

Rt Hon Sajid Javid MP  
Home Secretary  
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11 June 2018

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Dear Secretary of State,

### **Tier 2 cap on skilled migration**

We welcome your announcement that you are undertaking a review of the Tier 2 visa system in light of the Tier 2 cap having been reached for the sixth consecutive month and the resulting impact on UK businesses/organisations.

The purpose of this letter is two-fold: to provide you with evidence of the cross sectoral damage the cap is having and to put forward proposals for alleviating this crisis.

ILPA is an association of around 900 members. Its Economic Working Group is made up of advisors to businesses in the UK covering all sectors and regions. ILPA's response<sup>1</sup> to the Migration Advisory Committee's call for evidence on EEA-workers in the UK labour market included responses from approximately 250 employers, with the overall number of employees covered coming to at least 114,000. Therefore we are placed ideally to feed into this review.

### **Background**

Tier 2 (General) of the Points Based System is the category that enables employers to bring in skilled workers to the UK when attempts at filling vacancies from the resident workforce has failed. There are restrictions in place on employers' ability to sponsor non-EEA workers to ensure that the resident workforce is protected.

We believe it is important to understand the steps that an employer has to take prior to sponsoring a non-EEA worker to appreciate that this is by no means an easy feat and so we have set these out below.

1. *Resident labour market test* – First, an employer will need to establish that the role could not be filled by a settled worker<sup>2</sup> and therefore the employer has to advertise the position for a minimum of 28 days in accordance with Home Office requirements.
2. *Sponsor licence* - If the employer does not have a Tier 2 sponsor licence, they will need to apply for one and provide justification as to why they have not been able to fill the vacancy from the resident workforce. A Tier 2 sponsor licence also carries with it an administrative

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<sup>1</sup> [ILPA's response to the Migration Advisory Committee's call for evidence on EEA-workers in the UK labour market](#)

<sup>2</sup> Settled worker is defined in the Tier 2 sponsor guidance as UK/EEA national, British overseas territories citizen, and those in the UK with indefinite leave to enter or remain or a UK Ancestry visa.

and cost burden which can be a hindrance to small/ start-up companies. The current processing time is approximately 2 to 3 months to secure a licence.

3. *Apply for an allocation from the quota (see below for details)* - If the migrant is overseas and the salary is below the high earner threshold, the sponsor then has to apply for an allocation from the annual quota by the 5<sup>th</sup> of the month prior to bringing the migrant worker to the UK. If it meets the minimum points the application should be granted by the 11<sup>th</sup> of the month.
4. *Apply for the visa* - If an allocation is granted from the quota then the employer will assign this to the migrant worker who then has to apply for their visa to the UK. The total cost for a 3-year visa for a migrant sponsored by a small company is £2,713. For a migrant relocating with family (e.g. spouse and two children, as is often the case) this would increase to £6,979<sup>3</sup>. For a company not deemed to be a small company the costs for bringing the worker to the UK increase to £4,621 and with a family (spouse and two children) costs increase to £8,887.

## The Tier 2 Limit

The annual cap has now been in place for over 7 years. In determining the way forward it is pertinent to also look back at when the cap was first introduced in 2011.

Ahead of the cap's introduction the UK Border Agency (at the time) carried out a public consultation entitled "Limits on non-EU Economic Migration", to which there were over 3,000 responses from a range of organisations including accountancy firms, manufacturers, telecommunications, universities, transport, retail, the media, the health sector, third sector organisations, trades unions, and professional bodies as well as private individuals.

ILPA also responded<sup>4</sup> and highlighted the concerns of the business community:

"The Government's stated aim is to *"reduce net migration to the level to the 1990s - tens of thousands, not hundreds of thousands"* by introducing a limit on immigration from outside of the EU. It has also stated its intention to *"continue to attract to the UK the brightest and the best to ensure economic growth."* These two aims are incompatible. The business community is concerned that the Government's proposals will adversely affect the UK's prospect of attracting new (or expanding existing) investment into the UK, diminish the country's competitive edge within global markets, result in greater burdens on employers and affect the delivery of key public services."

Concerns were raised about the impact on the reputation of the UK and the potential advantage that this gave to other countries to recruit highly skilled migrants. Indeed the Merits Select Committee at the time expressed concern about the lack of evidence-based information provided by the Government for introducing the cap and noted that there has not been a sufficiently detailed account of what has been learnt from the consultation exercise<sup>5</sup>.

