

## **Students, settlement and citizenship – an update:**

1. These notes are to accompany a presentation and discussion on 12<sup>th</sup> June 2010 at a Kanlungan meeting.
2. The aim of the notes is to provide a broad update on developments affecting migrants coming to the UK for the purpose of studies; and developments affecting those migrants who may be permitted to apply for settlement or citizenship. A word of caution is necessary. Immigration law and policy changes, and can change frequently and quickly. The May election has led to a new Government of the UK, and so it is perhaps even more important to be cautious about what is said here.
3. Some short information is given about the UK Border Agency website, and where to find things on the website.

### **Information in the UK Border Agency website**

4. The UK Border Agency website can be found at:  
[www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)
5. Some information on the website is very complex. Although the website contains some useful general information, many migrants will be likely to benefit from getting legal advice before acting on that information. In many cases, fees for immigration applications are very high; and a fee may be lost if an application is made incorrectly.
6. On the left hand side of the home page there is a list of links. The 'News and updates' section highlights some changes in immigration law and policy. In this section, a full list of UK Border Agency news announcements can be found in date order by clicking on the link called 'Latest news in all categories'. Most of these announcements are not of much use (many of them are announcements about arrests and prosecutions). However, scattered amongst these, are important announcements about changes to immigration law and policy.
7. The 'Studying in the UK' section provides information relevant to migrant students. In this section, there are several pages. It is important to note

that some of these pages contain several links on the page, which are necessary to reveal further information. On the right hand side of the page, there are more detailed (and often more complex) documents. Always keep an eye on the left hand side of the page. This will help you keep track of where you are and what other information is available.

### **Students**

8. The current position is that students may apply to come to the UK under Tier 4 of the points based system, or may apply to come to the UK as student visitors for a period of no more than 6 months. Important changes were made in March and April of this year.

#### ***The new Government:***

9. Since those changes, there has also been a change in Government. The new Government – a coalition of the Conservative and Liberal Democrat parties – has made a coalition agreement. The agreement sets out commitments of the new Government. It includes:

*“We will introduce new measures to minimise abuse of the immigration system, for example via student routes...”*

10. This indicates that there may be further changes concerning student migrants. During the passage of the Borders, Citizenship and Immigration Bill in 2009, Damian Green MP said:

*“Bogus colleges prey on unsuspecting students, who are predominantly from overseas. Once they have paid their fees for what are bogus qualifications, no recourse is available to them. Many students are scared to contact the authorities for fear of deportation, because they discover that although they may be the innocent victim of a scam, that will make them vulnerable. In the end, they are in a no-win situation. Either they return to their country of origin angry at the treatment they have received in the UK or they stay here illegally.”*  
(Hansard, HC Committee, Sixth Sitting 16 Jun 2009 : Column 172)

11. Damian Green MP is now the Immigration Minister. Also at the time of that Bill, he indicated one measure that the Conservative party considered would be helpful:

*“The Minister will be aware how important it is to protect the name “university”, and in the modern world it is equally important to protect the title “college”. I think that that would be a significant step forward both for the education world and in driving out the use of education as a means of circumventing our immigration controls.”*  
(Hansard, HC Committee, Sixth Sitting 16 Jun 2009 : Column 173)

12. The proposal in this second statement is to regulate the use of the word ‘college’. This would be to require any business to comply with certain requirements in order to be permitted to use the word in describing itself. However, it is likely wrong to think that the Government would consider this measure to be sufficient. While the first of the two statements reproduced above suggests a degree of sympathy with migrant students, the second indicates that the Conservative party is also concerned about migrants coming to the UK, saying they intend to study, but merely using this to gain entry to the UK – presumably to work. This, along with the commitment in the coalition agreement, suggests that further changes may be made to the Immigration Rules increasing restrictions on student migration to the UK.

***The most recent changes (March and April 2010):***

13. In March, ILPA produced a “Students” information sheet. This set out important changes that were to be made affecting student migrants. That information sheet remains correct, save in one respect. The reference to “*level 8 (or above) of the Scottish Credit and Qualifications Framework*” is no longer correct. In April, changes to the Immigration Rules replaced this description with a reference to qualifications “*awarded on a directly equivalent basis [to level 5 (or above) of the revised National Qualifications Framework] in the devolved administrations*”.
14. Key changes, explained in that information sheet relate to:
  - when a student migrant will be permitted to bring his or her family to the UK,
  - whether and for how many hours per week a student migrant will be permitted to work in the UK, and
  - if a student migrant does bring family members with him or her, whether they will be permitted to work.

The changes do not apply to students whose current leave to enter or remain in the UK was granted following an application made before 3 March 2010. The changes are briefly explained in the following paragraphs.

