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IMMIGRATION LAW 2018

VIRTUAL ROUND TABLE

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Introduction & Contents

The Immigration Law Roundtable 2018 features six experts from around the world. In this edition, we discuss topical issues such as the crackdown on undocumented workers, immigration post-Brexit in the context of the Premier League, and a landmark case study based on the Surinder Singh judgment. Our chosen experts also provide useful insights into the role of immigration in M&A transactions, separation & divorce, and entry options for high net worth individuals. Featured countries include: France, Netherlands, United Kingdom and the United States.

James Drakeford
Editor In Chief

Meet The Experts

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Marcel Reurs is a partner with Everaert Advocaten. He is an immigration attorney with over 21 years of experience. His practice encompasses a broad range of business immigration work for corporate clients across the globe. Marcel is a frequent lecturer, contributing co-editor to the leading commentary on the Dutch Immigration Act, editor-in-chief of the Journal on Dutch Immigration Law, and chief of the editorial board of Jurisprudence on Immigration Law, the Dutch immigration jurisprudence series. He teaches and examines the Dutch National Bar Association's course on immigration law in the mandatory professional education programme for trainee attorneys and he served the Ministry of Justice as an expert adviser in the immigration policy reform, Modern Migration Policies.

Marcel is a member of the IBA and the Dutch specialist associations for immigration lawyers, SVMA and WRV. He is an international associate to AILA and chairs the GMS Analytics Committee. Marcel is annually listed in the Who's Who of Corporate Immigration Law as a leading Dutch immigration attorney and was recognised as a 'thought leader' in the 2017 edition.

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Fadi Farhat is the Head of Appeals and Public Law at Gulbenkian Andonian Solicitors. He has been involved in legal practice since the age of 19 and has, to date, handled thousands of cases in the field of immigration, human rights, asylum, nationality and public law. He undertakes his own advocacy and has represented appellants across hundreds of hearings in the Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal as well as the County Court and Employment Tribunal. He is a Legal 500 recommended lawyer and has been described as '*very professional*', '*can think on his toes*' and '*has an excellent way of preparing cases*'

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Richard is the Founder of the Fleischer Law Firm LLC, and has been practicing Immigration Law for over 45 years. Richard was the first attorney in Ohio to specialize in this area. He focuses his practice on all aspects of Immigration Law including immigrant and non-immigrant visas, naturalization, deportation and asylum. Much of his time and expertise is devoted to processing PERM, national interest waivers and outstanding research petitions. Richard has been extremely successfully obtaining these classifications for clients located throughout the United States.

Richard has won many accolades for his work over the years; from 2006 to 2019 Richard was named an Ohio "Super Lawyer" by Law & Politics Magazine and the publishers of Cincinnati Magazine, as well as being named a "Leading Lawyer" by Cincy Business Magazine.

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Kerry heads the employment, immigration and pensions department at Stevens & Bolton LLP. She is experienced in all aspects of business immigration law and also advises in relation to obtaining indefinite leave to remain and naturalisation. Kerry advises employers and individuals in relation to the points based immigration system, including assisting employers with the sponsorship registration process, assigning certificates of sponsorship, entry clearance and extension applications. She also advises on illegal working issues.

Chambers UK states that Kerry is "a true professional with full knowledge of the subject" and "her advice is particularly clear".

Meet The Experts

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Karl Waheed, member of the New York (1987) and Paris (1993) bars, founded Karl Waheed Avocats, a twenty-five person law firm dedicated exclusively to corporate immigration. Karl Waheed Avocats was retained in 2006 by the French Ministry of Labour to present a white paper on corporate immigration in France. This report presented a series of recommendations which were incorporated in the currently applicable French regulations on business immigration.

Mr. Waheed started his career as an auditor with Deloitte in Florida (1980 to 82). He obtained his Juris Doctorate at Stetson Law School, Gulfport, Florida (1985) and Diplôme des Etudes Approfondies in European Law at the Sorbonne (1986). He has been practicing corporate immigration law in Paris since then.

Chris Magrath - Magrath Sheldrick LLP
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Career History:

- 1990 to date – Senior Partner and Head of Immigration and Employment Departments at Magrath Sheldrick LLP, London
- 1977 – 1990 – Partner at Powell Magrath & Spencer, London
- 1976 – 1977 – Assistant Solicitor, Evan Davis & Co, London
- 1973 – 1976 – Brian Thompson & Partners (now Thompsons Solicitors), London

Publications:

- Editor of "The Corporate Immigration Review" (6th Edition) and co-author of UK Chapter with Ben Sheldrick, Managing Partner in the Immigration Department (4th – 8th Editions)
- "Working in the United Kingdom": A Guide to UK Immigration Law for Overseas Nationals
- Co-author of "A Practical Guide to Disciplinary, Grievance & Performance Management Guide" with Adele Martins, Partner in the Employment Department
- Co-author of "Practitioners' Guide to the Police & Criminal Evidence Act 1984"

Education:

- 1986 Admitted to New York State Bar
- 1975 Admitted as a Solicitor in England and Wales
- 1973 College of Law (London)
- 1972 Trinity College University BA (Hons) Dublin

Expertise:

Chris is the founder and Senior Partner at Magrath Sheldrick LLP and is also the head of the Immigration and Employment Law Departments.

As a dual qualified practising English solicitor, and US attorney, Chris has over 30 years of cross border experience in corporate and private UK and US immigration.

Chris assists clients from the global financial community as well as representing a wealth of commercial clients and internati

Q1. Can you outline the current labour market conditions in your jurisdiction?

Kerry Garcia

The UK is currently experiencing a buoyant employment market, with almost record low unemployment levels. In May 2018 there were around 1.4 million unemployed people.

