UK Immigration And The Risk Of Non-Compliance

The consequences of non-compliance with UK immigration law increased dramatically in August when the UK Border Agency (UKBA) took the unprecedented step of revoking London Metropolitan University’s Tier 4 (student) sponsor licence.

It is reported that London Metropolitan University (LMU) sponsor around 2,000 non-EU students. As the UKBA has revoked their licence, it means that they can no longer sponsor students wishing to study at the university. Students who already have a visa that is sponsored by LMU now have 60 days to find a new sponsor or else they must leave the UK. It also means that LMU cannot sponsor any new students.

The UK Border Agency explained that several areas of non-compliance led to the decision. They discovered that a high proportion of non-EU students considered in a sample were in the UK unlawfully.

This was a big decision that will not have been taken lightly. The implications for LMU and the affected students will be enormous and, as many commentators have been quick to point out, there could also be a significant knock on effect on how UK universities are perceived overseas.

The media has focused on what this means for the UK’s higher education sector but that is only part of the story. In the background there is a clear message for business: the UKBA is cracking down on non-compliance and will take action against those who break the rules.

The root of this compliance focus can be tracked back over several years and across three tangible shifts in the way that UK employers manage their non-EU workforce. Migration policy is no longer about plugging skills gaps. Managing risk and compliance is just as important. The latest and most understated of these developments means that employers should take the Immigration Rules more seriously than ever before.

The first significant change came in February 2008 with the introduction of a duty for employers to check the immigration status of new employees. The requirement was given teeth (and added impetus) by the introduction of civil penalties and criminal penalties for employers who were not able to show compliance with these new requirements.

Four years ago we saw a more fundamental change. In November 2008 the traditional work permit was replaced by Tier 2 of the Points Based System (PBS) and the introduction of sponsor licences.

Tier 2 rationalised the Immigration Rules and brought a greater level of certainty to the system.

Sponsorship had a more fundamental effect. Licences are required for any employer looking to recruit from outside the UK and sponsors have direct responsibility to monitor and report on their migrant workforce, ensuring that every element of guidance is followed.

Companies that fail to adhere to the rules can be removed from the sponsor register and prevented from recruiting and transferring migrant workers. The implications for a multinational could be catastrophic, with criminal charges for the worst offenders.

Three further developments have shown the UKBA’s re-focus on non-compliance since the beginning of this year, with the UKBA creating a hostile operational environment for individuals and organisations who do not play by the Rules.

In February 2012 the UKBA announced that it would name non-compliant businesses. Quarterly reports are now published listing companies who have not paid an outstanding civil penalty or else they must leave the UK. It is reported that London Metropolitan University’s Tier 2 licence holders was awarded the licence on 27 November 2008 and they will need to be renewed on 27 November of this year. The UKBA is unlikely to visit every sponsor before licences are renewed but it seems reasonable to expect them to attempt to visit a large proportion. We are certainly seeing a steep increase in audit visits by the UKBA.

Businesses must be prepared for audits. Sponsors should, as a matter of good practice, have a single document that sets out their licence, leaving them unable to continue to employ their existing sponsored workers in the UK.

This focus on audits is likely to remain high until at least the New Year. The first cohort of Tier 2 licence holders was announced that it would name non-compliant businesses. Quarterly reports are now published listing companies who have not paid an outstanding civil penalty within 28 days of their appeal rights being exhausted. The reports contain the business’ trading name and location, along with the severity of the penalty incurred.

Crucially, ports of entry have increased since the new UK Border Force was created in March 2012. Announcing the new Director, Teresa May, the Home Secretary, told Parliament that it would have its own ‘ethos of law enforcement’. Immigration Officers are delivering against that commitment and business travellers can now expect a greater degree of scrutiny at the border, particularly questions relating to the activities they will undertake on arrival.

Throughout the year, UKBA audits of businesses holding Tier 2 sponsor licences (the skilled non-EU worker category) have become more frequent. UKBA visiting officers are conducting more thorough audits and will frequently arrive unannounced. Businesses must get these audits right. Those who fail an audit face losing their licence, leaving them unable to continue to employ their existing sponsored workers in the UK.