15. Students given leave to enter the UK for less than 6 months cannot bring their family members.
16. Students studying for courses below degree level (or what is called 'foundation degree level' – minimum level 5, revised National Qualifications Framework) will only be permitted to work for a maximum 10 hours per week during term time. For these students, if granted leave for more than 6 months, while they may be permitted to bring their family members, those family members will not be permitted to work.
17. In April, other changes were made. Key amongst these was to introduce a 'highly trusted' status for sponsors. Only highly trusted sponsors will, from 6 April 2010, be able to offer certain courses to new migrant students. This will apply to courses at Level 3 of the National Qualifications Framework (or level 6 of the Scottish Credit and Qualifications Framework). Also, only Highly trusted sponsors will be permitted to offer work placements on courses below degree level (unless the course is at foundation degree level).

***Some ongoing difficulties for migrant students:***

18. The UK Border Agency website contains a Q&A sheet which students migrants may find useful. It is available at:  
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/studying/t4-ganda-students.pdf>

*Work placements*

19. Tier 4 students may do work placements provided this is an assessed part of their course of study. The UK Border Agency position is that work placements must not exceed 50% of the total course time – unless, UK law requires that a particular course should be comprised of a greater percentage of time on a work placement. Note the new restrictions (see

above) as to which colleges are permitted to offer courses with work placements.

*Sponsors whose licence is suspended*

20. The UK Border Agency may suspend a sponsor's licence while considering whether the sponsor has broken any rules and, if so, what action should be taken against the sponsor. If a migrant student already has leave to enter the UK, but has not yet arrived, the UK Border Agency advises that he or she should not travel. If he or she does travel, however, the student should be admitted to the UK. If the student is already in the UK, he or she may continue on the course (though the UK Border Agency says it will not warn the student that the sponsor's licence has been suspended; and if it is withdrawn this may cause problems). If the student has an outstanding application for further leave, the UK Border Agency will delay deciding that application until it has decided whether or not to withdraw the sponsor's licence.
  
21. The UK Border Agency has recently been taken to court over suspensions of licences. There are court cases outstanding with the High Court. In two cases, the UK Border Agency has been ordered to reinstate a college's licence pending a final decision on the case.

*Sponsors whose licence is withdrawn*

22. If the UK Border Agency withdraws a sponsor's licence, it will cancel the leave to enter of any student who has not yet arrived in the UK. If the student is already in the UK, it will limit the student's leave to enter or remain to 60 days – unless he or she has only 6 months remaining leave (in which case, he or she may complete that period of leave). However, if the UK Border Agency considers that the student was involved in the reasons that have led to the sponsor's licence being withdrawn, the student's leave will be immediately curtailed (cancelled). If the student has an outstanding application for further leave, that application will be refused.

*Sponsors who are taken over by a different business/organisation*

23. If the new organisation does not have or fails to apply for a sponsor's licence within 28 days of the take over, the UK Border Agency will limit the

student's leave to 60 days – unless he or she has only 6 months remaining leave (in which case, he or she may complete that period of leave).

*Changing courses and/or changing sponsor*

24. If a student migrant wishes to change course, but stay with the same sponsor, he or she may do so without permission from the UK Border Agency – provided he or she has sufficient leave to enter or remain in order to complete the course he or she wishes to change to. If the new course is shorter than the time for which he or she has been granted leave, the student must notify the UK Border Agency. In any case, the sponsor must notify the UK Border Agency of any change of course.
  
25. From 5 October 2009, a student migrant who wishes to change sponsor has been required to apply for permission to do so and must pay the fee for a new Tier 4 visa. He or she should not start the course with the new sponsor before permission is granted. Previously, it was possible to apply without payment of a new fee and to start the new course before permission was granted (though this could be problematic if permission was refused). If permission is refused to change sponsor, this does not necessarily mean that the student will not be permitted to continue studying with the sponsor for which he or she had originally been granted leave to enter or remain.

*Switching into another points-based Tier*

26. Tier 4 students may switch into Tier 1 or Tier 2. To do so, a student must apply for leave to remain under the relevant Tier and will need to satisfy the requirements under the rules. Under Tier 2, this will include needing to have a sponsor offering employment.

**Settlement and citizenship**

27. The previous Government introduced changes to how a migrant may become a British citizen by provisions in the Borders, Citizenship and Immigration Act 2009. However, these provisions have not yet come into force. The previous Government said it would not bring these changes into force before July 2011. It included transitional provisions that would permit migrants who reached the point of applying for indefinite leave to

remain to escape these changes if their applications were successful. Similarly, migrants with indefinite leave to remain would have an opportunity to escape these changes.