In our experience, employers in many different sectors are struggling to fill vacancies. In April to June 2018 there were 24,000 job vacancies, the highest since records began in 2001. Examples of skilled roles where there are difficulties finding suitable candidates include doctors and nurses and teachers in the public sector and specialist programmers in the technology sector. Businesses are, of course, always keen to ensure that top positions are filled by the best people, regardless of whether they are British, EEA or non-EEA nationals and, as such, an increasing number of employers have applied to sponsor individuals under Tier 2 of the Points Based System. This has put pressure on the system and for the last seven months the number of applications for Tier 2 unrestricted certificates of sponsorship has exceeded the monthly quota and employers have therefore been unable to employ the non-EEA candidate.

In addition, many lower skilled roles, including in the hospitality, catering and agricultural sectors, are filled by EEA nationals. There are around 2.29 million EU nationals currently working in the UK but over 100,000 EU nationals have left the UK since the Brexit referendum. Between the date of the referendum and the end of 2017 over 10,000 EU citizens working for the NHS left their jobs, and the number of EU nurses applying for UK jobs decreased by 96%. Academia has also been hard hit as over 2,300 EU academics resigned from UK universities between 2016 and 2017. Beyond this, there have been growing problems in recruiting people in many areas.

A recent survey of employers by the Manpower Group found that large companies with 250+ employees have the most difficulty filling job vacancies - with 50% of employers experiencing talent shortages. 45% of mid-sized organisations, with between 50 and 249 employees, are finding it difficult to recruit too. The same survey revealed that skilled trades, such as electricians, welders and mechanics are the most difficult skills to find in the UK, followed by drivers and healthcare professionals. However, the majority of these roles would not meet the skills threshold for Tier 2 sponsorship so employers are generally only able to rely on British and EEA nationals to fill such roles.

Employers are therefore concerned about the impact of Brexit and whether this will lead to even more difficulties in being able to fill both skilled and unskilled positions.

Karl Waheed

France lacks in labour at all levels, from highly qualified to low qualified labour. Successive governments have been easing the hiring of the highly qualified (degree-level) workers but nothing has been done for mid to low qualified workers.

Fadi Farhat

The legal framework in the UK's Immigration Rules has not kept up with the changing dynamics in the labour market. Certain sectors or industries have been affected more than others.

The UK economy continues to do well. Official unemployment figures have reached a record low with the lowest unemployment rate in the developed world. However, businesses (across all sectors) want to grow and want to expand. It has been difficult to obtain and recruit the best talent possible from the international pool due to Brexit.

Q1. Can you outline the current labour market conditions in your jurisdiction?

Fadi Farhat

There has been a decline, since June 2016, in the number of workers from the European Union as a result of the uncertainty surrounding a future in the UK. This has had consequences for the catering & hospitality industry as well as social care with care homes experiencing a shortage of carers.

In highly skilled sectors such as marketing, legal services, accountancy, medical services etc, the prospect of Brexit has created uncertainty and a race to search for the best talent across the world as a form of future planning. Despite this demand, at a policy level, UK Immigration Law particularly in the Tier 2 (General) category for highly skilled migrants has not been adapted to meet this demand. There remains an annual cap on the number of Tier 2 (General) visas worldwide (which translates into a monthly cap).

For the first time ever, demand for Tier 2 (General) visas by approved and licenced UK companies and businesses exceeded the monthly allocation for several months during the end of 2017 and into 2018. With this excess, visas are prioritised on criteria which favour larger salaries. This meant that companies seeking a CEO or a marketing professional willing to pay, for example, a salary of £100,000 per year were favoured over nurses sought for recruitment by NHS Trusts or even doctors on a lesser salary.

With demand for visas exceeding the monthly allocation, many businesses have felt that the system has turned into a lottery and this has resulted in shortages in certain industries. It has left smaller businesses frustrated as well as medium to large businesses that required highly skilled talent but cannot match the salaries offered by very large companies.

Some reprieve was provided when the Home Secretary announced that doctors will be excluded from the tier 2 (General) cap, but this has not resolved the wider problem.

Karl Waheed

In 2018 and 2019, Dutch economy is anticipated to continue to grow steadily with 3.2% and 2.7%. In Q2 of 2018, unemployment dropped to 3.9% (5% in Q2 of 2017). The number of jobs is expected to grow with 318,000 to over 10.5 million in 2019. The number of vacancies is anticipated to continue to grow in all sectors, notably in job agency and intermediation, (health)care, retail and construction. Despite a decrease of jobs, the financial sector sees an increase of vacancies for highly-skilled workers, such as accountants, risk managers and programmers. Shortages are reported in many, notably lower-skilled sectors and include cooks, plumbers, pipe fitters, welders, truck/lorry drivers, nurses and medical practitioners. The Netherlands remains among the best countries for investing or establishing a business. We rank fourth most competitive economy in the world according to the 2018 IMD World Competitiveness Ranking.

Chris Magrath

The UK Government classifies the current unemployment rate as below 4m which apparently constitutes "full employment." There are however major shortages in the Health Care sector (nurses, doctors, care workers etc.) and in the Hospitality sector. Current immigration restrictions make it difficult for non-EU workers to enter the UK to fulfil outstanding roles. However, a new six month seasonal worker visa for up to 2,500 EU nationals will be implemented when Brexit becomes reality.

Q1. Can you outline the current labour market conditions in your jurisdiction?

Richard Fleischer

Unemployment is the lowest it has been in the United States for many years. It is 4% for those in working age – 16 years of age and older, yet the job-skills gap may curb growth. There is a growing gap between the rising number of job openings and the number of workers equipped to fill them. According to the President's Council of Economic Advisors, a smaller labour pool are working or looking for work than before the recession beginning 2007.

Q2. Have there been any recent regulatory changes or interesting developments?

Karl Waheed

The previous government created the "Talent Passport" regime, which facilitates work permits for highly qualified workers, intra corporate transfers (ICT), international service providers, start-upers, entrepreneurs, investors, and foreign students graduating with French degrees.

There is an immigration act which we expect to be promulgated in September, which extends the "Talent Passport" regime to some other categories, such as foreign students having graduated with a French degree who wish to work in France, not upon graduating, but at some time later. The foreign graduate may go back to their home country or pursue other options for a period of up to four years before accepting an employment offer in France. I am not aware of any other country which is as flexible as France with graduating foreign students.

