to prove their cases. The test makes mention of a number of documents the decision maker can have when assessing how viable an entrepreneur is, for instance, a business plan or examples of market research that the applicant has conducted. An applicant is, however, not required to submit these documents nor is any guidance provided as to what form they must take. It is therefore difficult for an applicant to know what they should submit in order to pass the test.

Most worryingly though, the government has placed a great deal of faith in UKBA caseworkers to make sound judgments about business, judgments that even seasoned investors would struggle to make with any certainty. It leaves the potential that a UKBA official could prevent the next big British business or invention coming to fruition because that official felt the business plan was not good enough. The end result is individuals with innovative or imaginative new
business ideas may be turned down due their lack of experience or the ‘moving goal posts’ being subjectively applied by Entry Clearance Officers. This can only stifle innovation and enterprise and potentially make the UK a less attractive option for entrepreneurs.

Marriage vows versus political promises

Traditional wedding vows in the United Kingdom typically speak of ‘to have and to hold from this day forward; for better, for worse, for richer, for poorer, in sickness and in health, to love and to cherish, till death us do part’. In our society, we continue to value marriage, both as a standalone institution and as a basis for creating stable families, considered fundamental to our society.

It is, therefore, entirely understandable that there remains an expectation that the UK government, which openly praises and encourages the institution of marriage, would not interfere with a couple’s vows ‘to have and to hold… till death do [them] part’. However, the challenges the UK immigration system now places on foreign partners of UK citizens and settled people are tremendous and at times insurmountable.

In July 2012, a number of significant changes to the immigration rules governing family migration came into force in the UK. The family migration routes were entirely overhauled, with the rules for partners being completely revamped.

Applicants would now need to show a minimum family income of £18,600 per annum (in households with no children). The income has to come from specified sources and the rules introduced requirements on who could earn the money and how. Where employment is relied on, at least six months with the same employer is needed, or where the employment has lasted for less time, evidence of earnings prior to that has to be shown. In order to demonstrate compliance with this requirement, specific evidence has to be adduced. Gone is the ability to rely on third party support. There is no longer any need to assess income and expenditure to determine whether a couple could afford to maintain and accommodate themselves.

Instead, the figure of £18,600 must be met and, bizarrely, expenditure is not considered. Where income could not be demonstrated, evidence of savings, held for a minimum of six months, of at least £62,500 (in households with no children) can be used in place of annual income.

These changes have meant that 47 per cent of employed British citizens no longer qualify to bring in a partner, a figure that rises to 58 per cent among people aged 20–30. It also disproportionately affects women, who continue to receive lower salaries to men on average, and those living outside of London. Given the detached consideration of income without a comparison to expenditure, it is questionable whether the real intent of these changes is to ensure couples do not have recourse to public funds. It can instead be seen as another cynical effort to reduce the number of people making successful applications.

These changes follow on from earlier efforts of the current government to stem...
the tide of family migration, as part of a broader effort to limit net migration pursuant to a Conservative Party manifesto promise of net migration in the ‘tens of thousands’. They had previously introduced an English language requirement for spouses and partners under the guise of a push for greater integration. Questions can be raised about how willing someone should be to integrate into a society which implements more and more barriers to their lawfully joining and remaining with their other half.

It is clear there is a public appetite for lower net migration (whether public fears about the effects of migration are based on fact or in tabloid fallacy is a debate for another time) but slashing family migration has already proved a more complex issue from the perspective of the UK voter. After all, marriage is still seen as a crucial societal institution and many assume that speaking their wedding vows will be enough, almost in and of itself, for permission to live with their partner in the UK. When immigration is seen as something that affects other people, it is far easier to remain objective about strict immigration rules in the face of rising net migration figures. Family is of course intensely personal and it is arguable that treating this as simply another area where migration can be ‘cut’ seems to sort of miss the point.

While making it harder for students or workers to come to the UK does discourage them from migrating to the UK, a couple committed to their marriage vows is unlikely to be so easily deterred. Rather, these rules have simply placed an additional burden on families, introduced additional pressure to the children of these families, and in all likelihood pushed committed families (the apparent bedrock of our society) away from our shores.

The government may be getting their wish in that net migration has shown signs of slowing and in fact dropping, if not to the tens of thousands then to a significantly lower level. Figures released in February 2013 show a drop of 34 per cent between July 2011 and July 2012. While the full impact of the changes of July 2012 on the statistics remains to be seen, the divisive impact on families can already be seen all too clearly.

The International Bar Association’s Human Rights Institute (IBAHRI), established in 1995, has become a leading global force in human rights, working to promote and protect the independence of the judiciary and the ability of lawyers to practice freely and without interference under a just rule of law. The IBAHRI runs training programmes and workshops, capacity building projects with bar associations, fact-finding missions, trial observations; issues regular reports and press releases disseminated widely to UN bodies, international governmental and non-governmental organisations and other stakeholders; and undertakes many other projects working towards its objectives.
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