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# Immigration: the current state of play

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# UKBA transition to the Home Office

The UK immigration system is operated by:

- UK Visas and Immigration (UKVI)
  - migration casework and customer contact
  - visas, asylum casework, appeals
  - business, growth and premium services
- Immigration Enforcement Directorate
  - immigration enforcements
  - detention and removals
  - operational intelligence (including public allegations)
  - foreign national offenders
  - immigration crime

# UKBA transition to Home Office

- Border Force
- Operational Systems Transformation Directorate
  - modernising immigration technology
  - identity and data integrity
  - performance, assurance and compliance
  - business strategy, analysis, design and change
  - strategic risk analysis
  - external engagement on growth
  - joint working across the immigration system

# The Genuine Student Rule (GSR)

- December 2011 – February 2012 – pilot scheme
- 30 July 2012 – Statement of Changes in the Immigration Rules HC 514
- Explanatory notes to HC 514: ‘these changes are intended to be used sparingly’
- Introduced two new powers:
  - ECO to be satisfied that an applicant is a genuine student
  - ECO to refuse application where applicant fails to attend an interview without providing a reasonable explanation

# GSR immigration rules

GSR: Immigration Rules (HC 395, as amended)

Paragraph 245ZV(ca):

*‘The applicant must, if required to do so on examination or interview, be able to demonstrate without the assistance of an interpreter English language proficiency of a standard to be expected from an individual who has reached the standard specified in a confirmation of acceptance for studies assigned in accordance with Appendix A paragraph 118(b) (for the avoidance of doubt, the applicant will not be subject to a test at the standard set out in Appendix A, paragraph 118(b)’.*

# GSR immigration rules (cont.)

Paragraph 245ZV(k):

*'The Entry Clearance Officer must be satisfied that the applicant is a genuine student. 245ZV(k) will not be applied to a national or the rightful holder of a qualifying passport issued by one of the relevant competent authorities listed in Appendix H'.*

# GSR immigration rules (cont.)

General grounds on which entry clearance is to be refused

Paragraph 320(7A):

*‘where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), or material facts have not been disclosed, in relation to the application or in order to obtain documents from the Secretary of State or a third party required in support of the application’.*

Paragraph 320(7D):

*‘failure, without providing a reasonable explanation, to comply with a request made on behalf of the Entry Clearance Officer to attend for interview’.*



# GSR internal guidance

Internal guidance to caseworkers and ECOs (STY02):

- Applications should not be refused under 245ZV(k) without interview unless:
  - i. the applicant has previously been refused because the ECO is not satisfied that he was a genuine student and there have been no material changes in his circumstances or new evidence since that refusal; *or*
  - ii. following a significant number of recent very similar or identical applications in that post, ECOs have satisfied themselves by interviewing a sample of these applicants that the applications are not genuine

# GSR internal guidance (cont.)

ECOs to consider the application in the round and take into account the following factors about the individual:

- Immigration history
  - previous visa applications for the UK and other countries, compliance and reasons for any refusals
  - time spent in the UK or other countries and purpose
- Education history, study and post study plans
  - time since last period of study, sound reasons for returning to or commencing formal study, personal circumstances
  - knowledge and research into the course, Tier 4 sponsor and living arrangements in the UK, post study plans

# GSR internal guidance (cont.)

- Financial circumstances
  - economic circumstances of the applicant in their country
  - is there a credible income source?
- Course provider and agents
  - is the institution under investigation or otherwise of concern?
  - are there concerns about any agents involved

# GSR internal guidance (cont.)

Internal guidance to caseworkers and ECOs (STY02):

*'The ECO's opinion on whether the applicant has the academic ability to study the proposed course is not a relevant consideration and should not form part of any conclusion reached. The academic ability of the applicant is a judgement for the sponsor to make with the benefit of its educational expertise. Similarly the fact that the course does not represent academic progression is not a decisive factor in this consideration'.*

# GSR internal guidance (cont.)

Internal guidance to caseworkers and ECOs (STY02) cont:

*‘The relevance of the course to post-study plans, or vagueness about the nature of post-study plans, should not be used as a sole reason to refuse an applicant, rather it will be one of a range of factors to be considered in the round in assessing whether the student is genuine. In this context, whether the course will add to the applicant's employability or whether the course could be undertaken more cheaply in the applicant's home country should not be considered. For those considered to be genuine students, intention to leave the UK at the end of the course is not relevant as there are many bases on which an individual could lawfully remain in the UK’.*

# GSR in practice

- ECO must be satisfied on the balance of probabilities that a student is not genuine in order to make a lawful refusal under GSR
- Students from countries deemed low risk will not be interviewed
- At the moment GSR refusals are not taken into account when calculating HTS refusal rate but this is likely to change
- A sponsor found issuing CAS to high volumes of students who are refused under GSR may be regarded as failing to help prevent abuse and other breaches (language testing, etc) (Sponsor guidance paragraph 15 (a))
- The Home Office announced in December 2012 that over 100,000 interviews will take place this year