At the time the UK was emerging from a deep recession, with the threat of a double dip around the corner. Since then the cap limit was reached in 2015, there was a referendum vote to leave the EU in 2016, and now the cap has been reached again for the sixth month in a row since December 2017 with no letup in sight.

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<sup>3</sup> £199 Certificate of Sponsorship (CoS) fee; £610 visa fee for 3 years per applicant; £212 priority service per applicant; £600 NHS fee per applicant; £3,000 Immigration Skills Charge if not a small company or £1,092 Immigration Skills Charge for small company.

<sup>4</sup> [ILPA response to the UK Border Agency Consultation on Limits on non-EU Economic migration](#)

<sup>5</sup> <https://hansard.parliament.uk/Lords/2011-05-03/debates/11050331000098/StatementOfChangesInImmigrationRules>

The resounding message from employers back in 2010 was that this is not the time for the Government to restrict any opportunities for growth in the economy in order to achieve its political ends and that message is now truer than ever.

### ***Application and Impact***

The Tier 2 limit is administered on a points scoring basis, with roles on the shortage occupation list, that pay large salaries, or are at a higher skill level being allocated first from the monthly limit. That limit has been reached for the sixth month in a row, with thousands of vacancies remaining unfilled. The data provided in response to a freedom of information request<sup>6</sup> shows that the number of refusals has grown month on month with the minimum number of points a request needs to be awarded currently standing at the 55 points mark, so for those non-shortage/PhD level jobs, the salary on offer needs to be minimum £55,000. Further, the situation is getting worse.

Certificates are allocated solely on points scored basis, there is no room for the exercise of discretion or for allocating a Certificate on an exceptional basis if there are any extenuating / compassionate circumstances where the points are not met. The Tier 2 sponsor guidance does provide an example of compelling circumstances where a CoS can be granted exceptionally but that is only for consideration out of panel and not within the ordinary procedure. The example given is that of a consultant surgeon who has been recruited and needs to be appointed at once because patients need life-saving surgery. However, in that example an allocation would not be granted to the surgeon if the salary on offer fell below the points scored in the last panel<sup>7</sup>, in the example given, potentially, this would result in loss of life.

The impact of the limit on the health sector has been widely reported and we are pleased to hear of reports that consideration is being given to these roles being removed from the limit. However, the harm caused by the limit does not simply stop at the health sector.

We called on ILPA's Economic Working Group to provide a sample of case studies from their clients of the impact the Tier 2 Cap is having and a select few are attached to this letter at Annex A.

As you can see from the case studies provided, the impact on businesses covers multitude of sectors, below is a summary of a few:

- *In the education sector* - the inability to sponsor the teachers needed is harming children with class sizes having to double. In one instance a history class which normally holds 20 students now has to cater for 40.
- *In the Tech sector* – one case study highlights the fast pace with which this industry moves and the importance of the businesses ability to respond quickly. The start-up has come up with a product which could have world changing consequences. However, it is currently unable to progress as it has not been able to sponsor the migrant with the relevant technical expertise to enable it to go to launch and so they are facing the risk of not being first-to-market.
- *In the health sector* – one case study demonstrates the ripple effect of not being able to recruit for a particular role. The company has not been able to recruit Occupational Therapists for over 8 months. This means that families of children with disabilities are without the vital support services that they need, which in turn will have an impact on the

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<sup>6</sup> [https://www.whatdotheyknow.com/request/restricted\\_certificate\\_bandings](https://www.whatdotheyknow.com/request/restricted_certificate_bandings)

<sup>7</sup> [Tier 2 Sponsor Guidance](#) paragraphs 29.30 and 29.33

children's development and quality of life, as well as an impact on the business and the services they can offer to families.

- *In the engineering sector* – the expansion plans of businesses have been hampered leading to damage to their reputation in the sector. One large company reported having to put a number of their projects on hold possibly indefinitely as it has had several vacancies which it has not been able to fill for over 8 months.
- *In the professional services sector* – one organisation could be facing the loss of an important international client and its ability to run some of the most serious and complex international sport disputes at both national and international level. This as a direct result of its inability to fill the role of the most senior position in its case management team, which they warn will also likely damage the UK's reputation in the global sports community. Another global firm is facing the possibility that it may not be able to sponsor 18 trainees which it has recruited via a milk round some two years previously as is the norm in the sector, with a resulting impact on the trainees and their future careers.