This immigration act also sets the foundation of a new work permit process, where the process may be handled for the most part internally by qualified employers. This new process will probably follow the lead of the USA of the UK. However, for the new process to become reality, we will need ample implementation regulations, which will take some time to be drafted and tested.

Marcel Reurs

In November 2017, the Inspectorate of Justice and Security published an investigation report to the State Secretary of Security and Justice, saying the Immigration and Naturalisation Service's ("IND") supervision of employers as recognised sponsors is not sufficient. In response, the IND announced that, in 2018, it will increase its supervision and enforcement and will start carrying out random inspection visits to recognised sponsors, auditing whether the conditions for recognised sponsor status and sponsor duties are being complied with. We have in fact seen the IND increasingly undertake random audits with companies.

Chris Magrath

Most of the anticipated developments relate to Brexit. In particular, it is likely that either following Brexit (March 2019) or the end of the transition period (around December 2020) the UK Government will introduce compulsory registration for EU Nationals upon arrival in the UK (to work, rather than as tourists) and it is anticipated that those EU citizens coming to the UK to work will only be allowed to remain after three months, if they have secured employment within this period.

Q2. Have there been any recent regulatory changes or interesting developments?

Chris Magrath

In autumn 2018 the Home Office is likely to roll out a new "Settlement" (Permanent Residence) scheme for EU Nationals who have lived, and can prove they have lived, in the UK for five years. The requirement for compulsory medical insurance for certain categories of EU migrant will be removed. It has been mooted (although not yet announced by the UK Government) that the restrictions on graduates from UK universities being able to secure employment following graduation will be lifted in favour of a new scheme which is likely to be similar to the now defunct Post Study Work scheme, which was granted for two years and was not employer specific. Finally, most employment based visas (except Intra Company Transfers) are subject to an annual cap. Medical professionals have now been removed from the cap leaving the overall limit unchanged. This is likely to ensure that more employment based visas will be issued in the future.

Q3. Have you been involved in any recent examples of new case law precedent or standout victories?

Fadi Farhat

I am currently involved in a case involving an important point of European Community Law under the Surinder Singh route embodied in Regulation 9 of the former Immigration (EEA) Regulations 2006.

The Surinder Singh judgment delivered by the European Court of Justice in the early 90s meant that a British citizen, for example, could live in and work in the European Union (more accurately the European Economic Area or EEA) and, on his/her eventual return to the UK, be treated as a EEA national for immigration purposes.

To be treated as an EEA national for immigration purposes places somebody in a more favourable position insofar as family migration is concerned – i.e. to bring in a partner as UK Immigration Rules says that somebody has to earn a gross salary of £18,600 to do so which can be bypassed under the so-called Surinder Singh route.

The actual Surinder Singh judgment involved a married couple. However, I appeared before the First-tier Tribunal (Immigration and Asylum Chamber) in late 2016 and argued, on behalf of my client who was an unmarried partner or common law partner, that the principle applies to unmarried partners. Properly interpreted, the Surinder Singh judgment outlines principles such as non-discrimination amongst others.

Unfortunately, the First-tier Tribunal dismissed my appeal and refused permission to appeal further but, undeterred, I applied and obtained permission to appeal to the Upper Tribunal where I appeared again and pleaded my case and won.

On this occasion, the UK government appealed the decision of the Upper Tribunal and the matter is set to be heard by the Court of Appeal in February 2019. However, I am pleased to say that I am in pole position to succeed in February 2019 because the European Court of Justice has recently issued a judgment (in July 2018) in a case called Banger C-89/17 which confirms that the Surinder Singh judgment does apply to unmarried partners as much as married partners.

This should, at some stage, bring about a change in the secondary legislation (namely Regulation 9 of the Immigration (EEA) Regulations 2016).

Q4. In the United States, there is evidence to suggest that the government is cracking down on undocumented workers and setting unprecedented fines for companies found guilty of on-going employment of unauthorised workers. (i) What is the current regulatory landscape in your jurisdiction? (ii) What measures of reasonable care or diligence should an employer undertake? (iii) How should a company respond to site visits, audits and raids?

Karl Waheed

(i) Immigration is a very polarized political subject in France, as well as throughout the EU. It is at the heart of Brexit. Legal and illegal immigration is being blamed for unemployment, cost of social security, growth in crime. I would not be surprised to hear that the refugee crisis is contributing to climate change.

Our legislation has been hardened with respect to fines and penal sanctions against employers employing foreign workers without work permits. All foreign workers posted in France are to be registered with the labour inspectorates having jurisdiction over the work site.

However, unlike the USA, we do not have an enforcement agency. Enforcement depends primarily on labour inspectorates, whose principle task is to ascertain that the conditions of work and work sites are in compliance with the law. The inspectorates are under staffed, and are struggling to achieve their principle task.

(ii) Employers are required to send the copy of the work permit of the foreign employee to the Prefecture two days before the employment start date for authentication. By following this requirement, the employer is assured that he/she is not hiring an unauthorised foreigner. However, when the employer is seeking to obtain a work permit for a foreign national who is not yet in France or is under an immigration category not allowing work, the employer will have to seek the assistance of a lawyer.

(iii) Employers are required to designate a representative, when making the obligatory declaration of the presence of a posted worker on their premises. This is the representative that the labour inspectorate will contact in case of compliance issues or in case of an audit. The designated representative should have easy access to all documents which will satisfy the labour inspectorate of the legality of all foreign workers employed, and their compliance with the applicable labour, social security and immigration laws.

Marcel Reurs

(i) Immigration compliance duties are set in the Work by Foreigners Act and the Immigration Act cum annexis. The Work by Foreigners Act prohibits illegal employment and requires employers to properly administer work permits and other right to work documents. The Immigration Act cum annexis requires employers who sponsor migrant workers to comply with sponsor duties, such as the duty to report facts and keep documents. The supervision and enforcement of these acts is assigned to the Labour Inspectorate and the Enforcement Division of the Immigration and Naturalisation Service. Supervision is carried out by cross checking information kept in the Alien Registration System with data systems kept by other agencies, such as the Tax Service.