# GSR in practice (cont.)

Sponsors or agents can:

- Let applicants know that they may be called for an interview and must attend
- Outline the type of questions they may be asked
- Include requests for some of the information from students at the beginning
- Advise applicants to spend time preparing for interviews, including rehearsing questions with friends or relatives
- Advise applicants to make a detailed note of questions they are asked and information they provide
- Ensure that applicants who are refused are aware of their right to seek Administrative Review and to receive a copy of the interview record (via a Subject Access Request if necessary)

# New opportunities: course offerings

An institution can only issue a CAS to enable a student to study a course that is of a type permitted in the sponsor guidance.

## Tier 4 (General)

- Minimum course level (QCF 3 or CEFR B2)
- Full-time
- Lead to an approved qualification (as defined by the Home Office)



# Course offerings: Tier 4 General

## Full-time

- Leads to a UK-recognised qualification at level 6 or above on the QCF. (The Home Office does not define ‘full-time’ in relation to degree level studies and this is left to the awarding institution to determine. A bachelors degree where there are only 8 hours of classroom based study a week would meet the requirements); *or*
- An overseas higher education course that:
  - i. the student is studying for in the UK; *and*
  - ii. leads to a qualification from an overseas higher education institution that is recognised as being equivalent to a UK higher education qualification; *or*

# Course offerings: Tier 4 General (cont.)

- A course of study below UK degree level that involves a minimum of 15 hours a week of classroom-based, daytime study (08:00 – 18:00, Monday to Friday). (An A-level or English language course, for instance, where the student is studying less than 15 hours a week in the classroom would not meet the criteria)

# Course offerings: Tier 4 General (cont.)

## Approved qualification

Courses must be:

- Awarded or validated by an institution that has been granted degree awarding powers by a Royal Charter, an Act of Parliament or the Privy Council. These are known as ‘recognised bodies’ and include all UK universities and some higher education colleges; *or*
- Recognised by one or more recognised body through a formal articulation agreement with the awarding body; *or*

# Course offerings: Tier 4 General (cont.)

- On the Register of Regulated Qualifications at QCF level 3 or above (English, Wales and Northern Ireland) or accredited at level 6 or above in the (SCQF) by the Scottish Qualifications Authority; *or*
- An overseas qualification that UK NARIC can assess as valid and equivalent to level 3 or above on the QCF (or equivalents);  
*or*

# Course offerings: Tier 4 General (cont.)

- Covered by a formal legal agreement between a UK-recognised body and another education provider or awarding body that:
  - i. is signed by an authorised signatory for institutional agreements within the recognised body, *and*
  - ii. confirms the recognised body's own independent assessment of the level of the programme compared to the QCF (or its equivalents), *and*
  - iii. states that the recognised body would admit any student who successfully completes the named course onto a specific or a range of degree-level courses it offers; *or*
- Acceptable English language tuition

# Course offerings: Tier 4 Child

## Tier 4 (Child)

Main course must be:

- a. taught in line with the National Curriculum; or
- b. taught in line with the QCF; *or*
- c. accepted as being of equivalent academic status by Ofsted (England), or the appropriate bodies in the devolved regions, including the Education and Training Inspectorate (Northern Ireland), Education Scotland (Scotland) and Estyn (Wales); *or*
- d. taught in line with the prevailing inspection standards for independent school education

# Course offerings: Tier 4 Child (cont.)

- Minimum hours of study are not imposed in relation to the Tier 4 (Child) category
- English language courses cannot be offered, as the main course of study, to students aged 15 or under who are sponsored under Tier 4 (Child). They can be offered as supplementary study so a student sponsored under Tier 4 (Child) could, for instance, study GCSEs or A-Levels as their main course of study and an English language course in addition
- Child students can use the Child Visitor route where English will be the main course of study

# Course offerings: Pre-sessionals

## Pre-sessional study

- Must meet the requirements of Tier 4 but do not have to lead to a recognised qualification
- Home Office definition – ‘preparatory course which directly precedes a student’s intended main course of study and enables the student to acquire the ancillary skills or knowledge necessary to adjust to study in the UK’



# Course offerings: Pre-sessionals (cont.)

- Not restricted to English language and can cover other topics
- Courses that are designed to give a student fundamental training in a subject as a stepping stone to further or higher education – for instance a Foundation degree – or courses which form an integral part of the main course of study but which are administered separately will not be considered as pre-sessional study

# Pre-sessionals: Issuing a single CAS

## Independent schools

An independent school can assign one CAS to a student that covers both the pre-sessional course and the main course of study providing:

