

# United Kingdom Immigration for Business Purposes\*

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The rules for the administration of the Immigration Act 1971,<sup>1</sup> which regulate the entry and the stay of persons in the United Kingdom, have been recently changed by the British government. The new Immigration Rules came into effect on January 1, 1983, at the same time as the British Nationality Act 1981.<sup>2</sup> The new rules generally make it more difficult for foreign nationals to qualify for admission to the United Kingdom.<sup>3</sup> For a foreign national who is desirous of entering the United Kingdom for the purposes of starting or investing in a new business, the available immigration categories are: approved employment under a work permit; businessmen and self-employed persons; permit-free employment; persons of independent means; and naturalization.<sup>4</sup>

## Approved Employment Under a Work Permit

An emigré can seek employment in the United Kingdom either by an established employer, or by a new company that has been formed on his

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\*This article deals with the immigration categories that are most likely to be applicable to foreign nationals wishing to enter the United Kingdom for the purposes of starting or investing in a new business. It will not deal with the immigration categories that are applicable to others, such as students, *au pair*, writers or artists.

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<sup>1</sup>Immigration Act 1971, 41 Stat. 12.

<sup>2</sup>British Nationality Act 1981, 51 Stat. 3.

<sup>3</sup>The Immigration Rules do not apply to citizens of the Irish Republic who are generally admitted freely to the United Kingdom. Nationals of Member States of the E.E.C. are entitled to be admitted to take or seek employment, to set up in business, or to become self-employed, for a period of six months without any formality, but are required to apply for residence permits if they wish to stay longer, and such residence permits are normally valid for five years. *Statement of Changes in Immigration Rules* (H.C. 169, Feb. 9, 1983), paras. 66-72 (hereinafter cited as *Immigration Rules*).

<sup>4</sup>For additional information, see generally, I. A. MACDONALD, *IMMIGRATION LAW AND PRACTICE IN THE UNITED KINGDOM* (1983).

behalf. The employer is required to submit a work permit application<sup>5</sup> on behalf of the prospective employee to the Department of Employment in the United Kingdom. In general, work permits are available only if a genuine vacancy exists, there is no suitable resident labor available, and the employer has made adequate efforts to find a qualified employee from the United Kingdom and other E.E.C. countries.

The requirement that the employer has taken steps to find suitable candidates from among the United Kingdom resident labor force and the E.E.C., can be very difficult to meet, especially in the current high level of unemployment. The Department of Employment expects the employer to give full results and details of advertising, including publications and dates.<sup>6</sup> However, if the employer is a new United Kingdom company which is going to engage in business that is related to what the foreign national has been doing in his own country, the Department of Employment may waive the advertising requirement on the grounds that the position requires intimate knowledge of the overseas business, especially at the start-up stage. The work permit, if granted, will be issued for an initial period of twelve months or less. At the end of that period, an extension of stay is usually granted by the Home Office<sup>7</sup> if the applicant is still engaged in, and the employer confirms that he wishes to continue to employ him in, the employment specified in the permit. If the permit was issued for a period of twelve months, the extension should be for a further three years.<sup>8</sup> Where the permit was originally issued for a period less than twelve months, an application for extension is generally referred back to the Department of Employment for further consideration.<sup>9</sup>

If the employee remains in this capacity for four years, he is entitled to apply for leave to remain in the United Kingdom indefinitely with a view to settlement,<sup>10</sup> if the employer wishes to continue to employ him. A person with settlement status is free to remain permanently in the United Kingdom. He does not require permission from any government department to take or change employment, and he may engage in any business or profession provided that he complies with any general regulations governing the busi-

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<sup>5</sup>The work permit application is submitted on a printed OW1(12) form designed to establish the prospective employee's professional qualifications or skill or experience.

<sup>6</sup>The Department of Employment deals with the issue and renewal of work permits. Its function is limited to the giving and withholding of approval of employment. Thus, it is this department which has established many of the requirements for approved employment.

<sup>7</sup>The Home Office is the equivalent of the Ministry of Interior in other countries. There is no British equivalent to an independent government agency, such as the Immigration and Naturalization Service in the United States, dealing exclusively with immigration and nationality.

<sup>8</sup>Immigration Rules, *supra* note 3, at para. 116.

