



Migration Advisory Committee  
2<sup>nd</sup> Floor  
Fry Building  
2 Marsham Street  
London  
SW1P 4DF

21 December 2011

Dear Sir/Madam

**Call for evidence by the Migration Advisory Committee on the level of the 2012/2013 annual limit on Tier 2 and associated policies**

I am pleased to submit the response of the Immigration Law Practitioners' Association to the Migration Advisory Committee's Call for evidence.

The Immigration Law Practitioners' Association (ILPA) is a professional association with some 900 members (individuals and organisations), the majority of whom are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics and non-governmental organisations are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous Government, UK Border Agency and other, consultative and advisory groups.

Members have advised and encouraged their employer clients to provide evidence and respond in full to the Migration Advisory Committee's request and call for evidence and have supported them to do so wherever possible. We are aware that we are not always able to contribute quantitative evidence to the Committee, however experience to date suggests that it can be helpful for us to pull together the experiences of members advising a diverse range of business clients specifically on the immigration processes associated with the employment of workers from outside the resident labour market and this is what we have sought to do. We have answered those questions where we consider that we have something to contribute.

Yours faithfully

Alison Harvey  
General Secretary

## **Introduction**

It is the Government's stated intention to reduce net migration to 'tens of thousands' by 2015.<sup>1</sup> In February 2011 the changes to the Points-Based System were announced as part of efforts to give effect to this intention.<sup>2</sup> From the 6<sup>th</sup> April 2011, a cap on the number of restricted Certificates of Sponsorship for the Tier 2 (General) route was imposed, limiting certificates to 20,700 per annum.<sup>3</sup> Allocations are granted monthly and any unused within a month are carried over to the next month.<sup>4</sup>

By the end of November 2011, only 6,580 of the potential 14,700 restricted Certificates of Sponsorship made available had been allocated. This has been widely attributed to the recession and to negative experiences of the interim limit.<sup>5</sup>

The Government has stated that it wishes to continue to deliver an improved system that commands public confidence and serves the UK's economic interests.<sup>6</sup>

Constant changes to immigration law, policy and procedures, excessive bureaucracy, poor quality initial decision-making, delays in processing and the increased cost of compliance are creating a harsh climate and a perception that the UK is 'closed for business'.<sup>7</sup> The effects on small and medium-sized enterprises are particularly severe.

In members' experience, businesses do not recruit non-EEA staff as a 'low cost' option but for the language and cultural expertise of those staff and more generally because they find the right person, at the right time with the right skills. Salary thresholds are preventing investment in different regions of the UK and raising the skills threshold would exclude certain occupations; leaving businesses with a shortage of key skills in their workforce.

The Migration Advisory Committee has been asked to advise the Government on the policy package for Tier 2 for 2012/2013, including the cap and whether further changes are needed to Tier 2 in light of the impact of the current cap and associated policies. The 'call for evidence' covers four main areas:

- i. The impact of the 2011/2012 limit; the potential impact of lowering the limit in 2012/2013; why there was a low uptake for Tier 2 (General) and employer's responses to the limits considered and put in place.

---

<sup>1</sup> See e.g. HC Deb, 2 November 2011, c641W.

<sup>2</sup> *Tier 2 of the Points-Based System Statement Of Intent, Transitional Measures and Indefinite Leave to Remain*, UK Border Agency, February 2011

<sup>3</sup> Statement of Changes in Immigration Rules HC 863.

<sup>4</sup> *Tier 2 of the Points-Based System Statement Of Intent, Transitional Measures and Indefinite Leave to Remain*, UK Border Agency, February 2011

<sup>5</sup> See e.g. *Confusion leaves visas going spare* Financial Times 5 May 2011.

<sup>6</sup> *Hansard* HC report 19 May 2011, Col 33WSff

<sup>7</sup> At meetings at which ILPA has been present, such as the autumn meeting of the Agency's Corporate Partner Group, senior UK Border Agency officials have acknowledged that this perception exists and that they are concerned about it.