When an employer is found to employ migrant workers illegally, or to violate sponsor duties, the most common sanction would be an administrative penalty to, potentially, any company that can be considered to have facilitated or received the work that is carried out, irrespective if the migrant worker is their employee under labour laws. Company officials who are considered to have personally executed, or otherwise be responsible for a violation, risk a penalty, too. Both inspection departments use schemes for imposing penalties. The standard amount for illegal employment is €8,000 per violation, per worker. For violating sponsor duties, set in the Immigration Act 2000 this is €3,000. This applies to ordinary and recognised sponsors, equally.

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Marcel Reurs

Penalties for illegal employment or violations of sponsor duties can have far reaching consequences that are much worse than the financial damage. Penalties may be ground to refuse or revoke recognised sponsor status which is required to sponsor migrant workers under the HSMP – the Netherlands' most common category for sponsoring skilled workers – and it is a ground to refuse applications for sponsoring under the EBC or ICT for a period of five years. Hence, the company can find itself in a position where it can no longer sponsor migrant workers for a period of five years. Further, the Employment Inspectorate publishes the findings of inspections online, which means bad publicity.

(ii) The appropriate stakeholders within the company should be aware of sponsor duties and sponsors should continuously monitor compliance and take measures to avoid incompliance.

(iii) Similar as for tax, competition and privacy related audits, companies should designate a response team and a protocol for an immigration audit. The response team should be educated and trained to act on an unanticipated and unannounced audit. Besides the response team, employees who are most likely to come in contact with inspectors (e.g. receptionists) must be included in the protocol and educated on how to act and respond to questions.

Richard Fleischer

My "jurisdiction" applies to every state in the United States. Since immigration laws are federal, there are no separate state laws regarding immigration. Site visits, either before a visa petition is approved or even after it was approved is done by the fraud unit of United States Citizenship and Immigration Services (USCIS). Inspection is to "ensure" there is no fraud in the process. So, keep a copy in a separate file of each petition and supporting evidence to show in a petition and keep such at least during the employment of employee and at least three years after employment. Audits may be done by Immigration and Customs Enforcement (ICE), USCIS or U.S. Department of Labor. Again, keeping a file is the best practice. Keep form I-9 up to date as well for all employees. As to raids by ICE, this is rare and usually only after a tip that an employer has workers who are unauthorised.

Q5. Tier 1 (Investor) visas have been in the news recently with UK immigration implementing a heightened level of security that reportedly held up Chelsea FC's Russian billionaire owner Roman Abramovich from extending his visa. What are the current entry options for high net worth individuals (HNWI) in your jurisdiction and what level of assistance can you offer?

Kerry Garcia

Broadly, individuals are able to apply to come to the UK as a Tier 1 (Investor) if they have control of at least £2 million which they are willing to invest in qualifying investments. The funds must be held in a UK or overseas-regulated financial institution and be disposable in the UK. The individual must have held these funds for at least three months before the date of the immigration application or they need to provide additional documentation to evidence the source of the funds. This is a popular route for high net worth individuals as it enables them to work in the UK and there are no English language requirements at this stage. However, there are restrictions as the investor must invest the funds within three months of arrival in the UK in the UK as a Tier 1 (Investor) and the acceptable qualifying investments are UK government bonds, or share or loan capital in active and trading UK-registered companies, subject to certain restrictions. This portfolio of qualifying investments must be managed in the UK by a financial institution which is regulated by the Financial Conduct Authority and, where relevant, the Prudential Regulation Authority.

After five years in the UK, the Tier 1 (Investor) and his dependants may be able to apply for indefinite leave to remain (also known as settlement). In order to do so, one of the criteria is that the individual must have maintained the £2 million investment throughout the five year period. Further they must not have been absent from the UK for more than 180 days in any 12 month period and must pass the Life in the UK test and show they meet the English language requirements.

If the individual invests and maintains an investment of at least £5 million they may be able to apply for indefinite leave to remain after three years and those investing at least £10 million may apply after only two years.

We are able to advise those who wish to come to the UK in relation to their initial immigration application and on extension and settlement applications. We also liaise with the firm managing their investments in order to ensure that all the correct documentation is provided. Further, we are able to book super priority appointments with the Home Office so that the application is processed within a few days.

Karl Waheed

France is not a popular destination for HNWIs due to our very high income tax rate. Until recently the only investment visa required a minimum investment threshold of €10 million. The investment had to be a brick and mortar active investment creating employment. It could not be a passive (financial) investment. Not a single person applied under this scheme.

In 2016 this threshold was lowered to a more reasonable sum of €300,000. I have not yet seen the statistics for 2017, but I believe this scheme remains unpopular.

"After five years in the UK, the Tier 1 (Investor) and his dependants may be able to apply for indefinite leave to remain (also known as settlement). In order to do so, one of the criteria is that the individual must have maintained the £2 million investment throughout the five year period."

- Kerry Garcia

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Fadi Farhat

The Tier 1 (Investor) visa, and to a lesser extent, the Tier 1 (Entrepreneur) visa, are still the standout options for HNWIs under UK Immigration Law.

The Tier 1 (Entrepreneur) route requires more work as one has to invest £200,000 into an existing or a new business and have a day-to-day role in the running of that business as well as create the equivalent of at least two full time jobs.

The Tier 1 (Investor) route allows a person to obtain permanent residence in the UK after a specified period of time depending on the amount invested. A minimum of £2 million must be invested in the UK by way of UK government bonds, share capital or loan capital in active and trading UK-registered companies (other than those principally engaged in property investment). Investment in offshore companies is allowed under the Rules.

There are no English language requirements, and a main applicant can be accompanied by their dependants such as partners and children. An applicant is also permitted to be away from the UK for 180 days per year.