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Businesses must be prepared for audits. Sponsors should, as a matter of good practice, have a single document that sets out how they meet all of their sponsor duties. This can be presented to the auditors and will provide a structure to the initial conversation about sponsor duties. Processes for monitoring staff absences and reporting changes are important, as is an explanation of how and where relevant records are kept. We also recommend that advertising methods are documented.

Sponsors should also be able to document processes for checking passports on
an employee’s first day, along with how they continue to undertake annual checks of passports for workers with continuing immigration restrictions in the UK. These responsibilities may not strictly form part of a business’s sponsor duties, but having a clearly defined process demonstrates a commitment to immigration compliance.

This focus on compliance is not likely to reduce in the near future and the action taken against LMU shows that the UKBA is not afraid to take action. UK businesses should ensure that they are complying with the Immigration Rules, and be more prepared than ever for a UKBA audit.

Caron Pope
Caron is the managing partner in Fragomen’s London office and has more than 20 years of experience as a lawyer practicing solely in the field of UK immigration and nationality law.

Caron has extensive expertise in all categories of applications under the Points Based System (PBS), servicing a wide range of employers in diverse industry. Caron also advises on the full range of applications covered by the Immigration Rules. She is a leading expert on Tier 1 applications, acting for both clients of private banks and high net worth individuals worldwide.

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The 2013 Corporate Relocation Conference & Exhibition
Monday 4th February, Hotel Russell, Russell Square, Bloomsbury, London, WC1B 5BE

FREE SEMINAR PROGRAMME
Chaired by Martin Humphrys, Humphrys’ Education Winner of Relocation Personality of the Year 2009

10.30am — Third Culture Kids - Raising Portable Children
There are many challenges associated with an international move, and how global mobility impacts children is a concern for many families. This session on Third Culture Kids will discuss what research tells us about these unique youngsters and how we can best support them during this life-changing experience. This session is for parents, but also educators, human resources and relocation professionals who want to understand more about raising and educating children abroad.

Presented by Mary Langford, an independent international education consultant, who has over 30 years experience working in international schools with families of many nationalities. As a TCk who spent a transient childhood in Europe, the USA and Latin America, her personal insights and professional experience make her a strong believer in the many advantages gained by internationally-mobile children when they are supported by parents and schools.

11.30am — I’m Settled...What’s Next? - A Focus On Long-Term Relocation Support
Often all of the attention is placed on the first few weeks of an international move. Join FOCUS to learn the longer-term support factors which have been proven to ensure a successful relocation for the whole family. Presented by FOCUS.

12.30pm — Tax Planning Tips For Expatriates
Imperative tax issues for foreign nationals living in the UK including understanding the UK tax system as it applies to a non-UK national, choosing between the remittance and arising basis of taxation, maximising foreign tax credits and dealing with investment considerations”. Presented by Frank Hirth.

2.00pm — Global Immigration
This seminar will be a practical session providing advice on the latest Immigration developments and the implications for businesses and will cover: Immigration Policies Updates, Global Immigration Management, Compliance and Risk Management, and United Kingdom Sponsor Licencing and Management.

If you have an immigration enquiry that you would like our consultants to cover on the day please email your enquiry in advance to fs@fergusonsnell.co.uk. Presented by Ferguson Snell.

3.00pm — How Do You Apply Procurement Practices To Mobility?
Procurement in the mobility industry can be a complex task, as the concept of supplier management is in its infancy when compared to industries such as technology or retail.

SIRVA utilises proven procurement principles that are the foundation of this presentation. As we walk through each step in the process, we provide best practices as well as examples that will simplify the application of procurement to mobility management. Presented by SIRVA.

4.00pm — Payroll Compliance For Mobile Employees
As the pressure on internal and external compliance gets greater, the challenges of reporting compensation data for international assignees, in particular relocation expenses and third party vendor expenses, get no easier. Data is invariably embedded in multiple data sources, often in different locations. At the seminar we will discuss what the reporting requirements are, what challenges are faced by organisations and explain some of the ways in which companies are deploying global processes to collect and report relocation expenses and third party vendor expenses.

Presented by Deloitte LLP.

Places at these seminars are free, but visitors must pre-register as there is limited availability.
To register your place for any or all of these seminars, please email helen@internationalhradviser.com or telephone Helen Elliott on 020 8661 0186.
We look forward to seeing you there.