- ii. The skill level for Tier 2; the right methodology for skill classification; recognition of appropriate occupations and the economic impact of raising the skill bar.
- iii. The impact of strictly applying the General Agreement on Trade in Services (GATS) definition of managers and specialists; whether £40,000 is a reasonable pay threshold for such jobs and whether there should be regional variations.
- iv. The impact of lowering the resident labour market test threshold on employers and the impact on the labour market.

ILPA members report their employer clients' concerns that the cap on Tier 2 (General) migration is having an adverse effect on long-term economic growth. In particular, there are concerns that lowering the cap further could irrevocably damage the UK's current reputation as a key international business hub. If the cap is reduced in 2012/2013, UK employers could continue to suffer from the perception among would-be migrants that the UK is closed for business.

Migrants are faced with uncertainty and employers are unable to plan their businesses because of the continued sense of uncertainty surrounding UK migration policy. ILPA therefore calls for four key themes to be addressed;

1. Consistency, predictability and certainty in Home Office policy with proper lead-in time for changes;
2. Training for Entry Clearance Managers so that there is a demonstrably correct application of the rules and guidance applied consistently and training more generally to ensure that the messages given are consistent;
3. Regional variations to recognise the particular challenge for employers outside of London; and
4. Graduates to be recognised in all Standard Occupational Classification Codes to ensure students can access Tier 2 by seeking sponsorship from employers holding sponsor licences given the Government decision to close Tier 1 General and Tier 1 Post Study Work categories.

## **Annual Limit on Tier 2 General**

### ***Question 1***

***What has been the impact of the annual limit on Tier 2 (General) of 20,700 in 2011/12 on the UK economy and labour market?***

The limit has not been reached. No one has been turned away from the UK because the limit has been exceeded.

This is not the same as saying that the cap has had no effect. Two aspects can be isolated as having an effect: perceptions of the cap and the practicalities of complying with the systems put in place to implement it. It additional eligibility changes over the lifetime of the cap have had an effect.

The experience of ILPA members is that the cap has affected the behaviour of migrants and employers. As a result the UK has seen a reduction in the number of migrants coming to the UK. Those who have stayed away are not necessarily those the policy-makers wishing to recruit net migration intended should stay away.

## ***The Economy***

### *Reducing Competitiveness*

There are concerns that the UK is now seen as a less attractive destination for business operations, and is now viewed as 'closed for business'. ILPA members report their clients' perceptions that annual limit and the associated procedures have damaged the UK's current reputation as a key international business hub.

Business and skilled workers are considering employment in other countries. Workers would like to go to places where they have more certainty about future options, for example in Australia and Canada they may be on routes that give them settlement from the moment of arrival. Businesses that are heavily dependent on migrant workers may be able to avoid the UK altogether by sending migrants to other offices. In other cases they are considering moving their operations to enable them to avoid the UK.

Potential migrants indicate to members that they have a choice of destinations. In particular at the moment, for example, the better economic position in Australia makes it a possible destination for them. Uncertainty over their, and their dependants, medium to long term prospects in the UK because of uncertainty as to future immigration regimes is a factor in their decision-making.

Businesses indicate to members that the three key reasons for employing migrant workers are:

- the short supply of workers from within the resident labour market;
- the language and cultural skills migrants provide
- a business development strategy to expand beyond the EU.

The reasons businesses give to their legal representatives for employing migrant workers are that migrant workers who come to the UK bring a diverse range of skills, international experience and best practices, which are not always available from the resident labour market.

The UK is competing with other countries to recruit. Businesses report already finding it increasingly difficult to recruit senior level people to work in the UK due to the tax rates for high earners and the cost of living in the UK. A restrictive immigration policy is a further barrier to recruitment.

Multinational businesses are reconsidering the scale of their presence in the UK because of concerns about their future ability to bring in those skilled workers they require. We cannot over-emphasise this aspect of their decision-making. Businesses plan and their strategic and operational plans are likely to cover a number of years. They need a degree of predictability to plan. They need to know that, if changes they have not predicted occur, that they will have time to absorb these into their planning

and to make adjustments. This is not on offer in the UK. All that is predictable is that UK immigration rules and policy will be unpredictable. There will be constant change and when change comes it may come with very little notice. Statement of Changes in immigration rules HC 96 was laid on 15 July 2011 and came into force on 19 July 2011. HC 698 was laid before parliament on 21 December 2010 and came into force on 23 December 2010. HC 908 was laid before parliament on 31 March 2011 and included changes that came into force on 6 April 2011.