The amount of time which a person needs to be in the UK before qualifying for permanent residence depends on the amount invested as follows;

Investment of £2 million – eligibility for permanent residence after five years in the UK
Investment of £ 5 million – eligibility for permanent residence after three years in the UK
Investment of £ 10 million – eligibility for permanent residence after two years in the UK

Overall, the situation with Roman Abramovich should not deter potential Tier 1 (Investor) applicants in general. Whilst it remains largely unclear what exactly happened in that case, such case specific matters which arise on a case-by-case basis should not be interpreted or seen as part of a wider pattern or trend.

Marcel Reurs

High net worth individuals can be eligible for a residence permit under our 'wealthy foreign national' category. The main requirement is to invest at least €1,250,000 in a company, based in the Netherlands, or in a fund that, according to the Ministry of Economic Affairs, falls within the SEED regulation, a participation fund or in a partnership that invests in a company in the Netherlands. It cannot be an investment in real estate, acquired by the investor to live in, as in several other EU countries. The investment must have an added value for Dutch economy, which will be tested by the Netherlands Enterprise Agency against a points-based system. Added value is accepted if the investment meets at least two of the following three criteria: (i) 10 jobs will be created within five years; (ii) the investment adds to innovation (e.g. by introducing a patent); or (iii) the investor brings a high value personal network or specific knowledge. The IND can verify the legal origin of the investment money via the Financial Intelligence Unit.

The residence permit provides free access to work, family reunion with a spouse or partner and minor children, and allows an absence from the Netherlands of eight months in any 12 months period. The residence permit is valid for three years and can be renewed. After five years the investor can apply for a permanent residence permit or Dutch citizenship, provided certain conditions are met. We can provide full assistance with the application procedure, however we do not advise, assist or intermediate regarding the investment.

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Chris Magrath

The main investment visa category in the UK is the Tier 1 (Investor) visa. This requires a minimum investment of £2m to be held in the stock or loan capital of actively trading British companies. The investment must remain unchanged over a five year period at the conclusion of which the investor can be granted Permanent Residence. This period is reduced to three years for an investment of £5m and two years for £10m. However, the UK Government have recently become more assiduous in checking the origin of funds invested in the UK and there is speculation that this may be the difficulty surrounding the delay in extending the Investor visa granted to Roman Abramovich.

All intending UK investors must produce police clearance certificates before an application is accepted by the UK authorities. An additional route is the Tier 1 (Entrepreneur) visa which only requires an investment into a British company of £200k (or £50k in certain instances). My firm can advise on all aspects of the Tier 1 (Investor) and the Tier 1 (Entrepreneur) visa applications.

Q6. To date, what do we know about the immigration implications of Brexit? And, given the continued level of uncertainty surrounding the post-Brexit landscape, how can both employers and individual's best prepare for the eventual outcome?

Kerry Garcia

The UK and European Union published the Draft Withdrawal Agreement in March 2018 setting out what EU citizens in the UK should expect now and during the transitional or implementation period (which begins on 29 March 2019 and ends on 31 December 2020) and what they will have to do to continue legally living in the UK after that implementation period ends.

EU citizens and their family members who arrived in the UK before 31 December 2020 and who have continuously lived in the UK for five years will be eligible to apply for "settled status". EU citizens and their family members who arrive in the UK before the end of the transition period on 31 December 2020 but who have not lived continuously in the UK for five years will be eligible to apply for "pre-settled status". After five years' residence they should then be eligible to apply for settled status.

EU citizens and their family members who are living in the UK as at 31 December 2020 will have until 30 June 2021 to apply for settled or pre-settled status. If they fail to do so they will be living unlawfully in the UK.

The Home Office plans to phase in an online application system from later this year which should be fully open by 30 March 2019 and they plan to make the process "simple and straightforward". We will have to wait to see if this will be the case.

Further, the recent Brexit White Paper indicates that the Government does not have a clear plan on what will replace the free movement provisions in relation to EU citizens who wish to come to the after 31 December 2020. The Migration Advisory Committee is due to report in September 2018 and a more detailed White Paper on immigration is expected in autumn 2018.

Q6. To date, what do we know about the immigration implications of Brexit? And, given the continued level of uncertainty surrounding the post-Brexit landscape, how can both employers and individual's best prepare for the eventual outcome?

Kerry Garcia

In the meantime, we advise UK businesses to assess who may be impacted by Brexit, including those in the UK as family members of EEA nationals. There may be applications they could submit now (e.g. for Permanent Residence or naturalisation as a British citizen) that would secure their UK residency. UK employers should also consider how reliant their business is on a European workforce and consider alternative recruitment strategies, particularly for lower-skilled roles that wouldn't qualify for Tier 2 sponsorship. Further, if the business doesn't have a Tier 2 sponsor licence, it should look into applying for one to enable it to sponsor individuals for skilled roles going forward.

Karl Waheed

This is a very frustrating question for us lawyers. Our job is to reduce uncertainties and help our clients make an informed decision and optimise their risk management. In the case of Brexit, I must admit that our guess is no better than those of our clients reading the daily press.

As we get closer to 30 March 2019, we are seeing some companies getting ready to move out of the UK or at least have a foot on the ground in the post Brexit EU. We are being consulted increasingly on corporate relocation from the UK to France.

Fadi Farhat

The immigration implications of Brexit are far-reaching. Currently, the White Paper published in July 2018, despite its 104 pages, is very vague. There are several explicit references to the ending of the free movement of people but very little by way of putting forward any alternatives.

The Migration Advisory Committee (MAC) is due to provide a report in September 2018 which will make recommendations to the government. However, even then, there is likely to be a wider debate both amongst think-tanks, academics and politicians as to the advantages or disadvantages of any recommendations in the MAC's report. Until then, it has been very difficult for employers and individuals to prepare for any eventual outcome.