## **Recommendations**

### *1. Remove the cap*

We welcome the statement you made on the Andrew Marr show that you want a policy “*that welcomes people who want to make a contribution and which brings in those high skills that we need*”. What the above summary and the attached sample case studies demonstrate is that the Tier 2 limit is having the opposite effect, it is keeping out the very people that the UK needs.

The Tier 2 limit was introduced at a different time when the UK was coming out a recession. This needs to be reassessed taking into account the current needs of the UK economy at a time when employers are finding it increasingly difficult to recruit the skills that they need, a situation which has been exacerbated by the decision to leave the EU. The fact that the limit has been reached for the sixth month running is an indication of this.

Failing to act is also now is damaging the message that the UK wishes to project about being open for business and open to attracting the brightest and the best. As reported by businesses, the result of the limit has been that they have lost some of these talented skilled workers to competitors in other countries, with those waiting for an allocation now thinking twice about coming to the UK in the first place.

The government needs to concern itself with making sure the UK remains a leading global destination. This requires a review of the visa system to make sure it addresses the needs of the UK economy and requirements of UK businesses.

As we have seen with the Windrush crisis, implementing a policy, in that case the hostile environment, without fully considering its impact, can lead to severe consequences. Similarly implementing an arbitrary objective of reducing net migration without an assessment of the potential impact on the UK economy and businesses, is proving harmful to the UK's economy, businesses and global reputation.

### *2. Remove shortage occupations and highly skilled roles from the cap*

It is not clear how the figure of 20,700 was decided upon but it was introduced at a time when the UK was coming out of a recession. We understand that the level already encompassed a margin to reduce net migration. However, some 7 years later, the needs of the UK has changed and the application of the limit should be changed to reflect that.

Therefore, if removing the cap cannot be done immediately, then we recommend that in the interim roles on the shortage occupation list and at PhD levels are removed from the 20,700 limit. This should alleviate some of the pressure on the number of applications being made each month and in turn assist these businesses that have not been able to fill the vacancies to do so.

We trust the above and attached evidence demonstrates the need for immediate action to be taken with regards to the Tier 2 limit. If we can assist further with your review please do not hesitate to contact us.

Yours sincerely,

Adrian Berry

Chair,

Immigration Law Practitioners' Association

**ANNEX A**  
**Case Studies**

**Education Sector**

<b>Case study 1</b>	
Sector	Education
Size of business	Medium
SOC code	2314 Secondary Education teaching professionals – other subjects 2315 Primary & Nursery education teaching professionals
Duration vacancy open for	Since Oct 2017
Number of attempts	6
Salary on offer	Various positions between £27,000 and £39,000
Impact of refusal	Shortage of teaching staff in the following subjects at the School: Japanese Language & Literature, PE, Home Economics, History, and a Primary School teacher. Other teachers are having to cover more classes and teach unfamiliar subjects. Class sizes have doubled making it more difficult for teachers to manage classes effectively. For example, with History there are now 40 students in a class when normally there would be 20.

<b>Case study 2</b>	
Sector	Education
Size of business	Medium
SOC code	2314 – Secondary Education Teaching Professional
Duration vacancy open for	5 months
Number of attempts	Four
Salary on offer	£35,000.00
Impact of refusal	London based school has been unable to fill which teaches children of leading {foreign country} diplomats and businessmen is unable to fill the post with a candidate who possesses a detailed and up-to-date working knowledge of the {foreign country} Educational System and curriculum. The specialist school as well as its pupils are suffering considerably from the lack of a suitably qualified teacher.

**Tech sector**

<b>Case study 3</b>	
Sector	Tech/Mobile
Size of business	Start-up
SOC code	2136 Programmers and software development professionals
Duration vacancy open for	Since November 2017
Number of attempts	3
Salary on offer	£39,000
Impact of refusal	We are building a platform that could revolutionise the use of augmented reality at a global mapping scale, but build progress/rollout of this has been severely hampered by the lack of technical knowledge. We have not been able to sponsor the successful candidate who is an industry expert in AR/mobile and 3D. As a start-up this is seriously disrupting our efforts to launch the product, putting us at risk of not being first-to-market. Again, we have a product which could have world changing consequences, but this is being hampered by UK Government policies.