Change may also affect those already in the UK as transitional provisions may provide little or no protection for them. The Ministerial statement heralding the commencement of section 19 of the UK Borders Act 2007, which deals with the rules of evidence in Points-Based System appeals, was made on Thursday 19 May 2011.<sup>8</sup> The change came into force on Monday 23 May 2011.<sup>9</sup> The new regime was applied to all appeals heard for the first time against refusals of applications for leave to remain in the UK under the Points-Based System, regardless of the date that the appeal was lodged. ILPA protested that this was an abuse of the principle of legal certainty. A person had gone to the effort, time, trouble and expense of lodging an appeal on one legal basis, only to find that legal basis changed without warning and without notice.

There is a level of unpredictability with which businesses can cope and which they can absorb into their planning. They are already dealing with a high level of unpredictability given the economic situation and the political situation surrounding it. The uncertainty that they face in the UK given the volatile nature of immigration policy is too great to be absorbed.

ILPA members have to advise migrants and employers on what they can expect in the future. What will happen to spouses, partners, children? Will leave be extended? Will it be possible to settle? To become British? If a person studies, or leaves to take up an assignment abroad, will they be able to return? How long can a company count on a particular employee being able to remain? The answers in most cases are hedged with uncertainty.

### *Compliance Cost*

Every major change, and many minor changes, to UK immigration law or policy require employers to invest a significant amount of time and money reviewing and amending internal processes to ensure they remain compliant with what the UK Border Agency expects of them. The impact of the annual limit on Tier 2 (General) has been a major cost to employers. In addition to the cost for sponsors to amend internal processes to ensure compliance with ever-changing sponsorship duties, many sponsors seek advice from their legal representatives each and every time a change arises to be certain that they are complying with a changing landscape of rules/guidance.

---

<sup>8</sup> *Hansard* HC report 19 May 2011, Col 33WSff.

<sup>9</sup> The UK Borders Act 2007 (Commencement No 7 and Transitional Provisions Order 2011 (SI 2011/1293 (C.53)).

## *Delay*

The process of applying for and obtaining entry clearance as a Tier 2 migrant is already long and complicated. The existing process causes delays, and sometimes permanent barriers to important hires. The panel process associated with the cap has made expeditious recruitment to meet business needs no longer possible.

Delays in processing result in direct costs for businesses as they are required to pay for additional temporary accommodation while applications are being processed and also to absorb any costs associated with rearranging travel. There is also the additional financial impact on businesses if projects are delayed because a non-EEA migrant worker is not able to enter the UK on their intended start date.

The increased costs involved in hiring non-EEA workers means that such decisions are not made lightly. It would not make economic sense for businesses to hire non-EEA migrants if there was not a business need.

The complexity and volatility of the current UK immigration system has a direct effect on business and runs wholly contrary to the Government's drive to reduce "red tape" for UK employers.<sup>10</sup>

## *The Economic Impact of Migrant Workers*

Highly skilled migrant workers not only may create new jobs for the resident workforce, they also share their expertise and train UK employees. High-tech hubs that attribute their successes to immigration include the Silicon Valley in the USA<sup>11</sup> and also in Israel.<sup>12</sup> One effect of making recruiting and hiring non-EEA national staff more difficult is that this limits the scope for training the existing workforce and improving their skills.

Uncertainty and instability in relation to immigration legislation has had a negative impact on business. It is the experience of ILPA members that their employer clients have avoided active recruitment in non-EU countries due to the uncertainty in relation to future immigration policy changes. This includes a lack of certainty about obtaining a restricted Certificate of Sponsorship, if required, and the lack of certainty in relation to settlement going forward as described above.

## *Investment and Growth*

It is challenging for businesses to adapt to the annual cap, whether or not it is reached, as it is costly and time consuming to comply with. According to the PricewaterhouseCoopers Global Talent Survey,<sup>13</sup> 66% of Chief Executive Officers fear that talent shortages will constrain their company's growth. For these reasons, businesses are concerned that the limit has slowed down their economic recovery and limited their scope for growth.