If we take football as an example. It is estimated that around 25% of all football players in the Premier League come from the EU. Premier League clubs are unable to prepare for Brexit as there is no current policy indication from the government as to what will happen. Upon leaving the European Union, if footballers from the EU were to be subject to the current work permit system that applies to non-EU footballers, we could see a situation where Premier League clubs will not be competitive and will not be able to bring in young teenage talent into their squads.

Currently, to qualify automatically for a work permit, the Football Association's endorsement criteria works by considering the FIFA ranking of a prospective player's country and how many appearances any specific player has made for their country in competitive matches over the last two years. For example, if one's country has a FIFA ranking between 1-10, a player is expected to have appeared in 30% of competitive matches for their country over the last two years. This means that clubs can only recruit established players. Players like David de Gea (now considered the best goalkeeper in the world) who joined Manchester United in 2011 as a young 20-year old goalkeeper would not have qualified as he had not even made an appearance for his country, Spain, at that time.

The potential adverse consequences on the football industry and the ability of Premier League clubs to compete are numerous and this includes revenue for TV rights, merchandising and sponsorship deals. That is just one example from the football industry. Every other sector has a similar story – a story of uncertainty and worry.

Q6. To date, what do we know about the immigration implications of Brexit? And, given the continued level of uncertainty surrounding the post-Brexit landscape, how can both employers and individual's best prepare for the eventual outcome?

Chris Magrath

The major immigration implication of Brexit is that post-Brexit (March 2019) and the subsequent transition period, there will no longer be free movement of goods, people or services between the UK and other EU or EEA countries. This is a particularly difficult issue at present as no agreement has been reached on any of these three elements of the EU Free Movement provisions. However, the UK Government have unilaterally confirmed that any EU citizen who is living/working in the UK when free movement comes to an end can stay here and in due course apply for settled status (i.e. Permanent Residence). Employees and individuals who may qualify for permanent residence now should take the opportunity to do so in view of future uncertainties.

Richard Fleischer

Brexit does not apply to the United States.

Q7. If a business wanted to hire a skilled foreign worker, can you talk us through the visa application process? What restrictions would be imposing on that worker?

Kerry Garcia

If a business wanted to hire a skilled foreign worker from outside the European Economic Area ("EEA"), then in most cases they would need to have a sponsor licence issued by the Home Office under Tier 2 of the points based system. This is the main immigration route for skilled work applications in the UK.

A Tier 2 sponsor licence allows a business established in the UK to sponsor migrants from outside the EEA in skilled roles (broadly roles at a professional or managerial role). To obtain a sponsor licence the UK business must be active and trading and must have at least one individual employee in the UK who is not subject to immigration control (i.e. who is a British or EEA national or who has settled status in the UK) to act as Key Personnel and be responsible for the licence. Sponsors also have to agree to take on a number of onerous obligations and if they do not comply with these they may lose their licence and be unable to sponsor non-EEA nationals.

Very broadly, there are two main Tier 2 categories. The first is known as Tier 2 (Intra Company Transfer) and under this route existing employees of the overseas entity are able to transfer to the UK office for a limited period of time (usually up to five years).

The other main category is Tier 2 (General) which is for new hires and can lead to the right to remain in the UK permanently after five years. However, in cases where the person will earn less than £159,600 per annum (and this figure may increase) there are stringent advertising requirements and the UK business may only sponsor a non-EEA national if it is satisfied there are no British, EEA or settled workers for the role. There are also other requirements, including maintenance requirements and English language requirements.

Q7. If a business wanted to hire a skilled foreign worker, can you talk us through the visa application process? What restrictions would be imposing on that worker?

Kerry Garcia

Once in the UK the individual can, in most circumstances, only work for the sponsor. The individual and the sponsor are responsible for reporting changes in their role or personal details to the Home Office and there are strict time limits for when notifications need to be made as well. If their role changes significantly they might have to make a fresh application in order to legally remain in the UK.

Alternatively, if an overseas company wishes to set up a branch in the UK it can send one of its senior employees to the UK as a sole representative. Sole representative applications must be submitted before the UK business is active and trading.

Marcel Reurs

If it concerns a citizen of the EU, EEA of Switzerland, they may travel to the Netherlands and work without any visa, work permit or other immigration permission required. Others must apply for a residence permit. Unless exempt, they must also apply for an entry visa ('MVV'). The most common categories for skilled workers are 'Highly skilled migrant' (HSMP) 'Intra company transfer'(ICT) and 'European Blue Card' (EBC). The HSMP and EBC category shall apply if the migrant worker will be employed by their Dutch employer i.e. will be receiving a local employment contract.

The notable difference between these two categories is HSMP is only available if the sponsor has recognised sponsor status and a lower salary threshold. The EBC requires the employee to have a degree and has a higher salary threshold, but is available to ordinary sponsors as well. The ICT category will in most cases be mandatory if the skilled worker is transferred to the Netherlands from a foreign entity, belonging to the same international group of companies as his employer abroad and is available to all sponsors.

The procedure involves an application, made by the sponsor, for 'Entry and Stay' with the Immigration and Naturalisation Service which is processed within either 90 days or two to three weeks if the sponsor holds recognised sponsor status. Unless exempt, the employee will need to collect an entry visa ('MVV') at the Dutch embassy or Consulate-General in his country of nationality or residence. The procedure is relatively straightforward and the outcome is quite predictable. Under the HSP and ICT, the salary must not only meet a threshold, but must also be in accordance with Dutch market level. The vast majority of applications is granted on application and within the legal set processing time. Issues we see in applications by skilled workers mostly have to do with the IND doubting if the applicant's salary is deemed to be outside Dutch market level.

Chris Magrath

Excluding EU citizens (for the present at any rate) it is relatively straight forward to secure work authorisation (a Certificate of Sponsorship) and subsequent visa for an Intra Company Transfer. These are however limited to skilled employees and the minimum salary for such individuals must be no less than £41,500 annually or alternatively a new hire. Unless the new hire is a high earner (a salary in excess of £159,600 a year), a 28 day advertising process must be undertaken and the Home Office must approve the issue of a Certificate of Sponsorship thereafter. Such an application is more problematic as it is subject to the Government's monthly immigration cap and the likelihood of approval is largely dependent upon the salary level to be paid to individual migrants. Employees are limited to working for a specified employer and upon termination of that employment or departure from the UK, the migrant will not be permitted to re-enter the UK to take up employment within 12 months.