<b>Case study 4</b>	
Sector	Fintech
Size of business	Small
SOC code	2135 for IT business analysts, architects and systems designers
Duration vacancy open for	4 months
Number of attempts	4
Salary on offer	£45,000 (increased to £60,000)
Impact of refusal	Our client is in the final stages of winning a multimillion dollar deal with a large bank, which is fundamental to our client. The final stages must be conducted by a team of highly specialised personnel. The migrant needs to be part of this team as she has specific skills that would take another employee at least 12 months to acquire. If the migrant is unable to commence work in the UK soon, we understand that our client will be likely to lose the deal.

<b>Case study 5</b>	
Sector	Tech/digital asset management software
Size of business	Start-up
SOC code	2133 – IT specialist managers
Duration vacancy open for	5 months
Number of attempts	1x application and during process for second attempt, candidate left US organisation
Salary on offer	£42,000
Impact of refusal	The candidate the company identified was required to work UK hours from the US for 3 months while the application was pending and eventually found another role with a US competitor. Losing this candidate has had a huge impact on service delivery. There is only one UK employee who has the experience to cover some of the workload from this vacancy and they have been required to do this in addition to their role. Our customers have been adversely impacted and we risk losing them if we cannot provide a sufficiently high level of service. We calculate the costs of losing this candidate are in the region of £100,000 and this is expected to increase to approximately £200,000 as we will need to hire consultants to help bridge the gap. Our organisation is struggling to fill vacancies through the resident labour market. Candidates who apply for the positions are insufficiently skilled or lack relevant experience.

<b>Case study 6</b>	
Sector	Tech
Size of business	Start up
SOC code	2136 – Programmers and software development professionals
Duration vacancy open for	3 months
Number of attempts	2
Salary on offer	£45,000
Impact of refusal	<p>This application is for a Data Scientist role within a fast growing tech start up in the Artificial Intelligence field. The role is recognised as being in shortage but the shortage occupation list specify that the role must require 5 years' experience.</p> <p>It has not been possible for the company to find anyone locally with the required skills. This is demonstrated by the fact that no one applied for the role when it was advertised.</p>



	<p>The individual they wish to hire has two masters' degrees. He has also published papers on AI. He doesn't meet the criteria for the shortage occupation list as he just finished his second Master's degree.</p> <p>The individual is currently working for the company remotely from Brazil (he is a Brazilian national), which is far from ideal. Raising the salary to an amount to pass the minimum points for the RCoS under the cap will be a significant expense for a start-up.</p>
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<b>Case study 7</b>	
Sector	Tech/ software providers
Size of business	Start up
SOC code	2134 IT Project and Programme Managers
Duration vacancy open for	6 months
Number of attempts	5
Salary on offer	£36,500
Impact of refusal	<p>When the position which needs to be filled by the overseas migrant was advertised, the company could not identify anyone remotely close within the UK to fill this position. The role requires implementation of fundamental piece of software and includes spending time at client offices as well as assisting the sales team with demo-ing the software to potential clients. The Company has seen a substantial growth but is now facing business difficulties as this key role remains unfilled.</p> <p>The company is facing losing existing clients as it has not been able to fulfil the contracted service as well as potential clients as they don't have the ability to demonstrate the strengths of the products.</p>

<b>Case study 8</b>	
Sector	Tech
Size of business	Medium
SOC code	3538 – Financial Accounting Manager
Duration vacancy open for	6 months
Number of attempts	1
Salary on offer	£30,000

Impact of refusal	The identified candidate has industry knowledge and practical hands on experience well suited for the job on offer. The delays with the RCOS process have had a domino effect on the business and the current staff hierarchy structure. Senior managers are required to take on more responsibilities to cover this job role in addition to their day to day work. The company believes this has had an overall negative effect on its economic growth.
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<b>Case study 9</b>	
Sector	Technology – search and digital marketing agency
Size of business	Small
SOC code	2473 Advertising accounts managers and creative directors
Duration vacancy open for	10 months
Number of attempts	6
Salary on offer	£35,000
Impact of refusal	The business has been planning to expand into the US market. The role requires a person with knowledge of the US market to enable it do so. It has not been able to fill this post for 10 months and this has had a negative impact on the company's expansion plans and they have missed out on prospective work as a result.