---

<sup>10</sup> See the Department for Business, Innovation and Skills Red Tape challenge.

<sup>11</sup> See *Silicon Valley's New Immigrant Entrepreneurs* Annalee Saxenian, A., May 1999

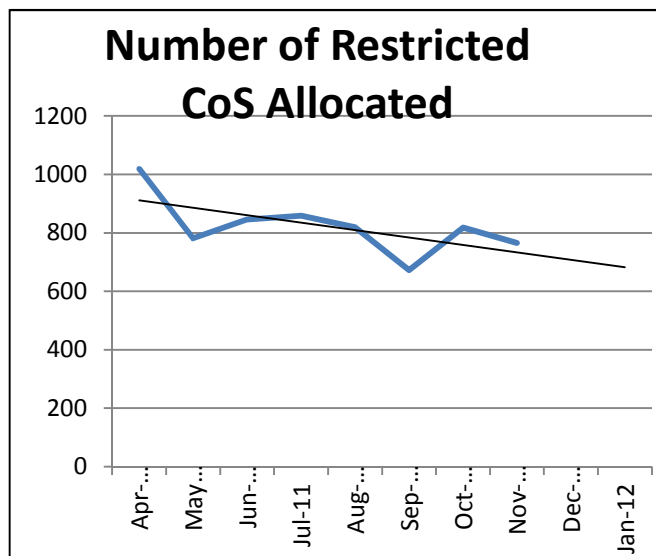
<sup>12</sup> *Silicon Valley and its Imitators*, Bresnahan, T. Gambardella, A. and Saxenian, A., Cambridge University Press 2004 including the chapter "Israel's silicon wadi"

<sup>13</sup> See <http://www.pwc.com/gx/en/ceo-survey/talent-search.jhtml>

With the tightening of the UK regulatory environment, ILPA members representing companies report that their clients perceive the UK to be a challenging location in which to conduct business. The World Bank has recently downgraded the UK to 7<sup>th</sup> in its 'Ease of Business' rankings.<sup>14</sup> The cap on Tier 2 migrants risks dissuading international businesses from making further investment or expanding their operations in the UK. Limits have made it difficult for all businesses, international and UK only, to plan for the future because they cannot risk expansion whilst the regulatory environment is restrictive and uncertain.

### **The Social and Public Service Impact**

Sponsored migrant employees are all, by default, in skilled roles. They are generally well remunerated with a high level of disposable income, much of which they spend in the UK on goods and services. Tier 2 migrants are prohibited from claiming public funds and would have no need to do so and not be eligible. In addition to the significant contribution to the economy they provide through their roles within UK businesses, they generally pay a significant amount of personal income tax. The Migration Advisory Committee has already recognised that they are net contributors to UK Gross Domestic Product.<sup>15</sup>



**What would be the impacts of setting a limit below the 2011/12 level in 2012/13?**

The strength of opinion voicing concerns surrounding the cap is overwhelming.

There is a notable divide in opinion as to the impact of the limit. The Government has indicated that the limit has yet to 'bite'; whilst businesses continue to flag grave concerns

as to its impact.

The Government would have to take extreme measures such as halving the numbers entering under Tier 2 for a cap on Tier 2 to have any notable effect on net migration. Such a move would be opposed by businesses and create a hostile environment. To quote Lord Wilson's comment about the actions of the Secretary of State in *R(Quila et anor) v SSHD* [2011] UKSC 45 "On any view it is a sledge-hammer but she has not attempted to indentify the size of the nut."

<sup>14</sup> See <http://www.doingbusiness.org/rankings>

<sup>15</sup> Limits on Migration: Limits on Tier 1 and Tier 2 for 2011/12 and supporting policies, Migration Advisory Committee, November 2010

As illustrated on the graph above, the number of restricted Certificates of Sponsorship allocated has decreased month by month, with a forecast continuing trend. Continual change has far-reaching implications; with negative consequences that are likely to far outweigh the perceived benefits of reducing a relatively small migration population further.