<sup>9</sup>*Id.*

<sup>10</sup>*Id.* at para. 133. Settlement is the term used in the United Kingdom to refer to the immigration status of a foreign national who no longer has any restrictions on the period for which he may remain in the country.

ness or professional activity. He is also no longer required to report changes of address or other particulars to the police. In effect, a "settled" foreign national in the United Kingdom is similar to a Green Card holder in the United States.<sup>11</sup>

### **Businessman and Self-Employed Person**

A person may seek admission for the purpose of establishing himself in the United Kingdom in business or in self-employment. For this purpose, he must show the following: a willingness to bring at least £150,000 of his own money to put in the business; that his level of financial investment will be proportional to his interest in the business; that he will be able to bear his share of the liabilities; that he will be occupied full-time in the running of the business; that there is a genuine need for his services and investment; that he can maintain himself and his dependents without recourse to employment of any kind (other than his self-employment) or to public funds; and that the business will provide new, paid, full-time employment for persons already settled in the United Kingdom.<sup>12</sup>

Prior to the introduction of the 1980 Immigration Rules,<sup>13</sup> it was possible to make most immigration applications, including the business applications, to the Home Office in Croydon, a London suburb, where the Immigration and Nationality Department is situated. The 1980 rules, however, effectively ensured that all future applications were made to the entry clearance officer at the British Consulate in the country in which the applicant was a national or resident. This requirement continues in the new 1983 rules. The decision-making process mandated by the 1980 rules was made less effectual by the transfer of responsibilities from the experienced officers of the Home Office to relatively inexperienced diplomats.<sup>14</sup>

The new rules worked well for about one year. The entry clearance officers adopted a common-sense approach and business-related applications were processed speedily. Then decisions began to be delayed and it became clear that the entry clearance officers were referring applications back to the Home Office, as a matter of course. The referral process was complex as the British Consulates must send the applications to the Foreign

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<sup>11</sup>If a settled foreign national leaves the United Kingdom, he will normally be re-admitted at any time within two years of his departure, without any change in his status.

<sup>12</sup>Immigration Rules, *supra* note 3, at paras. 35-37.

<sup>13</sup>The previous Immigration Rules were introduced on the 1st of March 1980, and were effective until the 31st of December 1982, when they were replaced by the new Immigration Rules on January 1, 1983.

<sup>14</sup>For example, the author once submitted an application to the entry clearance officer at the British Consulate in Jeddah, Saudi Arabia, who was not even aware that the 1980 Immigration Rules had empowered him to make the decision.

Office in central London,<sup>15</sup> which must record every application before transferring the file to the Home Office in Croydon. The increased line of communication not only extended the time between application and decision but also resulted in the loss of some applications. Some solicitors believe that the new procedure was designed deliberately to frustrate and delay the business applicant.<sup>16</sup>

Once the applicant is approved, the businessman is admitted for a period not exceeding twelve months with a condition restricting his freedom to take employment (other than his self-employment).<sup>17</sup> At the end of the initial twelve-month period, the person can apply to the Home Office for an extension of stay. The applicant must once again satisfy the requirements described above, and in addition, must produce audited accounts of the business to establish its precise financial position.<sup>18</sup> If these requirements are met, the applicant's stay would be extended for a period up to twelve months. As with the former category, if the businessman remains in this capacity for four years and he is entitled to apply for leave to remain in the United Kingdom indefinitely with a view to settlement.

### **Permit-Free Employment**

A representative of an overseas firm which has no branch, subsidiary or other representative in the United Kingdom does not need a work permit, although he is coming for employment.<sup>19</sup> He may be admitted for a period not exceeding twelve months if he holds an entry clearance granted for an appropriate purpose.<sup>20</sup> Such a person is commonly known as the "sole representative." Prior to 1980, the sole representative applications were filed directly with the Home Office in Croydon, but the 1980 and 1983 rules require all such applications to be made to the entry clearance officer in the relevant country. As in the case of the business applications, the current procedure seems to be the referral of all sole representative applications back to the Home Office, as a matter of course.

At the end of the initial twelve-month period, the sole representative can apply to the Home Office for an extension. He should be granted a three-year extension if he is still engaged as such and the employer confirms that he

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<sup>15</sup>The Foreign Office is the equivalent of the State Department or the Ministry of Foreign Affairs in other countries.

<sup>16</sup>See e.g., Simmons, *Immigration for Business Purposes: An Opportunity Lost*, 80 *THE L. Soc'ys GAZETTE* 2657 (1983).

<sup>17</sup>Immigration Rules, *supra* note 3, para. 120.

<sup>18</sup>*Id.*, at paras. 119-20.