28. The changes include stricter requirements for a successful citizenship application. They extend the period of time on limited leave (without access to various services or benefits), which a migrant needs to complete before applying for citizenship. Indefinite leave to remain (or permanent residence) would no longer be available – unless the migrant spent even longer on limited leave. The changes would also introduce a requirement for the migrant to undertake voluntary or community work, or else wait up to 2 years longer before permitted to apply for citizenship.
29. When the Borders, Citizenship and Immigration Bill was considered by Parliament, Damian Green MP said:

*“The citizenship test is clearly inadequate for the Minister’s purpose. It is not a real test of knowledge or of commitment to this country. Being able to take the test again and again until you pass it, does not necessarily achieve a great purpose. I suspect that the Minister shares my view of how we need to tighten up marriage loopholes.”*  
(Hansard, HC Committee, Third Sitting 11 Jun 2009 : Column 79)

30. As regards ‘marriage loopholes’, the new Government has already announced that from autumn 2010 migrants wishing to come here to join or marry a partner will have to take a compulsory English language test. Generally, the Conservative party has indicated that it considers that English language tests for migrants are inadequate; and it is possible they may, therefore, look at raising the level of English or English testing for citizenship applications.
31. As regards the changes that the previous Government intended to introduce to how migrants may become British, Damian Green MP has previously indicated the Conservative party’s scepticism about the community or voluntary work requirement:

*“That comes very close to compulsory volunteering, which is perhaps the ultimate absurdity.”*

(Hansard, HC Second Reading 2 Jun 2009 : Column 232)

*“The Bill introduces an activity condition for qualifying for citizenship, but it is not clear what would be covered by it – it is not given, but left to be clarified in secondary legislation... The proposals threaten to be both expensive and bureaucratic.”*

(Hansard, HC Report 14 Jul 2009 : Column 224)

32. The Liberal Democrats also criticised these proposals. It is not certain, but there must be some hope that what has been called ‘the activity condition’ (the requirement to undertake community or voluntary work) may be abandoned.
  
33. Whether or not that happens, other statements made by Damian Green MP give reason to think that the remainder of the previous Government’s plans will be implemented. The new Government may even consider ways of making these changes more restrictive. It is yet to be seen what the new Government will do, but again statements made by Damian Green MP (now Immigration Minister) give some indication of their thinking:

*“It has been expressed to me that, if someone is in this country with a work permit, it is a right to have British citizenship. I do not agree. British citizenship is a privilege and not a right to anyone who happens to work in this country.”*

(Hansard, HC Committee, Third Sitting 11 Jun 2009 : Column 82)

*“...we on the Conservative Benches do not go all the way with those who are saying – as I think that the Liberal Democrats are – that everyone who is here should not have any of the new citizenship tests applied to them. That would be a step too far.”*

(Hansard, HC Committee, Third Sitting 11 Jun 2009 : Column 84)

34. The second of these statements seems to indicate that the Conservative party would wish to implement at least some of the previous Governments planned changes. The first statement does not necessarily indicate any intention to go further than this. After all, it is already the case (though some fail to recognise or prefer to ignore this) that citizenship is not given automatically simply because someone has been in the UK for a particular period of time.



### **An immigration cap**

35. The new Government's coalition agreement can be found at:  
<http://programmeforgovernment.hmg.gov.uk/immigration/>
36. The above link takes you to the part of the agreement setting out commitments concerning immigration. However, it is possible to look at all the agreement from this page.
37. One of the commitments the agreement sets out is as follows:  
  

*"We will introduce an annual limit on the number of non-EU migrants admitted into the UK to live and work. We will consider jointly the mechanism for implementing the limit."*
38. No clear statement has yet been made by the new Government as to how this limit is to work and who it will affect.

### **Conclusion**

39. The current position is uncertain. There is a new Government. It is made up of two political parties (the Conservative and Liberal Democrat parties) working together. It is not possible to know what plans they now have, or what changes they will in time decide to introduce.
40. However, it seems sufficiently clear that the possibility of further changes to immigration law and policy is very real. It is to be hoped, but there can be no guarantees, that any important changes are first subject to careful and public consultation and that these are announced in good time, at a minimum, on the UK Border Agency website so that migrants and those advising them can see how they may be affected. It is also to be hoped, but again this cannot be guaranteed, that the new Government will think carefully before making fundamental and more restrictive changes to the rules on applications for further leave or citizenship by migrants, who are already lawfully in the UK and who had been led to expect that different rules would apply to them.
41. Migrants and migrant community organisations may need to take steps to make sure they are not taken by surprise by any changes the new Government may make. It will be important for them to look out for any

announcements or consultations, which they may wish to respond to in an effort to avoid changes adversely affecting them and those they represent.

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11<sup>th</sup> June 2010

**Annex A – legal advice:**

Please note that ILPA cannot provide immigration advice on individual cases.

If you or someone you know needs immigration advice, you may see if someone in the ILPA Directory at [www.ilpa.org.uk](http://www.ilpa.org.uk) can assist.

Another source of legal advice (or information about where to find legal advice) may be your local Citizens Advice Bureau, local law centre or local library.

**Annex B – note of caution:**

The information given here is intended to be of a general nature. Individuals who may be affected by any of the matters addressed here should consider taking immigration advice on their own circumstances.

Immigration law and policy changes over time. Sometimes changes can be made quickly and with little notice. Sometimes there can be frequent or fundamental changes. The accuracy of the information given here cannot be guaranteed – indeed, it is over time likely to be subject to change.