Q7. If a business wanted to hire a skilled foreign worker, can you talk us through the visa application process? What restrictions would be imposing on that worker?

Richard Fleischer

This is too complicated to put in one or two short paragraphs. Hiring a new employee can be as a non-immigrant (H-1B working visa; L intra-company manager, executive or employee with specialised knowledge; E visa where U.S. and alien's country have a treaty; J exchange visitor visa). Further, an employer can file for an employee for a "green card," though this process takes longer.

"Hiring a new employee can be as a non-immigrant (H-1B working visa; L intra-company manager, executive or employee with specialised knowledge; E visa where U.S. and alien's country have a treaty; J exchange visitor visa)."

- Richard Fleischer

Q8. What immigration considerations need to be applied in M&A transactions?

Kerry Garcia

There are a number of immigration considerations which should be considered as part of any M&A transaction in the UK. Firstly, as part of the due diligence process, the buyer should find out as much information as possible about the makeup of the work force and any immigration risks. I recommend finding out if there are any employees within the target business who are non-EEA nationals, and if so, what their current immigration status is. The buyer should also check if the target company has a Tier 2 sponsor licence and, if so, make further enquiries as to whether the company has complied with its sponsor licence obligations. Buyers should also ask questions about whether the target has carried out right to work checks properly. If the company has not done so and it transpires that an employee is working illegally the business will face a civil penalty of up to £20,000 per illegal worker. I also recommend requiring warranties from the seller to confirm that all employees have the right to work, that right to work checks have been properly carried out and that the target company has complied with all of its sponsor licence obligations.

If the company is being acquired by way of an asset purchase, the buyer should carry out its own right to work check within 60 days of the acquisition. If the business being acquired has a sponsor licence further work will need to be carried out post acquisition. If there is a share sale and the immediate parent company of the company holding the sponsor licence changes, an application for a fresh sponsor licence must be made within 20 working days of the acquisition. If there is an asset purchase the seller and buyer must both notify the Home Office that the Tier 2 migrants sponsored by the seller have transferred to the buyer. If the buyer does not have a sponsor licence it will need to apply for one within 20 working days of the transfer.

There may be further Home Office notifications required as a result of the transaction, for example, if employees are made redundant, move to other locations or change roles or if there are new companies or premises which need to be added to an existing sponsor licence. As the timescales are tight and this is a complex area we recommend that immigration advice is always sought in good time before the acquisition.

Q8. What immigration considerations need to be applied in M&A transactions?

Marcel Reurs

In any corporate restructuring, the immigration aspects must be assessed properly and timely. In the Netherlands, a sponsored migrant worker's residence permit is connected to a specific legal entity that is considered his employer and sponsor for immigration purposes. If, due to a merger, acquisition or other corporate restructuring, the employing entity will change or cease to exist, the entity receiving the migrant workers will not automatically follow up in sponsorship. A specific and timely action will be required to achieve this. Normally, this involves the employing and receiving entity making sponsorship notifications to the IND. This is applicable to all migrant workers who are sponsored by their employer, regardless if the entities have recognised sponsor status. The receiving entity will itself need to acquire recognised sponsor status before it can legally sponsor any HSMP workers it will be receiving.

Again, ignoring immigration compliance can have devastating consequences for the receiving entity as it can result in penalties, losing eligibility for recognised sponsor status and losing eligibility for sponsoring under EBC or ICT for a period of five years. Hence, it can find itself banned from hiring any non-EU workers for five years. Apart from the company, the sponsored workers are at risk to: employed without the appropriate work authorisation, their residence permit permits may be revoked.

Chris Magrath

M&A transactions can provide some interesting problems. Put simply, an asset sale/purchase will always require individual migrant employees to secure new work authorisation although advertising will not be required as the individual will, by definition, already be working in the UK. Shares/stock acquisitions may or may not involve an application for approval of a "Change of Employment" (akin to the TUPE Employment Regulations) but this will very much depend upon the acquisition structure. The only time that the migrant employee will be seriously disadvantaged is if the acquiring entity does not have a Sponsor Licence (permitting it to assign Certificates of Sponsorship) and fails to apply for such a licence. In such a situation the migrant employees of the acquisition target will need to secure alternative employment within 60 days or leave the UK.

Q9. Can you talak us through the complexities surrounding immigration in cases of separation and divorce?

Fadi Farhat

In the most typical and common scenario, a non-British person will arrive in the UK on a visa as the partner of a British citizen. After five years, the non-British person will be able to make an application for permanent residence and, thereafter, British citizenship. Whilst most relationships last that five-year course, other relationships break down before that five-year period.

Broadly speaking, the complexities surrounding immigration in cases of separation and divorce in the UK can be divided into two cases – those cases involving children and those cases where there are no children.

Where there are no children involved, there is no independent provision to remain in the UK following a divorce for the non-British partner of a British citizen following divorce or separation. The only exception to this are cases of domestic violence where the British citizen has subjected the non-British partner to domestic violence (the definition of which is very broad and may conclude behaviour such as belittling, shunning or being overly critical of a person etc).

Other than that, there is very little protection for the non-British partner who may have uprooted themselves and sold off assets in their home country to relocate to the UK. None of this is accounted for within the framework of the Immigration Rules.

Q9. Can you talk us through the complexities surrounding immigration in cases of separation and divorce?

Fadi Farhat

In cases where there are children, the non-British partner will or should (in the absence of any harm to the child or children's welfare) obtain some form of contact with the children whether by agreement or through a Child Arrangements Order from the Family Court. In such a case, that non-British partner may be able to stay in the United Kingdom following divorce to enable such contact with the children to continue and the UK Immigration Rules (as well as human rights-based case-law outside the Immigration Rules) make accommodations for such cases.

