

**HSMP FORUM**

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Date - 30 November 2010

To,

Mr Damian Green,
Immigration Minister

Dear Mr Green,

As you are aware, HSMP Forum represents the interests of skilled migrants who have been coming to the UK under different categories such as Highly Skilled Migrant Programme (HSMP), work permit, Tier 1 and Tier 2 etc. I have been in touch with you in the past concerning various campaigns which you have been very supportive of and this letter is concerned with the recent immigration changes. The Home Secretary Theresa May announced on 23 November 2010 a number of changes to immigration policy in respect of Tiers 1 and 2 of the points-based system, designed to deliver the government's commitment to place a limit on non-EU economic migration to the UK. The changes include closing the Tier 1 (General) category and reforming categories under Tier 1 to only allow entrepreneurs, investors and people of exceptional talent into the UK. A new Tier 2 limit of 20,700 was also introduced and while it was stated that this limit will not apply to existing Tier 2 migrants, there was no information disclosed on the fate of existing Tier 1 migrants.

Needless to say, the lack of information adds incredible uncertainty to existing legitimate migrants and creates an atmosphere of fear and confusion among Tier 1 migrants. Tier 1(General) migrants include a wide range of highly skilled professionals like doctors, lawyers, academic researchers and financial specialists. These people left successful careers in their countries of origin with the intention to make the UK their main home.

We are also concerned about the fact that there is no information provided about the future of the Tier 1(Post-Study Work) category and how the new rules affect existing Tier 1(PSW) visa holders. This category was created in order to retain the UK's best international graduates and to make UK university education more attractive to international students. In the past, Tier 1(PSW) migrants have been allowed to apply for the Tier 1(General) category at the end of their visa. However, due to the closure of these categories effective April 2011, current Tier 1(PSW) visa holders and prospective applicants are put at a significant disadvantage, this limits their options to continue to work in the UK and probably would force them to find Tier 2 sponsors within a short period of time.

The principles of fairness and predictability require that no retrospective changes should be applied to existing migrants. We have won legal challenges in the past against such retrospective rules. The courts in 2008 and 2009 held such changes to be unfair, unlawful and rank abuse of power in its judgments concerned with migrants on HSMP affected by the April 2006 settlement criteria and November 2006 extension criteria changes. The court ordered to honour the terms of the scheme which applied on the date when the migrants joined it. This is strong evidence that any retrospective changes will merely result in wasting taxpayers' money. We are of the firm belief that such changes are unfair and illegitimate and if required will consider legal challenge. We therefore ask that the government provide clear transitional arrangements for all existing migrants and allow them to extend their stay and reach settlement according to the original terms. In its recent report, the MAC recommended that extensions be excluded from the cap and "were reluctant to suggest retrospective changes for migrants already in the UK" (p.226, "Limits on Migration", MAC report).

In the past you have consistently opposed the retrospective elements of the changes to the rules affecting highly skilled migrants therefore, we do not have to explain to you on why retrospective changes are unfair.

On 14th July 2009 you stated:

"The Government's previous decision to change the rules so that highly skilled migrants who are already here and who want to stay are now disqualified from

doing so is both unfair and wrong-headed. It is unfair because those people have made a commitment to this country but are having that flung back in their faces, and it is wrong-headed because it sends a signal to highly skilled people around the world that Britain is an unreliable place." (House of Commons debates, 14th July 2009)

Tier 1 and HSMP guidance notes clearly stated that highly skilled migrants (Tier 1) must spend a certain period of time i.e. four or five years in the UK and be economically active in order to qualify for settlement. However on 24th November 2010 Home Office published new guidance that Tier 1 and Tier 2 migrants applying for settlement will need to meet the salary criteria that applied when they last extended their permission to stay. These changes are retrospective and unfair for existing Tier 1 and Tier 2 migrants. For example, Tier 1 migrants are required to meet relatively high earning standards in order to extend their visa; some of the migrants need to go through two visa extensions. Under the current financial climate, some migrants have had to accept salary cuts or lower-paying skilled jobs in order to remain economically active. And while they ask for no concessions in meeting the salary requirements during the Tier 1 extension stage, it would be unfair to introduce this new hurdle as a requirement for settlement. It would cause significant hardship to existing migrants, who have planned their lives around the current immigration rules and who have a reasonable expectation of attaining settlement once they fulfill the residency criteria while remaining economically active. These migrants have honored the terms of the scheme by making the UK their main home, contributing to the economy through taxes and investments, and passing the criteria set at every extension. We ask the government, too, honor its part of the original agreement.

You are also very well aware about the objections to retrospective immigration changes which were made by your other colleagues in the government i.e. the then Shadow Home Secretary of Liberal Democrats (current Deputy Prime Minister) Mr Nick Clegg and later by Mr Chris Huhne during the passage of Citizenship and Immigration Bill. In several of my interactions with Mr Clegg he expressed his strong support against the retrospective changes which were imposed by the past government and emphasised in his communications on the need for applying grandfather clause. The public will want to see whether the government is willing to live up to the

commitments and positions it held before it came to power. We believe that retrospective changes send a negative message to current and future migrants and the public in general. The most important factor in business is trust and people who are planning to invest their money in UK should know that they can rely on a consistent and predictable immigration policy.

We hope you will address our concerns about the changes in migration policy, and implement fair transitional arrangements for extensions and settlement of existing migrants on Tier 1 and Tier 2.

We believe that migrants deserve to be able to plan their future without fear of unwarranted changes in regulations and policy. We hope that it will be confirmed that extension and settlement criteria will remain the same as per their original visa conditions.

Yours Sincerely,



Amit Kapadia

Executive Director (Chairman)

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