<sup>19</sup>In addition to representatives of overseas firms other categories of permit-free employment are: ministers of religion, representatives of overseas newspapers, doctors and dentists. *Id.*, at paras. 31-33.

<sup>20</sup>*Id.*, at para. 31 (the appropriate purpose for each category is set out in this paragraph).

wishes to continue to employ him.<sup>21</sup> The three-year extension is considerably more advantageous than the year-by-year extension that is available in the businessman category. However, the sole representative conditions are relatively easy to meet and do not require any minimum amount of capital, let alone £150,000, to be invested in the business. As a result, the sole representative category has become very popular with foreign applicants, and correspondingly unpopular with immigration officials. Recently, the Home Office has been requiring evidence to be submitted with the extension applications to establish that the applicant has indeed been conducting business in the United Kingdom on behalf of his foreign employer.<sup>22</sup> These new requirements are not specifically provided for in the Immigration Rules. If the sole representative remains in this capacity for four years, he is entitled to apply for leave to remain in the United Kingdom indefinitely with a view to settlement, if the employer wishes to continue to employ him.

### Person of Independent Means

A foreign national may come to the United Kingdom to live as a person of independent means,<sup>23</sup> if he holds an entry clearance issued to him for that purpose. He should be admitted for an initial period of up to twelve months with a prohibition on the taking of employment. A person of independent means may invest his money in a business, but he is not expected to run the business himself or to engage in other business activities. There are no requirements that he should be retired or be of a certain age.

The application must be filed with the entry clearance officer in the applicant's country of residence. The applicant is required to show that he has, under his control and disposable in the United Kingdom, a sum not less than £150,000 or income of not less than £15,000 a year; that he is able to maintain himself and support and accommodate his dependents indefinitely in the United Kingdom without working, with no assistance from any other persons and without recourse to public funds; and that he has a close connection with the United Kingdom (including the presence of close relatives or periods of previous residence), or that his admission would be in the general interests of the United Kingdom. These conditions may appear to be relatively easy to meet by persons with adequate financial resources. However, a number of rich Iranians and other nationals have failed to qualify as persons of independent means, because of the requirement that they have a close connection with the United Kingdom and an entry clearance obtained abroad.<sup>24</sup> At the end of the initial twelve-month period, the person can apply

<sup>21</sup>*Id.*, at para. 117.

<sup>22</sup>Because certain workers do not need work permits, their means of employment is under the direct control of the Home Office rather than the Department of Employment.

<sup>23</sup>For a description of this category, see Immigration Rules, *supra* note 3, at para. 38.

<sup>24</sup>The Times (London), December 14, 1981, at 9.

to the Home Office for extension to stay. He must continue to meet the requirements described above. If the evidence is satisfactory, he would be granted an extension of stay not exceeding twelve months with a prohibition on the taking of employment.<sup>25</sup> If the person remains in this capacity for four years, he is entitled to apply for leave to remain in the United Kingdom indefinitely with a view to settlement.

### **Naturalization**

A foreign national who is entitled to settlement in the United Kingdom may apply for naturalization as a British citizen, not earlier than twelve months from the date on which he was settled, if he meets the "five-year residence" requirements. The five-year period is the period ending with the date his application is received in the Home Office. He would meet the "five-year residence" requirements if he was in the United Kingdom at the beginning of the five-year period; in the five-year period he was not outside the United Kingdom for more than 450 days; in the last twelve months of the five-year period he was not outside the United Kingdom for more than 90 days; in the last twelve months of the five-year period his stay in the United Kingdom was not subject to any time limit under the immigration laws; and he was not at any time in the five-year period in breach of the immigration laws.<sup>26</sup>

### **Conclusion**

A foreign national wishing to enter the United Kingdom for the purposes of starting or investing in a new business, may qualify under a number of applicable categories in the Immigration Rules. The new procedure requiring the submittal of applications to the entry clearance officer at the British Consulate in the applicant's country of residence, and the habitual referral back of applications to the Home Office, has made it time consuming and difficult to obtain entry clearances. However, unlike the Immigration and Nationality Act of the United States,<sup>27</sup> the Immigration Act of the United Kingdom provides practical rules allowing the entry and settlement of foreign businessmen and investors, regardless of whether their country has a treaty with the United Kingdom or whether there is an available visa number.

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<sup>25</sup>Immigration Rules para. 122.

<sup>26</sup>If the applicant is married to a British citizen on the date of application, the residence requirement is reduced to three years, and there is no twelve-month waiting period after settlement.

<sup>27</sup>8 U.S.C. §§ 1101-1525 (1982).