Marcel Reurs

If the divorcee is an EU, EEA or Swiss national, they will be able to remain in the Netherlands if they have work or a business, of if they have sufficient means to support themselves and a valid health insurance. If the divorcee has another nationality, it will depend if they were sponsored by an EU/EEA/Swiss national or by a Dutch or non-EU national.

If sponsored by an EU/EEA/Swiss national, the divorcee would be able to remain in the Netherlands, provided they were in a genuine marriage or relationship with their sponsor for at least three years of which the divorcee remained in the Netherlands for at least one year. If sponsored by a Dutch or non-EU national, the sponsor and divorcee are legally required to inform the IND that their relationship has broken down and this will result in the residence permit being revoked. Permit holders who have been holding a residence permit to stay with their spouse or partner for a continuous period of at least five years can be eligible for a residence for continued stay provided they passed the Civic Integration Exam. It is not required that they have employment or income.

If the separation or divorce occurs within the five years, the situation is more complex and we must determine if the permit holder can be eligible under another immigration category to continue their stay (e.g. HSMP). If children were born from the relationship, the permit holder may under circumstances rely on Article 8 ECtHR for a continued stay.

Richard Fleischer

One way to obtain a green card is by marrying a United States citizen (USC) or green card holder. Such person holds a lot of power of the would-be immigrant because if he or she stops the process before the green card is issued, the approval will not be issued. Of course if there is a divorce before the issuance it will be the same result.

If alien beneficiary has not been married to USC/green card petitioner for two years before the green card is issued, then initial green card is valid for only two years. This means that if still married to each other, a petition to remove conditions within a 90-day window before the two years are up must be filed by the alien and spouse to remove the "conditional" part of the residence or permanent residence status is automatically terminated. However, if divorced from USC or permanent resident spouse, alien beneficiary may file this form at any time before or after the two years are up.

"If sponsored by an EU/EEA/Swiss national, the divorcee would be able to remain in the Netherlands, provided they were in a genuine marriage or relationship with their sponsor for at least three years of which the divorcee remained in the Netherlands for at least one year."

- Marcel Reurs

Q10. What key trends do you expect to see over the coming year and, in an ideal world, what would you like to see implemented or changed?

Marcel Reurs

The big immigration topic in the UK is of course Brexit. We now have more certainty in relation to the on-going rights of EU nationals who are currently in the UK and the rights of those who come to the UK after Brexit but before 31 December 2020 (when it is proposed that the implementation period will end). However, there is very little information yet about the extent to which EU nationals will be able to come to the UK to live and work after 31 December 2020.

Businesses and immigration lawyers are waiting for the Migration Advisory Report looking at the economic impact of Brexit and the loss of free movement rights. The report may also contain recommendations for the future immigration system. In addition, an immigration White Paper is due to be published in autumn 2018.

My hope is that the Government will take into account employers' concerns by allowing EU nationals to continue to have access to the UK labour market on more favourable terms. Many employers currently rely heavily on EU nationals to fill roles, particularly in certain sectors and in low skilled positions.

It would be very problematic if EU nationals have to abide by the Immigration Rules which currently apply to non-EEA nationals. Under the current Rules there are no routes into the UK to work in lower skilled positions. Also, if employers want to employ a non-EEA national in a skilled position they currently need to register as a sponsor and take on numerous onerous reporting and recording keeping obligations. If these are breached the business may lose its sponsor licence. Therefore in an ideal world I hope that this sponsor regime is not simply just extended to EU nationals without any further thought.

There have also been significant problems with the sponsorship regime in recent months which has had a detrimental impact on many employers. There is a monthly quota of unrestricted certificates of sponsorship and for the last seven months the number of applications has exceeded this monthly quota. This means that in many cases employers have been unable to employ the person they wish to. In an ideal world I hope that, as part of a general review, the Government will increase this quota. This will be particularly key if EU nationals also have to apply under this system.

Karl Waheed

I expect to see a greater protection of national labour markets to the detriment of third-country (i.e. non EU) workers, in France and Europe. I also expect to see greater inta-EU mobility of EU workers. The Commission has announced a re-haul of the EU Blue Card scheme, in order to make such scheme more uniform throughout the EU member states, and make the intra-EU mobility more fluid.

Fadi Farhat

As with most in the UK, I eagerly await developments on Brexit. As stated earlier in an answer to another question, the White Paper was vague and provided very little specifics.

However, I expect that the MAC's report, currently set for publication in September 2018, will set the tone for any future policy-making in this area and will set the tone for any onward debate and dialogue on this issue.

The White Paper refers to the importance of services to our economy which embodies nearly 80% of the UK economy. The White Paper emphasises that there needs to be an environment whereby such services are able to continue and flourish including financial services, legal services, services in the technology industry etc.

Q10. What key trends do you expect to see over the coming year and, in an ideal world, what would you like to see implemented or changed?

Fadi Farhat

What tends to be overlooked is that services are performed by people. Services mean people and people means migration. To strike a balance between the identifiable wishes of the electorate to reduce migration and maintain a competitive and prosperous economy will be the biggest and most difficult challenge to emerge from Brexit.

Chris Magrath

Trends for the future will be largely determined by Brexit and the effect, if any, that this will have on the UK's labour market. It is clear at present that there has been substantial reduction in EU workers coming to the UK and that gap will need to be filled. This will be difficult in circumstances where the UK Government for some uncountable reason, includes students in its net migration figures. This makes little sense and distorts the true number of people coming to the UK in anticipation of being able to live here permanently.

Later this year the Migration Advisory Committee (MAC) will be advising the Government on changes that it recommends to the current employed based migration system, but as there have been no leaks of any conclusions drawn by the MAC, it is pure speculation what their advice will be. In any event, the Government has the option to accept the MAC's recommendations – or not as the case may be.

Richard Fleischer

The current administration is taking a ridiculously hard line on even legal immigration. Instead of helping employers, it is making it more difficult to acquire aliens as employees. This may well continue until there is a new administration.

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