The Tier 2 cap was proposed at a level that already encompassed a margin to reduce net migration; with the cap currently running at only half capacity, a more stringent limit is unwarranted.

Clients value stability in migration policy. Migrants can thus plan, while the cost to employers of ensuring compliance with migration is a drain on business resources and finances that is hard to afford in the current climate. This is a widely reported problem and is also of particular prevalence for small and medium-size enterprises.

There are opportunities to promote the notion that the UK is open for business in 2012 because of the publicity generated by both the Olympics and Her Majesty's diamond jubilee. The UK has much to showcase; it currently retains both its Standard and Poor and Moody's AAA credit rating at a time when many European States using the Euro have been placed on Credit Watch Negative.

## **Question 2**

***Why has the uptake of Tier 2 (General) consistently been below the implied monthly limit during 2011? Do you expect the level of uptake of such visas to change in the future, and why?***

Businesses were left reeling by the Tier 2 interim limit and this dented confidence; a mistake that the Home Office has openly acknowledged at meetings members have attended.<sup>16</sup> When the cap was introduced in April, there was a peak when 1019 restricted Certificates of Sponsorship were allocated. Based on members' experience, these figures indicate that, in light of the problems experienced with the interim limit, businesses were 'panic buying' to ensure movement of workers. The subsequent uptake of restricted Certificates of Sponsorship has been much steadier; with a mean average uptake of 794 Restricted Certificates of Sponsorship from May 2011. The trend in uptake of Certificates of Sponsorship is in line with the Government expectations of a more substantial initial allocation in April.

Whilst the trend in uptake of Certificates of Sponsorship aligns with predictions, the *number* of Certificates of Sponsorship allocated under the cap have, so far been lower than anticipated. The 20,700 cap was implemented on the basis of Tier 2 uptake during a period of recession. The low uptake in 2011 appears symptomatic of the depth of the UK's economic problems.

The available capacity in the cap can be seen as a tool for growth and a potential lifeline for the labour market in efforts to return to pre 2008 levels of growth.

It is premature to hail the cap as an effective and workable policy. ILPA members' experience is that that the panel process is bureaucratic and time-consuming and

---

<sup>16</sup> Most recently at the PricewaterhouseCoopers Legal Immigration Club meeting on 15 December 2011.



makes recruitment more difficult. It is widely reported by clients that there has been a significant delay to recruitment and it is considered that that the Tier 2 restricted Certificate of Sponsorship panel process has made recruitment of non-EEA workers more challenging. This is illustrated by the increasing trend of exceptional applications.

The high levels of uncertainty that were a by-product of the interim limit, have been compounded by the decision to review the Tier 2 policy so soon after its implementation. Members and clients struggle to keep abreast of the changes. There are widespread reports of increased expenditure by employers on compliance and on legal advice which is inhibiting the recruitment of migrant workers. Small and medium-sized enterprises struggle to absorb these costs for relatively small work forces and relatively small numbers of workers from outside the resident labour market; they are disproportionately disadvantaged.

Recruitment of non EEA workers is being stalled by the indecisive policy environment, with many businesses describing a direct correlation between restrictive UK immigration policy and the international reach of their global recruitment. In ILPA's view this further explains the low uptake under the cap.

### **Question 3**

***What responses to the limit on Tier 2 (General) migration have been considered and put in place by employers, including measures to recruit from and train the UK workforce?***

#### *Compliance*

As a direct response to the implementation of the Tier 2 cap ILPA members have extensively been asked to provide additional and further support to employer clients to ensure compliance with immigration policy.

#### *Temporary Migration*

Businesses have also indicated that in a bid to overcome the negative effects of the cap and to pre-empt any changes as a result of this consultation, they have increased their use of temporary migration routes such as Tier 5. This has already undercut the number of applications that many businesses would typically have made under Tier 2. This further explains the underutilisation of the cap. The cap is merely pushing applicants under different tiers.