### **Medical / Pharmaceutical**

<b>Case study 10</b>	
Sector	Health (Children's Services)
Size of business	Small
SOC code	2222 Occupational therapists
Duration vacancy open for	8 months
Number of attempts	1
Salary on offer	£36,000
Impact of refusal	We find it extremely hard to recruit Occupational Therapists, the role has now been open for 8 months. In this field, a vacant position means that families of children with disabilities are without the vital support services that they need. This can have an impact on children's development and quality of life. As well as the impact on families, it obviously has a financial impact on us as a small business, and impacts the services we can offer to families if we are stretched thinly.

<b>Case study 11</b>	
Sector	Animal care (veterinary practice)
Size of business	Large – nationwide
SOC code	2216 – Veterinarians
Duration vacancy open for	6 months
Number of attempts	3 – have not submitted further applications as the minimum points are over that on offer
Salary on offer	£40,000
Impact of refusal	The business is a nationwide veterinary care practice which is comprised of more than 460 first opinion veterinary practices and four Specialist referral centres. The business created employment for close to 1,500 vets, supported by more than 1,500 veterinary nurses and 1,200 veterinary care assistants. The shortage of qualified vets in the UK, which is being exacerbated by Brexit, remains an industry wide problem yet vets remain off the shortage occupation list. The current challenges with the RCoS cap mean it is very challenging for us to attract and recruit veterinary talent from outside the EU. As a consequence we have chosen to slow our practice rollout, practices are also experiencing upward pressure on their people costs due to increased use of locums to cover vacancies.

<b>Case study 12</b>	
Sector	Retail pharmaceutical
Size of business	Large
SOC code	Pharmacist
Duration vacancy open for	Ongoing
Number of attempts	3
Salary on offer	£34,000 - £45,000
Impact of refusal	The company recruits a large number of pharmacists each year, a high percentage of whom come from overseas. The salaries offered are linked to the NHS pay banding. Since December 2017, all applications made for restricted CoSs for pharmacists have been refused. We understand, in response to an FOI request, that this has been the case regarding every application made in this SOC code.

## Engineering / Energy / Environment / Transport

<b>Case study 13</b>	
Sector	Engineering
Size of business	Large
SOC codes	2129 Engineering professionals not elsewhere classified (6 vacancies)/ 2121 Civil Engineers (1 vacancy) / 2431 Architects (1 vacancy)
Number of vacancies	Eight
Vacancies have been open for	Various up to 8 months
Number of attempts	Varies up to 4 times
Salary on offer	Various salaries on offer ranging from £30,500 to £43,000
Impact of refusal	Large engineering company who has been actively expanding their Digital offering to respond to the needs of their global clients. Company has been finding it extremely difficult to recruit applicants from within the UK as there is a distinct shortage. This has put a number of their projects on hold – possibly indefinitely if the visa applications are unsuccessful. This in turn means that they have not been able to deliver to their clients and are losing credibility in the London market as the thought leader they are.

<b>Case study 14</b>	
Sector	Energy
Size of business	SME – 150 employees
SOC code	2436 Project Manager
Duration vacancy open for	1 month
Number of attempts	Once
Salary on offer	£30,000
Impact of refusal	We were unable to fill this role and it has remained unfilled in the UK. We are therefore losing out on potential future business opportunities and also incurring expensive consultancy costs to try to plug the gap.

<b>Case study 15</b>	
Sector	Environmental body
Size of business	Small

SOC code	1139 for functional managers and directors not elsewhere classified
Duration vacancy open for	Over 5 months
Number of attempts	4
Salary on offer	£40,000
Impact of refusal	The company has not been able to fill this senior post for over 5 months a role which is crucial to the company. This is hampering the company's development and its engagement with external stakeholders.

<b>Case study 16</b>	
Sector	Engineering
Size of business	Small-medium
SOC code	2124 Electronics Engineers
Duration vacancy open for	4 months
Number of attempts	3 unsuccessful, further attempt made in June
Salary on offer	£50,000
Impact of refusal	Not able to fill this position is having an impact on the business and its ability to deliver the service

<b>Case study 17</b>	
Sector	Transport
Size of business	Micro
SOC code	2136
Duration vacancy open for	7 months
Number of attempts	7
Salary on offer	£44,000
Impact of refusal	The company has been unable to fill the role for months and so has been forced to outsource the work abroad, hence increasing UK imports and reducing exports. If the RCoS situation continues the company is considering outsourcing more of its work abroad.

