



Overview of Recent UK Investor and Entrepreneur Visa Changes

14 April 2015

Significant changes were made to the UK immigration rules on 6 November 2014, and most recently on 6 April 2015. Below we have outlined the main changes to the investor and entrepreneur categories.

Investors

The investor category is for high net worth individuals who can invest £2million in the UK. Significant changes were made on 6 November 2014 and again on 6 April 2015.

- **Increase from £1million to £2million and removal of the loan route**

On 6 November 2014 the UK increased the financial threshold of an investor visa from £1million to £2million. It also removed the loan route which enabled investors to borrow £1million from a UK bank against a security of £2million assets. Investors from countries such as China with strict currency controls could be affected by this and should take advice on their options.

The threshold had been £1million since the early 1990s. It is therefore unsurprising that it has been increased, and experience so far suggests this has not made a significant impact on the number of applications.

- **Minimum age limit of 18**

Since 6 April 2015 it has been a requirement that the main applicant is over the age of 18. Between 6 November 2014 and 5 April 2015 the applicant had to be aged over 16, and prior to 6 November 2014 there was no lower age limit. The age limit was introduced due to a concern within the Home Office that a minor would not be considered "in control" of the funds and the consequent difficulties in opening an investment account in their sole name.

- **Necessity for a UK bank account before applying**

Since 2008, the rules have required that, subject to whether or not the funds have been held consistently for 3 months, it is necessary to provide specific evidence of the source of these funds. The funds do not have to be held in the UK at the date of application; however the fund must be free from any restrictions on transfer to the UK.

On 6 April 2015 the Home Office announced that it would additionally, be necessary to have a UK bank account opened before making the initial visa application and provide a letter from the bank to confirm this. It is therefore necessary to take early action when considering relocating to the UK

under this category as it can take time to open the UK account and may necessitate a trip to the UK to do so.

When this requirement was initially publicised, there was some concern that it was necessary to have a letter from a UK bank, and not a UK financial institution (a wider term which encompassed wealth management firms and which is used elsewhere in the rules). However on 7 April 2015 the Home Office released guidance which defines a 'bank' for this purpose, as "a UK-based FCA regulated financial institution", bringing it into line with the rest of the investor rules.

Whilst this is helpful, the guidance is not definitive law, and as the above clarification is not set out in the UK immigration rules it could be subject to change without consultation or notice.

• **Wide grounds for refusal on character of applicant or third party providing the funds**

Introduced on 6 November 2014, the Home Office can now refuse a Tier 1 (Investor) application if they have reasonable grounds to believe that:

- the applicant is not in control of or at liberty to freely invest the funds;
- the funds were obtained unlawfully (or by means which would be unlawful if they happened in the UK) whether by the applicant or the party providing the funds; or
- the character, conduct or associations of a party providing the funds are such that approving the application would not be conducive to the public good.

• **Making and maintaining the investments**

Funds must be invested in UK qualifying investments within 3 months of entering the UK or obtaining the visa, as applicable. Introduced on 6 November 2014, the rules envisage that there may be certain situations where an applicant could not invest in time for reasons outside of their control, and discretion could be exercised. Whilst this is welcome new it is important to note that detailed representations, accompanied by supporting evidence, would be required.

The level of investment must be maintained throughout the investor's stay in the UK. Prior to 6 November 2014 it was a requirement to top up any shortfall in the value of the investments by the start of the next reporting period. This was an onerous requirement and led to investors choosing largely low risk investments. The Home Office has sought to open up the range of investments by removing this requirement for those who apply after 6 November 2014.

When the 'topping up' obligation was removed in November 2014, practitioners in the field were concerned that the initial drafting of the new rules required that if an investment was sold at a loss, it would need to be topped up to the £2million, thus restricting the applicability of the new rules. However, in the 6 April 2015 changes the Home Office clarified that this would not be the case. Therefore if the investment is sold at a loss the investor does not need to inject additional funds, however the entire sum, including any gain, must be maintained in the portfolio. The re-investment must be completed by the end of the next reporting period or six months, whichever is sooner

Entrepreneurs

The entrepreneur category caters for those who wish to set up, join or take over a business in the UK. Most applicants would need to invest £200,000 in the business however in certain circumstances this sum can be £50,000.

On 6 April 2015 the Home Office introduced several changes to this category.

- **Length of time funds must be held**

It is now a requirement that the funds be held consistently for 90 days prior to the date of application. If the funds have not been held for this length of time, then additional evidence of 'third party funding' needs to be provided.

There appears to be a potential issue here: if you have not held the funds for 90 days, and you cannot supply the evidence of third party funding, (perhaps because the source of funds is not a third party but, for example, a court settlement, or winnings) then you cannot succeed with an application because the required wording of a letter from the 'third party' may not be possible. In such a case the applicant may have to wait 90 days before applying, a problem for cases where the business needs immediate set-up. The guidance does not explain or elaborate any further. Clarification may be provided in due course.

- **Genuine Entrepreneur test**

The 'genuine entrepreneur' test was introduced for initial applications in January 2013. The test was designed to enable the immigration authorities to take a subjective view of the viability of a proposed business. On 6 April 2015 this has been extended to extensions and Indefinite Leave to Remain applications. This means that it is quite possible an applicant would be interviewed about the business they are running and whether they are genuinely engaged in this regard.

- **Business plan**

In keeping with the genuineness test the new rules also introduce a requirement to provide a business plan which will be used to assess the viability of the business.

- **How the funds are spent**

The 6 April 2015 rule change also contains a clarification of the rules regarding what you can spend the £200,000 on. The new rules clarify that where an applicant is buying a business from the previous owner, and the funds go to the previous owner and not into the business, these funds will not be counted towards the £200,000. In such a case the entrepreneur must invest £200,000 into the business in addition to the cost of buying the business itself.

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