#### *Intra-Company Transfers*

### **Question 4**

***If intra-company transfers were strictly limited to the GATS definition of senior managers and specialists, what impact would that have on employers?***

It is difficult to assess the impact of limiting Intra-Company Transfers strictly to the General Agreement on Trade in Services (GATS) definitions of 'senior manager' and 'specialist'. The definition of specialist is wide and arguably covers everyone who 'possesses uncommon knowledge'.

However, if the General Agreement on Trade in Services definition were to restrict the number of occupations classified for Intra-Company Transfer purposes, then the impact on employers would be detrimental. The PricewaterhouseCoopers Global Talent Survey<sup>17</sup> found that 59% of Chief Executive Officers are planning to send more staff on international assignment. Intra-Company Transfers allow companies already in the UK to train their staff and develop collaborative relationships with global markets. Any changes will affect firms of all sizes and thereby the economy.

***Is £40,000 per year a reasonable minimum pay threshold for such jobs, or should this threshold be higher?***

£40,000 is a reasonable minimum pay threshold for most managers, even in light of regional salary variations but it is important to make provision for exceptions in those cases where it is not adequate which may occur, for example, in the voluntary sector. Any upward variation to the Intra-Company Transfers threshold would certainly jeopardise Intra-company Transfers in Small and Medium Size Enterprises, the public sector and smaller scale multi-national enterprises.

***Should it vary amongst different regions of the UK and why?***

Minimum income thresholds are more difficult to achieve in areas outside the South East, where average salaries are often below those stated on the Tier 2 Codes of Practice. This is particularly the case in Scotland and it appears to members that there is disproportionate effect on different parts of the UK with the effects are particularly pronounced in Scotland. It is difficult to recruit non EEA migrant workers through Tier 2 or to sponsor existing members of the workforce under Intra-Company Transfers to relocate to different parts of the UK because the market rate for salaries in locations outside of London are lower than the Standard Occupation Classification Code salary threshold which is based on London rates. These difficulties are stopping companies from investing in different parts of the UK.

Since companies in London tend to pay higher wages than in other parts of the country, firms outside London seeking to sponsor migrants are disadvantaged, as are companies in sectors in which salaries are generally lower, such as the public sector and the voluntary sector.

Regional offices are less likely to be able to pay salaries high enough to obtain visas, depriving some areas of the benefits that have been identified with non-EEA workers, especially in filling key occupations where there are shortages in the resident labour market.

Salaries should reflect market trends. The national medium and mean salary figures when compared with the regional equivalents illustrate how regional variations can be substantial. For example, in Scotland, finance and investment analysts and advisors earn on average 36.9% less than the national average in this occupation. Moving to different parts of the UK is an alternative to moving out of the UK altogether.

---

<sup>17</sup> *Op.cit.*

There remains scope to encourage private sector growth in different parts of the UK; especially in locations where the skill set for certain industries are concentrated. Large scale manufacturing bases, for example, are concentrated in the North East and the Midlands, so it is important to facilitate the immigration of skilled workers from overseas companies in the same sectors, directly to those regions. However, in members' experience, overseas companies have been and will continue to be reluctant to invest if they cannot bring certain migrant workers to the UK. In particular, members report that Japanese and Chinese companies will not come unless these conditions are addressed.

### **Question 5**

***Does the inclusion of non-salary remuneration (allowances) in the £40,000 pay threshold for the intra-company transfer route undermine the validity of that threshold as a test of skill? Does it actually or potentially create an unfair advantage to migrants and their employers as discussed in Box 3.2 in Section 3 and, if not, why not?***

The inclusion of non-salary remuneration does not undermine the validity of that threshold as a test of skill.

There is a misconception that the inclusion of non-salary remuneration undercuts the resident labour market as it is perceived to allow companies to bring in employees on lower wages but with extremely high allowances. ILPA considers that the UK Border Agency should challenge employers who are not just and equitable in their application of the law and guidance, which is clear as to the requirements for allowances. This is the way to deal with an inappropriate use of allowances, rather than excluding it from the pay threshold.

## **Skill Level for Tier 2**

### **Question 6**

***Can the methodology used to identify the skill levels of occupations, discussed in Section 3 of this call for evidence, and in our report "Analysis of the Points Based System: List of occupations skilled to NQF level 4 and above for Tier 2" (Migration Advisory Committee, February 011), be improved, and if so how?***

The Migration Advisory Committee's current three tier analysis of roles is generally supported by businesses who are clients of ILPA members as a fair means of assessing skill level and it is considered that the National Audit Office ranking and salary are generally good indicators of a job title's skill level.