## Professional services

<b>Case study 18</b>	
Sector	Professional services
Size of business	Not for profit
SOC code	2419 Legal professionals not elsewhere classified
Duration vacancy open for	2 months
Number of attempts	2
Salary on offer	£54,000
Impact of refusal	This post is the most senior in the case management team in charge of running the most serious and complex international sport disputes at both national and international level. The fact that the role is currently vacant is having an impact on the running of these sensitive cases. The organisation also faces the possibility of losing an important international client which will in turn damage the UK's reputation in the global sports community.

<b>Case study 19</b>	
Sector	Professional Services
Size of business	A Magic Circle Global Law Firm
SOC code	2413, Solicitors
Duration vacancy open for	18 trainee solicitors hired via Milk-round advertising two years
Number of attempts	6
Salary on offer	£44,000
Impact of refusal	<p>As a global firm, our strategy is built on being able to offer our clients multi-jurisdictional legal advice and being culturally sensitive to our client's needs. In the UK market there is a shortage of talented, high calibre lawyers. The talent pool is small and with several international firms searching for the same candidates, competition is fierce.</p> <p>These future hires are supported financially so, in addition to being unable to plan for the future needs of the business in terms of number of people, the recent financial implications on the firm in relation to those who have not been offered a visa are significant. Failing to start at the same time as their peers also means that the trainees' career progression will be impacted.</p>

<b>Case study 20</b>	
Sector	Professional services
Size of business	Large
SOC code	2413 Solicitors
Duration vacancy open for	1 month
Number of attempts	Once
Salary on offer	£50,000
Impact of refusal	The vacancy remains unfilled by the large professional services organisation, who had sought to employ a solicitor with an unusual specialism in a highly technical role. The organisation is unable to offer the service which would have been provided by the sponsored migrant.

### **Other sectors**

<b>Case study 21</b>	
Sector	Advertising and Marketing Services
Size of business	Large
SOC code	1134 Advertising and public relations directors
Duration vacancy open for	6 months
Number of attempts	2
Salary on offer	£48,000
Impact of refusal	A top British multinational advertising and public relations company which has been recruiting for Two Account Director Vacancies covering the finance and energy sectors. The salary offered is already competitive and the business is unable to increase this further. The company has been unable take on further UK based clients due to insufficient staff levels to service their needs. The company is renowned for “producing home grown talent” within their industry and feel that this is a major blow for the next generation of talented young people.

<b>Case study 22</b>	
Sector	Fashion
Size of business	Medium (51-200 employees)
SOC code	3422

Duration vacancy open for	5 months
Number of attempts	5
Salary on offer	£30,900
Impact of refusal	<p>This is a crucial for the fashion retailer's collections and the creative branding, it involves working directly with the company's acclaimed Creative Director. The role has now been vacant for over 5 months. The candidate selected for sponsorship is unable to take up the role and this is impacting the company. The acclaimed Creative Director has stated that, "Throughout my 20 year long career I have worked with many Designers and therefore know from experience and must stress, that design synergy is hard to find, difficult to replicate and does have a significant impact on the working of a Design Studio, the success of the collections and, in this case, the realisation of the branding vision of the company." The absence of the migrant worker is having an immediate impact on the creative output and the development of design projects at the business.</p>

<b>Case study 23</b>	
Sector	Architecture
Size of business	Small
SOC code	3545 for sales accounts and business development managers.
Duration vacancy open for	6 months
Number of attempts	3
Salary on offer	£42,000
Impact of refusal	<p>The company wanted to set up a team to capitalise on an emerging market for which a migrant was identified to lead. The business expected to generate fees of £650,000 plus VAT for the first year with £1.4 million plus VAT for the second and over £3 million in the third year. The business was to start with one person supported by an administrator and to increase to over 15 people in the UK within three years. The role has now been vacant for over six months and the business is concerned the continued delay will result in significant loss of business as they will not be able capitalise on the opportunities presented by this market.</p>