

UK IMMIGRATION –INVESTOR or ENTREPRENEUR?

‘Businesses large and small are the backbone of our economies, and enterprise is the engine of our prosperity. That is why Britain is and will always be – open for business: open to investment in our companies, infrastructure, universities and entrepreneurs’ – Theresa May January 2017.

High net worth foreign nationals who wish to come to live in the UK for business or personal reasons often apply under the Tier 1 (Investor) or Tier 1 (Entrepreneur) visa routes, both of which require a significant financial investment to be made in the UK.

Despite Brexit, the UK seems to still be able to attract high net worth individuals and 2017 saw a significant increase particularly amongst those applying for Tier 1 Investor status, notwithstanding a minimum financial requirement of £2m, possibly partly due to the weakness of the pound following the Brexit referendum.

The latest official statistics for the third quarter of 2017, showed a total of 114 new Tier 1 Investor applications processed during this period, compared with 73 for the same period in 2016.

As we see from our practice, the main attraction for prospective applicants to the Tier 1 Entrepreneur category is the minimum financial requirement of £200,000, against the £2m required for the Tier 1 Investor category, so even if the prospective applicant does have the £2m available to make the qualifying investment, their inclination is to elect to apply as a Tier 1 Entrepreneur route first.

The Tier 1 Entrepreneur

For the initial Tier 1 (Entrepreneur) application, the £200,000 will need to be in either their own name or pledged by a third party to invest in the UK business or businesses, in the Entrepreneurs own name. Two individuals can apply as a team using the same £200,000.

What prospective applicants are often not aware of however is how difficult it is to make a successful Tier 1 Entrepreneur application, either at the initial or extension stage, with only an approximately 50% approval rate at either stage.

One of the main stumbling blocks is the requirement that the applicant is a “genuine entrepreneur”, in that they need to have actual experience of investing in or setting up and managing a business, a subjective test determined usually by an Entry Clearance Officer sometimes at an interview, which prospective applicants are potentially subject to.

The Tier 1 Entrepreneur applicant will need to produce a detailed business plan to show their proposed business activities in the UK and how they expect to make the business succeed. and are subject to maintenance and English language tests.

A Tier 1 Entrepreneur migrant is limited to working in the UK within the business or businesses in which they have invested in

The Tier 1 Investor

The basic requirements for the Tier 1 Investor is that the applicant has at least £2m of their own money, freely transferable to the UK and to show they have opened a UK account, for the purposes of investing the £2m.

Assuming the initial application is approved The Tier 1 (Investor) must invest the whole £2m within a specified period, in qualifying investments, which include, UK government bonds, share capital or loan capital in a UK Company, provided they are active and trading but the funds cannot be invested in companies mainly engaged in property investment, management or development.

This route enables Tier 1 (Investors) and their dependants to work without restriction in the UK, being employed or self employed or study without the necessity for a student visa or simply to do nothing at all.

Fast Track routes to settlement

Tier 1 (Entrepreneur) offers a fast track route to settlement of 3 years, contingent on either a specified increase in turnover of business or a specified increase in the number of additional employees taken on as a result of the investment.

The Tier 1 (investor) route offers two fast track routes to settlement, the first, for those investing £5 million (3 years to settlement) or £10 million (2 years to settlement), These only apply to the main Applicant and not their dependants.

Conclusion.

it is important that strategic immigration advice is obtained to consider the requirements and suitability of each of these categories to the individuals specific circumstances and it may be that there are other categories which are more suitable. Regard also needs to be had, at an early stage, to recent changes in the Immigration rules relating to the treatment of absences of the partners of Points-based System Migrants, in order to qualify for settlement.

© January 2018 – Cavendish Legal Group

This article is intended for a general guidance only and is based on the current UK Immigration rules and is neither comprehensive nor exhaustive.

It should not be relied upon in the absence of detailed legal advice on an applicant's specific circumstances, which we will be pleased to provide, once formally instructed to do so.

If you require further information regarding the above or any UK Immigration enquiry, please do not hesitate to contact Mark Barnett, Head of Business Immigration and Notary Public at Cavendish Legal Group on 0203 096 8454 or at m.barnett@clglaw.co.uk