Nevertheless, ILPA advocates the importance of a more subjective approach with regards to the qualifications necessary to be considered 'skilled'. All the evidence from members is that experience is valued more highly than formal qualifications. An inflexible and rigid assessment risks isolating promising and emerging talent. Whilst the Government is promoting alternative routes to employment other than university, for example, through apprenticeships and work-based training, failure

adequately to recognise that such entry routes are comparable to graduate positions, will inhibit these initiatives and will mean that businesses, finding that they are not supported in their efforts to increase skills in their workforces, will cease to engage.

Whilst the Government presently indicates a willingness to recognise experience/qualifications other than certificates from higher education institutions, businesses struggle to find evidence of the high level of skill in some job titles. Academic success does not always correlate to success in business and employers should not be prevented from hiring the people they want and need just because those people lack formal qualifications. People give jobs to those whom they consider capable of doing them; they have every incentive to be careful.

Whilst the Migration Advisory Committee tries to allay these concerns by identifying that only 2/3 skill indicators must be passed to be categorised as highly skilled; 2/3 indicators are informed by formal qualifications. The skills test therefore reassures PHD students and researchers that despite lower pay they will be recognised, but informally qualified candidates cannot rely on salary alone to secure recognition under Tier 2.

#### **Question 7**

***Are any of the occupations listed in Table A.2 skilled to National Qualification Framework level 6 or above (NQF6+)? In either case please supply evidence to support your view.***

No response given.

#### **Question 8**

***What would be the economic impact of raising the minimum skill level for the intra-company transfer, RLMT and shortage occupation route from NQF4+ to NQF6+?***

ILPA is opposed to the rise in skill level for Tier 2. The proposed increase in skills level would unnecessarily restrict the movement of skilled workers in the UK and adversely affect particular industries, jobs and sectors.

The proposed list of occupations that would no longer qualify under Tier 2 is generic, overly inclusive and excludes some pivotal roles that are identified as offering a valuable contribution to UK business continuity and economic output. Standard Occupation Classification Codes are not detailed enough to distinguish between small and large businesses; this threatens unfairly to prejudice workers at large organisations which make big contributions to the economy.

Any move on the skill level threshold should be approached with the utmost caution; a substantial number of the roles earmarked as not to be considered to be NQF6+ are in the public sector and would adversely effect in particular the Department of Health which is particularly reliant on sponsored non EEA migrants.

The direct economic impact of raising the minimum skill level for Tier 2 migrants from NQF4+ to NQF6+ is likely to include migrants with visas due to expire being

unable to satisfy requirements for renewal; this sends a negative message out to businesses as they find themselves unable to retain key workers. It also highlights to them the risk that future changes will undermine their strategy.

Businesses are likely to already have undertaken the Resident Labour Market Test for a majority of the roles affected; this provides proof that the positions cannot be filled from within the resident labour market. Businesses are concerned that these shortages will pose a threat to business continuity. There are also cost implications: as the business must re-advertise the position and, should the role remain unfulfilled, they will have to invest in a full and extensive training program in a bid to up-skill existing workers. This will, for a considerable period, leave the company without important workers in key roles and inhibit capacity to trade and capitalise on business opportunities.

A further argument is that the Standard Occupation Classification codes flagged for declassification from graduate level will hit the creative and vocational areas hard. There are a number of initiatives intended to encourage entrepreneurial spirit in the arts. Their importance is recognised in the Tier 1 Exceptional Talent route. Yet the proposed changes to Tier 2 would be extremely hard hitting on these sectors. These industries do not lend themselves to traditional skills assessment due to the focus beyond formal qualifications. Furthermore, these professionals tend to work independently. Unlike formal office environments, artists do not operate in roles where conservative methods of up skill training would be effective. Artist talent is subjective and artists can not necessarily be 'replaced' by domestic artists.