- the school has made an unconditional offer to the Tier 4 (Child) student for a main course of study; *and*
- the total length of the pre-sessional course plus the main course of study is no more than six years (for those under 16) or three years (for 16 and 17 year olds). (The pre-sessional course is not limited to 3 months under Tier 4 (Child) and the Home Office accepts the Sponsor Guidance is unclear)

# Pre-sessionals: Issuing a single CAS (cont.)

## Higher Education Institutions

A higher education provider can assign one CAS to a student to study both the pre-sessional course and the main course of study providing:

- the student has received an unconditional offer for the main course of study; *and*
- the main course of study is at degree level or above; *and*
- the pre-sessional is no more than three months long; *and*
- the main course will start no later than one month after the date when the pre-sessional ends; *and*
- the requirements of Tier 4 (General) in relation to maximum length of study and English language are met

# New opportunities: Partnerships

Can students we sponsor be taught at another institution?

The Home Office's position is outlined in paragraph 615 (h) of the current version of the Sponsor Guidance which states:

- *'615. We will revoke your licence immediately for any of the following reasons:*
  - *h. The study element of any course you offer to sponsored students is not taken on your premises or at a partner institution named on your licence and the sponsored student's CAS'.*

# New opportunities: Partnerships (cont.)

International students who you sponsor may only be taught at another education provider's premises in the following circumstances:

- they are taking supplementary study\*, as defined in paragraphs 506 – 508 of the current version of the Sponsor Guidance, in which case that study can take place anywhere; *or*
- they are being taught by a provider that is named as a partner institution on your sponsor licence and on the CAS issued to the student (118-122 SG); *or*

# New opportunities: Partnerships (cont.)

- they are being taught by a provider that is recognised as a 'branch' on your sponsor licence (106-116 SG); *or*
  - they are being taught at one of your campuses
- \* nothing in the rules prohibits supplementary study before or after main course

# Student visitors/extended student visitors – avoiding refusals

- Some increase in refusals for SVVs and ESVVs
- Mainly due to insufficient evidence of:
  - a. unconditional acceptance/enrolment (acceptance letter)
  - b. previous study or qualifications, including English language ability
  - c. intention to return to home country and links with home country
  - d. financial sponsor's occupation, income and savings, assets and funds set aside specifically to cover UK studies

# Student visitors/extended student visitors – avoiding refusals (cont...)

- Students from high risk countries with little or no employment/ education history who are applying for long courses face the greatest risk of refusal
- Reasons for previous refusals of leave to enter or stay should be considered carefully and addressed if relevant
- Letter from education provider should contain as much information as possible about accreditation, course name and duration, cost, student specific information (reason for offer, helpful information about accommodation, etc)



# Student visitors/extended student visitors – avoiding refusals (cont...)

- Comprehensive information about the student's employment, prior study, relevance to UK study and information to demonstrate that they are likely to return to their home country will assist greatly
- Comprehensive information as to the financial sponsor's position is also important (reasons for sponsoring and ability)

# Student visitors/extended student visitors – future

- Home Office report published in June 2013 confirmed that the SV route is working well
- However, significant numbers of refusals may change that position
- Those with a Tier 4 licence particularly should be careful to ensure that students in the SV and ESV categories do not breach immigration conditions or overstay because one of the duties of a sponsor is to ‘help to prevent the system from being abused’ (Sponsor guidance paragraph 15 (a))

# Future developments

- Immigration Bill (Autumn 2013)
  - tackling illegal immigration in privately rented accommodation
  - migrant access to health services in the UK
  - stricter penalties for those employing illegal workers
- Financial bonds for visitors
- New Immigration Rules (October 2013)
- More interviews (students, entrepreneurs, spouses)
- More compliance visits
- Premium customer service
- Initiatives to attract genuine international students

**CARTERTHOMAS**

Questions?

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# Our education sector services

- Sponsor licence and HTS applications
- Tier 4 compliance checks
- SV and ESV compliance
- International student policies: reviews and advice
- Guidance on new course offerings, partnerships and other growth initiatives
- Tier 2 and Tier 5 (for employees, tutors, etc)
- Post Study Work options
- Strategic advice on dealing with enforcement action

For latest news and commentary visit: [www.carterthomas.co.uk](http://www.carterthomas.co.uk)

# What they say about our work

*'... a huge amount to develop the law of Tier 4 sponsorship for higher education institutions...successfully repealed UKBA decisions to strip colleges of their sponsor statuses'.*

Chambers & Partners

*'...conscious of the need to give clients value for money'.*

Chambers & Partners

*'...inspires total confidence from clients and peers'.*

Legal 500

*'...a leading adviser on compliance and risk management'.*

Chambers & Partners