Omission from Tier 2 is likely to create a divide in the sector between amateur artists and those at an internationally recognised level under Tier 1 Exceptional Talent; this risks stifling the creative industry. The number of creative and vocational Tier 2 migrants mean that their exclusion would be nigh on immaterial in the efforts to reducing net migration; however the close knit nature of their industry means that their exclusion would have a disproportionately negative impact on the sector. This will impact heavily on small and medium-sized enterprises and the development of the creative industries. The arts play an integral part in the UK tourism industry, a sector which contributed 8.6% to the UK's Gross Domestic Product last year, with music tourism accounting for £846 million alone.<sup>18</sup>

## **Resident Labour Market Test**

### **Question 9**

**What would be the impact on employers, the economy and the UK labour market of lowering the threshold for exemption from the RMLT from the current level of £150,000 per year to somewhere in the range of £70,000 to £100,000 per year?**

### **Question 10**

**What would be the impact on the UK labour market, including on employment opportunities of UK workers, of making the above changes**

---

<sup>18</sup> Destination: music – The contribution of music festivals and major concerts to tourism in the UK, UKMusic see <http://www.ukmusic.org/assets/media/UK%20Music%20-Music%20Tourism.pdf>

As the UK national average salary is £25,900, workers on a salary in excess of £70,000 constitute only a very small proportion of the national labour force. It is therefore unlikely that workers earning these higher salaries would disrupt the resident labour market.

There is a widespread consensus among members' employer clients that advertising positions with remuneration in excess of £70,000 at the Job Centre is misplaced and is not having the desired effect of opening these positions to UK workers. The Resident Labour Market Test gives all members of the resident labour market a chance to apply for jobs but this does not mean that advertising in the Job Centre is the most appropriate method of facilitating applications from within the resident labour market for these roles. If the Job Centre is not successful in identifying candidates for this role the UK Border Agency should consider reviewing and amending the Resident Labour Market Test to ensure all roles are accessible to the resident labour market. It may be that the way in which Job Centres and associated websites operate could be changed so that they become the place of choice to advertise this type of job. If that is so, people will use them. But they are not there yet; people are advertising in Job Centres purely to satisfy the UK Border Agency and not with any hope of recruiting. This is artificial and bureaucratic.

### ***Additional Comments***

#### *Definition of Migrants*

The Government is struggling to reduce 'net migration' but this is variously defined and is not adequately measured. Students are one of the largest groups in numerical terms to contribute to the net migration statistics. International students represent 38% of the overall net migration figure; with 250,000 students have been admitted from outside the EU annually. However, Tier 4 is not a route for permanent migration and therefore students should not be counted in the net migration statistics without further information. This is of greater pertinence in light of the abolition of the post-study work route from April 2012.

A number of countries such as Canada, Australia, the US and New Zealand do not define students as migrants and therefore do not adhere to the UN definition of net migration. The UK is not bound by the UN definition and would be encouraged to implement the Organisation for Economic Cooperation and Development (OECD) definition as a more realistic assessment of the migration issues faced by the UK today. Consideration should be given to a measure of net migration that counts "permanent" migrants, persons who are admitted to the country and granted permanent residence and to excluding those with temporary status from official net migration statistics.

#### *Measurement of net migration*

The inadequacies of data collection are supposed to be solved by the e-borders project but this has been beset by delays and some of the UK's desiderata are incompatible with EU data protection law. There is no reason to be optimistic that the UK will be in a position accurately to record net migration in the near future. The current position is that departures are not recorded.

Persons with no leave may remain in the UK for a considerable period before making a voluntary departure or being subject to a forced removal. There is no satisfactory methodology by which unlawful immigration can be incorporated into the net migration figure.

The International Passenger Survey is what we currently have. Its methodology is inadequate to record the movement of those moving unlawfully. Further, it counts a person coming to the UK as a student. It counts a person leaving the UK to study overseas as a student. It does not count a person who has been studying in the UK and is leaving the UK to take up a job, or to marry, as a student. Students are counted in as a group, but not counted out. While those departing after more than a year will contribute to the net migration figure the statistics are raw and do not allow behaviour to be examined.

ILPA

21 December 2011